

TURKEY

Protesting as a Terrorist Offense

The Arbitrary Use of Terrorism Laws to Prosecute
and Incarcerate Demonstrators in Turkey

HUMAN
RIGHTS
WATCH



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Printed in the United States of America
ISBN: 1-56432-708-6
Cover design by Rafael Jimenez

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NOVEMBER 2010

1-56432-708-6

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I. Summary

In Turkey, many hundreds of people currently face prosecution, or are serving substantial sentences for terrorism convictions. Their “crime” was to engage in peaceful protest, or to throw stones or burn a tire at a protest. Legal amendments since 2005, along with case law since 2008, have allowed courts in Turkey to convict demonstrators under the harshest terrorism laws, by invoking two articles of the Turkish Penal Code in combination with the Anti-Terror Law. In July 2010, as this report was being finalized, the government passed legal amendments to improve the treatment of child demonstrators; but this report focuses mainly on adult demonstrators, whose treatment remains harsh, disproportionate and ultimately violates several human rights norms.

The vast majority of demonstrators currently being prosecuted under terrorism laws is Kurdish, and the laws are usually invoked in the mainly Kurdish-populated areas of southeast Turkey, or in Adana and Mersin and other cities with large Kurdish populations. People whose writings and commentary on “the Kurdish question” in Turkey support positions perceived to be similar to those of the outlawed armed Kurdistan Workers’ Party (PKK) have long faced particularly harsh punishment under Turkish law. Now the courts are applying the same or even harsher punishments to regular people who take to the streets to demonstrate support for opinions the authorities perceive to be similar to those of the PKK. While many of the prosecutions discussed in this report involve allegations of stone-throwing or tire-burning at demonstrations, the government’s increasingly harsh punishment of Kurdish demonstrators does not appear to be a response to demonstrators’ violent acts, but rather to their perceived ideological support for the PKK. The present laws fall foul of the standards required by human rights law and the rule of law that criminal offenses must be defined precisely and in a foreseeable manner (the requirement of legality). Their application in the manner documented in this report amounts to an arbitrary use of criminal law in violation of international human rights standards and the rule of law. The laws also offend against international law as they criminalize the legitimate exercise of freedom of opinion, expression, and assembly. The imposition of aggravated punishment under the Anti-Terror Law because an individual expresses a political opinion, as opposed to the gravity of the unlawful activity, violates international human rights law.

Official statistics are not available for the number of adults and children convicted under terrorism laws and sentenced to prison for participating in demonstrations, but Human Rights Watch estimates that the figure runs into many hundreds. Anecdotal evidence from interviews with lawyers suggests that the numbers have been increasing in the past two years, since an important legal decision on the issue in 2008.

Turkey's Kurdish citizens have frequently protested publicly to express frustrations with the government's policies towards their culture, status, and rights, and, in recent years, the imprisonment of Abdullah Öcalan, the PKK leader. For instance, on July 14, 2008, and from October 18 to 21, 2008, protests were held in various cities in Turkey against Öcalan's prison conditions and alleged ill-treatment. Protests are also held every year on February 15, the day in 1999 that Turkish authorities captured Öcalan in Kenya and brought him to Turkey. The festival of Newroz/Nevruz (Kurdish and Turkish spellings in common usage in Turkey), the Kurdish New Year, on March 21, often elicits demonstrations as well as cultural celebrations. Protests took place prior to Turkey's March 29, 2009 municipal elections. There are also fairly frequent localized protests in cities throughout southeast Turkey and in mainly Kurdish-populated districts of cities such as Adana. These typically involve groups of youths and children, who shout pro-Öcalan and PKK slogans, burn tires in the street, and respond to police orders to disperse by throwing stones.

In the past, courts in Turkey convicted these protestors under laws governing public order or of "making propaganda for a terrorist organization" (Article 7/2, Anti-Terror Law). Yet in recent years, criminal justice officials have deemed Kurdish protestors demonstrating against Turkey's policies towards the Kurds to be "committing crimes on behalf of the PKK without being a member of that organization" (Article 220/6, Turkish Penal Code). As a result, they are prosecuted as if they were actually fighting the government as armed "members" of the PKK (Article 314/2, Turkish Penal Code). These serious charges, on top of more usual charges under the Law on Demonstrations and Public Assemblies, could result in sentences of 28 years in prison, or more, if there are repeated offenses. To date, the majority of adults convicted under these laws have received prison terms of between seven and 15 years. Prior to a July 2010 legal amendment, child protestors typically received prison sentences of between four and five years, though in 2010, at least several children were sentenced to seven-and-a-half years in prison.

Law enforcement authorities and the courts allege that the PKK and its representatives are organizing the demonstrations as part of a wider policy to promote civil unrest, and even uprising, among Kurds in towns and cities throughout Turkey. By way of evidence the government and courts point to the PKK's decrees issued at various congresses, and the fact that senior PKK representatives use sympathetic media outlets to issue "appeals" to the Kurdish population to take to the streets in protest. Hence, the template for individual indictments includes an abstract overview of PKK history and policies, followed by a statement of the alleged specific criminal activities of the defendant. In none of the cases examined by Human Rights Watch had prosecutors submitted evidence to establish that the individual defendant either heard the PKK's "appeal" or had been directly instructed or

motivated by the PKK to participate in the demonstration, much less that the individual had any other specific link with the PKK or committed a crime under its orders.

The Turkish courts consider it no obstacle to conviction that the prosecution has failed to provide evidence of the defendant's specific intent to support or aid the illegal activities of the PKK. The General Penal Board of the Court of Cassation has held that it is sufficient to show that sympathetic media outlets broadcast the PKK's "appeals"—speeches by the PKK leadership calling on the Kurdish population to protest or raise their voices on various issues. Then the defendant, by joining the demonstration, is assumed to have acted directly under PKK orders. Yet even at extremely local demonstrations not announced in the media beforehand, protestors are routinely charged with acting under the orders of the PKK. In some cases, courts have held that the PKK's "appeal" to participate in demonstrations is a continuous generic one, and therefore a specific instance of appeal to the population need not be proved.

This legal framework makes no distinction between an armed PKK combatant and a civilian demonstrator. In fact, demonstrators may be punished more harshly, because while combatants who turn themselves in may receive partial amnesty under the "Effective Repentance" provision in the Turkish Penal Code, there is no such provision to reduce the sentences of peaceful demonstrators who have never taken up arms. As a result, peaceful demonstrators with no clear PKK affiliation may be punished more harshly than PKK members who have actually served as guerrilla fighters.

On July 22, 2010, after civil society groups campaigned extensively against the prosecution of children under terrorism laws, the Turkish parliament adopted several amendments to limit the applicability of such laws to child demonstrators. Law no. 6008, published in the *Official Gazette* on July 25, 2010, states that all children will henceforth stand trial in juvenile courts, or adult courts acting as juvenile courts; child demonstrators "who commit propaganda crimes" or resist dispersal by the police will not be charged with "committing crimes on behalf of a terrorist organization" and hence "membership in a terrorist organization" and children will not face aggravated penalties, and may benefit from sentence postponements and similar measures for public order offenses.

The amendments also reduce penalties for both children and adults for forcibly resisting police dispersal and offering "armed resistance," including with stones, during demonstrations under the Law on Demonstrations and Public Meetings.¹ Yet the new law

¹For full law, "Terörle mücadele kanunu ile bazı kanunlarda değişiklik yapılmasına dair kanun" ("Law amending the Anti-Terror Law and other laws") (Law no. 6008), see *Resmî Gazete* (Official Gazette), July 25, 2010,

omits any provision to prevent children from being charged with “making propaganda for a terrorist organization” (either under Article 7/2 of the Anti-Terror Law or Article 220/8 of the Turkish Penal Code).

After the law entered into force, courts in Adana, Diyarbakir, and Van, among other places, immediately released children who were serving prison sentences or being held in pretrial detention on terrorism-related charges. In the coming months the Court of Cassation is expected to overturn all convictions of child demonstrators meted out by the adult Special Heavy Penal Courts. The Special Heavy Penal Court will issue decisions of non-jurisdiction for the cases against children and transfer the cases to the juvenile courts. Retrials will take place in juvenile courts and, according to the new law, in most cases where children were convicted of “committing a crime on behalf of an organization” (Article 220/6, Turkish Penal Code) and “membership in an armed organization,” (Article 314/2, Turkish Penal Code) the juvenile courts must drop these charges. Most children convicted of other offenses (such as “propaganda for a terrorist organization”, Article 7/2, Anti-Terror Law) are likely to benefit from sentence postponements. Since this report was finalized during the judicial recess when no retrials had yet begun, from Fall 2010 it will be important to monitor how the law is applied to new and ongoing cases, as well as to cases in which there is already a confirmed sentence.

Since its foundation, the Republic of Turkey has pursued variously assimilationist and repressive policies towards minority groups, especially one of the largest ones, the Kurds. Today, Turkey is home to an estimated 12 to 20 million Kurds, though there is no official tally because the government does not recognize the Kurds as a distinct group and population censuses have not collected information about ethnicity for many years. The problems of Kurds today have been compounded by decades of poverty, discrimination, and underdevelopment, and 25 years of displacement and armed conflict. While in the past, Kurdish language and cultural expressions were strictly prohibited, those restrictions have eased. Yet laws and regulations still curtail Kurdish-language education in schools and the use of languages other than Turkish in public life, and restrict the rights to political representation and participation.

In 2009, President Abdullah Gül and the Justice and Development Party (AKP) government emphasized the pressing need to solve the Kurdish problem and committed to taking concrete steps to a resolution. In May 2009, President Gül commented: “Call it terrorism, call it the southeast, call it the Kurdish problem: this is Turkey’s number one problem. It must be

<http://rega.basbakanlik.gov.tr/main.aspx?home=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm&main=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm> (accessed July 26, 2010).

solved ... we must not miss this opportunity.” On July 29, 2009, Interior Minister Beşir Atalay indicated that a solution would be achieved “by broadening and strengthening our citizens’ democratic rights and ensuring that each of our citizens, wherever they live, feel themselves to be equal and free individuals of the state.” The government named the project “the democratic opening,” though it is also known in the press as the “Kurdish opening.” The government signaled the formal start of the process when it presented a plan to parliament on November 13, 2009. Among other reforms, Minister Atalay said the government would set up a commission to combat discrimination and end obstacles to all-day broadcasting by private television channels in languages other than Turkish. The latter step was achieved with a regulation introduced on the same day as Minister Atalay’s announcement.

The first blow to the government’s plan came in December 2009, when the Constitutional Court banned the pro-Kurdish Democratic Society Party (DTP), accusing it of separatist activity.

Then in May 2010, PKK escalated its deadly attacks on military and police targets, continuing through the summer. (In mid-August 2010, the organization declared an end to such attacks during the month of Ramazan.)

Over the following months there were no developments indicating that the government was pursuing an “opening” and there were also further serious setbacks to the process. In June 2010, 151 officials of the now-banned DTP and its successor, the Peace and Democracy Party (BDP), were indicted for membership in an alleged “Turkey Assembly” of the Union of Kurdistan Communities (KCK), a body connected with the PKK. Those due to stand trial in October 2010 include eight serving and four former elected mayors of municipalities in the southeast; at the time of writing this report, seven of the serving mayors had been held in pretrial detention for eight months. Prior to being formally indicted, 53 of the other Kurdish party officials, lawyers and activists among the 151 people facing trial had been held for over a year in pretrial detention for alleged KCK/PKK connections following a clampdown on legal Kurdish political activity beginning in April 2009 right before the government announced its “democratic opening.”

Also in June 2010, eight PKK members based in PKK camps in northern Iraq and 22 civilians from the Mahmur camp in Iraq run by the Office of the United Nations High Commissioner for Refugees (UNHCR), who had returned to Turkey apparently in response to the government’s “democratic opening,” were put on trial for “membership in the PKK,” “making propaganda for the PKK,” and “committing crimes on behalf of the PKK.”

Despite the adverse climate that had developed by June 2010, Prime Minister Erdoğan repeatedly restated his commitment to pursue the “democratic opening.”² In 2009, the government did lift restrictions on broadcasting in Kurdish, and in July 2010, it ended the prosecution of all children in adult courts and adopted amendments to limit the application of the most serious terrorism laws to child demonstrators. However, by August 2010, the government had taken no other concrete steps to implement its plan. If the government is truly committed to bringing about a “democratic opening,” one important measure will be to put an end to the arbitrary use of terrorism laws against demonstrators.

In this report, Human Rights Watch examines the use of terrorism laws to prosecute adults who protested peacefully, or who threw stones, burned tires and committed other minor acts of violence. While people who commit such offenses may legitimately be prosecuted and sanctioned, there is no evidence that the vast majority of these defendants committed any act that would typically or reasonably be considered “terrorism.” The “terrorism” charges brought against these protestors are extremely vague and imprecise and do not correspond to the nature or gravity of the acts committed. As such, they fail the test of legality, and their application amounts to an arbitrary use of criminal law, and a violation of human rights and the rule of law.

Furthermore, it is contrary to the requirements of a fair trial under international law for a state to impute motives to individuals and then prosecute them solely for these assumed motives—in this case, for the Turkish government to assume that demonstrators are acting under orders of the PKK - without showing any evidence of this. It is a violation of the right to freedom of assembly for the government to infer that demonstrators have criminal intent solely because they participated in a peaceful protest. The reality is that in many of these cases, the demonstrators are doing nothing more than exercising their right to freely express their views, a right that is protected under international law as one of the foundations of a democratic society.

Key Recommendations

Human Rights Watch calls on the Turkish government, as a matter of urgent priority and as part of its stated commitment to uphold the human rights of Kurdish citizens of Turkey, to amend the laws that have resulted in the punitive application of terrorism charges against demonstrators, notably by repealing Articles 220/6 and 220/7 of the Turkish Penal Code

² See, for example, speech to the AKP group meeting in parliament: <http://www.beyazgazete.com/video/2010/06/18/erdogan-acilim-bitmedi-ayni-kararililikla-devam-cnnturk.html> (accessed August 23, 2009).

“committing a crime on behalf of an organization without being a member of that organization,” and “knowingly and willing aiding and abetting an organization”), which are punishable under Articles 314/2 and 314/3 of the Turkish Penal Code (“membership in an armed organization”), and Article 2/2 of the Anti-Terror Law, which includes a similar provision: “A person who is not a member of a terrorist organization but, commits a crime on behalf of the organization, is also deemed to be a terrorist offender and is punished as a member of the organization.”

Methodology

This report is based on the examination of 50 cases of the prosecution of adult and child demonstrators in the Diyarbakır and Adana courts. We have focused on these two provinces because most of the recent prosecutions of demonstrators occurred in these regions.

Terrorism offenses and organized crime fall under the jurisdiction of Heavy Penal Courts, which are authorized under Article 250 of the Criminal Procedure Code (henceforth “Special Heavy Penal Courts,” except where referring to a specific court, such as Diyarbakır Heavy Penal Court No. 4). Crimes committed in Diyarbakır and in the surrounding provinces of Urfa, Mardin, Batman, Şırnak, Siirt, and Bingöl are dealt with by the Diyarbakır Heavy Penal Courts. The cases in this report before the Special Heavy Penal Courts in Adana mainly concern crimes committed in the city of Adana, though the courts also have a remit over crimes committed in surrounding provinces, such as Mersin, İçel, Gaziantep, and Hatay.

The report draws on interviews with defense lawyers, prosecutors, heads of bar associations, police officers, families of prosecuted demonstrators, defendants free from prison on bail, and representatives of children’s rights and human rights groups.

This report examines 18 cases against 26 individuals in greater detail to demonstrate the current practice of the courts and reveal problems in their application of the laws.

The report does not deal in any detail with the much broader matter of comprehensively extending the limited juvenile justice system in Turkey. In July 2010, the Turkish government amended laws to end the practice of prosecuting children under the age of 18 in Special Heavy Penal Courts and to ensure that in future, all children will stand trial in juvenile courts. The amendments also stopped prosecutors from applying the most serious terrorism laws to child demonstrators. While these are very welcome steps, further reforms to terrorism laws are needed to remedy the injustices described in this report.

The research was carried out between January 2009 and March 2010. Interviews with children released from prison pending trial were carried out in Adana in May and June 2009. All interviews were conducted in Turkish.

In this report “child” and “children” are used to refer to anyone under the age of 18, consistent with usage in international law. The names of all children are abbreviated to their initials to protect their privacy. This follows the practice of NGOs and children’s rights groups in Turkey. All adults are referred to by their full names and not by pseudonyms. The cases in this report are up-to-date as of July 2010.

II. Background

Conflict and Kurdish Rights in Southeast Turkey

For the past 25 years, the Turkish military and the Kurdistan Workers' Party (PKK) have been locked in conflict in the southeast and eastern provinces of the country. The fighting has killed an estimated 44,000 people: soldiers, PKK members, and civilians.³ During the 1990s, human rights groups documented gross violations of human rights by both the Turkish security forces and the PKK. There were thousands of enforced disappearances and unresolved killings suspected to have been carried out by state perpetrators. A state policy of burning down villages, ostensibly to prevent them from being used as PKK bases, led to the displacement of 950,000 to 1.2 million people.⁴ State agents conducted torture on a mass scale, and both state forces and the PKK attacked civilians.⁵

For many years, much of the southeast and eastern regions were governed by emergency laws, which severely curtailed the rights to assembly, association, and expression. Fighting lessened after the 1999 capture of PKK leader Abdullah Öcalan and the PKK's announcement of a ceasefire. Yet violence escalated again at various times from 2004 to mid-2010, typically taking the form of armed clashes between the military and the PKK in remote mountainous regions away from population centers. The PKK, or groups affiliated with it, have occasionally launched attacks on civilian targets in cities and holiday resorts. Most recently, since May 2010, the PKK has carried out a series of deadly attacks on military and police targets.

Over the last decade, the Justice and Development Party government (which has served two terms between November 2002 and the present), and the coalition government that preceded it, undertook important reforms to advance fundamental rights and freedoms.

³ In July 2008, the general chief of staff discussed the number of fatalities over 24 years in a speech to the press: see http://www.tsk.tr/10_ARSIV/10_1_Basin_Yayin_Faaliyetleri/10_1_7_Konusmalar/2008/org_ilkerbasbug_iletisim_16092008.html (accessed April 29, 2010). The official figures were stated as follows: 6,482 soldiers; 32,000 PKK members; 5,660 civilians killed. Nongovernment organizations have expressed doubt about the accuracy of these official figures, and in particular, the number of PKK deaths, which they believe may include a significant number of civilians misidentified as PKK members.

⁴ See the December 2006 study by Hacettepe University's Institute of Population Studies, <http://www.hips.hacettepe.edu.tr/tyona/TGYONA-AnaRapor.pdf> (accessed April 30, 2010).

⁵ See, for example, annual reports of the Human Rights Foundation of Turkey, <http://www.tihv.org.tr/index.php?turkiye-insan-haklari-raporu>; "The Kurds of Turkey: Killings, Disappearances and Torture" (Human Rights Watch, March 1993); "Turkey: Extrajudicial Executions," Amnesty International 1990, http://ob.nubati.net/wiki/Extra-judicial_Executions; "Listen to the Saturday Mothers," Amnesty International, 1998; see, <http://www.amnesty.org/en/library/asset/EUR44/017/1998/en/3ccea6b6-d9a5-11dd-af2b-b1f6023af0c5/eur440171998en.html>; and reports on internal displacement of Kurds including "Turkey: Displaced and Disregarded: Turkey's Failing Village Return Program," Human Rights Watch, October 2002, see, <http://www.hrw.org/en/node/78636> (all accessed April 29, 2010).

However, the conflict has had a profound impact on the way legislation has been drafted in this era, and has also influenced the way courts have interpreted laws. The lawmakers who amended the Penal Code and Anti-Terror Law, and the courts, most notably the Court of Cassation, have focused primarily on measures to enhance security, often at the expense of human rights.⁶ The pattern of prosecutions and convictions addressed in this report is a direct legacy of the conflict: vague and overly broad laws, and harsh, potentially discriminatory, implementation of those laws by Turkey's Court of Cassation.

While the previous AKP government (November 2002-July 2007) introduced many legal reforms, countless laws continue to affect Kurds and other minority groups disproportionately, restricting their right to use their mother tongue in public life, to organize politically on the basis of their ethnic or religious identities, and to enjoy other cultural rights.⁷ Until recently, Turkish government and state officials viewed the Kurdish question solely as about the PKK, a problem of security and territorial integrity. They did not focus on or attempt to address the roots of the problem. The history of minority rights in Turkey and of Kurdish rights in particular has been extensively surveyed elsewhere, and the following section gives only a brief overview.

Minority Rights in Turkey

Turkey is a heterogeneous country, made up of religious and ethnic minority groups including Kurds, Laz, Çerkes, Roma, Alevi, Syriacs, Arabs, Greeks, Armenians, Jews and others, alongside the Turkish majority. The Republic of Turkey has a well-documented history of variously assimilationist and repressive policies toward minority ethnic and religious groups.⁸ The government has denied minority groups a full spectrum of rights, including cultural recognition, linguistic rights, and political inclusion on the basis of ethnic or religious identity, except for three groups (Greeks, Armenians, and Jews) recognized as

⁶ The UN special rapporteur on the protection and promotion of human rights in the course of countering terrorism criticized elements of the Anti-Terror Law in follow-up statements to his November 2005 visit to Turkey. A/HRC/4/26/Add.2: <http://daccess.un.org/doc/UNDOC/GEN/G06/149/42/PDF/G0614942.pdf?OpenElement>, November 16, 2006 (accessed September 8, 2009).

⁷ In April 2010 the Election Law (Law 5980, published in Official Gazette, April 10, 2010) was amended so that it is no longer a criminal offense for parties conducting election campaigns to use languages other than Turkish. However, article 81 of the Political Parties Law still prohibits languages other than Turkish.

⁸ During the early history of the republic, the government forcibly crushed a number of armed insurrections against the central authority of the state in majority Kurdish-populated areas of the country. A nascent Kurdish nationalism colored some of these uprisings; some also carried religious overtones against the new secular order; in others, residents of peripheral areas resisted incorporation into a centralizing and homogenizing new state. The state authorities denied the very existence of Kurds, including their cultural or linguistic identities. During the conflict with the PKK, officials began to acknowledge the Kurds as an ethnic group. The literature on the issues includes: Robert Olson, *The emergence of Kurdish nationalism and the Sheikh Said rebellion* (Austin: University of Texas Press, 1989); Martin van Bruinessen, *Agha, Shaikh and State: The Social and Political Structures of Kurdistan* (London: Zed Books, 1992); Hamit Bozarslan, *La Question Kurde: Etats et minorités au Moyen-Orient* (Paris, 1997).

minorities by the 1923 Treaty of Lausanne. Throughout the 87-year history of the republic, the state has refused to officially recognize any other group as a minority.⁹ The numerically largest groups to be denied recognition were Kurds and heterodox Muslim Alevis.

Throughout the history of the Republic of Turkey, Turkish citizenship and identity has been equated with membership in the Turkish and Sunni Muslim majority, and citizens have been expected to bury other ethnic or religious affiliations and associations.¹⁰ The education system in Turkey has emphasized a single Turkish identity for all citizens and omitted any mention of minority groups other than those originally recognized in 1923. People who have called for the recognition of minority rights have often faced criminal prosecution for offenses against the integrity of the state, and their written expression has been censored. Even today, people are prosecuted for non-violently expressing opinions on the Kurdish issue, discussing Kurdish history, and criticizing the state policy on minority rights and more generally discussing the recent history of minority groups.

Under the influence of the Turkish left and the Iraqi Kurdish national movement, Kurdish nationalism in Turkey began to develop in the late 1960s, and became highly visible in the 1970s with a burgeoning number of cultural and political groupings. Following the September 12, 1980 military coup, all Kurdish nationalist cultural and political groupings were banned, along with leftist and rightist groups. This left the field open to the Kurdistan Workers' Party (PKK) – an underground group with a Marxist-Leninist orientation at that time – that launched an armed struggle against the Turkish state in 1984. From that time onwards, the Turkish military has fought the PKK, which throughout the 1980s and '90s sought to build a separate Kurdish state. The PKK no longer advocates a separate state. Now the group, still armed, fights for cultural and political rights for Kurds in Turkey.¹¹

In Turkey's recent history, restrictive state policies resulted in a harsh clampdown on the civil, political, economic, social, and cultural rights of the civilian population in the southeast. At the height of the conflict with the PKK, this translated into serious violations of human rights and humanitarian law. Countless judgments by the European Court of

⁹ Baskin Oran, *Türkiye'de Azınlıklar, Kavramlar, Teori, Lozan, İç Mevzuat, İctihat, Uygulama* (Istanbul, 2004).

¹⁰ Kemal Kirişçi, "Disaggregating Turkish Citizenship and Immigration Practices," *Middle Eastern Studies*, vol. 363, (2000), s.122. Martin van Bruinessen, "Race, culture, nation and identity politics in Turkey: some comments," http://www.let.uu.nl/~Martin.vanBruinessen/personal/publications/Identity_politics_in_Turkey.pdf.

¹¹ Aliza Marcus, *Blood and Belief: The PKK and the Kurdish Fight for Independence* (New York: New York University Press, 2007).

Human Rights found Turkey responsible for extrajudicial executions, enforced disappearances, torture, and the destruction of property in the southeast provinces.¹² The failure to resolve the Kurdish question has been one of the main obstacles to fostering a political order in Turkey that exhibits and adheres to the hallmarks of democracy, rule of law, and respect for human rights propounded by human rights instruments such as the European Convention on Human Rights. The European Commission has repeatedly commented in its regular reports on the need for Turkey to sign international conventions on the protection of minority rights, as well as to amend its national laws. For years, successive Turkish governments have missed many opportunities to tackle these issues.

The AKP Government's "Democratic Opening" and Minority Rights

In 2009, the Turkish government indicated that it was committed to addressing the failures of the past. Prime Minister Recep Tayyip Erdoğan and President Abdullah Gül emphasized the pressing need to solve the Kurdish problem and committed themselves to taking concrete steps to do so. In May 2009, President Gül commented: "Call it terrorism, call it the southeast, call it the Kurdish problem: this is Turkey's number one problem. It must be solved ... we must not miss this opportunity."¹³ On July 29, 2009, Interior Minister Beşir Atalay announced that the government had begun to work on a plan to solve an issue that "we all know is vital for Turkey's future," emphasizing the need for "broadening and strengthening our citizens' democratic rights and ensuring that each of our citizens, wherever he or she lives, feel themselves to be equal and free individuals of the state." Atalay promised a wide-ranging consultation process to solve what he described as "not only our party's or our government's problem, but a problem of the whole society."¹⁴ The

¹² See e.g. *Akdivar and Others v. Turkey*, Judgment of September 16, 1996, Reports of Judgments and Decisions 1996-IV, *Avsar v. Turkey*, judgment of July 10, 2001, Reports 2001- VII; *Bilgin v. Turkey*, Judgment of July 17, 2001, Reports 2001- VIII; *Çakıcı v. Turkey* [GC], no. 23657/94, ECHR 1999-IV; *Ergi v. Turkey*, Judgment of July 28, 1998, Reports 1998-IV, *Ertak v. Turkey*, no. 20764/92, ECHR 2000-V; *Güleç v. Turkey*, Judgment of July 27, 1998, Reports 1998-IV; *İlhan v. Turkey*, [GC] no. 22277/93, ECHR 2000-VII; *Kaya v. Turkey*, Judgment of February 19, 1998, Reports of Judgments and Decisions 1998-I, p. 324; *Kılıç v. Turkey*, Judgment of March 20, 2000, Reports of Judgments and Decisions 2000-III; *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III; *Kurt v. Turkey*, Judgment of May 25, 1998, Reports 1998-III; *Selçuk and Asker v. Turkey*, Judgment of April 24, 1998; Reports of Judgments and Decisions; 1998-II, *Taniikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV.

¹³ "İster terör, ister Güneydoğu, ister Kürt meselesi deyin. Bu, Türkiye'nin birinci meselesidir. Mutlaka halledilmeli," <http://www.ntv.com.tr/id/24964940/> (accessed November 21, 2009).

¹⁴ "Konunun Türkiye'nin geleceği açısından ne kadar hayati olduğunu hepimiz biliyoruz", "Kürt meselesi olarak adlandırılan meselenin de vatandaşlarımızın demokratik haklarının genişletilmesi ve pekiştirilmesiyle, nerede yaşarsa yaşasın her vatandaşımızın kendisini devletin eşit ve hür ferdi olarak hissetmesini sağlamakla çözülebileceğine biz inanıyoruz. Bu nedenle çözüm sürecinin yönü demokratikleşmedir. Bu konuda daha önce yaptıklarımız bundan sonra yapacaklarımızın da bir göstergesidir. Demokratikleşme adımlarını toplumun tüm kesimleriyle birlikte atmak istiyoruz. Bu mesele sadece partimizin ya da hükümetimizin değil tüm toplumun meselesidir." For further details of the speech, see *Radikal* newspaper, July 30, 2009, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetay&ArticleID=947208&Date=30.07.2009&CategoryID=77> (accessed August 14, 2009).

government named the project “the democratic opening,” though it also became known in the press as the “Kurdish opening.”

On November 13, 2009, the government brought the Kurdish issue to the parliament for discussion. Minister Atalay promised various reforms, such as establishing a commission to combat discrimination, lifting obstacles to all-day broadcasting by private channels in languages other than Turkish, and creating a new constitution.¹⁵ Prime Minister Erdoğan described the process as a “new beginning for Turkey.”

The first sign of a backlash against the initiative came in December 2009, when the Constitutional Court banned the pro-Kurdish Democratic Society Party (DTP) on grounds that it promoted separatism.¹⁶ Over the following months there were no developments indicating that the government was pursuing an “opening” and there were also some serious setbacks to the process.

In May 2010, the PKK escalated its deadly attacks on military and police targets, in a campaign that continued through the summer. (In mid-August 2010, the organization declared an end to such attacks during the month of Ramadan.)

In June 2010, the authorities clamped down on legal Kurdish political activity, and the Diyarbakir prosecutor’s office indicted a large group of politically active Kurds after a long investigation.¹⁷ For more than a year, officials and activists in the DTP and its successor, the Peace and Democracy Party (BDP), and lawyers perceived to be close to the parties, had been held in pretrial detention. In June, 151 people—including eight democratically elected serving mayors and four former mayors of municipalities in the southeast—were indicted for membership in an alleged “Turkey Assembly” of the Union of Kurdistan Communities (KCK), a body connected with the PKK. They are to stand trial in October 2010.¹⁸ Seven of the serving mayors remain in pretrial detention at the writing of this report. The Diyarbakir prosecutor’s move to demonstrate links between the DTP and its successor the BDP, with 20

¹⁵ For details of the November 13, 2009 parliamentary debate, see the press reports of the government and opposition’s speeches to parliament, including <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetay&ArticleID=964199&Date=13.11.2009&CategoryID=78> (accessed November 13, 2009).

¹⁶ See Human Rights Watch press release and Q and A on the closure of the DTP: <http://www.hrw.org/en/news/2009/12/11/turkey-kurdish-party-banned> (accessed July 1, 2010).

¹⁷ See Human Rights Watch press release, <http://www.hrw.org/en/news/2010/01/12/turkey-rights-defender-arrested> (accessed July 1, 2010).

¹⁸ Indictment accepted by Diyarbakir Heavy Penal Court No. 6, June 18, 2010.

members of parliament, and the armed PKK, clearly threatens current prospects of solving the Kurdish problem by democratic means.

Also in June 2010, eight PKK members based in PKK camps in northern Iraq and 22 civilians from the Iraqi Mahmur camp run by the Office of the United Nations High Commissioner for Refugees (UNHCR), who had returned to Turkey apparently in response to the government's "democratic opening," were put on trial for "membership in the PKK," "making propaganda for the PKK," and "committing crimes on behalf of the PKK."

Despite the adverse climate that had developed, Prime Minister Erdoğan repeatedly restated his commitment to resolving the Kurdish question.¹⁹ In 2009, the government had lifted restrictions on broadcasting in Kurdish, and in July 2010, the government ended the prosecution of children in adult courts and limited the application of the most serious terrorism laws to child demonstrators. Yet by August 2010, more than a year after the interior minister had first promised a "democratic opening," the government had taken no other concrete steps to implement its plan.

If the government is serious about reform, among many other concrete steps needed, it must end the arbitrary use of terrorism laws against demonstrators, as permitted by a combination of the Turkish Penal Code, the Anti-Terror Law, and recent case law.

¹⁹ See, for example, speech to the AKP group meeting in parliament: <http://www.beyazgazete.com/video/2010/06/18/erdogan-acilim-bitmedi-ayni-kararilikla-devam-cnnturk.html> (accessed August 23, 2009).

III. A Culture of Political Protest

The past few years have seen increasing numbers of protests by Kurds frustrated with government policies towards their culture, status, and rights, and towards Abdullah Öcalan, the imprisoned leader of the armed Kurdistan Workers' Party (PKK). For example, on July 14, 2008, and from October 18 to 21, 2008, protests were held in various cities in Turkey against the alleged ill-treatment of Öcalan and his prison conditions.²⁰ Civic, cultural and political occasions regularly spur demonstrations in Kurdish neighbourhoods, villages and towns. Protests are held every year to mark the anniversary of Öcalan's capture by Turkish authorities on February 15, 1999 in Kenya and his transfer to prison in Turkey.²¹ The festival of Newroz/Nevruz, the Kurdish New Year, on March 21, elicits demonstrations as well as cultural celebrations.²² Protests took place prior to Turkey's March 29, 2009 municipal elections. Spontaneous local protests also take place fairly frequently in cities throughout southeast Turkey and in mainly Kurdish-populated districts of cities such as Adana. Protests typically involve groups of youths and children, who shout pro-Öcalan and PKK slogans, burn tires in the street, and respond to police orders to disperse by throwing stones.

The majority of protestors, however, are in fact over 18, and are ordinary citizens making their living as storeowners, tradesmen or laborers. Others include students, mothers running homes, or may be unemployed. Interviews conducted with demonstrators by Human Rights Watch in Adana revealed that all interviewed were from families that had been forcibly displaced from villages in southeast Turkey in the early 1990s, had lost their farming-based livelihoods, and had been compelled to start anew with few possibilities for employment. In Diyarbakır and the other cities of the southeast, many demonstrators also share this background.

As the tendency to protest Kurdish issues has increased in recent years, so has the Turkish government's drive to prosecute protestors. In the past five years, lawmakers revised the Turkish Penal Code and the Anti-Terror Law to more broadly cover protest. Judicial precedents have established an even broader basis for the prosecution of protestors. Now, Kurdish

²⁰ For an account of some of the protests held in cities in the southeast, as well as in cities such as Istanbul and Mersin, see the news report in *Özgür Politika* daily newspaper, July 15, 2008, <http://www.yeniozgurpolitika.org/yazdir.php?hid=34988> (accessed July 8, 2009).

²¹ February 15 is the anniversary of imprisoned PKK leader Abdullah Öcalan's 1999 capture by Turkish security forces in Kenya and return to Turkey and is marked annually with unauthorized protests in cities in the southeast and in other parts of Turkey among some PKK sympathizers and Öcalan supporters.

²² Newroz (Kurdish)/ Nevruz (Turkish) is the traditional festival of New Year in the Persian calendar, which marks the arrival of spring at the March 21 equinox and is celebrated especially by the Kurdish community in Turkey.

demonstrators routinely face prosecution and long prison terms. Kurdish party officials and others who make speeches on the Kurdish question or some journalists writing on it and in particular expressing opinions that are ideologically similar, or perceived to be similar, to opinions of the PKK, may also face prosecution under the same combination of laws. Although the statistical picture is incomplete, research by Human Rights Watch indicates that many hundreds of individuals are currently being prosecuted under harsh anti-terror laws merely for participating in demonstrations on Kurdish issues or for speeches and writings.

Our focus in this report is on demonstrators rather than on the individuals prosecuted for speeches and writings. A clear pattern has emerged: Police arrest demonstrators on the grounds that they have taken part in unauthorized demonstrations, accusing them of shouting pro-PKK slogans, waving pro-PKK banners, and resisting police dispersal by throwing stones. Police and prosecutors also identify statements from the websites and satellite TV broadcasts of news outlets sympathetic to the PKK to demonstrate that the PKK has issued “appeals” to the people to participate in demonstrations centered on particular themes on particular days. The demonstrators are then charged and sentenced as though they are armed members of the PKK. Up until now, a significant proportion of the demonstrators treated in this manner have been children, typically aged 15 to 17, but some as young as 12. Legal amendments passed in July 2010 improved their situation, mandating that they be tried in juvenile courts only, and exempting them from prosecution as armed militants for most offenses. Human rights groups will closely monitor the implementation of the new law in the coming months.

Violations of and limitations on freedom of expression in Turkey have been well-documented.²³ Yet in the past, most of those who faced prosecution for making critical statements on the Kurdish question, on minority rights, and on Turkish state policies, have been more or less prominent individuals—mayors and other political officials, writers, publishers, journalists, and other public figures—or publishing houses and media outlets. In contrast, this report focuses on ordinary citizens who join demonstrations and face prosecution for shouting slogans or holding up banners, and for exercising their right to assembly; their cases rarely garner public attention or press coverage. And while civil society groups in Turkey have campaigned against the prosecution of child demonstrators, there

²³ For example, see the quarterly reports issued by the online news service Bianet as BIA Monitoring reports; “216 Defendants ‘Celebrated’ World Press Freedom Day Behind Bars,” Bianet online news service, May 9, 2010, <http://www.bianet.org/english/freedom-of-expression/121859-216-defendants-celebrated-world-press-freedom-day-behind-bars> (accessed May 19, 2010). See also the weekly bulletins and reports of the Initiative for Freedom of Expression, <http://www.antenna-tr.org/sites.aspx?SiteID=48> (accessed May 19, 2010).

has been much less attention paid to adult demonstrators and the legal changes that in the past several years have fostered a disturbing new pattern of convictions.

Law enforcement officials, public prosecutors, and courts claim that these demonstrations are organized by the PKK and its representatives as part of a wider policy to promote civil disobedience and even uprising among Kurds. Police officers interviewed by Human Rights Watch stated that recently more children were participating in demonstrations, and expressed their belief that these children—as well as adults—were being organized by representatives of the PKK, down to details such as where they stand in the demonstrations.²⁴ Similarly, in a 2009 statement to the Committee on the Rights of the Child, the Turkish government wrote that the PKK and groups linked to it have stressed “the necessity of spreading violence, mass riots and protests to cities and urban areas by using particularly women and children” and have exploited the youth “either by force or by money or through false promises in order to create mass violence.”²⁵ Yet most of the demonstrators facing prosecution are over 18 years old, and Human Rights Watch has seen police reports that regularly blame adult demonstrators for directing resistance to the police.

Public prosecutors seem to share this view of Kurdish protestors’ motivations for demonstrating. Indeed, most indictments state that the demonstrations are part of a PKK policy of protest. The indictments detail the formalization of the PKK policy in a series of decrees the organization issued at various congresses, and state that senior representatives of the PKK use sympathetic media channels to issue their calls to Kurdish supporters to take to the streets in protest. Individual indictments thus include an abstract overview of elements of the history of the PKK and its policies, followed by a statement of the alleged specific criminal activities of the defendant. Typically, prosecutors submit no evidence that would establish that the individual defendant either heard the PKK’s “appeal” or was directly instructed or motivated to participate in the demonstration by the PKK, much less evidence that the defendant had any specific link to the PKK or committed a crime under its orders.

The Turkish courts do not view the prosecution’s failure to provide evidence of the defendant’s specific intent to support or aid the illegal activities of the PKK as any obstacle

²⁴ Human Rights Watch researcher in conversation with police officers employed at the Anti-Terror and Security Branches of the Diyarbakir Security Directorate and in the Anti-Terror Branch of the Mersin Security Directorate, Ankara, February 26-27, 2009, at a European Commission TAIEX training workshop on the use of force in policing.

²⁵ “Written replies by the Government of Turkey to the list of issues (crc/c/opac/tur/q/1) to be taken up in connection with the consideration of the initial report of Turkey under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (crc/c/opac/tur/1)”: CRC/C/OPAC/TUR/Q/1/Add.1, September 2, 2009.

to conviction. The General Penal Board of the Court of Cassation has held that it is sufficient to show that sympathetic media outlets broadcast PKK “appeals,” speeches by the PKK leadership to the Kurdish people. Then the court assumes that any demonstrator went out to protest in direct response to the PKK’s “appeals,” under PKK orders—whether or not that particular demonstrator ever heard them. Even in cases involving extremely local demonstrations that no media outlet announces beforehand, protestors are routinely charged with acting under the orders of the PKK. Courts in Adana, for example, have justified convicting child defendants of “committing a crime on behalf of the PKK” by claiming that the PKK’s “appeal” to participate in demonstrations is a continuous one, and therefore does not require a specific address about a particular occasion.

This legal framework makes no distinction between an armed PKK fighter and a civilian demonstrator. In fact, a loophole can lead to harsher punishments for demonstrators than for fighters: the “Effective Repentance” law (Article 221, Turkish Penal Code) provides for a partial amnesty for onetime fighters who turn themselves in, but there is no such provision for peaceful demonstrators who have never taken up arms. As a result, such demonstrators can be sentenced to prison terms for membership in a terrorist organization without the possibility of a reduced sentence or dropped charges available to others who have actually taken up arms on behalf of the PKK. These serious charges, added to charges under the Law on Demonstrations and Public Assemblies, could result in prison sentences for protestors of 28 years or even higher. To date, the majority of adults prosecuted under these laws have received prison terms of between seven and 15 years, since courts dealing with these cases have generally not opted to apply sentences at the upper end of the sentence range. Child protestors have typically received prison sentences of between four and five years, though in 2010, at least several children were sentenced to seven-and-a-half-year prison terms.

The laws are discussed in full in the next chapter, followed by a discussion of the case law.

IV. Terrorism laws and Demonstrators

In 2004, when the Justice and Development Party (AKP) government began to revise the Turkish Penal Code, many observers hoped for broad legal change as part of Turkey's bid for full European Union membership and more importantly to benefit all citizens of Turkey. Yet in 2005, when the new Penal Code was passed into law, it contained important improvements in some areas (for example, in the provisions relating to the prosecution of violence against women, and the definition of the crime of torture and its prosecution). Yet in other areas, the new code fell short of expectations: restrictions on freedom of expression remained, and crimes deemed terrorist offenses were vaguely worded and lacked the clarity required in criminal law. Then in 2006, lawmakers passed amendments to the Anti-Terror Law that broadened its applicability, with particularly serious consequences for juveniles. And in 2008, the highest chamber of Turkey's court of appeal (the Court of Cassation) issued a precedent ruling which pointed the way to the harsh and arbitrary application of vaguely worded provisions in the 2005 Penal Code to those involved in demonstrations.

Below, we review the application of two articles of the new Penal Code (Articles 220 and 314) to demonstrators on Kurdish issues, and also consider the impact of the new Anti-Terror Law of 2006 and the case law that since 2008 has allowed demonstrators to be sentenced to long prison terms as "terrorists" for activities such as shouting slogans, making victory signs, holding up banners, and throwing stones. We also review July 2010 amendments to the Anti-Terror Law that have ameliorated the situation of child demonstrators, but have not improved the prospects of adults, or addressed the problems in the Penal Code.

Terrorism Offenses in the 2005 Turkish Penal Code and the 2006 Revisions to the Anti-Terror Law

Domestic and international nongovernmental organizations have frequently criticized Turkey's laws on terrorism offenses. Courts have too often deemed nonviolent expression to be terrorist propaganda or to constitute aiding and abetting a terrorist organization. Courts have deemed individuals to be "members" of armed organizations on notoriously vague grounds. It was therefore particularly regrettable to discover that the legal reforms introduced with the 2004 revision of the Turkish Penal Code, which went into effect on June 1, 2005, did not sufficiently remedy the situation. Our focus here is the laws that have established a basis for the problematic prosecution of demonstrators and for the high criminal sentences available and imposed in such cases. Defendants are also charged under previously existing laws, such as being in violation of the Law on Demonstrations and Public

Meetings (Law no. 2911), which outlines more standard offenses related to demonstrations, such as “resistance to police dispersal,” and the grounds on which demonstrations can be restricted and therefore deemed unauthorized.

The 2005 Penal Code introduced Article 220, entitled, “Forming Organized Groups with the Intention of Committing Crime” (See translation, appendix 1). This article has been most commonly used to punish criminal gangs, as a separate article, discussed below, criminalizes membership in armed political organizations. However, courts have also applied Article 220 to those deemed to be associated with armed political organizations.

This article also introduced a provision allowing individuals to be treated as if they are members of an armed organization even if they are not. Paragraph 6 of Article 220 states:

A person who commits a crime on behalf of the organization *although he or she is not a member of the organization* [emphasis added] shall also be punished as though a member of the organization.

Thus, individuals who “commit crimes on behalf of” armed organizations such as the PKK can be prosecuted as if they were fighters, and sentenced accordingly.

Similarly, Article 220/7 states:

A person who aids and abets the organization knowingly and willingly, although he or she does not belong to the hierarchical structure of the organization, shall be punished as though a member of the organization.

While Article 220/7 has not recently been applied to pro-Kurdish demonstrators, it has in some cases been applied to leftist demonstrators who have been punished as “members” of armed organizations for “knowingly and willingly aiding” them without providing any material assistance.²⁶ This undefined and vague charge currently in use against leftist demonstrators deserves a separate study.

²⁶ See Ankara Heavy Penal Court No. 11, reasoned verdict, dossier 2007/366; decision 2008/251, October 22, 2008. The case concerns a group who joined two authorized Ankara demonstrations on December 17, 2005 and February 19, 2006 that were attended by a broad coalition of trade unionists and activists. The defendants in this trial were accused of knowingly and willingly aiding and abetting an illegal organization (the armed Marxist Leninist Communist Party: MLKP). These charges were based primarily on evidence that they had shouted slogans at the demonstration, had carried banners with slogans, and had publications sympathetic to the outlawed organization in their possession. Documentation provided to Human Rights Watch by lawyer Raşan Aytaç Sala.

Article 220/6-7 of the Penal Code connects with Article 2/2 of the Anti-Terror Law, which includes a similar provision:

A person who is not a member of a terrorist organization, but commits a crime on behalf of the organization, is also deemed to be a terrorist offender and is punished as a member of the organization.²⁷

Finally article 220/8 penalizes “propaganda,” and its use frequently constitutes a restriction on free expression:

A person who makes propaganda for the organization or its objectives shall be punished to imprisonment of one to three years. If the crime is committed through media and press, the sentence will be increased by half.

When a defendant is convicted of committing a crime on behalf of an armed political organization, Article 314 of the Penal Code provides the punishment, stipulating substantially higher penalties than if the person were prosecuted for a crime committed on behalf of an organized criminal gang.

Article 314/2 applies to any person who establishes or becomes a member of an armed political organization (see translation, appendix 1). Article 314/3 states vaguely:

Other provisions relating to the offense of forming an organized group for the purpose of committing crimes are treated [punished] in the same way as for this offense.

This paragraph, and Anti-Terror Law Article 2/2 (above) provide the legal basis for linking the offenses proscribed by Article 220 (e.g., 220/6, participation in political demonstrations) with the harsh punishments provided for in Article 314.

The charge of “membership in an armed political organization” under Article 314/2 of the Penal Code carries a five-to-10-year prison sentence. Then the Anti-Terror Law bears on the case, and its Article 5 provides that the sentence automatically increases by one-half, because the crime is also a terrorism offense. Any crime committed “on behalf of” the PKK falls under Article 5 of the Anti-Terror Law because the PKK is a terrorist organization under Turkish law.

²⁷ “Terör örgütüne mensup olmasa dahi örgüt adına suç işleyenler de terör suçlusu sayılır ve örgüt mensupları gibi cezalandırılırlar,” Article 2/2, Anti-Terror Law (no. 3713).

To date, adult demonstrators convicted under Articles 220 and 314 have typically been sentenced to between seven and 15 years in prison after discretionary reductions are applied.²⁸ In addition to the charge of “membership in an armed organization” for “committing a crime on behalf of an organization,” the defendant also faces other charges for being in violation of the Law on Demonstrations and Public Meetings.²⁹ The combination of charges, in theory, means that a defendant could face 28 years’ imprisonment or more, and an even higher sentence if there are multiple violations, and the court were to opt to sentence at the upper end of the range.³⁰

In July 2006, the Turkish parliament passed a series of amendments to the 1991 Anti-Terror Law. Of relevance here is the amendment to Article 7/2 concerning the crime of “making propaganda for a terrorist organization,” so it could be applied more directly to demonstrators and others committing an offense by means of a speech, in writing or over a broadcast (see Appendix 1 for a full translation of article 7). This provision is widely used in Turkey today to restrict nonviolent expression on the Kurdish issue, as well as to prosecute nonviolent expression by individuals associated with legal leftist organizations that share ideological ground with illegal armed leftist groups. The widespread use of Article 7/2 to restrict leftist nonviolent expression merits a separate study, but the cases included in this report demonstrate that this charge of “making propaganda” is now invariably used against Kurdish demonstrators, along with the more serious charge of “committing a crime on behalf of the PKK.”³¹

²⁸ Turkish Penal Code Articles 61 and 62 on sentencing outline the criteria for judges to apply discretionary reductions in sentencing, which are in most cases reductions of one fifth.

²⁹ For example, an adult demonstrator who is prosecuted for “committing a crime on behalf of the PKK,” may be sentenced to 7.5 years in prison (which becomes six years and three months after discretionary reductions), plus an additional year for “making propaganda for the PKK,” (which becomes 10 months after discretionary reductions). The total sentence to be served would be 8.5 years (which becomes seven years and one month with reductions). The demonstrator may be sentenced on more than one count of “making propaganda” if he or she has attended more than one demonstration, increasing the sentence by one year (10 months after reductions) for each count. On top of this, many demonstrators are sentenced to further prison time for violating the Law on Demonstrations and Public Meetings (Law no. 2911). A demonstrator may receive a five-year sentence (which becomes four years and two months after discretionary reductions) for “armed resistance to police dispersal” (Article 33/c, Law no. 2911). The three charges together would bring the sentence up to 13 years (11 years and three months, with reductions). Had the demonstrator resisted police dispersal on more than one occasion, he would receive separate sentences on each count, increasing the sentence.

³⁰ The possible 28-year total prison sentence consists of the following components: a 10-year sentence for “membership in an armed organization” on the basis of having “committed a crime on behalf of the organization” under Articles 314/2, 314/3, and 220/6 of the Turkish Penal Code (increased by one-half to 15 years, on the basis of Article 5 of the Anti-Terror Law providing for aggravated sentences); a five-year sentence for “making propaganda for a terrorist organization” under Article 7/2 of the Anti-Terror Law; and an eight-year sentence for having forcibly resisted dispersal of a demonstration by the police under Article 33/c of the Law on Demonstrations and Public Assemblies. This leaves out other possible charges, such as “damaging property,” (Articles 151/1 and 152/1a, Turkish Penal Code), which would increase the sentence by up to three years, “damaging public property” (Article 152/1a, Turkish Penal Code), which could increase it up to six years, and “resisting a public official” (article 265/1, Turkish Penal Code), which would increase the sentence by up to three years.

³¹ Because this report chooses to highlight the application of the offense of “committing a crime on behalf of an organization,” with its much more severe penalty, we have chosen not to focus here on prosecutions under article 7/2 of the Anti-Terror Law.

Revisions to the Anti-Terror Law in 2006 had particularly serious implications for children. Under the 2006 amendments, children between 15 and 17 years of age charged with a terrorist offense forfeited the right to be tried in juvenile courts (Article 9, Anti-Terror Law). Instead, they were now to be tried in Special Heavy Penal Courts established under Article 250 of the Criminal Procedure Code, which have a special remit to deal with terrorism and organized crime cases.³²

The Case Law on Articles 220/6 and 314/2-3: The Felat Özer Case

The provisions discussed above build a complicated and interlinked set of legal norms applicable to demonstrators, and potentially also to anyone else deemed to have committed a crime “on behalf of” an illegal organization. They do not, however, explain how participation in a demonstration, without any further action, can be sufficient to warrant the charge of committing a crime on behalf of the PKK, and, by extension, of membership in the PKK. To understand how Turkish courts today are able to apply these laws to demonstrators, it is necessary to review the reasoning of the General Criminal Board of the Court of Cassation in a 2008 precedent-setting decision.³³ In the Felat Özer case, the Court of Cassation held that by the sole fact of joining protests, demonstrators were committing crimes “on behalf of the PKK.” The court reasoned that because the PKK regularly issues “appeals” through sympathetic media outlets to the Kurdish people to join protests, any demonstrator attending a protest must be acting under PKK orders. This ruling led other courts to apply the vaguely worded laws discussed above to demonstrators.

The Özer case involved a demonstrator who was convicted of violent activities during mass protests that took place in the city of Diyarbakır on March 28 to 31, 2006, as well as for his conduct during two other demonstrations which he participated in at around the same time. The March 2006 protests merit a brief account here because they prompted the legal changes that have resulted in the prosecution of and severe penalties for demonstrators that are the subject of this report. Following the March 2006 demonstrations, the government also quickly introduced revisions to the Anti-Terror Law.

Background to the Özer Case: The Diyarbakır Protests of March 28 to 30, 2006

On March 24, 2006, the military killed 14 members of the PKK in the Şenyayla region, a rural area between Diyarbakır, Bingöl, and Muş. The PKK subsequently made unsubstantiated

³² However, under the 2006 amendments, those under 15 years of age were able to receive a suspended or delayed sentence, which was not applicable to children ages 15-17 and adults convicted under the Anti-Terror Law (article 13).

³³ General Penal Board decision (no. 2007/9-282; Decision no. 2008/44, March 4, 2008): copy in possession of Human Rights Watch.

claims that the group had been attacked by some form of chemical weaponry, leaving their bodies burnt and unrecognizable. After autopsies in Malatya, the bodies of four of the militants were released to their families in Diyarbakir, amid public outrage about the alleged use of chemical weaponry. On March 28, a funeral ceremony for the four took place in Diyarbakir. A satellite news channel sympathetic to the PKK had reportedly encouraged popular participation in the funeral.³⁴ At any rate, the crowd assembled for the funeral grew large, and after the funeral prayers, clashes erupted between demonstrators and the police, and spread to different neighbourhoods. The protests assumed a scale not previously encountered in many years, and went on for days. In the course of the demonstrations, 10 individuals were killed, eight of them by bullets suspected to have been fired by the security forces. Local human rights groups and the Diyarbakir Bar Association believe that the use of excessive force to police the demonstrations exacerbated tensions and caused the demonstrations to continue longer.³⁵

Hundreds of demonstrators and members of the security forces were reportedly injured during the protests. Hundreds of people—many of them children—were detained. Many of the detainees, including many children, reported ill-treatment in police custody. These claims were documented at the time by local human rights NGOs, the Diyarbakir Bar Association, and Amnesty International.³⁶ To date, not a single allegation of ill-treatment or

³⁴ <http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=4160330&tarih=2006-02-28> (accessed September 12, 2009).

³⁵ See the report on the incidents by the Diyarbakir branch of the human rights group Mazlum Der; http://www.mazlumder.org/haber_detay.asp?haberID=94; by the Diyarbakir Bar Association; <http://ortakpayda.org/makale.asp?foo=read&feox=326>; by the Human Rights Association; http://www.ihd.org.tr/index.php?option=com_content&view=article&id=106:28-mart-2006-darbakir-olaylarina-k-celeme-raporu&catid=34:el-raporlar&Itemid=90. See also the report by Democratic Society Party (DTP) members of parliament, dated April 14, 2006, <http://ortakpayda.org/boxes.asp?foo=read&feox=62&ronin=4>. For an assessment of the incidents blaming the PKK by a department of the Ministry of Interior, and including a selection of critical commentary from newspaper columnists, see http://www.arem.gov.tr/rapor/basin/teror_son_donem_olaylar.htm (all accessed September 8, 2009).

³⁵ See the report on the incidents by the Diyarbakir branch of the human rights group Mazlum Der; http://www.mazlumder.org/haber_detay.asp?haberID=94; by the Diyarbakir Bar Association; <http://ortakpayda.org/makale.asp?foo=read&feox=326>; by the Human Rights Association; http://www.ihd.org.tr/index.php?option=com_content&view=article&id=106:28-mart-2006-darbakir-olaylarina-k-celeme-raporu&catid=34:el-raporlar&Itemid=90. See also the report by Democratic Society Party (DTP) members of parliament, dated April 14, 2006, <http://ortakpayda.org/boxes.asp?foo=read&feox=62&ronin=4>. For an assessment of the incidents blaming the PKK by a department of the Ministry of Interior, and including a selection of critical commentary from newspaper columnists, see http://www.arem.gov.tr/rapor/basin/teror_son_donem_olaylar.htm (all accessed September 8, 2009).

³⁶ See the reports by Mazlum Der and the Human Rights Association discussed in the previous footnote. The Diyarbakir Bar Association report summarizes it as follows:

“Ten civilians died as a result of excessive use of force by law enforcement officials, over 500 individuals were injured, over 500 workplaces were damaged. 203 children aged 12 to 18, and 364 adults, were detained on the grounds of having participated in violent protests. 396 suspects were placed in pretrial prison detention after testifying before the Diyarbakir prosecutor and the courts. From their testimonies and doctors’ reports it was established that during apprehension, law enforcement officials used “disproportionate force” against them, and that during transfer and in places of detention, they were subjected to ill-treatment and torture in violation of the laws.”, <http://ortakpayda.org/makale.asp?foo=read&feox=326>. See statement by Amnesty International, <http://asiapacific.amnesty.org/library/Index/ENGEUR440052006?open&of=ENG->

use of excessive force by police has resulted in a disciplinary sanction against a police officer, far less any criminal prosecution. In all but one case, the separate investigations into the fatal shootings have still not been concluded after more than four years.³⁷

After the demonstrations, hundreds of adults and children were tried for terrorism offenses, as well as for damaging public property, for various violations of the Law on Demonstrations and Public Assemblies (resisting dispersal, joining unauthorized demonstrations, etc.), and also for looting. The courts generally convicted the demonstrators of an offense under Article 7/2 of the Anti-Terror Law (“making propaganda for a terrorist organization”), violating the Law on Demonstrations and Public Assemblies, and, where there was enough evidence, “damaging public property” (Articles 151-52, Turkish Penal Code).

The General Criminal Board of the Court of Cassation Decision in the Özer Case

In March 2006, as Diyarbakır erupted in protest, Felat Özer was working there as a barber. Özer was accused of involvement in violent acts at the March 28 protest and two other demonstrations around that time. The main evidence cited against Özer in the reasoned verdict of the court consisted of video footage of him at various demonstrations: Özer carrying an empty coffin and shouting slogans at the funeral of a PKK member on February 26, 2006; Özer at the front of a group of protestors at a Newroz demonstration, gesticulating to the others with his hands, which the court determined amounted to directing the resistance to the police; and Özer shouting slogans among a group of people burning tires during the March 28 Diyarbakır protests, and partly covering his face with a red scarf to conceal his identity. There was apparently no video evidence of Özer actually throwing stones or resorting to violence himself, only a photograph of him with a stone in his hand, and evidence that he had been among a group that violently resisted the police. On the basis of this evidence, on September 29, 2006, Diyarbakır Heavy Penal Court No. 4 convicted Özer of resisting dispersal by the police in violation of the Law on Public Meetings and Demonstrations, and of making propaganda for the PKK (Article 7/2, Anti-Terror Law).

Özer’s lawyer and the prosecutor both lodged an appeal against the sentence with the Ninth Penal Chamber of the Court of Cassation.³⁸

TUR, April 12, 2006, and also a brief account by Amnesty International of children reporting ill-treatment and torture by the police: “Europe and Central Asia: Concerns in Europe & Central Asia bulletin: January—June 2006,” entry on Turkey, <http://www.amnesty.org/en/library/asset/EUR01/017/2006/en/20f477d6-d3fa-11dd-8743-d305bea2b2c7/eur010172006en.pdf>, pp.84-6 (all accessed September 8, 2009).

³⁷ In January 2010, three police officers were indicted in the fatal shooting of 17-year-old Mahsun Mızrak, who died after police shot a tear-gas cannister at him, which embedded in his skull. Information supplied to Human Rights Watch by lawyer Barış Yavuz, March 2010.

In a February 21, 2007 ruling, the Ninth Chamber held that the Diyarbakır Heavy Penal Court should have tried and convicted Özer under different articles of the Penal Code, and that Özer had in fact committed a crime on behalf of the PKK and could have been punished as a member of the armed organization (Articles 220/6 and 314/2-3, Turkish Penal Code). The Ninth Chamber reasoned that the PKK had ordered all the demonstrations Özer had participated in, and that he was therefore acting under the PKK's orders.

The Diyarbakır court retried Özer, but rejected the view of the Ninth Chamber of the Court of Cassation that Özer should have been charged with committing a crime on behalf of the PKK. Arguing that the defendant had not aided the organization directly, on May 31, 2007, the Diyarbakır court returned the same verdict as it had in September 2006 that Özer had violated the Law on Demonstrations and Public Meetings and had made propaganda for the PKK.

The Diyarbakır court had reasoned:

In our view, the issue aimed at in Article 220/6 of Turkish Penal Code No. 5237 is to ensure punishment of individuals committing crimes on behalf of an organization as subcontractors of the organization, and to punish both the crimes committed and the individual as a member of an organization in whose name crimes have been committed. For example, individuals have committed a crime on behalf of an organization if they commit crimes such as bombings, murders and holdups, and moreover, it is natural for them to be punished as members of the organization.

In contrast with this, in cases where people participate in the funerals of members of a terrorist organization or in Nevruz celebrations, after the abstract and generalized appeal of that organization, and in cases where shouting slogans constitutes propaganda for an organization, it is not possible to say that crimes were committed on behalf of the organization. In order for the court to say that a crime has been committed on behalf of an organization, the organization must have appealed for action not to an undefined collective, but rather to an individual capable of directly carrying out an action.³⁹

³⁸ The ninth chamber deals with crimes against the state, and crimes punishable under anti-terrorism legislation, among other areas.

³⁹ "Kanaatimizce, 5237 sayılı TCY'nin 220/6. maddesi ile amaçlanan husus, taşeron olarak örgüt adına suç işleyen kişilerin hem işledikleri suçtan hem de adına suç işledikleri Örgütün üyesi olmak suçundan dolayı cezalandırılmalarını sağlamaktır. Sözgelimi, Örgüt adına bombalama, adam öldürme, yol kesme gibi suçları işleyen kişiler örgüt adına suç

Because of the disagreement between the local Diyarbakır court and the Ninth Penal Chamber of the Court of Cassation, the case was referred to the General Penal Board of the Court of Cassation. The decision of the board produced the definitive judgement on the matter and established the case law that is binding on courts hearing comparable cases.

The General Penal Board agreed with the Ninth Chamber that individuals who join mass demonstrations for which there had been an “appeal” to participate by an armed group are acting under the orders of the armed group. The court reasoned that:

An organization’s general “appeal” [for participation in a demonstration] is made concrete through broadcasts from broadcasting organs belonging to the organization, and there is no need for such appeals to be made to an identified individual person. It is established that the actions carried out on behalf of the organization are realized under the knowledge and at the wish of the organization. An action by a defendant who joins these demonstrations carried out on behalf of the organization constitutes a violation of Turkish Penal Code Article 314/2 indicated by Articles 314/3 and 220/6.⁴⁰

In determining that demonstrators were responding to PKK orders to protest, the General Penal Board described at length PKK policies to promote a campaign of civil unrest (in Kurdish, *serhildan*) among the general Kurdish population. The board said that the PKK had organized university students, parents of schoolchildren, and civil society groups to petition for Kurdish-language education, and had also organized campaigns to appeal for a general amnesty for PKK members, a ceasefire, and the release from prison of Abdullah Öcalan.⁴¹ After the General Penal Board’s decision in the Özer case, many subsequent indictments against those charged with “membership in an armed organization” and “committing a crime on behalf of an organization,” have referred to these PKK resolutions as though they prove that various defendants have acted under PKK orders.

işlemiş olup, bu kişilerin ayrıca örgüt üyesi olarak cezalandırılmaları doğaldır. Buna karşılık örgütün soyut ve genel çağırısı üzerine bir terör Örgütü mensubunun cenazesine veya nevrüz kutlamalarına katılma ve slogan atarak örgüt propagandası yapılması halinde bu suçların örgüt adına işlendiğini söylemek mümkün değildir. Örgüt adına suç işlendiğinin söylenebilmesi için örgütün eylem çağırısının muhatabı belirsiz bir topluluğa değil, doğrudan doğruya fiili icra edecek kişiye yöneltilmiş olması gerekir.” Diyarbakır Heavy Penal Court No. 4 decision, May 31, 2007, cited in General Penal Board decision (no. 2007/9-282; Decision no. 2008/44, March 4, 2008).

⁴⁰ ... Örgütün genel çağırısı, örgüte ait yayın organlarının yayınları ve çağrıları ile somutlaşmış olup bu çağrıların belirli bir kişiye yapılmış olmasına gerek bulunmuyor. Örgütün bilgisi ve istemi doğrultusunda gerçekleştirilen bu eylemlerin örgüt adına gerçekleştirildiği sabittir. Örgüt adına gerçekleştirilen bu eylemlere katılan sanığın eylemi, diğer suçların yanında 5237 sayılı TCK’nın 314/3 ve 220/6 maddeleri yollamasıyla 314/2 maddesine de aykırılık oluşturur...: Ibid. For a discussion of this case and extracts from the ruling, see a recent study of the Anti-Terror Law by a judge serving at the Diyarbakır Heavy Penal Court No. 4: Mehmet Taştan, *Terörle Mücadele Kanunu*, (The Anti-Terror Law) (Ankara: Adalet Yayınevi, April 2009).

⁴¹ Listed at length in General Penal Board decision (no. 2007/9-282; Decision no. 2008/44, March 4, 2008).

The Diyarbakır court had reasoned that a person could not be convicted of “committing a crime on behalf of the PKK,” unless the organization directly ordered that individual to act, rather than issuing a generalized appeal to an “undefined collective.” Yet the General Penal Board held the opposite, that a generalized “appeal” was sufficient to prove the crime. Subsequent to the General Penal Board’s ruling, indictments have typically included statements from the PKK and its leadership aired on sympathetic news websites and television channels as evidence of such “appeals,” without attempting to prove a link between individual demonstrators and such material, much less the PKK itself.

Ultimately, on December 16, 2008, the Diyarbakır court convicted Felat Özer in a second retrial of “committing a crime on behalf of the PKK,” and also of “membership in an armed organization,” “making propaganda for the PKK,” and three counts of violating the Law on Demonstrations and Public Assemblies (Law no. 2911) for “using force or violence or threats or attacks or resistance during the dispersal of a demonstration” (Article 32/c, Law no. 2911).⁴² Özer was sentenced to 14 years and seven months in prison. The Court of Cassation upheld the sentence on all counts but one on November 11, 2009.⁴³

The Diyarbakır Bar Association has criticized the use of Article 220 of the Turkish Penal Code that has emerged since the Özer precedent, noting “the extremely vague and wide definitions in the law that have opened the way to such an interpretation” by the Court of Cassation. The bar association concluded that the article violates the principles of legality and legal certainty because it is too broad and vague to meet requirements in criminal law for precision and clarity. Suggesting that the article also violates the fair trial principle and the principle of proportionality between crime and punishment, the bar association recommended that Article 220 be amended, commenting:

It openly runs against the terms of a democratic society for a person who has no direct connections with an organization to be prosecuted, and potentially sentenced to more than 20 years in prison, solely because that person joined a mass demonstration and shouted a slogan or threw a stone.⁴⁴

⁴² See Diyarbakır Heavy Penal Court No. 4, reasoned decision (no. 2008/252; Decision no. 2008/475).

⁴³ The Ninth Penal Chamber of the Court of Cassation decision no. 2009/11316, November 11, 2009. The court quashed one count (out of three) against Özer under Article 32/c of the Law on Demonstrations and Public Assemblies. A retrial on that one count is underway, but the final sentence will only be altered by 18 months. Information supplied by lawyer Baran Pamuk, Diyarbakır, March 6, 2010.

⁴⁴ Mehmet Emin Aktar, head of the Diyarbakır Bar, “General assessment no. 2009/136” (Diyarbakır Barosu Başkan Mehmet Emin Aktar, Genel Değerlendirme [no 2009/136], Diyarbakır Barosu), unpublished document by the Diyarbakır Bar, February 2, 2009. In early 2010, the heads of the Diyarbakır, Van, and Sırnak bar associations also submitted an unpublished and undated opinion to the government delineating how to change the relevant laws applied to children, titled “Çocuk hakları alanında yapılması gereken yasal değişiklik ve düzenlemeye ilişkin ortak görüşümüz”: copy supplied to

A combination of vague language in the Penal Code (Article 220/6-7) and the Anti-Terror Law (Article 2/2) and the harsh ruling in the Özer case has resulted in a new pattern of prosecutions and convictions, which we show in Chapters 5 to 7 of this report.⁴⁵

Legal Amendments in July 2010 Concerning Child Demonstrators

The prosecution of children under terrorism laws rose over the period 2006 to 2010, with a significant rise in the number of prosecutions in 2008 (the last available official statistics). In 2006, legal proceedings under the Anti-Terror Law against 299 children were initiated in that year; in 2007 the figure rose to 438 children, and in 2008 this rose to legal proceedings initiated against 571 children.

Of these 571 children, 306 were charged with membership in an armed organization, an offense in the penal code that is also simultaneously punishable under the Anti-Terror Law. It is probable that the other 265 children were prosecuted primarily under article 7/2 of the Anti-Terror Law (“propaganda for a terrorist organization”).

In response to the rising number of prosecutions revealed in these figures, throughout 2009, local civil society groups campaigned extensively against the treatment of children (whom the press dubbed “the children who throw stones”) under the Anti-Terror Law (though it was not the Anti-Terror Law alone that led to their extensive convictions and harsh sentencing). A signature-based campaign called “Those Who Call for Justice for Children” (Çocuk için Adalet Çağırıcıları) was a leading force, and those involved advocated concertedly and regularly across parties, launching a huge media campaign to press for the repeal of relevant articles of the

Human Rights Watch. For the first critical commentary on the Özer decision by Diyarbakır lawyer Tahir Elçi, “Yargının Kürt sorunu çözümü” (“The Court of Cassation’s solution to the Kurdish problem”), Radikal newspaper, November 2, 2008, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalEklrDetay&ArticleID=906290&Date=02.11.2008&CategoryID=42> (accessed December 10, 2008).

⁴⁵ In one typical case that reflects the lower sentencing of the past, Yılmaz Aslan and Osman Akın were accused of having burned tires and shouted pro-Öcalan slogans during a demonstration in Ceylanpınar, Urfa, on April 3, 2006 (Diyarbakır Heavy Penal Court No. 6, Decision no. 2007/464, December 11, 2007, in the possession of Human Rights Watch). They were charged under the Anti-Terror Law with “making propaganda for a terrorist organization,” (Article 7/2) and were sentenced to six months and 20 days in prison. They were at liberty during their trial proceedings, and their case is still on appeal. Aslan and Akın were accused of conduct identical to that of many of the demonstrators whose cases are examined in this report, yet their sentence was substantially less than would be the case today.

In another example, demonstrator Hasan Bayram was accused of shouting pro-Öcalan and pro-PKK slogans and being part of a group throwing stones at the police during a January 11, 2006 public assembly in Diyarbakır. The occasion for the public assembly was the reading of a statement protesting a disciplinary punishment reportedly meted out to Abdullah Öcalan in prison. After the statement was read, the assembled crowd reportedly resisted dispersal and threw stones at the police. Bayram was caught on the police cameras. He received a 10-month prison sentence for “making propaganda for a terrorist organization” (Article 7/2 Anti-Terror Law) (Decision of the Diyarbakır Heavy Penal Court No. 4; Decision no. 2006/193, September 29, 2006, in the possession of Human Rights Watch).

Anti-Terror Law and an end to the use of terrorism laws and articles of the Law on Demonstrations and Public Meetings against children.⁴⁶

In 2009, the United Nations Committee on the Rights of the Child expressed concern that 2006 amendments to the Anti-Terror Law “allow for the prosecution of children above 15 years as adults in Special Heavy Penal Courts.”⁴⁷ The committee expressed particular concern “over reports indicating the application of the ATA [Anti-Terror Act, i.e. Anti-Terror Law] on grounds such as the presence or participation in demonstrations and public gatherings.”

The committee made a number of recommendations, including that the Turkish government amend the Anti-Terror Law “to ensure that children are not tried as adults in Special Heavy Penal Courts” and that they be “guaranteed the protection of juvenile justice standards in ordinary courts....” The committee also called on Turkey to ensure “that children are only detained as a measure of last resort and for the shortest possible time period,” and to afford children a number of other procedural protections.⁴⁸

The government started and then stopped its efforts to change laws and practices related to children. In September 2009, following enormous public pressure, and just before the Committee on the Rights of the Child was to publish its conclusions, the government announced that it would repeal several provisions of the Anti-Terror Law and ensure that all those under 18 years of age would again be tried in juvenile courts.⁴⁹ Children who received sentences of less than two years would be eligible to receive a suspended sentence and those aged 15 to 17 could benefit from greater discretionary sentence reductions.⁵⁰ Yet the government shelved the amendments in December 2009, most likely in reaction to the death of seven soldiers in a December 8 PKK attack in Tokat province.

In June 2010, Minister of Justice Sadullah Ergin stated that there were 206 children in prison in Turkey convicted of, or standing trial for, terrorist offenses, and that there was a total of

⁴⁶ A coalition of NGOs called the Justice for Children Initiative (Çocuk için Adalet Girişimi) should also be mentioned for its efforts to raise the issues publicly, via the media and advocacy efforts.

⁴⁷ See Concluding Observations on Turkey of the Committee on the Rights of the Child, 52nd session, September 14, 2009, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-OPAC-TUR-CO1.pdf> (accessed March 21, 2010).

⁴⁸ Ibid.

⁴⁹ ‘Taş atan çocuklara’ yeni formül’ (New formula for the stone-throwing children), *Radikal* daily newspaper, September 30, 2009, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetay&ArticleID=956902&CategoryID=77> (accessed October 27, 2009).

⁵⁰ See draft law, <http://www2.tbmm.gov.tr/d23/1/1-0775.pdf> (accessed April 30, 2010). As of April 2010, the draft remained with the Parliamentary Justice Commission.

2,506 children in prison for all offenses.⁵¹ However, the campaign for change continued, in March 2010 the government revived the plan, and on July 22, 2010, the Turkish parliament adopted several amendments to ensure that in future children will only stand trial in the juvenile justice system.

The positive aspects of the “Law Amending the Anti-Terror Law and other Laws” (Law no. 6008), published in the *Official Gazette* on July 25, 2010, include the following provisions: all children will henceforth stand trial in juvenile courts, or adult courts acting as juvenile courts; child demonstrators who commit “propaganda crimes” or resist police dispersal will not be charged with “committing crimes on behalf of a terrorist organization” (Article 2/2, Anti-Terror Law); and children will not face aggravated penalties and may benefit from sentence postponements and similar measures for public order offenses. The amendments also reduce penalties for both children and adults under the Law on Demonstrations and Public Meetings for forcibly resisting police dispersal and offering “armed resistance,” including with stones, during demonstrations.⁵²

Yet the new law omits any provision to prevent children from being charged with terrorism propaganda offenses (either under Article 7/2 of the Anti-Terror Law or Article 220/8 of the Turkish Penal Code).

The new law also failed to state directly that Turkish Penal Code Articles 220/6-7 (“committing a crime on behalf of an organization” and “aiding and abetting an organization knowingly and willingly”) used in conjunction with Article 314 (“membership in an armed organization”) would not be applied to children. Instead, the amendment focused on the non-applicability of Article 2/2 of the Anti-Terror Law in cases of children who had committed “propaganda crimes” or had resisted police dispersal. As stated earlier, Article 2/2 of the Anti-Terror Law states: “A person who is not a member of a terrorist organization, but commits a crime on behalf of an organization, is also deemed to be a terrorist offender and is punished as a member of the organization.”⁵³ This article connects directly with Turkish Penal Code Article 220/6 (“A person who commits a crime on behalf of the organization although he is not a member of the organization shall also be punished as though a member

⁵¹ See press report <http://www.stargazete.com/politika-tas-atan-cocuklar-duzenlemesi-alt-komisyonunda-haber-270184.htm> (accessed June 22, 2010).

⁵² For full law, “Terörle mücadele kanunu ile bazı kanunlarda değişiklik yapılmasına dair kanun” (“Law amending the Anti-Terror Law and other laws”) (Law no. 6008), see *Resmî Gazete (Official Gazette)*, July 25, 2010, <http://rega.basbakanlik.gov.tr/main.aspx?home=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm&main=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm> (accessed July 26, 2010).

⁵³ “Terör örgütüne mensup olmasa dahi örgüt adına suç işleyenler de terör suçlusu sayılır ve örgüt mensupları gibi cezalandırılırlar,” Article 2/2, Anti-Terror Law (no. 3713).

of the organization”). The non-applicability of Anti-Terror Law Article 2/2 to most child demonstrators would thus appear to block the courts from applying Turkish Penal Code Articles 220/6-7 and 314/2-3 to children. To reduce the possibility of any ambiguity on this point, it would have been preferable for the new law to state directly that 220/6 (“committing a crime on behalf of an organization”) and 220/7 (“aiding and abetting an illegal organization”), both punishable as “membership in an armed organization,” are no longer applicable to children.

It should also be noted that under the new law, child protestors accused of using explosive substances, including Molotov cocktails, may still be charged with “committing a crime on behalf of a terrorist organization.” Only the implementation will reveal whether courts continue to press this charge.

Overall it will be very important in the months ahead to monitor the implementation of the July 2010 legal amendments to make sure that they have closed the door on the prosecution of child demonstrators as members of armed organizations simply on the basis of their participation or actions during public gatherings.

In the days after the amendments had entered into force on July 25, courts in Adana, Diyarbakir, and Van, among other places, immediately released children from prison who were serving sentences or in pretrial detention on terrorism-related charges. In the coming months the Court of Cassation is expected to overturn all convictions of child demonstrators meted out by the adult special Heavy Penal Courts. Special Heavy Penal Courts will issue decisions of non-jurisdiction for the cases against children and transfer the cases to the juvenile courts. The children will be retried in juvenile courts (in children’s heavy penal courts in provinces where such courts exist) and on the basis of the legal amendments passed as law no. 6008 adjustments will be made to the charges on which they stand trial. In most cases, charges of “committing a crime on behalf of an organization” (Article 220/6, Turkish Penal Code) used in conjunction with “membership in an armed organization” (Article 314/2, Turkish Penal Code) will be dropped. Most children convicted of other offenses (such as “propaganda for a terrorist organization,” Article 7/2, Anti-Terror Law) are likely to benefit from sentence postponements. Since this report was finalized during the judicial recess when no retrials had yet begun, from Fall 2010 it will be important to monitor how the law is applied to new and ongoing cases, as well as to cases in which there is already a confirmed sentence.

Of relevance to adult demonstrators as well as children was a provision in the July amendments which reduced penalties for all those who violate articles of the Law on

Demonstrations and Public Meetings by forcibly resisting police dispersal or offering armed resistance, including with stones.⁵⁴ While this report does not deal in detail with articles of the Law on Demonstrations and Public Meetings, the amendments to that law may result in lower overall sentences for adult demonstrators.

The most important failing of the July legal amendment was the failure to amend or repeal the extremely punitive laws on “committing a crime on behalf of an organization” (article 220/6) and with it the equally vague “knowingly and willingly aiding and abetting an illegal organization” (article 220/7). These can still be applied to all adult demonstrators. The greatest failing of the new legal amendment is the fact that the most problematic and vaguely drawn law which, following the case-law, has resulted in long prison sentences for hundreds of adult and child demonstrators remains in place and will continue to be widely applied to anyone aged 18 and over.

Statistics on Prosecutions of Child Demonstrators under Terrorism Laws

In 2009, nongovernmental organizations attempted to collect their own statistical data on cases of child demonstrators prosecuted under terrorism laws, which provided a fairly clear picture of the pattern of convictions of children in the courts of Adana and Diyarbakır. It is worth reviewing their research here, as nongovernmental organizations will continue to monitor how the implementation of the July amendments changes the situation of child demonstrators.

In November 2009, the Adana branch of the Human Rights Association reported that it had identified 106 children convicted of terrorism offenses in the period between June 2008 and October 2009 in the Adana courts (92 of these convictions were in 2009). Of these 106 children, 104 had been convicted of “committing a crime on behalf of an organization” (Article 220/6, Turkish Penal Code) and therefore “membership in an armed organization” (Article 314/2, Turkish Penal Code). Eighty-three had also been convicted of “making propaganda for a terrorist organization” (Article 7/2, Anti-Terror Law). After reductions on account of their ages, these children received prison sentences ranging between four and

⁵⁴ The most significant change is to Article 33/c of the Law on Demonstrations and Public Assemblies, which reduces the penalty from five to eight years to one to three years. See fn. no. 37 above. For new law, see “Terörle mücadele kanunu ile bazı kanunlarda değişiklik yapılmasına dair kanun” (“Law amending the Anti-Terror Law and other laws”) (Law no. 6008), see *Resmî Gazete (Official Gazette)*, July 25, 2010, <http://rega.basbakanlik.gov.tr/main.aspx?home=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm&main=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm> (accessed July 26, 2010).

five years. Just two children among the 106 were convicted only of “making propaganda for a terrorist organization.”⁵⁵

Of the group of 106 children, 12 children were 13 or 14 years old, and all had stood trial in the Special Heavy Penal Courts, although Turkish law stipulates that children under 15 years of age must be tried in a children’s heavy penal court. There is no such court in Adana, and no arrangement was made to transfer the trials to a juvenile heavy penal court in another city. All but one of the 12 children under age 15 received a prison sentence of more than four years. These convictions are currently before the Court of Cassation and should be quashed following the July 2010 changes in the law.

In January 2010, lawyers on behalf of the Adana branch of the Human Rights Association and the civil society initiative Those Who Call for Justice for Children (Çocuk için adalet çağırıcıları), were able to identify 11 ongoing Adana trials in which 60 children were being prosecuted under these laws. However, this figure did not necessarily represent all cases against children in the Adana courts.⁵⁶

According to an unpublished October 2009 report by the Diyarbakır coordinator of the Justice for Children Initiative (Çocuk İçin Adalet Girişimi), 159 children ages 15 to 17 were being tried in ongoing proceedings in the Special Heavy Penal Courts in Diyarbakır, and 15 children ages 12 to 14 were being tried in the juvenile heavy penal court for terrorism offenses. At the time of the report’s completion, in the cases of 93 children, lower courts had passed verdicts, with convictions in 56 cases.⁵⁷ The total number of 267 cases examined concerned trials spanning the period 2008 to September 2009. The report stated that the number of case files examined did not represent the total number of such cases over that period as there had been difficulties accessing all files.

Human Rights Watch has no recent figures on the number of prosecutions in the Istanbul, Izmir, Ankara, Van, and Malatya courts.

⁵⁵ Latest tables detailing cases supplied to Human Rights Watch by Ethem Açıklın, Adana Human Rights Association, November 2, 2009.

⁵⁶ Table of cases provided to Human Rights Watch by the Adana branch of the Human Rights Association, March 2010.

⁵⁷ Unpublished report supplied to Human Rights Watch by lawyer Kezban Yılmaz, Diyarbakir coordinator of the Justice for Children Initiative and board member of the Diyarbakir branch of the Human Rights Association. The figures in this report update and provide greater detail than an earlier report published on the website of the Human Rights Association: see http://www.ihd.org.tr/index.php?option=com_content&view=article&id=1487:2008-yili-kanunla-ihtilafa-dusen-cocuklar-raporu&catid=34:el-raporlar&Itemid=90, May 2009 (accessed June 12, 2009).

Lack of Detailed Statistics on Prosecutions of Demonstrators under Terrorism Laws

The Ministry of Justice has not released statistics on the number of trials opened in 2009 and early 2010 under Articles 220 and 314 of the Turkish Penal Code, although all lawyers interviewed in the course of the research for this report indicated that they had witnessed a significant rise in the past two years in the number of prosecutions of demonstrators under these articles.

Nongovernmental organizations have made no known attempts to compile data on the number of prosecutions and convictions of adult demonstrators under the same laws that affected children. However, based on information received from lawyers and a survey of case files, the number of prosecutions and convictions would appear to be much higher.

Even if the figures were available, it would not be possible to tally the number of cases in which Article 220/6 and 220/7 are used in conjunction with Article 314 in any year, because the numbers are not disaggregated. Since Article 220 is most commonly used against those prosecuted for membership in organized crime, it is not possible to determine how many cases were initiated against demonstrators. In any case, this report focuses on the increase in prosecutions since the Özer case, which became binding law for lower courts in March 2008.

V. Restricting the Rights to Freedom of Assembly and Expression

Demonstrators face harsh punishments not because they are violent—but because the Turkish authorities believe the act of protest on Kurdish issues entails ideological support for the PKK. Prosecutors and courts have focused on the number of demonstrations an individual has attended as an important factor in determining whether he or she has been acting on behalf of an armed organization. We consider here cases in which the defendant committed no violent act and in which the content of slogans cannot be argued to amount to incitement to violence. Instead, in these cases, court records establish that the defendant joined demonstrations on more than one occasion and expressed an outlook ideologically similar to that promoted by an illegal organization. One judge who has written on the use of terrorism laws in the wake of the General Penal Board’s ruling in the Özer case has summarized the approach of courts as follows:

In cases where it is understood that the perpetrator is engaged in activities and actions which demonstrate the continuity, variety, severity and effectiveness of their organic link with the organization *though without posing danger*, it is necessary for them to be punished with the crime of membership in an armed organization [emphasis added].⁵⁸

Case of Veysi Kaya

Veysi Kaya attended public demonstrations on three occasions between August 2005 and February 2007.

Photographic evidence presented at trial established that Kaya was present at a demonstration in Diyarbakır on August 11, 2005, protesting Prime Minister Recep Tayyip Erdoğan’s visit to the city. He had also attended a demonstration against the prison conditions of PKK leader Abdullah Öcalan on January 16, 2006, and a protest on February 14, 2007, the eve of the anniversary of Öcalan’s capture by the Turkish intelligence services in 1999.⁵⁹

⁵⁸ Mehmet Taştan, *Terörle Mücadele Kanunu*, (The Anti-Terror Law) (Ankara: Adalet Yayınevi, April 2009), p. 81-2.

⁵⁹ In cities such as Diyarbakır, assembling evidence towards securing the prosecution of demonstrators involves the Anti-Terror and Security Branches of the police, which routinely examine police video footage of demonstrations to identify repeat offenders. Courts also rely heavily on the services of lip-reading experts to determine the exact content of slogans shouted by demonstrators on police video footage of demonstrations.

Kaya was detained a few days after the third demonstration and charged with three separate counts of “making propaganda for the PKK” (Article 220/8, Turkish Penal Code), one for each demonstration attended. There was no evidence that he had participated in any violent action. He was held in pre-trial detention.

On the basis of photographic evidence showing that at two demonstrations, Kaya had carried banners supporting Öcalan, and on two occasions, he had been seen shouting pro-Öcalan slogans, Diyarbakır Special Heavy Penal Court No. 4 on April 25, 2006 convicted him of three counts of “making propaganda for a terrorist organization or its aims” (Article 220/8, Turkish Penal Code). The banners the defendant carried included the words, “Öcalan is the only interlocutor—Democratic People’s Initiative” (carried on August 11, 2005), and “Mr. Öcalan is our political representative” (carried on February 14, 2006). Based on video footage, Kaya was determined to have shouted the following slogans: “Long live leader Öcalan” (on January 16, 2006), and “We are with you, chairman, with our souls and our blood” on February 14, 2006). For each of these three separate incidents, the Diyarbakır court sentenced him to a one-year prison term, which was in each case reduced to 10 months, so that his total prison sentence added up to 30 months. The court also stripped him of political rights (such as the right to be elected to public office, to serve on the boards of foundations, associations, trade unions, or political parties) for the duration of his prison sentence, as is the custom for terrorism offenses (Article 53/1, Turkish Penal Code).⁶⁰ The court released Kaya from detention pending the result of his appeal.

Following his conviction, the defendant’s lawyers lodged an appeal against the decision with the Court of Cassation. On November 4, 2008, following the decision in the Özer case, the Ninth Penal Chamber of the Court of Cassation quashed the conviction, arguing that on the basis of the evidence Veysi Kaya should not have been convicted of “propaganda” crimes but rather for the more serious offense of “membership in an armed organization” (Article 314/2, Turkish Penal Code) because he had “commit[ed] a crime on behalf of an illegal organization, while not ... a member of that organization” (Article 220/6, Turkish Penal Code) punishable with a five- to 10-year prison sentence. The Ninth Penal Chamber determined that Veysi Kaya should be retried under those articles as well as on propaganda charges, reasoning that he had acted “on the information and under the wishes of the organization by carrying banners praising the organization and shouting slogans when joining a press

⁶⁰ Deprivation of normal political rights enjoyed by citizens is applied to most individuals convicted of terrorism offenses (according to Article 53, Turkish Penal Code), and we have not repeated this elsewhere in the report since it applies in all the cases examined.

conference organized on three separate dates in response to the appeal for action following the organization's strategy and issued by media channels belonging to the organization."⁶¹

At the time of writing, the retrial of Veysi Kaya on these more serious charges was pending in the Diyarbakır court. However, given the developing practice of Turkish courts after the Özer decision, it is almost certain that Kaya will be convicted and receive a substantially higher prison sentence.

Case of Murat Işıkkırık

The case of Dicle University student Murat Işıkkırık was one of the first examples of a confirmed sentence in conformity with the decision in the Özer case.⁶²

Murat Işıkkırık, a 23-year-old fourth-year student in the Philosophy Department at Diyarbakır's Dicle University, was arrested and placed in pre-trial detention on the basis of video evidence showing him present for just eight seconds during an unauthorized demonstration that took place on March 5, 2007, on the university campus.

The video evidence shows him stopping briefly beside some masked demonstrators and clapping, before walking off. Prosecutors asserted that this protest, which included a boycott of classes, was one of a number of demonstrations the PKK ordered through sympathetic news outlets against the alleged poisoning of imprisoned PKK leader Abdullah Öcalan. After identifying Murat Işıkkırık at this protest, the police then discovered from film archives that he had also been part of a mass funeral procession accompanying the coffins of PKK members on March 28, 2006, which subsequently spiralled into violent protests over several days (see above). Video footage revealed that Işıkkırık had raised two fingers in a victory sign during the 2006 funeral procession.⁶³ A subsequent expertise report could not confirm an allegation that he had also shouted a slogan. No warrant had been issued for Murat Işıkkırık's arrest after the March 2006 protest, or after another protest on December 21, 2006 that Işıkkırık attended, according to video footage. At the December demonstration—

⁶¹ 'Tüm dosya kapsamına göre, sanığın örgütün stratejisi doğrultusunda örgüte ait yayın organları tarafından yapılan eylem çağırısı üzerine üç ayrı tarihte düzenlenen basın açıklanmasına katılıp slogan atmak, örgütü öven döviz taşımak suretiyle örgütün bilgisi ve istemi doğrultusunda gerçekleştirdiği eylemlerin 5237 sayılı TCK. nun 314/3 ve 220/6. maddesi yollaması ile 314/2. maddesinde tanımlanan suçtu oluşturduğu anlaşıldığından bu suçtan zamanaşımı süresi içinde açılması mümkün görülmüştür.' Decision of the Ninth Criminal Chamber of the Court of Cassation, no. 2007/9184, Decision 2008/11733, November 4, 2008 (Yargıtay İlamı, T.C. Yargıtay 9. Ceza Dairesi, esas 2007/9184, karar 2008/11733, 4 Kasım 2008).

⁶² A copy of all documents relating to Murat Işıkkırık's case is on file with Human Rights Watch.

⁶³ Copies of video footage showing Murat Işıkkırık at both the March 5, 2007 and the March 28, 2006 demonstrations are on file with Human Rights Watch.

later excluded from the case by the court—Işıkırık had been among a group, the Dicle University Students Association (DÜO-Der). At that demonstration, he was filmed clapping and holding one side of a banner calling for peace and a ceasefire in the ongoing conflict between the PKK and the military.

Murat Işıkırık was remanded to pre-trial detention for the duration of his trial. On November 30, 2007, Diyarbakır Heavy Penal Court No. 5 convicted him of “committing crimes on behalf of the PKK,” punished as equivalent to membership in the PKK (Articles 220/6 and 314/2-3, Turkish Penal Code) and on two counts of “making propaganda for the PKK” (Article 7/2, Anti-Terror Law) and sentenced him to a prison term of six years and three months for the former crime and to two sentences of 10 months for the latter “propaganda” crime.

On January 29, 2009, the Court of Cassation upheld the six-year-and-three-month sentence. The Court of Cassation ordered a retrial on the count of “making propaganda for the PKK” on procedural grounds. If convicted on that count, Işıkırık is likely to receive at least an additional 10-month sentence. Işıkırık has been in prison for almost three years and has approximately four years left to serve. For his main sentence, he has no remaining right of appeal left in Turkey, and his lawyers have applied to the European Court of Human Rights in Strasbourg.

In a number of similar cases currently pending before the Court of Cassation or ongoing in the lower courts, the sole evidence against the defendant is his or her mere presence at a demonstration and alleged sympathy with the aims of the demonstration. In light of the Court of Cassation’s recent decisions, the convictions are likely to be upheld on appeal.

Case of Mehmet Kocakaya and Others

Another Dicle University student, Mehmet Kocakaya, was detained along with other students on April 6, 2009, when he participated in a student protest against the fatal police shooting of a fellow student. Mahsum Karaođlan and another man, Mustafa Dađ, had been killed during an April 4, 2009 march to Abdullah Öcalan’s home village of Ömerli (Kurdish name: Amara) in Urfa province to mark the anniversary of the imprisoned PKK leader’s birth and to protest his prison conditions and allegedly insufficient care for his health problems. Kocakaya was charged with “membership in the PKK,” on the grounds of “having committed a crime on behalf of the organization,” as well as “making propaganda for a terrorist organization,” and he was detained pending trial.⁶⁴ The prosecutor stated in the indictment that the student protest was organized in response to an appeal the PKK issued through the

⁶⁴ Diyarbakır Heavy Penal Court No. 5 indictment, dossier no. 2009/790, dated May 14, 2009, police report and other case documents supplied to Human Rights Watch by lawyer Reşan Bataray.

Roja Ciwan website, in which the PKK called on the “youth of Kurdistan” “to continue the march to freedom of Mustafa Dağ and Mahsum Karaoğlan, who were executed on their way to Amara to celebrate the leader’s birthday and ... to stand up more strongly for the will of the people in North Kurdistan and in all parts of Kurdistan ...” The indictment named Kocakaya as part of a group that organized a boycott of classes that day at the campus, made the other students leave the building, shouted slogans on the campus, and “incited the other students to get involved in illegal activities.” He reportedly also tried to escape apprehension by the police. The sole evidence against Kocakaya is video footage of him shouting slogans such as “Long live Chairman Apo,” and “The martyrs don’t die!” Mehmet Kocakaya was remanded to prison for the duration of his trial. He was released on bail on April 13, 2010, after receiving a seven-year-11-month prison sentence, which he has appealed. Three of four fellow students from the university who stood trial with Kocakaya also received prison sentences and remain in prison pending the outcome of their appeals.⁶⁵

Case of Three Dicle University Students Campaigning for the Right to Mother Tongue Education

On February 25, 2010, Diyarbakır Heavy Penal Court No. 4 convicted three more Dicle University students to sentences ranging from six years and three months to seven years and six months in prison for their roles in a boycott of classes on October 15, 2008, and in a sit-in at which they read out a public statement demanding mother tongue (Kurdish language) education. The prosecutor determined that the PKK had issued appeals for popular protests on the issue of mother tongue education on Roj TV and on websites such as Rojaciwan (on September 12, 2008) and Kurdistan-Post (on September 19, 2008).⁶⁶

The indictment states that a group made up of a “crowd supporting the organization” had gathered at around 10 a.m. on the university campus and shouted slogans such as “The right to mother tongue language cannot be prevented!” “The PKK is the people and here are the people!” “No life without the leader!” “Don’t sleep, Amed [Diyarbakır], protect your honor!” They had carried yellow, red and green cardboard banners with slogans in Kurdish relating to mother tongue education: “Our language is our existence!” “We want our mother tongue language!” “Freedom of language is freedom of the people!” The prosecutor judged “the words

⁶⁵ Diyarbakır Heavy Penal Court No. 5 indictment, dossier no. 2009/790, dated May 14, 2009, police report, verdict, and other case documents supplied to Human Rights Watch by Mehmet Kocakaya’s lawyer Reşan Bataray. Mahsum Akbaş, Yoldaş Fırat, İdris Baran, and Ceylan Saybak are the other students tried for participation in the same demonstration. The latter three remain in prison. A second trial of four students who participated in the same protest continues in Diyarbakır Heavy Penal Court No. 6. The students on trial for participation in the same demonstration are Cihan Bahadır, Abdullah Nas, Talat Uçar, and Sinan Kaplan. All four were remanded to prison where they have remained for the duration of their trial.

⁶⁶ Diyarbakır Heavy Penal Court No. 4 indictment; 2008/1612, dated December 17, 2008.

they carried, the slogans the group shouted, the choice of colors on the cardboard banners” as amounting to “propaganda for the illegal PKK terrorist organization on the campus.”

Later, the indictment charges, a group of 20 to 30 people “supporting the organization” entered classes in university buildings and banged on professors’ lecterns (*kursu*), shouting slogans such as, “Dicle, don’t sleep, protect your honor!” and forcing the students to leave the classrooms.⁶⁷

The Diyarbakır court determined that two students—Hasan Yağiz and Özgür Güven—had “hindered the education” of other students (Article 112/1-b, Turkish Penal Code) “in the frame of the organization’s [the PKK’s] activities” (Article 5, Anti-Terror Law), and also “committed a crime on behalf of the PKK,” punishable as “membership in the PKK.” The court handed them each seven- year- six-month prison sentences (after discretionary reductions). The court ruled that Nurettin Salhan had “committed a crime on behalf of the PKK” for reading out the public statement.⁶⁸

Mehmet Kocakaya (see previous case) and Özgür Güven were among a group of Dicle University students in prison in Diyarbakır that wrote a letter to the press in March 2010 describing their situation:

We are over forty Dicle University students held in Diyarbakır D- and E-type prisons. In the face of great difficulties, our families are putting us through education. Despite not having the means that our peers in the West have, we worked hard and won places at university. But we did not become complacent about the political, social and economic problems in our country.

For this reason, we struggled to have various democratic events, seminars, public statements, etc. All the events we joined were lawful and were democratic and legal actions. Despite this, the security forces put us under every kind of pressure.

[...]

⁶⁷ See <http://www.gundem-online.net/haber.asp?haberid=87650> (accessed March 4, 2010).

⁶⁸ Diyarbakır Heavy Penal Court No. 4, record of sixth hearing, February 25, 2010. The indictment against the three also includes evidence of their participation in other demonstrations on various dates. They were acquitted of most of the other charges. There is not space here to go into details that are not related to the charges over the mother tongue language protest on October 15, 2008, which forms the main evidence against them. Two other students were also tried but acquitted of any involvement in the October 15 protest.

Most of our families are outside Diyarbakır. University friends come to visit [us in prison] when they don't have exams conflicting with visiting days. Most of our families manage to come to the open visit once a month. Sometimes they cannot come. Some of us cannot phone our families for the 10-minute per week phone call because the lines to our villages are blocked. What remains to us is letters. We also get our exam results from the letters our friends send, not from the notice boards in the university. A prison vehicle ("the hell") takes us in handcuffs to exams at the university. We are brought to an empty classroom, with a soldier standing in front of each window and door. We do our exams under the supervision of soldiers and professors. Anyone who saw us would think we'd planned a coup! Some friends write political solutions on the exam papers, some write articles and poems, and others send greetings to their friends and professors. What should they do? Some were arrested when they were only in their first year. They either have no books/sources or what they have is inadequate. Even if they had, it's really hard to study or to prepare under prison psychology. Finally, those of us who have signed our names below and those Dicle University students we couldn't reach and whose names aren't written here are facing punishments of up to 20 to 30 years. While at every trial hearing, we hope to be bailed, like the children who have thrown stones, we face punishment with sentences that match our ages. And some of our friends have been sentenced ... We are expecting you to raise your democratic voice and we want to see you beside us against the injustice we've been subjected to and the unlawfulness which the state deems fitting for the university students who are its future ...⁶⁹

Cases of Vesile Tadik, Medeni Aydın, and Selahattin Erden

In early 2010, Diyarbakır courts issued a series of verdicts convicting individuals at their very first trial hearing of "membership in the PKK" and for "committing a crime on behalf of the PKK" because they merely shouted a slogan or held up a banner. The cases in question all concern public gatherings on December 6, 2009, in the towns of Kurtalan, Erüh and Siirt, all in the southeastern province of Siirt, for the reading of a public statement protesting the

⁶⁹ See Oral Çalışlar, "Hapisteki Dicle Üniversitesi Öğrenciler" ("The Dicle University students in prison"), Radikal daily newspaper, March 7, 2010, <http://www.radikal.com.tr/Default.aspx?aType=RadikalYazarYazisi&ArticleID=984213&Yazar=ORALÇALIŞLAR&Date=07.03.2010&CategoryID=98> (accessed March 23, 2010). Five of the signatories are women students held in Diyarbakır E-type prison.

prison conditions of Abdullah Öcalan. Scores of people were reportedly prosecuted for their participation in demonstrations in the three towns on the same day, which the police and prosecutor argued came in response to an appeal the PKK issued through sympathetic media outlets. While Diyarbakır Heavy Penal Court No. 6 heard some of the cases, resulting in acquittals, Diyarbakır Heavy Penal Court No. 4 heard some cases, resulting in convictions at the very first hearing. Here we present three such cases.

Perhaps the most striking example is the case of Vesile Tadik.

The public prosecutor's indictment of Vesile Tadik, a 49-year-old mother of six, asserts that on December 6, 2009, she joined a group that gathered outside the district Democratic Society Party (DTP) building in the town of Kurtalan, in Siirt province. The group reportedly walked to the clock tower in the town where DTP district head Fikret Örenç read out a public statement protesting the prison conditions and treatment in prison of Abdullah Öcalan, before the group dispersed "without incident." Individuals in the crowd reportedly shouted pro-Öcalan slogans (such as "Long live chairman Öcalan!"), and Vesile Tadik was caught on a police camera holding up a pro-Öcalan banner. The indictment describes the scene as follows:

The suspect Vesile Tadik opened and held up with friends a banner on which was written "The approach to Öcalan is the approach to peace" and actively joined in an illegal demonstration that turned into propaganda for a terrorist organization and took place in Kurtalan district on December 6, 2009, on the appeal of the PKK terrorist organization.

Thus, the investigation determined that the suspect's aim was to make propaganda for a terrorist organization by joining an illegal demonstration that took place in the district of Kurtalan on the appeal of the PKK terrorist organization, which is an armed organization under Article 314 of the Turkish Penal Code no. 5237, because its aim is to separate a section of the lands under the sovereignty of the Republic of Turkey from the state's governance by means of an armed struggle, and in this region, to create an independent Kurdish state with the name Kurdistan, and with this aim, it carries out violent actions (armed attacks, armed clashes, throwing Molotovs, arson, bombings, etc.).⁷⁰

⁷⁰ Diyarbakır Heavy Penal Court No.4, indictment; 2009/1742, dated December 28, 2009.

The court reasoned that PKK statements to sympathetic media outlets (four broadcasts on Roj TV on four different dates) amounted to a call to the population to demonstrate, and that the gathering had therefore been ordered by the PKK. It is striking to note that the public prosecutor did not choose to charge anyone with the reading out of a public statement and organizing the demonstration, and in fact, Vesile Tadik's lawyer argues that the public gathering was a legal one, for which the local DTP had secured permission.

On the strength of a photograph of Vesile Tadik holding up a banner that read, "The approach to Öcalan is the approach to peace," she was convicted at her first court hearing on March 9, 2010, of "making propaganda for a terrorist organization" (Article 7/2, Anti-Terror Law) and of "membership in an armed organization" (Article 314/2, Turkish Penal Code) for having "committed a crime on behalf of the PKK" (Article 220/6) to a prison sentence of seven years and one month (after discretionary reductions). The slogan itself contained no incitement to violence and falls within the boundaries of free expression.

The court also ignored the fact that Vesile Tadik is illiterate, and speaks Kurdish but not Turkish, forcing her to rely on an interpreter in court. She explained through her interpreter that she had not been able to read the banner in Turkish. In view of this, her level of education, and her general circumstances, the prosecutor argued that she should be acquitted. The court disagreed. The case is on appeal.⁷¹

Diyarbakır Heavy Penal Court No. 4 also convicted Medeni Aydın of "making propaganda for a terrorist organization" (Article 7/2, Anti-Terror Law) and of "membership in the PKK" (Article 314/2, Turkish Penal Code) and of "committing a crime on behalf of the PKK" (Article 220/6, Turkish Penal Code). Medeni Aydın, like Vesile Tadik, received a seven-year-and-one-month prison sentence (after discretionary reductions) at his first trial hearing on March 16, 2010. His crime was shouting the slogan "Long live Chairman Apo!" and clapping at a December 6, 2009 demonstration at which a press statement was read out in front of an assembled crowd in the town of Eruh, in Siirt province.

As was the case with Vesile Tadik, Medeni Aydın was not detained at the demonstration itself, but a few days later, on December 11, when he was brought before the Eruh prosecutor to testify. The prosecutor and court decided that the crime of shouting the slogan, "Long live chairman Apo!" was serious enough to justify remanding Aydın to prison pending trial. He remains in prison pending appeal for shouting a slogan that the court should have judged as falling within the boundaries of free speech.

⁷¹ Diyarbakır Heavy Penal Court No. 4, trial hearing record, March 9, 2010.

On March 16, 2010, Diyarbakır Heavy Penal Court No. 4 also convicted Selahattin Erden, a 40-year-old father with 15 children from two wives, of “making propaganda for a terrorist organization” and of “membership in the PKK” for having “committed a crime on behalf of the PKK” to a seven-year-and-one-month prison sentence. He too was placed in pre-trial detention and remains in prison pending his appeal. Selahattin Erden’s crime at the Eruh demonstration on December 6, 2009 was to have held one edge of a banner reading, “Either free leadership and free identity, or resistance and revenge to the end!” Diyarbakır Heavy Penal Court No. 6 acquitted Hayrettin Teğın, who held up the other corner of the same banner, of committing a crime on behalf of the PKK. The court instead sentenced him to the much lesser offense of “making propaganda for a terrorist organization” (Article 7/2 Anti-Terror Law), for which he received a 10-month sentence but was released from prison pending appeal.⁷²

Case of Rihan Yıldız

Rihan Yıldız, a 56-year-old mother of five, was sentenced at her first hearing on March 11, 2010, to nine years and seven months in prison for “membership in a terrorist organization” (Article 314/2, Turkish Penal Code) for “committing a crime on behalf of the PKK” (Article 220/6, Turkish Penal Code) and for four counts of “making propaganda for the PKK” (Article 7/2, Anti-Terror Law).⁷³ Arrested on December 21, 2009, and remanded to prison the next day, she remains in a Diyarbakır E-type prison pending the result of her appeal.

Rihan Yıldız joined four different Diyarbakır protests at which public statements were read out. The evidence against her consisted of video footage showing her shouting pro-Öcalan and pro-PKK slogans and clapping at the demonstrations, and at two demonstrations, carrying a banner. The demonstrations she joined took place on September 30, 2007 (protesting Öcalan’s prison conditions and health problems); on March 26, 2008 (protesting fatal shootings by the police during Newroz in Van, Hakkari, and Şırnak); on August 19, 2009 (calling for a peaceful solution to the Kurdish problem); and September 11, 2009 (protesting the arrests of Kurdish Democratic Society Party officials and activists, for membership in the Union of Kurdistan Communities (KCK/TM), a body connected with the PKK). At the last demonstration, video footage showed that she had walked at the front of the group, holding a banner with the slogan, “Don’t touch my party; don’t touch my political choice; this operation will finish you,” referring to the arrests of party officials and warning the authorities against the clampdown. Prosecutors asserted that she shouted slogans including, “Long live chairman Apo!” “Oh leader, we are with you, with our blood and souls!”

⁷² Information supplied to Human Rights Watch by Siirt lawyer Şakir Demir, March 23, 2010.

⁷³ Diyarbakır Heavy Penal Court No. 5, record of hearing 2010/78, March 11, 2010. Information supplied to Human Rights Watch by Diyarbakır lawyer Serkan Akbaş.

and “The PKK is the people, the people are here!” “The ambassador for peace is on Imralı [the island where Öcalan is imprisoned]”⁷⁴ During her trial hearing, the court identified her as having carried a banner reading “Close down Imralı prison,” at the demonstration on September 30, 2007, and identified other similar slogans, which the video footage showed she had shouted along with others.

The prosecutor argued in the indictment that two of the demonstrations were organized in response to PKK “appeals” made through media outlets (Roj TV and the Rojaciwan website), and hence were ordered by the PKK.

At her trial hearing, Rihan Yildiz was not fluent enough in Turkish to follow the proceedings, and relied on an interpreter who spoke Kurdish. She stated, “My son died when he was in the organization [PKK], I joined demonstrations for an end to the crying of soldiers’ mothers and the mothers of members of the organization; my aim is peace.” Her lawyer argued that she was illiterate and that she and her much older husband had health problems and called for her acquittal and release from prison. In passing the nine-year-and-seven-month prison sentence, the court determined that she should remain in prison. The case was on appeal at the time of this writing.

⁷⁴ Diyarbakır Heavy Penal Court No. 5, indictment; no. 2010/80, January 11, 2010.

VI. Stone-Throwing Equated with PKK Membership: Disproportionate Charges and Sentences

The majority of cases examined by Human Rights Watch involved allegations of or evidence that defendants had “violently resisted” the police or refused orders to disperse. In most cases this “resistance” took the form of stone-throwing, or much more rarely, throwing Molotov cocktails. Prosecutors often present video evidence to support these charges, but numerous convictions have also been made based solely on a police statement that the defendant was seen resisting orders to disperse.

In the cases examined so far, the prosecutor accused the defendant of “committing a crime on behalf of the PKK,” and therefore of “membership in the PKK” solely on the basis of the defendant’s participation in one or more demonstrations. In some, but not all, of these cases, the number of demonstrations the defendant was alleged to have attended was considered relevant to the determination of guilt. Where the defendant is accused of stone-throwing or other violence, the charge of “committing a crime on behalf of the PKK,” and therefore, of “membership in the PKK,” need not be proven by evidence of participation in multiple demonstrations. Defendants face the same charges for participation in a single demonstration.

Case of Feyzi Aslan, Fatma Gökhan, and Tufan Yıldırım

Feyzi Aslan, Fatma Gökhan and Tufan Yıldırım all took part in a Diyarbakır demonstration on March 26, 2008. Tufan Yıldırım was accused of making a victory sign and shouting slogans during the demonstration; Fatma Gökhan was accused of covering her face with a scarf (*poşu*) to conceal her identity, and of having been among a group shouting slogans; all three defendants were accused of having thrown stones at the police.

The authorities claim that the PKK used sympathetic press outlets to broadcast appeals for the demonstration to protest the harsh policing of earlier unauthorized Nevruz/Newroz demonstrations in the towns of Siirt, Van, Hakkari, and Yüksekova.⁷⁵ The indictment points to PKK statements the Fırat News Agency and the Roja Ciwan website broadcast encouraging participation in demonstrations.

⁷⁵ Cases demonstrating excessive use of force and two fatal shootings by the police during the unauthorized Nevruz/Newroz demonstrations in Van on March 22, 2008, were documented in the December 2008 Human Rights Watch report, “Closing Ranks Against Accountability: Barriers to Tackling Police Violence in Turkey,” see, <http://www.hrw.org/en/reports/2008/12/05/closing-ranks-against-accountability-0>.

On March 10, 2009, Diyarbakır Heavy Penal Court No. 4 convicted the three defendants as follows: Tufan Yıldırım and Fatma Gökhan received prison sentences of 11 years and three months for “membership in the PKK,” (Article 314/2, Turkish Penal Code) for “committing a crime on behalf of the PKK,” (Article 220/6, Turkish Penal Code) for “making propaganda for the PKK,” (Article 7/2, Anti-Terror Law) and for violating the Law on Public Meetings and Demonstrations by violently resisting dispersal (Article 32/3, law no. 2911), and Feyzi Aslan received a prison sentence of 10 years and five months for “membership in the PKK,” for “committing a crime on behalf of the PKK,” and for violating the Law on Assemblies and Demonstrations.⁷⁶ The case is currently on appeal.

Case of H.A.

H.A., who was 15 at the time of the incident, and whose full name is withheld in this report, joined in a demonstration in the town of Silopi in Şırnak province on October 19, 2008, organized by the local branch of the Democratic Society Party (DTP), at which the DTP provincial chair spoke. The demonstration was organized under the slogan, “Neither the Justice and Development Party, nor Ergenekon, the solution is a democratic republic”⁷⁷

The prosecutor argued that this slogan did not reflect the real motivation for the demonstration and that the PKK was behind it. He argued that two days before the demonstration, the Firat News Agency had broadcast news about the alleged ill-treatment of Öcalan in prison, and the PKK military wing had issued a statement to the prime minister threatening to respond to any such “attacks” on Öcalan in the future. The prosecutor also pointed to an October 17, 2008 broadcast by Roj TV calling on the Kurdish population to demonstrate and to close workplaces and boycott school classes to protest Prime Minister Erdoğan’s October 20 visit to the southeast.

For these reasons, the prosecutor accused H.A. of acting under PKK orders when he joined the Silopi demonstration and therefore charged him with “membership in the PKK,” (Article 314/2, Turkish Penal Code) for “committing a crime on behalf of the PKK,” (Article 220/6, Turkish Penal Code) along with “making propaganda for the PKK,” (Article 7/2, Anti-Terror Law) and violently resisting dispersal.

⁷⁶ Diyarbakır Heavy Penal Court No. 4, reasoned decision (2008/192, March 10, 2009. Case documents on file with Human Rights Watch. These are the prison terms they will actually serve if approved by the Court of Cassation, minus time already spent in pre-trial detention.

⁷⁷ “Ne AKP ne Ergenekon çözüm demokratik cumhuriyet”: the slogan refers to the perceived polarization between the government and opposition forces characterized by the Ergenekon trial—the ongoing trial of former senior military and gendarmerie figures, special police units, journalists, academics, and others, for allegedly fomenting conditions for a military coup to unseat the government.

Video evidence showed that H.A. had held the corner of a banner that showed Öcalan's picture and a PKK flag while raising his right hand in a victory sign, had partially hidden his face with a scarf, and had thrown stones at the police. The 15-year-old defendant admitted his actions, but argued that he was not a PKK member, had not joined the demonstration with the intention of making propaganda for the PKK, and had not acted under the organization's instructions. Instead, H.A. stated that he "had joined in the incidents with the ignorance that comes with group psychology," and regretted it.

H.A. was convicted, and, after benefiting from reductions on the basis of his age, sentenced to a prison term of seven years and six months. He was released on bail pending the decision on appeal.⁷⁸ Following the July 2010 amendments, his sentence should be quashed by the Court of Cassation. Any retrial will take place in a juvenile court and any prison sentence should be postponed or otherwise suspended.

Case of B.S.

B.S., who was 15 years old at time of incident, and whose name has been withheld, participated in a demonstration on October 9, 2009, in Batman, on the eleventh anniversary of Abdullah Öcalan's expulsion from Syria in 1998. She was apprehended by police at the demonstration and the prosecutor's indictment described how "defendant B.S., wearing a black-and-white scarf (*poşu*) with the aim of hiding her face, had been active among a group throwing stones and Molotov cocktails." The evidence against her was based on video footage in which she was identified, though there was no video evidence of her actually throwing stones or Molotov cocktails.

Diyarbakır Heavy Penal Court No. 4 sentenced B.S. to seven years and six months in prison at her first court hearing on December 29, 2009.⁷⁹ The court refused her bail pending appeal.

Two lawyers who visited her in the Diyarbakır prison said that she and another young girl prisoner had asked hopefully whether the lawyers had come to get them out of there and whether they could go home yet.⁸⁰ Following the July 2010 amendments, B.S. was released

⁷⁸ See Diyarbakır Heavy Penal Court No. 4, no. 2008/1586; Decision no. 2009/179, March 23, 2009. On file with Human Rights Watch.

⁷⁹ Diyarbakır Heavy Penal Court No. 4, reasoned decision, 2009/579, December 29, 2009. After reductions based on her age and conduct during the trial, B.S. received a prison sentence of four years and two months for "committing a crime on behalf of the PKK" (Article 220/6, Turkish Penal Code) punishable as "membership in the PKK," (Article 314/2, Turkish Penal Code) and two years, nine months and 20 days in prison under Article 33/c of the Law on Demonstrations and Public Assemblies, and six months and 20 days in prison for "making propaganda for a terrorist organization," under Article 7/2 of the Anti-Terror Law.

⁸⁰ Reported to Human Rights Watch by lawyer Emin Aktar, head of the Diyarbakır Bar Association, March 5, 2010.

from prison.⁸¹ Her sentence will be quashed by the Court of Cassation and any retrial will take place in a juvenile court.

There are hundreds of cases of adults and children similar to the five discussed above.

Human Rights Watch spoke to several prosecutors about the laws and the case law that make such convictions possible. One prosecutor expressed deep concern that the drafting of Article 220 represented a “systemic error,” which could only be rectified by rewriting the law:

Where once we would apply Article 7/2 of the Anti-Terror Law when it came to charging demonstrators who engage in the kind of activities we are seeing today, after the General Penal Board’s decision, we are now obliged to apply Articles 220/6 and 314/2 of the Turkish Penal Code. The case law on this serves no good purpose. It isn’t a case of poor implementation by the courts, but rather, case law we must conform with.

Referring in particular to children prosecuted under these laws, he commented: “Those who are caught by the police during demonstrations and are put on trial are not experienced, actually. The same children who throw stones and Molotov cocktails at the police are often those who will also agree to play football with them!” He was opposed to the imprisonment of children, which he felt tended to radicalize them:

I’m afraid that after prison these children may go to the mountains [i.e. join the PKK]. I remember one child who in court was genuinely sorry for what he had done and regretted it. Once he had spent time in prison, he wrote to me telling me he had changed his mind, he was angry and no longer regretted anything.⁸²

These views were not shared by another prosecutor interviewed by Human Rights Watch. The second prosecutor pointed to “the special conditions prevailing in Turkey, which have seen over 35,000 killed due to terrorism.” He was unwilling to criticize the existing laws or the case law of the Court of Cassation, but suggested that it was important to attempt to draw distinctions between the kinds of demonstrations that take place. Thus, in his view, March

⁸¹ See press report, http://www.gazeteport.com.tr/GUNCEL/NEWS/GP_733226 (accessed July 27, 2010).

⁸² Human Rights Watch interview with Prosecutor A, who works in a Special Heavy Penal Court (name and location withheld at request of prosecutor), March 2009.

21 Newroz/Nevruz celebrations constitute a more legitimate grounds for a public gathering, while February 15, the anniversary of the return of Öcalan to Turkey, is not legitimate. He argued that prosecutors should think along these lines.⁸³

⁸³ Human Rights Watch interview with Prosecutor B working in a Special Heavy Penal Court (name and location withheld at request of prosecutor), March 2009.

VII. Convictions Based Solely on Police Identification

In the cases discussed above, the verdicts depend on video footage showing the role of the individuals in demonstrations. In other cases examined by Human Rights Watch, the evidence against the defendants consisted solely of police reports alleging participation in criminal acts during demonstrations without any corroboration. On the basis of such statements, courts have authorized pretrial detention, and these police reports have often been the main evidence put forward at trial. In many of these cases, the police identification of the defendant(s) at the time of the demonstration, and months later in court, seems highly questionable, given the difficulties of identifying individuals in the middle of large demonstrations. Without corroborating evidence, these statements raise concerns about possible abuse. Human Rights Watch has concerns that in these cases there is a risk that the police may write up records claiming to have seen an individual actively participating in a demonstration and throwing stones there, simply because they have apprehended that individual and need to justify detaining the person after the fact.

Case of Murat Baran

In the case of 21-year-old Murat Baran, apprehended for participating in a February 15, 2009 demonstration in Mersin, the police and prosecutor determined that the fact that the individual had half a lemon in his hand was evidence that he had intentionally participated in the demonstration. The police argued that it was common knowledge that demonstrators apply lemon to their faces and eyes to counteract the effects of tear gas. The court agreed, and made no efforts to summon witnesses who might have testified in court as to whether they had seen Murat Baran participate in the demonstration. The individual thus got a nine-year-and-nine-month prison sentence (after discretionary reductions) for “membership in the PKK,” (Article 314/2, Turkish Penal Code) for “committing a crime on behalf of an organization,” (Article 220/6, Turkish Penal Code) for “making propaganda for a terrorist organization,” (Article 7/2, Anti-Terror Law) and for resisting the police. The only evidence produced was the half lemon in his hand.⁸⁴ Murat Baran has been in detention for the duration of his trial and is likely to remain in prison pending the result of his appeal.

⁸⁴ Information supplied by lawyer Tugay Bek, Adana. See Adana Heavy Penal Court No. 6 indictment; 2009/190, April 7, 2009; and record of court hearing, 2009/93, February 15, 2010.

See press coverage of the case, <http://www.milliyet.com.tr/Guncel/HaberDetay.aspx?aType=HaberDetay&ArticleID=1208008&Date=09.03.2010&Kategori=guncel&b=Elinde%20yarim%20limon%20var%20diye%209%20yil%20ceza%20aldi> (accessed March 23, 2010).

The case of Murat Baran is among the most concerning. However, there have also been other examples of individuals detained and placed in pretrial detention in the absence of camera images or witness testimonies asserting that they participated in a demonstration. In one such case, police officers reportedly detained six children between the ages of 13 and 16 in Bingöl on the grounds that they were sweating and their hands were dusty and sooty, suggesting that they had lit a fire during the protest.⁸⁵ Three of the six were placed in pretrial detention on this basis, to be later released at their first trial hearing.

Case of Abdulcelil Karaş

Abdulcelil Karaş was seen in video stills standing apparently silently in the crowd during the March 28, 2006 Diyarbakır protests. In court, Karaş claimed that he had been on his way to the hospital from the café where he worked to collect the results of some medical tests. A police report states that Karaş was among those who threw stones at the police. One police witness in court identified Karaş. Another stated that he could not positively identify Karaş, but that the content of the police report at the time had been correct. On this basis, Karaş, who was released on bail during his trial, received a prison sentence of six years and three months. This case is currently on appeal.⁸⁶

Case of Salih Özbek, Seyithan Akbal and Others

In a similar case, five suspects, including Salih Özbek and Seyithan Akbal, both aged 60, were detained at a protest against Prime Minister Erdoğan's visit to Diyarbakır on October 20, 2008, and were placed in pretrial detention. The only evidence against Salih Özbek and Seyithan Akbal is a police report alleging that they were witnessed directing a group of protestors that violently resisted police dispersal. The police report claims the men's hands smelt of a burning substance, which they conclude was because the men had burnt car tires, and according to the police, there were traces on the men's hands that showed they had thrown stones. Video footage shows the two men present in the demonstration, but not throwing stones or offering violent resistance. The indictment describes the actions of the defendants in absolutely identical terms, with each accused of taking a position at the front of the demonstration. On October 6, 2009, all five suspects were convicted. Salih Özbek and Seyithan Akbal were both sentenced to 11 years and three months in prison. Salih Özbek is

⁸⁵ See for example, press report, "Mademki terlemişsin demek ki eylemcisin" ("Since you're sweating you must be a demonstrator!"), *Sabah* newspaper, March 2, 2010, see http://www.sabah.com.tr/Yasam/2010/03/02/mademki_terlemisin_demek_ki_eylemcisin (accessed March 5, 2010).

⁸⁶ See Diyarbakır Heavy Penal court No. 5; no. 2006/201; Decision no. 2008/115, April 8, 2008. On file with Human Rights Watch.

still in prison; Akbal was released on bail at an earlier hearing. Lawyers have appealed the convictions.⁸⁷

Case of Ramazan Uçgün and İdris Üzen

Ramazan Uçgün and İdris Üzen were allegedly part of a group that burned car tires and shouted slogans in support of the PKK and Abdullah Öcalan during a demonstration in Cizre on March 20, 2008, the night before the March 21 festival of Newroz/Nevruz. A police report represents the sole evidence for the prosecution of the two men.⁸⁸

Medical reports show that İdris Üzen suffered a dislocated shoulder, for which he received medical treatment, including a plaster cast, in the hospital.⁸⁹ He alleges that his injuries were the result of excessive use of force by the police officers who apprehended him, and complained to the prosecutor and in court. So far, there is no evidence of any investigation into that complaint.

After spending almost two years in prison through the duration of their trial, Uçgün and Üzen were convicted at their twelfth trial hearing of “membership in the PKK” (Article 314/2, Turkish Penal Code) on the basis of having “committed a crime on behalf of the PKK,” (Article 220/6, Turkish Penal Code) in response to an “appeal” to protest by the armed group; with “making propaganda for the PKK,” (Article 7/2, Anti-Terror Law) and with violating the Law on Demonstrations and Public Assemblies. Uçgün received an 11-year-and-three-month prison sentence (after discretionary reductions), and Üzen, a nine-year-and-seven-month prison sentence (after discretionary reductions).⁹⁰ The case is on appeal and the two will remain in prison pending the results of their appeal.

* * *

Media outlets do not even announce some of the smaller and more local demonstrations, yet the charge of acting under orders of the PKK is included in all such cases. Courts in Adana in particular have justified convicting child defendants for the most severe charges by

⁸⁷ Diyarbakır Heavy Penal Court No. 6, record of verdict hearing, 2008/589, October 6, 2009. Indictment, police reports, and court records on file with Human Rights Watch.

⁸⁸ Human Rights Watch representative attended the fourth trial hearing against İdris Üzen and Ramazan Uçgün at Diyarbakır Heavy Penal Court No. 6, February 24, 2009.

⁸⁹ Medical reports for İdris Üzen from Cizre State Hospital dated March 20 and 24, 2008, in possession of Human Rights Watch. Several police officers also obtained medical reports documenting superficial injuries.

⁹⁰ Diyarbakır Heavy Penal Court No. 6 indictment, case no. 2008/836, June 18, 2008. Record of twelfth hearing of Diyarbakır Heavy Penal Court No.6 (dossier no. 2008/354), February 23 2010. Copies of documents, including court hearing records, statements to prosecutor, police reports, and medical reports in the possession of Human Rights Watch.

claiming that the PKK's "appeal" to participate in demonstrations is a continuous one, seeming to suggest that no specific address to the local population is needed.

Case of M.Ö. and İ.S.

M.Ö., who was 15 at time of incident, and whose name has been withheld, and İ.S., who was age 16 at time of incident, and whose name has been withheld, were apprehended by police at a March 8, 2009 demonstration in a neighborhood of Adana. According to the prosecutor's indictment, a group of approximately 50 to 60 people had shouted pro-Öcalan slogans, assembled barricades in the road with trash cans, and resisted police dispersal by throwing stones. The police apprehended the two defendants, whom they alleged were among the group. They were remanded to pre-trial detention and on June 2, 2009, Adana Heavy Penal Court No. 6 convicted them at their first court hearing to prison sentences of four years and nine months under Turkish Penal Code Articles 220/6 and 314/2-3 ("committing a crime on behalf of the PKK" and "membership in the PKK") and for "making propaganda for a terrorist organization" (Article 7/2, Anti-Terror Law).⁹¹ The two defendants were not released on bail. Information about their possible release following the July 2010 legal amendment was not available at the time of writing.

In this case there is nothing in the indictment to suggest that the PKK made a particular "appeal" to demonstrators to participate in this demonstration. After giving a summary of the history of the PKK, naming its various wings and organizational bodies, the indictment identifies a generalized "appeal" to youth to participate in protests:

All types of appeals to action in the cities for retaliation against the cross-border and domestic operations by our security forces against the PKK/KONGRA-GEL, and for an improvement of the situation of terrorist leader Abdullah Öcalan in İmralı Prison, were made by the senior members of the organization by means of press and broadcasting channels belonging to the organization ...⁹²

While the Court of Cassation decision in the Özer case and subsequent rulings by local courts had pointed to direct appeals by the PKK to the population to join a particular demonstration, the Adana court interpreted this requirement of showing an "appeal" by the PKK more loosely, suggesting that the organization issued a perpetual summons to protest,

⁹¹ Human Rights Watch did not document other cases in 2009 in which courts handed down verdicts at first hearings. In several cases mentioned earlier in this report, the Diyarbakır courts did convict defendants at their first hearings in February and March 2010.

⁹² Adana Public Prosecutor's Office, indictment, 2009/194.

and so prosecutors need demonstrate no specific appeal to the population to join a particular demonstration. In presenting his case in the court on the day of the verdict, the prosecutor stated that, “the defendants complied with the *perpetual appeal* to action of the armed terrorist organization PKK in joining a 100-person group at 16:30 on the day of the crime [emphasis added].”⁹³

Human Rights Watch has come across two cases in which a judge openly challenged the use of Article 220/6 and 220/7 of the Turkish Penal Code, and called on the Constitutional Court to amend the provisions. The same Diyarbakır-based judge issued a dissenting opinion in each case, criticizing the decision of the panel to convict individual demonstrators of “membership in the PKK” on the basis of “having committed a crime on behalf of the organization.”

One such case involved Mehmet Fidan, an adult who was apprehended on February 14, 2008 in the town of Idil in Şırnak province after joining an unauthorized demonstration on the anniversary of Öcalan’s capture nine years earlier. The indictment and decision view the event as organized in response to a PKK appeal to demonstrate broadcast on Roj TV on February 3 and 5, 2008, and also by the Fırat News Agency on February 5, 2008. Mehmet Fidan is said to have “been among the group, setting up barricades, burning tires, and throwing stones at the police.”⁹⁴ As such, the case resembles scores of others. Mehmet Fidan received a prison sentence of 10 years and five months for “membership in the PKK” (Article 314/2, in conjunction with Article 220/6, Turkish Penal Code) and for violently resisting police dispersal of the demonstration. The dissenting judge argued for his acquittal, raising many of the points that critics of the law have raised.

Arguing that the first article of the Penal Code provides for the protection of rights and freedoms, the public good and the social peace, and advocates preventing crime, the judge focused on the need to deter support for the PKK, and argued that provisions such as Article 314 (“membership of an armed organization”) applied by means of Article 220 (“committing a crime on behalf of an organization”) would only radicalize Kurds and encourage their support for the organization. He argued that the current application of the law, whereby individuals could be imprisoned simply for showing their sympathy for the PKK, ironically

⁹³ Adana Heavy Penal Court No. 6, Decision no. 2009/95, June 2, 2009: “Yapılan yargılama sonunda sanıkların silahlı terror örgütü PKK’nin sürekli eylem çağrısına uyarak suç tarihinde saat 16:30 da 100 kişilik grubun katıldığı....”

⁹⁴ “Sanık Mehmet FIDAN’ın yollara barikat kuran, lastik yakan, polisleri taş atan grubun içerisinde yer aldığı”; see Diyarbakır Heavy Penal Court No. 4, Decision no. 2009/171; Decision: 2009/495, August 18, 2009, p.5. Copy of decision in possession of Human Rights Watch.

resulted in “ensuring that they acquired the mindset necessary for membership in the organization.” He viewed it as counterproductive to try protestors in the Special Heavy Penal Courts, and suggested that this does more to encourage popular support for the PKK than to prevent it. Suggesting that it is highly problematic for the state to punish individuals as “members of the PKK,” when they had never joined the PKK’s mountain cadres or undergone military and political training, this judge recommended that lawmakers amend Article 220/6 and 220/7 of the Turkish Penal Code.

The dissenting judge argued that some provisions of the Penal Code are intended to strengthen the social peace and prevent crime, including the “Effective Repentance” law. While a person who spent eight years in the mountains as an armed member of the PKK would typically get a five-year prison sentence, if that person turned him or herself in, he or she would not have to serve any prison time at all under the terms of the effective repentance law (Article 221, Turkish Penal Code). In contrast, if the person had never taken up arms against the Turkish state as a member of the PKK, but had merely been a peaceful demonstrator without any direct link to the PKK, that person could face a five-year sentence for “membership in the PKK,” without the prospect of reducing or eliminating the prison time that the repentance law provides. Repeated participation in demonstrations and multiple offenses could add years to the sentence.

The judge noted that prosecutors have failed to provide evidence that protestors ever heard or read the PKK’s “appeals” to action.

There is no concrete evidence that these appeals have reached these individuals.... but to demonstrate that such appeals have been made on websites, they [PKK statements from news broadcasts] get included in the case file by the police, although there is no hard evidence that the defendant received the summons and committed a crime as a result of it.

For this reason, the judge recommended an application to the Constitutional Court for the cancellation of Article 220/6.

The dissenting judge argued that Mehmet Fidan ought to be acquitted.⁹⁵

⁹⁵ Diyarbakır Heavy Penal Court No. 4, decision no. 2009/171; decision: 2009/495, August 18, 2009. Human Rights Watch is in the possession of a copy of the reasoned decision. On September 3, 2009, the same judge issued a dissenting opinion in a second case bearing similarities to that of Mehmet Fidan, arguing again that there was “not clear and convincing evidence” that the two defendants convicted by the court and sentenced to prison terms of 10 years and five months and 11 years and three months for joining a Cizre demonstration had committed a crime on behalf of the PKK. Again the judge concluded that the defendants should have been acquitted. The case reference is Diyarbakır Heavy Penal Court No. 6, no. 2009/78. Record of hearing at which verdict was issued on file with Human Rights Watch.

VIII. Human Rights Violations

Turkey is party to a number of human rights treaties, including the International Covenant on Civil and Political Rights,⁹⁶ the European Convention on Human Rights,⁹⁷ and the United Nations Convention on the Rights of the Child,⁹⁸ which by virtue of Article 90 of the Turkish Constitution, have the force of law in Turkey.⁹⁹ These treaties guarantee freedom of expression and association, the rights to liberty and security, and due process rights with respect to detention and the criminal law, all of which Turkey is violating by its harsh practice of routinely detaining and prosecuting demonstrators on terrorism charges. Though these treaties have the force of law in Turkey, no authority—either the police, prosecutors or the courts—is taking these legally binding human rights obligations into account when confronting legitimate, public action in opposition to the state’s policies on treatment of the Kurdish minority.

Freedom of Expression and Assembly

Freedom of assembly is often a particular manifestation of freedom of expression, and in the cases examined in this report, freedom of assembly in southeast Turkey is clearly linked with Kurdish political and cultural expression. Any regulation of, interferences with or restrictions on the exercise of the right to assembly must also therefore fully respect the right to freedom of expression, and other rights, such as the right to liberty and security. Every time police intervene to disperse an assembly, arrest those at protests and seek to prosecute individuals for the act of participating in a demonstration, this constitutes an interference with the right to assembly and expression. Such interferences are only permissible under international law if they have a proper legal basis, are necessary in a democratic society for a legitimate purpose, and are proportionate.¹⁰⁰

⁹⁶ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Turkey on September 23, 2003.

⁹⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950, 213 U.N.T.S. 222, entered into force September 3, 1953, ratified by Turkey on May 18, 1954.

⁹⁸ Convention on the Rights of the Child (CRC), U.N. Doc. A/44/49 (1989), entered into force September 2, 1990 ratified by Turkey on April 4, 1995.

⁹⁹ Article 90 of the Constitution of the Republic of Turkey, 1982, provides “International agreements duly put into effect bear the force of law.”

¹⁰⁰ Article 21 of the ICCPR provides that: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.” Article 15 of the CRC provides similar protection with respect to the right of children to assemble. Article 11 of the ECHR provides that: “ Everyone has the right to freedom of peaceful assembly and to freedom of association with others 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the

The European Court of Human Rights has made clear on numerous occasions:

... that the right to freedom of assembly is a fundamental right in a democratic society and is one of the foundations of such a society (see *G. v. the Federal Republic of Germany* [No. 13079/87, Commission decision of 6 March 1989, DR 60]; *Rai, Allmond and “Negotiate Now” v. the United Kingdom*, no. 25522/94, Commission decision of 6 April 1995, DR 81-A, p. 146). This right, of which the protection of personal opinion is one of the objectives, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered “necessary in a democratic society” the Contracting States enjoy a certain but not unlimited margin of appreciation.... the freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected to a sanction—even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as this person does not himself commit any reprehensible act on such an occasion (see *Ezelin...*).¹⁰¹

The cases documented in this report raise serious concerns about restrictions on freedom of expression, association and assembly, discrimination against those who demonstrate on the Kurdish issue, and disproportionate charges and sanctions. Participants in demonstrations on the Kurdish question routinely receive dramatically higher sentences than others, not because of their conduct during demonstrations, but because of their presumed motives for protesting and the political message they are assumed to express. In this regard, the Court has also emphasized that:

Freedom of assembly and the right to express one’s views through it are among the paramount values of a democratic society. The essence of democracy is its capacity to resolve problems through open debate. Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles—however shocking and unacceptable certain views or words used may appear to the

protection of the rights and freedoms of others.” Article 19 of the ICCPR, Article 10 of the ECHR, and Article 13 of the CRC provide similar guarantees related to freedom of expression.

¹⁰¹ *Galstyan v. Armenia*, Judgment of November 15, 2007, Series No. 26986/03, paras. 114 – 115; *Ashughyan v. Armenia*, Judgment of July 17, 2008, Series No. 33268/03, paras. 89-90.

authorities, and however illegitimate the demands made may be—do a disservice to democracy and often even endanger it.

In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means.¹⁰²

In the Court's view, where demonstrators do not engage in acts of violence, it is important for public authorities and officials to show a degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.¹⁰³

Clearly in cases such as those documented in this report, the imposition of higher sentences because of political views imputed to the accused is an unjustified restriction on freedom of assembly and expression and a violation of Turkey's human rights obligations. In practice, in many of these cases, the demonstrators are doing nothing more than exercising their right to freely express their views. The government cannot deem such conduct, which in itself is not an offense, to be a crime merely by imputing a motive to participants (assuming that they are acting under orders of the PKK). To infer criminal intent from mere participation in a peaceful protest is a clear violation of the right to freedom of assembly.

Principles of Legality, Fair Trial and Due Process

Individuals who commit offenses such as throwing stones and burning tires may legitimately be prosecuted and sanctioned under criminal law. However, the use of an expansive interpretation of the law to render acts that are no more than an exercise of freedom of speech, or low-level acts of violence, as terrorism offenses, and sanction them as such, offends international human rights law.

Human rights law and the rule of law require that criminal law be foreseeable and predictable, obligating states to define precisely all criminal offenses.¹⁰⁴ This obligation finds

¹⁰² *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, Series Nos. 29221/95 and 29225/95, para. 97, ECHR 2001-IX.

¹⁰³ See e.g. *Oya Ataman v. Turkey*, Series No. 74552/01, paras. 38-42, ECHR 2006; *Nurettin Aldemir and Others v. Turkey*, Series Nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, para. 46, December 18, 2007; *Saya and Others v. Turkey*, Series No. 4327/02, para.46, October 7, 2008.

¹⁰⁴ This principle of legal certainty is referred to by the Latin phrase "*nullum crimen, nulla poena sine lege*," meaning that any offense or penalty must be clearly provided for in law.

articulation in several provisions of human rights treaty law legally binding on Turkey, and is a general principle of criminal law.¹⁰⁵ The European Court of Human Rights explained:

The guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment.

Accordingly ... Article 7 ... embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. From these principles it follows that an offense must be clearly defined in the law.... The Court thus indicated that when speaking of 'law' Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises written as well as unwritten law and implies qualitative requirements, notably those of accessibility and foreseeability ...¹⁰⁶

The use of anti-terrorism laws against demonstrators in Turkey clearly offends the principles of clarity and legality required by international law in general, and by the European Convention on Human Rights in specific.

There is no evidence that the vast majority of the defendants considered in this report committed any act that would typically or reasonably be considered "terrorism." The terrorism charges that are brought against these protestors are wholly disproportionate and do not correspond to the nature or gravity of the acts committed. The evidence leveled against such demonstrators varies widely in substance, raising further fair trial and due process concerns.

¹⁰⁵ See Article 15 of the ICCPR and Manfred Nowak. UN Covenant on Civil and Political Rights. CCPR Commentary (2nd rev. ed.). Kehl am Rhein: Engel, 2005, pp.358 – 362; Article 7 of the ECHR and Article 40 of the CRC.

¹⁰⁶ See e.g. *S.W. v. the United Kingdom* and *C.R. v. the United Kingdom*, Judgments of November 22, 1995, Series A Nos. 335-B and 335-C, paras. 34-36, and paras. 32-34, respectively; *K.H.W. v Germany*, Series No. 37201/97, para. 45, ECHR 2001-II.

Human Rights Watch calls on the Turkish government as a matter of urgency to amend or repeal the laws that in combination create a legal basis for these abuses of Turkey's international legal obligations.

UN Special Rapporteur's Concerns about Vaguely Worded Terrorism Laws

In his first report to the UN Commission on Human Rights, Martin Scheinin, the UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, directly addressed the need for laws to adhere to the principle of legal certainty and to be clearly and precisely drawn. He reminded states that for activities to be prescribed by law, "the prohibition must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct." Furthermore, that "In the prohibition of terrorist conduct, it is important for States to ensure that prescriptions to that effect are accessible, formulated with precision, applicable to counter-terrorism alone, non-discriminatory, and non-retroactive."¹⁰⁷

Following his 2006 visit to Turkey, Scheinin expressed particular concern about the definition of terrorist crimes in Turkish law. Relating his comments to the definition of terrorism in Article 1 of the Anti-Terror Law, he recommended that "the definition of terrorist crimes should be brought in line with international norms and standards, notably the principle of legality as required by article 15 of the International Covenant on Civil and Political Rights (ICCPR), including *defining more precisely what crimes constitute acts of terrorism and confining them to acts of deadly or otherwise grave violence against persons or the taking of hostages* [emphasis added]."¹⁰⁸

Turkish Penal Code Articles 220/6 and 220/7 ("committing a crime on behalf of an organization" and "knowingly and willingly aiding and abetting an organization") are striking examples of legal provisions that are so vaguely worded and lacking in clarity about what is

¹⁰⁷ See "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin," E/CN.4/2006/98, http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/3_CODEXTER/Working_Documents/2006/Sheinin%20E-CN.4-2006-98.pdf (accessed September 8, 2009), December 28, 2005.

¹⁰⁸ The special rapporteur raised the following general concern: "The Anti-Terror Act is drafted in a way that allows for an overly broad application of the term terrorism. Article 1, paragraph 1, defines 'terrorism' mainly with regard to its aims. It appears to criminalize the aims as such since it does not require any act to have been committed in pursuing the listed aims, which include the aim to change the 'political, legal, social, secular and economic system' of Turkey and the aim of 'weakening ... the authority of the State.' The clause is therefore not restricted to tactics employed in the furtherance of these aims that amount to deadly or otherwise grave violence against persons. Instead, the provision is applicable to any kind of act that entails 'pressure, force and violence, terror, intimidation, oppression or threat' [emphasis added]." A/HRC/4/26/Add.2, <http://daccessdds.un.org/doc/UNDOC/GEN/G06/149/42/PDF/G0614942.pdf?OpenElement>, November 16, 2006 (accessed September 8, 2009).

prohibited as to offer an individual no indication of how to regulate or limit conduct. The special rapporteur also stated in relation to Turkey: “Only full definitional clarity with regard to what acts constitute terrorist crimes can ensure that the crimes of membership, aiding and abetting and what certain authorities referred to as ‘crimes of opinion’ are not abused for other purposes than fighting terrorism.”¹⁰⁹ As the cases examined below demonstrate, the application of Turkish Penal Code Article 220/6 and 314/3, in conjunction with Article 314/2 (“membership in an armed organization”), directly bear out the concerns raised by the special rapporteur.

While the case of Felat Özer included evidence that Özer was among a group engaged in violent resistance to the police, it is important to note that the reasoning of the General Penal Board of the Court of Cassation did not focus on the matter of whether Özer had engaged in violent resistance to the police or had endangered lives through violent actions. Rather, the board focused on the matter of whether demonstrations had been organized or ordered by the PKK, as evidenced by the organization’s statements. As such, the General Penal Board was not primarily interested in individual actions within demonstrations, and the pattern of convictions to date suggests that evidence of violent activities only contributes to the application of additional charges (such as damaging public property, or violently resisting dispersal) on top of the standard charge of “committing a crime on behalf of an organization,” indicating the charge of “membership in an armed organization.”

Subsequent cases have followed this line of reasoning. Thus, the courts have focused on participation in a demonstration allegedly called by the PKK, rather than on violent conduct. In fact, as the cases documented in this report show, a number of convictions involve only nonviolent expressions of opinion that arguably do not amount to incitement to violence but rather are within the boundaries of protected expression.

¹⁰⁹ Ibid.

IX. Specific Concerns Related to Prosecution of Child Demonstrators

Following the positive changes to the law introduced by the Turkish government in July 2010, Human Rights Watch continues to have two areas of concern about the treatment of child demonstrators on apprehension. The first concern is that the new law does not end the possibility that some children detained following demonstrations will be placed in pre-trial prison detention for extended periods. The second area of concern is the failure of the authorities to investigate the reports that child demonstrators have been ill-treated following apprehension by members of the security forces.

Pre-trial Detention of Children

In the majority of cases of child demonstrators Human Rights Watch reviewed, the defendants were remanded into custody pending trial. Given the lengthy processes of Turkish courts, this pre-trial period could be as long as one year. Local human rights and children's rights groups interviewed for this report frequently raised concerns that the detention of child demonstrators removes them from family socialization and may deprive them of the possibility of continuing their education. Some expressed concern that many children might become radicalized in prison and in the long-term profoundly alienated from their families and the broader society.

Under the United Nations Convention on the Rights of the Child, children should be arrested, detained, or imprisoned “only as a measure of last resort and for the shortest appropriate period of time.”¹¹⁰ The best interest of the child must be a primary consideration.¹¹¹ In its 2001 review of Turkey, the United Nations Committee on the Rights of the Child expressed concern about children’s “long periods of pre-trial detention and the poor conditions of imprisonment and the fact that insufficient education, rehabilitation and reintegration programs are provided during the detention period.”¹¹² It reminded Turkey that “pre-trial detention should be used only as a measure of last resort, should be as short as possible and should be no longer than the period prescribed by law. Alternative measures to pre-trial detention should be used whenever possible.”

¹¹⁰ CRC, art. 37.

¹¹¹ CRC, art 3.

¹¹² See Concluding observations of the Committee on the Rights of the Child Turkey, 27th session, CRC/C/15/Add.152, 9 July 2001, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/432/64/PDF/G0143264.pdf?OpenElement> (accessed December 21, 2009).

The Committee reiterated these concerns in September 2009, urging Turkey to:

[...]c.) Ensure that children are only detained as a measure of last resort and for the shortest possible time period. If in doubt regarding the age, young persons should be presumed to be children;

d.) Guarantee that children, if accused of having committed terrorist crimes, are detained in adequate conditions in accordance with their age and vulnerability;

e.) Inform parents or close relatives where the child is detained and allow contact;

g.) Guarantee children a periodic and impartial review of their detention;

h.) Ensure that children in detention have access to an independent complaints mechanism. Reports of cruel, inhuman and degrading treatment of detained children should be investigated in an impartial manner;

i.) Afford educational programmes and recreational activities, as well as, measures for all detained children's social reintegration;¹¹³

In numerous cases against Turkey, the European Court of Human Rights has held that pre-trial detention of children is too lengthy, finding violations of the right to release pending trial. For example, in the case of *Selçuk v. Turkey*, the court concluded “having regard particularly to the fact that the applicant was a minor at the time, the Court finds that the authorities have failed to convincingly demonstrate the need for the applicant’s detention on remand for more than four months.”¹¹⁴ In the case of *Nart v. Turkey*, “especially having regard to the fact that the applicant was a minor at the time” the Court ruled that 48 days was too long a period of pre-trial detention.¹¹⁵

¹¹³ Concluding Observations on Turkey of the Committee on the Rights of the Child, 52nd session, September 14, 2009, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-OPAC-TUR-CO1.pdf> (accessed March 21, 2010).

¹¹⁴ *Selçuk v. Turkey*, no. 21768/02, para. 36, Judgment of January 10, 2006.

¹¹⁵ *Nart v Turkey*, Judgment of May 6 2008, Series No. 20817/04, para. 34.

A review of ongoing legal proceedings against child demonstrators reveals that prolonged pretrial detention was being widely used in 2009. A sample of ongoing cases in Diyarbakır and Adana courts revealed that children (several of them on trial in the Diyarbakır courts as young as 13 and 14) were typically placed in pretrial detention for periods of five months, but in a significant number of cases, they were detained for periods of over a year. For example, Human Rights Watch examined the cases against 40 children on trial for participating in a February 16, 2008 demonstration in Cizre, and they were held in pre-trial detention for a period of over one year.¹¹⁶

The prison population in Turkey is known to have increased significantly over the past few years, with a high percentage of remand prisoners, making overcrowding very common.¹¹⁷ A report on an April 2009 visit to the children's dormitory of Diyarbakır Prison by the Turkish Medical Association raised serious concerns about prison conditions.¹¹⁸

Because we focus here primarily on laws, in the course of the research for this report there was no attempt to undertake a wider study of the treatment of children or adults in places of detention. However, a representative of Human Rights Watch and representatives of the coalition of domestic NGOs calling themselves the Justice for Children Initiative interviewed a sample of 10 child demonstrators in Adana following their release from prison. Given the seriousness of the reported irregularities in the handling of child suspects, including allegations that they were ill-treated, a summary of the findings from the sample interviewed in Adana is included here.

Ill-Treatment and Procedural Irregularities in the Handling of Child Suspects¹¹⁹

In May-June 2009 interviews with 10 children who had been released from pre-trial detention in Adana and were facing continuing legal proceedings in the Adana courts, Human Rights

¹¹⁶ Cases on file with Human Rights Watch.

¹¹⁷ The prison population has doubled in four years. The head of the Prison Directorate in the Ministry of Justice has underscored the difficulty he faces in explaining to European delegations the extremely high proportion of remand prisoners in Turkey (at the end of May 2009 running at 61,000 remand prisoners and remand prisoners with convictions not finalized and/or under appeal out of a total prison population of 111,000 prisoners), <http://www.haber7.com/haber/20090613/Kalaman-Cezaevleri-tika-basa-doldu.php> and http://www.dunyabulteni.net/news_detail.php?id=79951 (accessed November 13, 2009).

¹¹⁸ See the report "To be a remand and convicted prisoner as a child; to be a child as a remand and convicted prisoner... Observation report on Children in the Diyarbakır E-Type Closed Prison, 20-21 April 2009" ("Çocukken Tutuklu ve Hükümlü Olmak Tutuklu ve Hükümlü Çocuk Olmak...Diyarbakır E Tipi Kapalı Ceza Ve İnfaz Kurumunda Alıkonulan Çocukları İzleme Raporu," 20-21 Nisan 2009, Türk Tabipleri Birliği), Turkish Medical Association, <http://www.ttb.org.tr/index.php/haberler/basinaciklamalari/1599-diyarbakir> (accessed August 8, 2009).

¹¹⁹ The issues relating to the treatment of juvenile suspects and defendants merit separate and much fuller consideration in their own right. Since the focus of this report has been the application of anti-terror laws to demonstrators and the urgent need to revise those laws, we do not attempt here to widen the discussion.

Watch heard allegations of ill-treatment in every case.¹²⁰ Both boys and girls reported ill-treatment—typically being roughed up, slapped or beaten—as they were apprehended by members of the Rapid Deployment Force (Çevik Kuvvet). The boys also reported being beaten, slapped, threatened, and sworn at by gendarmes and prison guards upon their arrival at the Kürkçüler E-type adult male prison, where boys were routinely held, separately from adult men for periods of about a week before being transferred to Pozantı Children’s Prison. The boys also gave consistent reports of doctors slapping and verbally abusing them in Kürkçüler E-type prison. As a result, many had felt completely unable to report ill-treatment by gendarmes and prison guards on arrival at the prison. For the most part, the boys had not seen lawyers while in the E-type prison, and therefore any complaints of ill-treatment were generally lodged much later, often at a first court hearing. (The girls were transferred to a women’s prison and Human Rights Watch heard no reports of ill-treatment at the prison from them.) The findings of Human Rights Watch support the wider investigation into the ill-treatment of child demonstrators undertaken in 2009 by the Adana branch of the Human Rights Association. The association documented many reports of ill-treatment of child demonstrators at different stages of their detention. All the children Human Rights Watch interviewed complained of sleep disorders, weight loss, and difficulty in resuming their old lives following their release from prison.

All of the children Human Rights Watch interviewed in Adana reported irregularities in the handling of their cases. The key problems identified included:

- i) Child suspects were routinely held at the Anti-Terror Branch of the Security Directorate for periods of several hours before transferring them to the Children’s Branch of the Security Directorate. During this time, children were frequently interviewed by police officers without the presence of a prosecutor or lawyer. Both these practices contravene Turkey’s domestic law.
- ii) Children were not informed of their rights as detainees, or of their right to have a family member informed of their detention; their families were not promptly informed of their detention and in some cases, were erroneously told the children were not in detention.

¹²⁰ Of the children interviewed, three were girls and the rest boys: S.Ö., N.K., A.B., Ö.C., B.O., H.D., İ.Ö., E.A., M.Ö, B.Ö., B.E. (names withheld). Eight children and members of their families were interviewed separately on June 8-9, 2009, by a representative of Human Right Watch and three representatives of the Justice for Children Initiative (comprising a children’s rights activist and trained social worker with experience working with juvenile offenders, a second children’s rights activist and specialist on child development, and a psychologist). The children were interviewed in private. Two children were interviewed separately by a representative of Human Rights Watch on a separate occasion. Full interviews with the children and their families and withheld identities of children on record with Human Rights Watch.

- iii) In the case of children the medical examination (compulsory for anyone held in police custody) at the Forensic Institute in Adana was routinely undertaken superficially and with the door open and within earshot of the police.
- iv) Children in Adana had no access to lawyers until they were brought before a prosecutor for interrogation. Meetings with lawyers were hastily conducted outside the prosecutor's room in the courthouse, if at all, and therefore in a manner that barely meets their right under Turkish law to benefit from legal counsel.

After this report was researched, other reports emerged of ill-treatment of child detainees in Adana. Adana lawyers lodged complaints of serious ill-treatment of children in Ceyhan M-type prison. The children, H.Y., U.D., A.A., K.F., İ.T., H.Ş., and M.D.,¹²¹ were transferred on January 22, 2010, from Pozantı Boys Prison to Ceyhan M-type prison. They reported to their lawyer that prison guards subjected them to prolonged beating with batons when they requested that they all be transferred together to a particular ward that held adult male political prisoners. In fact, they could not have legally been transferred to the adult ward because of their age, but their request reportedly triggered a dispute, and ill-treatment by the prison guards. They also reported to their lawyer that guards poured buckets of cold water over them. Their lawyer reported to Human Rights Watch that at the time of his meeting with the children, they bore visible signs of having been beaten. One child had sustained a head injury, which was bandaged.¹²²

Cruel, inhuman, and degrading treatment or punishment of any detainee is strictly prohibited under international law. The Convention on the Rights of the Child explicitly reiterates this universal prohibition in respect of children. International guidelines on the detention of juveniles also require that a parent or guardian be notified immediately when a child is apprehended.¹²³ In 2009, the United Nations Committee on the Rights of the Child called on Turkey to:

Ensure that children in detention have access to an independent complaints mechanism. Reports of cruel, inhuman and degrading treatment of detained children should be investigated in an impartial manner.

¹²¹ In order to protect the minors involved, Human Rights Watch identifies children only by their initials. The full identities of the children are known to Human Rights Watch.

¹²² Following the children's' complaints of ill-treatment to the Ceyhan public prosecutor, the prosecutor opened an investigation (investigation no. 2010/583). Information reported to Human Rights Watch by Adana lawyer Tugay Bek, March 2010.

¹²³ The Beijing Rules, para. 10; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 16(3).

X. Recommendations

To the Turkish Government:

Amend laws applicable to adults and children

- Urgently amend Turkish Penal Code Article 220 (“forming criminal organizations”), and repeal 220/6 (“committing a crime on behalf of an organization”) and 220/7 (“aiding and abetting an organization knowingly and willingly”), which are vague, lack legal clarity and specificity, and are therefore subject to arbitrary application.
- Urgently repeal Turkish Penal Code Article 314/3 and Anti-Terror Law Article 2/2 (“committing a crime on behalf of an organization”) providing for the linkage of article 314/2 (“membership in an armed organization”) and Article 220/6 and 220/7 (above), as discussed in this report.
- Amend Anti-Terror Law Article 7/2 (“making propaganda for a terrorist organization”) and Turkish Penal Code Article 220/8 (“making propaganda for an organization or its objectives”) to prevent them from being used to restrict freedom of expression and peaceful assembly and to bring them into conformity with the case law of the European Court of Human Rights.
- Set up a review board to examine all cases concluded under these articles for compliance with international human rights law obligations, with a view to quashing sentences under Turkish Penal Code Articles 314/2 and 314/3 in connection with Articles 220/6 and 220/7.
- Instruct the prosecuting authorities to impose a moratorium on all ongoing prosecutions under the offending provisions, so that they can be reviewed and assessed for compliance with international human rights law. All prosecutions which would violate international human rights standards should be dropped immediately.
- Following the July 2010 repeal of Articles 9 and 13 of the Anti-Terror Law, review all convictions of juveniles currently on appeal or upheld by the Court of Cassation and ensure that they are swiftly quashed and transferred to juvenile courts for retrial, or that charges are dropped under the terms of the new law.

To the Judiciary:

Limit pre-trial detention of adult demonstrators

- Ensure that decisions regarding remand and pre-trial detention are in strict compliance with international human rights standards, which are legally binding and have the force of law in Turkey. Under such standards, pre-trial detention should be the exception, not the norm and courts should supply a fully reasoned explanation of decisions to prolong pre-trial detention of individuals standing trial for participation in demonstrations.
- In line with international human rights law, refrain from placing in pre-trial detention nonviolent demonstrators against whom there is no evidence that they will not present for trial, or would interfere with witnesses or evidence.

End the pre-trial detention of child demonstrators

- End the practice of prolonged detention of children in fulfillment of Turkey's obligations under the UN Convention on the Rights of the Child and in conformity with the case law of the European Court of Human Rights. Ensure that children are detained only as a matter of last resort and for the shortest appropriate period of time.

Investigate all allegations of ill-treatment of child detainees

- Ensure any allegations of ill-treatment lodged by child suspects /defendants raised before judges are investigated.

To the Police and Prosecuting Authorities:

Bring the handling of apprehended child demonstrators into conformity with the law

- End violations of the Criminal Procedure Code in the handling of child suspects. Child suspects must be transferred immediately to the Children's Department of the Security Directorate; a member of their family must be immediately informed of their detention, and child detainees must be promptly informed of their rights.
- Bar associations should be immediately advised of all child detainees, so they can ensure the immediate provision of legal aid to all child suspects in police detention in accordance with the Criminal Procedure Code.
- Prosecutors should take steps to investigate any allegations of ill-treatment lodged by child suspects /defendants and give child suspects/defendants the opportunity to lodge such complaints at any stage following their apprehension by law enforcement officials.

- Conduct an independent investigation into allegations that gendarmes, prison guards, and doctors working at Adana Kürkçüler E-type prison in the first six months of 2009 beat and otherwise ill-treated adults and children. Conduct thorough investigations into all other reports of ill-treatment by members of the security forces and prison guards to combat the culture of impunity

To Turkey's International Partners, including the European Union and the United States:

- Use every opportunity to encourage the Turkish authorities to undertake the aforementioned reforms to address the concerns detailed in this report

Appendix: Translations of Relevant Articles: 2005 Turkish Penal Code and 2006 Revision to the Anti-Terror Law

1) Laws used to penalize demonstrators:

Turkish Penal Code Articles 220/6 in combination with 314/2 and 314/3

Forming organized groups with the intention of committing a crime

ARTICLE 220-(1) Those who establish or direct an organization for the purpose of committing crimes shall be sentenced to imprisonment of two to six years if the structure of the organization, number of members, equipment and supplies are sufficient to commit the intended crimes. However, at least three members are required for the group to be deemed an organization.

(2) Those who become members of the organization established to commit crimes shall be sentenced to imprisonment of 1 to 3 years.

(3) If the organization is armed, the sentenced stated above will be increased from one fourth to one half.

(4) If crimes are committed within the framework of the organization's activities, these crimes will also be punished.

(5) The heads of the organization shall also be sentenced as the perpetrators of all crimes committed within the framework of the activities of the organization.

(6) The person who commits a crime on behalf of the organization, although he or she is not a member of the organization, shall be punished as a member of the organization.

(7) A person who aids and abets the organization knowingly and intentionally, although he or she does not belong to the hierarchical structure of the organization, shall be punished as a member of the organization.

(8) A person who makes propaganda for the organization or its objectives shall be sentenced to imprisonment of one to three years. If the said crime is committed through the media and press, the sentence will be increased by half.

Armed organization

ARTICLE 314-(1) Any person(s) who forms an armed organization to commit the offenses listed in the fourth and fifth sections of this chapter [Section Four: crimes against state security; Section Five: crimes against the constitutional order and its functioning], and commands this group, is punished with imprisonment of 10 to 15 years.

(2) Members of the organization defined in the first paragraph are sentenced to imprisonment of five to 10 years.

(3) Other provisions relating to the offense of forming an organization for the purpose of committing crimes are treated [punished] in the same way as this offense.

Anti-Terror Law (no. 3713, as amended in July 2006)

Article 2 [not amended].

(1) Any member of an organization founded to attain the aims defined in Article 1 who commits a crime in furtherance of these aims, individually or in concert with others, or any member of such an organization, even if he or she does not commit such a crime, shall be deemed to be a terrorist offender.

(2) A person who is not a member of a terrorist organization, but who commits a crime on behalf of an organization, is also deemed to be a terrorist offender and is punished as a member of the organization.

Article 7-

(1) Those who establish, administer or become members of a terrorist organization to commit crimes for the purposes stipulated in Article 1, using force, violence, pressure, fear, intimidation, oppression or threat, shall be punished in accordance with Article 314 of the TPC. Those who organise the activities of the organization shall also be punished as the administrators of the organizations.

(2) A person who makes propaganda for a terrorist organization shall be punished with a prison sentence of one to five years. Where such a crime is committed through the press or media, the penalty shall be increased by half. In addition, a judicial fine of 1,000 to 10,000 days shall be imposed on the owners of such press and media organs. The upper threshold of this punishment shall be 5,000 days for their chief editors. The acts and behaviour stated below shall also be punished according to the provisions of this paragraph:

- a) Completely or partially concealing one's face for the purpose of concealing one's identity during assemblies and demonstrations that become propaganda for a terrorist organization
- b) Carrying the emblem or the signs of a terrorist organization, shouting slogans or broadcasting them through sound systems [loudspeakers] in a way to demonstrate that a person is a member or supporter of the organization, or wearing uniforms on which there emblems and signs belonging to a terrorist organization

Where the crimes stipulated in paragraph two are committed at the buildings, premises, offices or extensions of associations, foundations, political parties, professional or workers' institutions or their affiliates, or at educational institutions or students' dormitories or their extensions, the punishments mentioned in this paragraph shall be doubled.

Acknowledgments

This report was written by Emma Sinclair-Webb, researcher in the Europe and Central Asia division of Human Rights Watch; it was reviewed and edited by Holly Cartner, executive director of the Europe and Central Asia division, Aisling Reidy, senior legal advisor, Joanne Mariner in the Terrorism and Counterterrorism Division, Zama Coursen-Neff in the Children's Rights Division, and Robin Shulman, a consultant to the Program Office. It was translated by Özlem Dalkıran and Veysel Eşsiz.

We express our sincere thanks to the Justice for Children Initiative (Çocuk için Adalet Girişimi) and the campaign Those Who Call for Justice for Children (Çocuk için Adalet Çağırıcıları), including Ethem Açıkalin, Arif Akkaya, Mehmet Atak, Muharrem Erbey, Nalan Erkem, Emrah Kırımsoy, Ezgi Koman, Bişeng Özdiñ, Ramazan Polat, Feray Salman, Mehmet Uçum, and Keziban Yılmaz. We thank the following lawyers in Diyarbakır, Cizre, and Siirt: Tahir Elçi, Rojhat Dilsiz, Meral Daniş Beştaş, Serhat Eren, Nusin Uysal, Rehşan Bataray, Chair of Diyarbakır Bar Association Mehmet Emin Aktar, Ahmet Özmen, Mehmet Nuri Deniz, Baran Pamuk, Muharrem Şahin, Sezgin Tanrıku, Serkan Akbaş, Şakır Demir, Servet Özen; lawyers in Adana: Sevil Aracı, Tugay Pek, Vedat Öztürk, Cemsid Tabak, and Beyhan Günyeli; lawyers Baran Bilici and Cüneyt Caniş in Van, and Raşan Aytaç Sala in Istanbul.

We thank public prosecutors working on terrorist offenses in the Special Heavy Penal Courts who spoke openly on the condition of remaining unnamed in this report; and members of the Adana Security Directorate. We are particularly grateful to the juveniles recently released from pre-trial detention and members of their families who we interviewed in Adana.

Protesting as a Terrorist Offense

The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey

In Turkey, hundreds of people currently face prosecution or are serving long prison sentences under terrorism laws simply for participating in demonstrations or throwing stones at a protest. The vast majority of them are Kurdish and joined protests in the cities of southeast Turkey or in Adana or Mersin in support of opinions the authorities perceive to be similar to those of the outlawed armed Kurdistan Workers' Party (PKK).

Legal amendments since 2005, along with case law since 2008, have allowed courts in Turkey to convict these demonstrators under the harshest terrorism laws. The courts punish them with membership in the PKK and "committing crimes on behalf of the organization," in effect, treating protestors on civil issues as though they are armed militants. In July 2010, the government passed legal amendments to end the prosecution of most children under these laws. While this was a welcome step, it did not address the core problems with the terrorism laws and their use by the courts, and does nothing to help the hundreds of adults subject to ongoing prosecution. The use of these laws against demonstrators is incompatible with human rights law, criminalizing the legitimate exercise of freedom of opinion, expression, and assembly.

Protesting as a Terrorist Offense, based on the examination of 50 cases of the prosecution of demonstrators in the Diyarbakır and Adana courts, also draws on interviews with defense lawyers, prosecutors, heads of bar associations, police officers, families of prosecuted demonstrators, defendants free from prison on bail, and representatives of children's and human rights groups.

The report calls on the Turkish authorities to amend the laws that have resulted in the arbitrary and punitive application of terrorism charges against demonstrators, to suspend ongoing prosecutions against demonstrators under these laws, and to review the cases of those already convicted.