A Report on the prosecution of the Human Rights Association of Turkey in Diyarbakir, south-east Turkey.

POLICING HUMAN RIGHTS ABUSES IN TURKEY

The Trial Of
The Human Rights Association
Of Turkey:
Diyarbakir Branch

May 1999

KHRP
Kurdish Human Rights Project

BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

The trial observation missions to Turkey and the publication of this report were made possible through the financial support of

The Bar Human Rights Committee of England and Wales
Stichting Advocaten Voor Advocaten - Lawyers for Lawyers (Netherlands)
medico international (Germany)
Bishop's Commission for MISEREOR (Germany)
The Winston Foundation for World Peace (USA)
The John Merck Fund (USA)
The Bromley Trust (UK)
The Lyndhurst Settlement (UK)
The Avenue Charitable Trust (UK)
Stichting Cizira Botan (Netherlands)
World Organisation Against Torture (Switzerland)
ACAT Suisse - Action des Chretiens pour l'Abolition de la Torture (Switzerland)

ISBN: 1 900 175 25 8

Published by the Kurdish Human Rights Project, London jointly with the Bar Human Rights Committee of England and Wales.

Kurdish Human Rights Project (KHRP)
Suite 319 Linen Hall
162 - 168 Regent Street
London W1R 5TB
England
Telephone +44 171 287 2772
Facsimile +44 171 734 4927
email: khrp@khrp.demon.co.uk
Internet: http://www.khrp.org

Bar Human Rights Committee of England and Wales
2nd Floor, 10 - 11 Gray's Inn Square
Gray's Inn
London WC1R 5JD
England
Telephone +44 171 395 9508
Facsimile +44 171 831 2430
email: bhrc@compuserve.com

The price of this publication (£5) covers the costs associated with its production and distribution.

A Report on the prosecution of the Human Rights Association of Turkey in Diyarbakir, south-east Turkey.

POLICING HUMAN RIGHTS ABUSES IN TURKEY

The Trial Of
The Human Rights Association
Of Turkey:
Diyarbakir Branch

Members of the Mission

This report was written by Edward Grieves who, along with Jon Rud, Rory Field, Rima Baruah, Kate McCrimmon, Rajesh Rai, Antonia Mulvey and Simon Ridley observed the trial of 10 executive members of the Diyarbakir Branch of the Human Rights Association in Turkey (Insan Haklari Dernegi or IHD), accused of political offences in 1998, on behalf of the Bar Human Rights Committee of England and Wales and the Kurdish Human Rights Project.

Edward Grieves is a barrister in private practice in the U.K. He is a member of the Bar Human Rights Committee of England and Wales.

Jon Rud is a member of the Norwegian Bar.

Rory Field is a barrister in private practice in the U.K. He is Treasurer of the Bar Human Rights Committee of England and Wales and has observed trials in Sierra Leone on behalf of that committee.

Rimah Baruah, **Kate McCrimmon** and **Rajesh Rai** are barristers in private practice in the U.K.

Antonia Mulvey and Simon Ridley are both Immigration Advisors at Howe and Co. Solicitors in West London.

Acknowledgements

The Bar Human Rights Committee of England and Wales (BHRC) is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards relating to the right to a fair trial.

The Kurdish Human Rights Project (KHRP) is an independent, non-political charity founded and based in Britain. It is committed to the protection of Human Rights of all persons within the Kurdish regions of Turkey, Iran, Iraq, Syria and the former Soviet Union, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

The Norwegian Bar Association is the co-ordinating body for the legal profession in Norway. The Norwegian Bar Association is currently involved in a joint project with the KHRP, assisting applicants in bringing claims against Turkey before the European Court of Human Rights. The Human Rights Committee of the Norwegian Bar Association works to promote human rights and the rule of law.

The delegations would like to express their deepest thanks to the interpreters from Diyarbakir who were so patient with us. Above all, however, the delegations would like to pay tribute to all those working under difficult, and often dangerous, conditions throughout the Kurdish regions to promote human rights and the rule of law.

Table of contents

Foreword

Introduction

I Background

1.1 Historical Introduction
1.2 The Kurdistan Workers' Party (PKK)
1.3 Broken Promises
1.4 HADEP
1.5 The Human Rights Association of Turkey (IHD)
1.6 IHD – Diyarbakir Branch
1.7 Previous Prosecutions of the IHD
1.8 The State Security Court (DGM)
1.9 The Arrest of Abdullah Ocalan

II The Prosecution

2.1 The Defendants
2.2 The Alleged Offence
2.3 Legislative Framework
2.4 The Interim Closure of Diyarbakir Branch
2.5 The Defence
2.6 Prosecution History
2.7 The Hearing of 22nd December 1998
2.8 The Hearing of 9th February 1999
2.9 The Hearing of 16th March 1999
2.10 The Hearing of 11th May 1999

III Turkey's International Obligations

3.1 The European Convention on Human Rights
3.2 Article 6: Right to a Fair Trial
3.2.1 "fair and public hearing"
3.2.2 "within a reasonable time"
3.2.3 "independent and impartial tribunal"
3.3 Articles 9 and 10 – Freedom of Thought and Freedom of Expression

IV Interviews

4.1 Interview with Kerim Yildiz, Executive Director of the KHRP
4.2 Interviews with the Residents of Diyarbakir

V **Conclusions**

VI **Recommendations**

Appendix

Annexe 1: The Indictment

Annexe 2: Related Legislation

Foreword

The Human Rights Association of Turkey (IHD) is an exceptional organisation. With branches throughout Turkey, it works tirelessly to uphold human rights. In a country where, for too long, human rights abuses went almost unnoticed by the international community, the IHD documents what is going on, disseminates reports and takes action.

Yet the IHD works in a climate of intimidation. IHD members have been prosecuted, tortured, imprisoned, and sometimes killed. Members of the IHD have been arrested on countless occasions for daring to raise the question of human rights abuses inflicted on the Kurdish people, and to suggest that steps be taken to solve the problem.

In 1997, the offices of the Diyarbakir branch of the IHD were raided. Ten executive members were arrested, and the branch was closed pending the outcome of their trial. The closure of the branch has had an adverse effect on human rights throughout the Kurdish regions. Not only has the scope for impartial reporting of human rights abuses in the region diminished, particularly in view of the limited access allowed to international visitors, but, as a teacher from Diyarbakir reported "the loss of the IHD means that those who have suffered have no place to go".

Delegations from the Kurdish Human Rights Project and the Bar Human Rights Committee of England and Wales travelled to Turkey four times in late 1998 and early 1999 to observe the trial of the ten executive members of the Diyarbakir branch of the IHD. After two adjournments, and one occasion when the delegation was barred from the region, they were present when a not guilty verdict was recorded. This will, it is hoped, mean that the branch can re-open and return to work. Yet for two years, the people of Diyarbakir have lacked an organisation to represent them.

This report, produced thanks to the efforts of all the trial observers, documents the trial process, and records the views of those in Diyarbakir working to uphold human rights. Particular thanks are due to Edward Grieves, who participated in all four delegations, and whose tenacity and diligence in writing this report has contributed to a thorough and informative account of the current situation in Diyarbakir. In addition, the Kurdish Human Rights Project and the Bar Human Rights Committee of England and Wales would like to thank all those in Diyarbakir who made the missions possible, in particular the members of the IHD, who have been working to bring fundamental human rights to the regions over many years, in the face of enormous difficulties.

International trial observations are, we believe, a crucial part of the human rights process, as they demonstrate support for those working in the regions, and assist both Kurdish and Turkish people, and the Turkish government, by providing an impartial account of events.

The Kurdish Human Rights Project and the Bar Human Rights Committee of England and Wales commend the not guilty verdict on 11th May 1999. We commend the openness of the final hearing on 11th May, when the international teams were allowed to view the trial without harassment, and we express the hope that such an approach will prevail at all other hearings throughout Turkey. We hope, finally, that the recommendations contained in this report will assist the international community and the Turkish government in the fight for human rights for all.

Kerim Yildiz
Executive Director
Kurdish Human Rights Project

Mark Muller
Vice-chairman
Bar Human Rights Committee of England and Wales

Introduction

The Diyarbakir Branch of the Human Rights Association of Turkey (IHD) in south-east Turkey was closed by the Turkish authorities in May 1997 and ten members of the executive/ management committee were prosecuted over allegations of "making propaganda" for and assisting the PKK (Kurdistan Worker's Party), an armed opposition group in Turkey.

It is this prosecution that this report covers.

The Diyarbakir Branch faced permanent closure and the Defendants each faced up to 10 years in prison. However, on 11th May 1999, all ten Defendants were acquitted on the ground that there was insufficient evidence.

The basis of the allegations was that the members had in their possession, either at the offices of the IHD or in their own homes, documents deemed to reveal support for the PKK. The said documents included banned human rights reports and personal literature (poetry). In addition, further grounds for the prosecution were said to be telephone and fax communications with various legitimate non-governmental organisations throughout Europe, including the Kurdish Human Rights Project[1].

The forum for the prosecution was the State Security Court (DGM), a military court entirely divorced from the civilian courts, in which the coram of three judges includes a military judge[2].

The Turkish authorities have brought multiple prosecutions against the various branches of the IHD (as separate legal personalities) and in parallel, the associated executive members, since its inception in 1986[3]. The proceedings against the organisation branches are parasitic upon the proceedings against the members of the organisation as it is the members' alleged crimes that form the basis of the prosecutions against the branches. Successful prosecutions mean prison for the members and closure for the IHD Branch in question. The prosecution analysed in this report is but one of many and simply a continuation of the sustained policy of harassment and oppression, through prosecution, of legitimate human rights organisations in Turkey.

This report is based on three actual observations. The hearing on 22nd December 1998 was observed by Edward Grieves, Rima Baruah and John Rud. The hearing of the 9th of February 1999 was observed by Edward Grieves and Kate McCrimmon. The hearing on 11th May 1999 was observed by Edward Grieves and Rajesh Rai.

A delegation comprising Edward Grieves, Rory Field, Antonia Mulvey and Simon Ridley flew into Diyarbakir on 15th March 1999 in order to observe the hearing scheduled for 16th March 1999. Unfortunately, the delegation was unable to observe the hearing as it was prevented from

---

[1] See "Interview with Kerim Yildiz, Executive Director of KHRP" *post*
[2] Please see "The State Security Court" *post*
[3] See "Previous Prosecutions of the IHD" *post*

leaving Diyarbakir airport and was returned to Istanbul[4]. This was apparently under the order of Provincial Governor Ohal that no foreigners were to be permitted into the south-east region. It later transpired that a French delegation had been granted entry to observe the trial on that date. The hearing was simply adjourned.

This report is divided into six parts. The first seeks to inform the reader of the general background and history in Turkey relating to the IHD and the Kurdish people. The second is a description of the prosecution summarised above. The third is an analysis of the trial in relation to Turkey's obligations under international legal instruments, particularly the European Convention on Human Rights. The fourth includes an interview with Kerim Yildiz, the executive director of the KHRP and his comments upon being named in the indictment of the trial. This section also includes extracts from personal accounts of the delegation members and describes the outcome of interviews that were given by various individuals in Diyarbakir over the three observations. The fifth sets out the observers' conclusions and the sixth comprises recommendations to the Turkish Government.

[4] The delegation proceeded to interview a number of human rights organisations, lawyers and political parties in Istanbul. Please see "Intimidation in Turkey", a report published by KHRP and BHRC in May 1999, for a further account of this mission.

I

BACKGROUND

1.1 HISTORICAL INTRODUCTION[5]

A founding principle upon which the modern state of Turkey rests is the indivisibility and homogeneity of the State. The principle envisages a unitary system of centralised government and public services. It has room for only one language and one people and does not recognise cultural minorities or diversity. The continued application of that same principle has led to the discrimination against and persecution of minorities who resist assimilation. Particularly affected have been the Kurds who comprise approximately one third of the population and are indigenous to south-east Turkey. Their cultural identity has been denied, their region economically starved and their customs and language prohibited and criminalised.

1.2 The Kurdistan Workers' Party (PKK)

As a result of such repression the Kurdistan Workers' Party (PKK), an extreme left-wing group, was set up by Abdullah Ocalan in a village near Diyarbakir. In 1984 the PKK began armed attacks upon the Turkish forces, mainly in the south-east of the country. To counter threats from the PKK, the Ozal government set up the Village Guard System in May 1985, whereby local villagers were armed and appointed as civilian extensions of the security forces. However, the government went further and placed eight provinces in the south-east region (increased to 10 by May 1990) under emergency rule which alienated many Kurds and bolstered PKK recruitment. However, at the same time the PKK were maintaining their attacks against the state and its perceived agents: the military, the *Jandarma* (rural police force), the police, Village Guards. There were also allegations that human rights abuses were committed by the PKK against civilians. In spite of this, and as a result of brutal State reprisals against the Kurdish region as a whole, PKK support increased, especially when in March 1990 Tansu Ciller's government began their "scorched earth policy". This involved the forcible evacuation and destruction of over three thousand Kurdish villages in order to create a "security buffer zone" to assist the fight against the PKK. Houses were burnt and villagers detained in a catalogue of human rights abuses including extra-judicial killings, disappearances, deaths in custody and torture. The destruction resulted in a mass migration into the Kurdish cities. The population of Diyarbakir rose from 500, 000 to 3 million in only three years. Poverty and destitution is now widespread in these overpopulated areas, especially in the shanty towns that encircle the cities.

As the fight against the PKK has escalated, with an estimated 30, 000 associated deaths since 1984, so has the war against the Kurdish population, particularly political parties and organisations that take up the Kurdish cause, on the basis of the alleged association with the PKK.

[5] The reader is referred also to the fourth section in this report containing records of interviews of individuals in the south east, though it should be noted that the majority were given before Abdullah Ocalan's arrest.

1.3 Broken Promises

In 1991, in the "November 1991 Declaration of Principles", the Turkish Government gave undertakings to abide by its obligations under its own constitution and the European Convention on Human Rights and to guarantee civil and political rights for all. Encapsulated in those undertakings were guarantees to recognise the cultural rights of the Kurds and their right to freedom of expression and association.

The "Law to Fight Terrorism", also dated 1991, came into force purportedly to combat terrorist activity. However, the law has been used to suppress non-violent dissidence and the south-east Kurdish population now endures consistent harassment, detentions, torture, killings and multiple prosecutions, particularly of lawyers, journalists, politicians and human rights workers[6]. Those particularly targeted are organisations that ask the Kurdish Question. Two organisations that have suffered severe harassment are the pro-Kurdish party, HADEP, and the Human Rights Association of Turkey (IHD).

1.4 HADEP

The people's Labour Party (HEP) was formed on 7th June 1990 by seven members of parliament expelled from the Social Democratic Populist Party (SHP) for attending a conference in Paris in November 1989 on the Kurdish situation. In order to bolster its support from the Kurdish regions, for the upcoming elections in October 1991, SHP allied itself with HEP. The alliance was short-lived and a number of deputies left SHP to re-form HEP in 1992. HEP was subsequently closed by the Supreme Court on 14th July 1993 for "functioning with the intention of destroying the indivisible integrity of the state and nation". In May 1993, 18 Kurdish deputies formed the Democratic Party (DEP), which was similarly banned on 16th June 1994. Thirteen of the deputies had their parliamentary immunity lifted and were charged with treason. Six fled to Belgium and the rest were sentenced for up to fifteen years' imprisonment on 8th December 1994. Four of them remain detained.

On 11th May 1994 HADEP was formed and experiences the same difficulties to this day[7].

1.5 The Human Rights Association of Turkey (IHD)

The IHD is an independent Human Rights organisation established in 1986. Its headquarters are in Ankara and it has 54 branches and 20,000 members throughout Turkey. It co-ordinates

---

[6] See "Lawyers in Fear, Law in Jeopardy" (1993; KHRP and Law Society); "Censorship and the rule of law in Turkey" (1993; Article 19, KHRP, BHRC, Medico international); "Report...[on]..trials of MPs and lawyers" (x.9.1994); "Advocacy and the Rule of Law in Turkey" (26.1.1995; BHRC); "Freedom of expression and Human Rights Advocacy in Turkey" (5.3.95; KHRP and BHRC); "The HADEP Trial" (x.1.97; KHRP); "Due Process: State Security Courts and Emergency Powers in South-East Turkey" (1997; KHRP, BHRC, Article 19, Norwegian Bar, Lawyers for Lawyers Foundation).

[7] See interview with HADEP in Part IV of this report, *post*

investigations on human rights practices in Turkey, particularly allegations of human rights abuses, and publishes its findings. The IHD has worked with the Kurdish Human Rights Project in bringing a number of cases against the Turkish government to the European Commission alleging breaches of the European Convention of Human Rights.

Article 3 of its constitution sets out the aims and objectives of the organisation:

i) To investigate, determine and inform individuals and the public of practices relating to human rights;

ii) To carry out and have carried out scientific research in the matter of human rights and to follow developments in this field and announce them to the public;

iii) To hold debates, conferences, seminars, forums, symposiums and all types of meetings and demonstrations, open exhibitions, issue publications, organise competitions, present prizes and found charities appropriate to the aims of the association;

iv) To perform research and determinations to ensure that the lives of convicts, remand prisoners and those in pre-committal custody pass under conditions appropriate to human dignity regardless of their race, sex, language, religion, political opinion and beliefs and to enlighten the public in these matters; and

v) To cooperate with other institutes with the same aims.

The IHD has a broad ambit and while it is well known for its work on Kurdish related topics it provides assistance for all victims of human rights abuses in Turkey. For example, a young Turkish soldier was treated under anaesthetic in hospital and was later found to have had a number of organs removed during surgery. His family are now in contact with the IHD in Istanbul in order to seek a remedy.

This is not the first time the IHD has been prosecuted by the authorities. It has been consistently targeted by the authorities and since its inception there have been many cases to try to close the IHD for good[8].

Nevertheless, the IHD continues its work and is currently on a travelling campaign designed to protest against the restrictions on freedom of expression in Turkey. It is touring the south-east region first and the campaign will culminate in a large rally in Ankara on 30th May 1999.

1.6 IHD - Diyarbakir Branch

Diyarbakir is one of the largest "Kurdish" cities in south-east Turkey. In 1988 the Diyarbakir Branch of the IHD was opened and 14 people were killed as a result. Nevertheless, by 1995 there were 650 members of the IHD in Diyarbakir.

---

[8] See "Previous prosecutions of the IHD" *post*

By 1996 most IHD offices in the surrounding cities had been successfully shut down by the authorities. As a result Diyarbakir Branch became vitally important as the only major organisation in the south-east area reporting on human rights issues. Not only that, but it was the springboard organisation from which a large number of cases in the European Court of Human Rights were launched that related to the south-east region. In this militarised zone, that is subject to a consistent policy of suppression, Diyarbakir Branch was doubly important as one of the main organisations that could monitor the abuses in the region and potentially check them.

The Diyarbakir Branch was closed in May 1997 and has remained closed, subject to the findings of the trial that this report covers. Given the not guilty findings, it is likely that, upon application to the court that closed the Diyarbakir Branch, it will be re-opened.

1.7 Previous Prosecutions of the IHD

The number of prosecutions has been vast and this report does not seek to set out the details of every prosecution here, as previous reports are dedicated to such[9]. However, an outline of the nature and number of these prosecutions follows.

Between 1991 and 1993, 20 cases were brought against the management committee members of the Istanbul Branch of the IHD over matters concerning "separatist" allegations. Eight of those cases were dismissed.

A case against the Istanbul Branch, as a legal personality, was dismissed on a technical point at the end of 1993. The charge was brought against the Branch under Article 53 of Law 2908 on Associations, in that it was alleged that its members had "...debated the subject that part of the national lands belonged to another nation and insults were directed at the principal state organisations, and further, the activities of a separatist organisation were highly acclaimed...". In fact, the members had debated the Kurdish question and referred to allegations of torture of Kurds in custody and the use of the Kurdish language. The case was dismissed because it should have been instituted within Ankara jurisdiction as that was where the IHD housed its Central Office. However, the cases against the individuals continued in the DGM. This trial was observed by the KHRP, BHRC and the International Bar Association[10] (IBA).

Again in 1993 the authorities sought closure of the Istanbul Branch of the IHD on the grounds that it organised a meeting at which people made allegedly made "separatist" speeches.

The trial of seven members of the management committee of the IHD Diyarbakir Branch commenced with the arrest of four of the defendants in December 1994, each being charged with being a member of the PKK and making separatist propaganda. The prosecution sought

---

[9] See footnote 6

[10] See report "Mission to Turkey to attend the Trial of the Istanbul Branch of the IHD" (x.12.93), KHRP and the Bar Association

sentences of 15 years imprisonment. This trial was observed by the KHRP, BHRC, IBA and The Law Society of England and Wales[11].

Akin Birdal, the current president of the IHD and Director of the Ankara Branch has been the subject of concentrated prosecutions and harassment. Mr Birdal was the target of an assassination attempt in May 1997 due to which he sustained serious injury. He was prevented from leaving the country in November 1998 to seek medical treatment in Norway.

On 27th October 1998, a sentence of one years' imprisonment for Mr. Birdal was upheld in the Court of Appeal in Ankara. This sentence was as a result of a conviction for "inciting people explicitly to hatred and hostility by making discrimination based on class, race, region, religious sects or opinion" under Article 312 of the Turkish Penal Code. The charge is a result of his having mentioned the words "Kurdish people" during a speech at a peace and freedom meeting on 14th September 1996 in Ankara.

On 15th December 1998 Mr Birdal was also sentenced to one years' imprisonment for "making separatist propaganda" which related to a speech on "World Peace Day" three years ago. An appeal is currently pending.

Mr Birdal will be imprisoned on 3rd June 1999 for nine months as a result of previous convictions. Mr Birdal is also subject to a current trial in Diyarbakir, for speaking about human rights, which has been adjourned to 6/7th June 1999.

1.8 The State Security Court (DGM)

The prosecutions described above, and indeed the prosecution that this report covers, are dealt with in the DGM. The DGM is essentially a Military Court, entirely separate from the civilian court system, and deals exclusively with matters deemed to be relevant to National Security:

"Courts of the Security of the State shall be established to deal with offences against the indivisible integrity of the State with its territory and nation, the free democratic order, or against the public whose characteristics are defined in the constitution, and offences directly involving the internal and external security of the State."

Article 143 of the 1982 Turkish Constitution

Hence any prosecution that is linked to separatist allegations, particularly relating to the PKK, will be dealt with by the DGM. Attempts to express Kurdish identity in any form are almost always viewed as separatist crimes and related to the PKK, and so have the DGM as their forum.

The 1982 Constitution does not specify how the court is to be comprised, however, presently, the Courts are made up of one military judge directly appointed by the Minister of Justice or

[11] See reports "The Law:Freedom of expression and Human Rights Advocacy in Turkey" (5.3.95), KHRP and BHRC, and "The European Convention Under Attack" (x.8.95), KHRP, BHRC, IBA, Law Society

Minister of National Defence, and two civilian judges who are directly appointed by other government departments.

There are a number of factors embedded in the very structure and composition of the DGM that automatically threatened the Defendants' chances of a fair trial[12].

1.9 The Arrest of Abdullah Ocalan

The arrest of Abdullah Ocalan in February 1999 caused a violent uprising of the Kurdish population throughout the world. In Turkey there were mass demonstrations. There are accounts that describe up to 3,000 individuals having been detained in the south-east since February at the date of writing this report.

Around the world, mass protests continue at the continued detention of Mr. Ocalan and his first trial in May 1999.

[12] See "Article 6: Right to a Fair Trial", post

II

THE PROSECUTION

2.1 The Defendants

All ten Defendants were members of the executive and management committee of the Diyarbakir branch of the IHD. They were:-

i)	Osman Baydemir;	President
ii)	Mahmut Sakar;	Former President
iii)	Mazhar Kara;	Financial Secretary
iv)	Sinan Tanrikulu;	Secretary
v)	Vedat Cetin;	Member & Editor of Bulletin
vi)	Ozlem Cetin;	Member & Director of Women's Rights
vii)	Pirozhan Dogrul;	Member
viii)	Bulent Ugaman;	Member of the Management Committee
ix)	Salih Tekin;	Member of the Management Committee
x)	Dogan Erdemir;	Member of Management Committee

2.2 The Alleged Offence

On 22nd May 1997 the offices of Diyarbakir branch and the homes of the Defendants were raided by the authorities. Property was seized and confiscated. This property formed the basis of the evidence upon which the prosecution was based. The seizures are particularised in the indictment[13] and comprised a number of banned publications and poems. The writings were deemed to be supportive of the PKK. In addition mere communications (the content of such communication is not particularised) with certain organisations, allegedly connected to the PKK, were also cited.

In summary the seized items were:

(i) Two reports published by the IHD in 1992:

(a) "**Abnormal Direction**" (Olagonusk Hal Bolge Raporu) which was banned in 1994;

(b) "**Panorama of Human Rights**"(Insan Haklari Panoramasi) which was banned in 1994 and is the subject of ongoing proceedings under Article 169 of the Turkish Penal Code;

(ii) Political Poetry: "In memory of Orhan TANRIKULU";

(iii) Computer disks upon which IHD reports were stored;

[13] See Appendix (Annexe 1)

(iv) Various banned newspaper/magazine articles/issues documenting allegations of killings, torture and breaches of human rights generally by security forces and government officials; and

(v) Photographs of villages destroyed by the security forces in south-east Turkey.

The communications were by telephone and fax to:

i) The Kurdistan Committee in Brussels
ii) MED TV studios, a TV station
iii) The Kurdish Human Rights Project and Kerim Yildiz, its Executive Director[14]; and
iv) The Kurdistan Information Centre, in London and Amsterdam.

As a result the prosecution was brought under Articles 7(2), 7(3) and 7(4) of Law No.3713 - The "Law to Fight Terrorism", and Articles 31, 33 and 36 of the Turkish Penal Code [15].

2.3 Legislative Framework

The essence of the charge is that of assisting and "making propaganda" for an illegal terrorist organisation, the PKK. The Prosecution were seeking sentences of up to five years imprisonment for each of the Defendants.

Article 7(2) of Law 3713 states, inter alia, that:

> " those who assist members of organisations constituted in the manner described above or make propaganda in connection with the organisation are to be sentenced by imprisonment of between 1 and 5 years and a fine of between 50 million and 100 million Turkish Lira, even if their offence constitutes another crime".

The "organisations" referred to are defined in Article 1:

> " Terrorism is any kind of action conducted by one or several persons belonging to an organisation with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal or external security of the State, public order or general health by any method of pressure, force and violence, terrorisation, intimidation, oppression or threat."

The PKK is deemed to be such an organisation.

---

[14] See interview with Kerim Yildiz, *post*
[15] See Appendix (Annexe 2)

Article 7(3) states that:

" In the case that this assistance is provided in buildings, premises, offices or extensions of associations, foundations, political parties, professional or workers' institutions or their affiliates, or in educational institutions or students' dormitories or their extensions the sentences mentioned in paragraph 2 will be doubled ".

The Defendants would have come under this provision if convicted, the IHD being run from premises, and so faced up to 10 years imprisonment, even though the prosecution sought sentences of between two and five years.

Article 7(4) further states that:

" activities of associations, foundations, trade unions and similar institutions, found to have supported terrorism, will be banned and the institutions will be closed down by a court's decision. Assets of these institutions will be confiscated."

This is the provision that would have been relied upon to close the IHD permanently, after conviction. The interim ban that was imposed is discussed below[16].

Article 9 provides that all offences under the "Law to Fight Terrorism" will be tried in the State Security Court.

2.4 The Interim Closure of Diyarbakir Branch

The Diyarbakir Branch was closed in May 1997 under Article 54 of the Association Law, which states that "Associations may be prevented from acting....in cases where delay endangers to safeguard the indivisible integrity of the State and its territory and nation, national security, national sovereignty, public order, public morals and others' rights and freedoms and prevention of crimes".

The decision to close was taken by the Governor of the region and the Defence Team applied, unsuccessfully, on several occasions to have the Diyarbakir Branch re-opened. The Court had held each time that the Diyarbakir Branch would remain closed until the conclusion of the case against the Defendants.

Following the not guilty findings, the Defence team will apply to have the interim closure order set aside and the Diyarbakir branch re-opened. It is anticipated that the Diyarbakir Branch will be opened upon this application.

[16] See "Interim Closure of Diyarbakir Branch", post

2.5 The Defence

The defendants were represented by seven lawyers:-

i) Sezgin Tanrikulu (head of the defence team)
ii) Emin Aktar
iii) Metin Kilavuz
iv) Meral Bestas
v) Mesut Bestas
vi) Fethi Gumus
vii) Feridun Lacin

The basis of the defence advanced was that:

i) there was only one copy of each of the written materials found and so this cannot constitute "making propaganda";
ii) the telephone calls were made to legal organisations; and
iii) there was no evidence of the IHD, or its members, assisting the PKK, or that the organisations contacted assist the PKK.

2.6 Prosecution History

The Diyarbakir Branch was closed in May 1997, after the raids had taken place. All ten members of the executive committee were held in custody for one day and then released on bail. While the Diyarbakir Branch remained closed, the executive committee members were not charged until September 1998, when they had their first hearing. This time delay of 16 months was so the prosecutor could prepare the case file.

2.7 The Hearing of 22nd December 1998

The delegation were allowed entry without difficulty to the public gallery, on production of proof of identity – a driving licence appeared to suffice - though cameras had to be left behind.

The three judges and the prosecutor sat together on the raised platform referred to in the U.K. as "the bench". The prosecutor was only slightly apart from the three judges. At first, and even second, glance it appeared that there were in fact four judges.

All of the Defendants were on bail except Mahmut Sakar and Mazhar Kara, who were in custody in Istanbul, where they had another case outstanding.

Of the 10 Defendants, only Osman Bayedemir was present in court. The remaining bailed Defendants had tried to enter the Court but had been prevented from doing so by the police, and so waited outside.

Sezkin Tanrikulu made a legal submission, asking for the immediate reopening of Diyarbakir Branch based upon the illegality of its closure. Osman Baydemir supported the submission. The submission was rejected.

The statements of Mahmut Sakar and Mazhar Kara were not before the court and so the case was adjourned to 9th February 1999.

The entire hearing lasted approximately fifteen minutes.

2.8 The Hearing of 9th February 1999

In addition to our own delegation, delegates from France and Amnesty International were in Diyarbakir to observe the trial. Passports were needed in order to gain entry to the Court building but we were not required to surrender our photographic equipment.

We were allowed to observe from the public gallery. All Defendants, apart from Mahmut Sakar and Mazhar Kara, were present in the court room. A large number of reporters and cameramen (including international media) had been permitted to film on the court room floor.

The statement of Mahmut Sakar was before the court, however Mazhar Kara's statement was still absent and so, after fifteen minutes of court time being taken up, the court adjourned the hearing until 16th March 1999. The Judge said that the case would be concluded on that occasion.

2.9 The Hearing of 16th March 1999

The delegation was unable to observe the trial on this date as it was refused entry to the south-east region of Turkey. The reason given by the officials at Diyarbakir airport was that the provincial governor had decreed that no foreigners were allowed into the region. Beyond that they were unable to discuss the matter.

The case was adjourned again to 11th May 1999 due to the fact that Mazhar Kara's statement was still not before the court.

2.10 The Hearing of 11th May 1999 – Final Hearing

This hearing was also observed by the French delegation that had been present on previous occasions. Upon reaching the DGM entrance we were met by an official who gave us official "press" badges that we hung around our necks. It appeared that these doubled for international observers as it was known that we were not from the Press. These badges appeared to recognise us officially, and, after handing in our passports at the front of the Court building, we were afforded easy access to the Court. This was the first time that we had received such recognition from the authorities to be present.

The hearing began at 11am with the well of the Court packed with cameramen, at least two of whom we knew to be reporters from Germany. A platoon of soldiers waited conspicuously, and ominously, in the wings. The substantive hearing began with Osman Baydemir making a speech that mentioned to the judges that if they found in the defendants' favour it would be a victory for human rights in Turkey. A soldier emerged from the right into the court and then returned to the recesses of the back rooms as if he had pre-judged his cue. The defence team then made their submissions. The Defendants then stood to receive the verdict with the soldiers now excitedly, eagerly entering the court. As the Judge read out the verdict people in the public gallery began to smile and clench their fists – all the Defendants were acquitted due to insufficient evidence.

The tribunal was unable to address the issue of re-opening the Diyarbakir branch of IHD as it was not the Court that made the order for interim closure. The Defence would have to apply to the closing court in order to set aside the interim closure order.

After the hearing the international delegations requested an audience with the tribunal which was refused on the grounds that the judges had other trials to preside over.

III

INTERNATIONAL OBLIGATIONS

3.1 The European Convention on Human Rights

The Turkish State has not ratified the International Covenant on Civil and Political Rights and is therefore not bound by its specific provisions. It is, however, a party to the European Convention on Human Rights (the Convention). In 1954 Turkey ratified the Convention and incorporated it into domestic law and on 28th January 1987 it recognised the right of individual petition. The Convention is therefore legally binding upon Turkey.

In 1987 the Turkish Government demonstrated further commitment to Convention obligations when it recognised the right of the individual to petition to the European Commission with limiting reservations (subsequently declared ineffective by the Commission[17]). By a derogation notice of 1992, communicated by the Permanent Representative of Turkey to the Council of Europe, Turkey withdrew its original derogation notice of derogations under Articles 5,6,8,10,11 and 13[18], as permitted under Article 15. Turkey therefore accepted the binding nature of these substantive articles save for Article 5.

3.2 Article 6 – Right to a Fair Trial

"Article 6

In the determination of ...any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

This is clearly a highly significant article and provides the foundation of the rule of law in a civilised society. Its importance is recognised in the wide interpretation the Commission and the Court have adopted in respect of the article. This was stressed in the case of Delcourt where it was held:

"In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6(1) would not correspond to the aim and purpose of that provision".[19]

---

[17] See Chrysotomos v Turkey Appl. No 15299, 15300 & 15318/89 4/3/91.

[18] Right to liberty and security; fair trial; respect to family and private life; freedom of expression; freedom of assembly and association and right to an effective remedy respectively.

[19] See judgement of 17.1.70, A.11 (1970), p.15.

Compatibility of Treatment

3.2.1 "fair and public hearing"

Fairness

The hearing of 22nd December 1998 raised concern over the authorities' adherence to Turkey's obligations under Article 6 of the ECHR in that some Defendants were not admitted to the hearing of their own trial. It appeared that it was the police who were restricting access, however, the Court did not intervene to order production of the Defendants, but proceeded in their absence.

By contrast, the Defendants were admitted to the later hearings.

Public Hearing

Apart from the hearing on 22nd December 1998, international delegations and journalists were allowed to film the proceedings. There were no difficulties in gaining access to observe the trial and hearings were indeed public.

There was concern over the extent to which the trial was "public" in that the international community was partially excluded from the March hearing. However, it is right to note that the delegation was not denied access to the court, but to the region. The Court was open to the indigenous public and those international observers allowed into the region.

3.2.2 "within a reasonable time"

A 16 month delay before the case is brought to Court is, by any standards, unreasonable. The only possible reason for the delay, one assumes, is case complexity. However, this case could hardly be called complex. The evidence was gathered in one sweep and in order to bring the matter to court it was simply a question of preparing the appropriate papers. In the face of the finding that there was insufficient evidence to convict, this delay is particularly ironic.

There was also further concern at the appearance of the trial process being unduly lengthened by constant adjournments, particularly in view of the fact that the judge said at the hearing of 9th February 1999 that the case would conclude on the next occasion.

The Defendants were not only affected by such delay, in that the prosecution was hanging over their heads for so long, but the Diyarbakir Branch was closed for the duration.

3.2.3 "independent and impartial tribunal"

Further international principles on independence of the Judiciary are to be found in "Basic Principles of the Independence of the Judiciary" adopted by the Seventh United Nations Congress and endorsed by General Assembly resolutions 1985:

" **2. The Judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.....**

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."

The delegations had, prima facie, concern over the forum of the trials, i.e. the State Security Court.

There are three pertinent characteristics to note. First, the DGM has been created as a special court purely for "terrorist" crimes with different procedures from the civilian courts. Second, the presence of a judge from the military may threaten objectivity in the proceedings. Third, the obvious dependence upon the executive for appointments creates the potential for undue influence from the executive.

These characteristics contravene international standards on the independence and impartiality of the judiciary and threaten the chances of a fair trial.

In respect of the matter of independence the European Commission on Human Rights in the case of *Incal v. Turkey*[20] stated that:

" The Commission is of the opinion, given the current legislation on the composition of the State Security Courts, that the appointment and assessment of military judges raise certain questions and may cast doubt on the image of independence which they should project. In this respect, the Commission notes that military judges, being military officers, are accountable to their commanding officers.

Moreover, the fact that a military judge participates in a criminal procedure against a civilian, which in no way involves the internal discipline of the armed forces, indicates the exceptional nature of this procedure and could be viewed as an intervention by the armed forces in a non-military domain, which in a democratic country, should be beyond suspicion of dependence or partiality.

In these circumstances, the Commission considers that the applicant, having been tried and convicted by a court which had a military judge amongst its three members, could be legitimately concerned about the objective impartiality of this jurisdiction. The fact that this court also included two non-military judges, whose independence and impartiality are not in question, makes no difference."

[20] ECHR Commission Report 25.2.97, paras. 74 – 77.

The final judgement[21] in this case found a breach of Article 6, deciding that the applicant had legitimate cause to doubt the independence and impartiality of the Izmir National Security Court as a result of one of the judges being a military judge.

In addition, the delegation was of the view that the perceived independence of the prosecutor and the Judges was undermined by the prosecutor's geographical position in Court, adjacent to the Judges and at the same raised level. Perceived independence is difficult to achieve when the impression is given that the Judges are part of the prosecution and the prosecutor is a member of the tribunal.

3.3 Article 9 – Freedom of thought, conscience and religion

"Article 9

1. **Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.**

2. **Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."**

Article 10 – Freedom of Expression

In so far as it is material, Article 10 reads as follows:

"Article 10

1. **Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority...**

2. **The exercise of these freedoms ..... may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime."**

The obligations are clear and unambiguous under these articles. In order to justify any interference with these rights, the respondent state must establish that the interference is

[21] Incal v.Turkey (41/1997/825/1031), Strasbourg, 9th June 1998.

"prescribed by law", has a "legitimate aim" and is "necessary in a democratic society" in the sense of being a proportionate response to a "pressing social need"[22].

Compatibility of Treatment

The basis of the charges was the possession of documents that have been retrospectively censored by the government, political poetry and telephone calls to media and international organisations. It is submitted that curtailment of such activity must seriously interfere with the right of freedom of expression in relation to mere communications with legitimate international organisations, also in relation to the implied holding of private thoughts through the possession of private documents and public documents that attempt to objectively report on human rights abuses.

It is worth examining whether such interference can be justified by reference to one or more of the qualifications referred to in paragraph 2 of Articles 9 and 10. But it is difficult to see how the prosecution of individuals for possession of such documents and such communications could be said to be a proportionate response to a pressing social need. The legitimacy of the aim of the interference must therefore be questioned as such interference achieves nothing bar the hindering of reporting human rights abuses.

In the case of *Incal v. Turkey*[23] the European Court of Human Rights ruled that the conviction of Ibrahim Incal, a lawyer and official in a Kurdish political party, for preparing materials protesting against the treatment of Kurds, had violated his right to freedom of expression under Article 10 of the Convention.

It is submitted that it is likely that such a violation would be found in the instant case in relation to the phone and fax messages. In addition it is likely that a violation of the right to freedom of thought under Article 9 would be found in relation to the possession of the documents.

---

[22] See The Spycatcher Case; Open Door Counselling and Dublin Well Woman Centre v Ireland and Handyside v UK. Report of 30.9.75, B22 (1976) pp.47 – 48.

[23] Case No 41/1997/825/1031, Strasbourg, Judgement of 9 June 1998.

IV

INTERVIEWS

4.1 INTERVIEW WITH KERIM YILDIZ, EXECUTIVE DIRECTOR OF THE KHRP

On the 19th May 1999 the writer of this report interviewed Mr Yildiz at the KHRP offices in London in order to put to him the implied allegations in the trial indictment, that both he and the KHRP were connected to the PKK.

Q. Mr Yildiz, the Diyarbakir Branch of the IHD was charged with assisting, and making propaganda for, the PKK. Part of the evidence relied upon by the prosecution to prove that charge is that the Diyarbakir Branch had contacted KHRP by phone and, specifically, had spoken to you. The implication is that the KHRP and you are linked to the PKK. Do you or the KHRP have any connection with the PKK?

A. The KHRP and I have no connection with any outlaw Kurdish organisation, including the PKK.

Q. You are the executive director of the KHRP and a founding member. Why did you set up the KHRP?

A. I was, in fact, a member of a Turkish political party, but was detained and tortured in Turkey because of my Kurdish ethnicity. I sought asylum in the U.K. in 1985. It was clear to me and others in the U.K that there was a vacuum when it came to assisting the Kurdish populations of the world in Turkey, Iraq, Iran, Syria and the former Soviet Union. Hence, a number of British lawyers and myself set up the KHRP in 1992. It was our aim to use international legal organs to assist individuals to seek redress, to monitor the human rights situation and to bring and end to the violations of the rights of the Kurds in these countries.

Q. Why was the IHD in Diyarbakir telephoning the KHRP?

A. The KHRP, ever since its inception in 1992, has worked with the IHD in the whole of Turkey to bring cases to the European Court of Human Rights in Strasbourg of individuals who have had their fundamental human rights violated by Turkey. They have telephoned us on a regular basis since 1992.

In fact the KHRP is called by a number of groups in Turkey such as the Bar Association, Journalists Association and other Human Rights Groups. They are not prosecuted by the authorities for calling us.

Q. Why is the allegation being made now then?

A. These allegations are not fresh, and I was not surprised that the KHRP and myself were mentioned in the indictment. When the KHRP began to bring cases to Europe against Turkey in 1992, Turkey accused the KHRP of being linked to the PKK then. They did

this in open court alleging that the KHRP were fabricating information and were using it against Turkey. Amnesty International, who assist in the cases, were also accused of being linked to the PKK.

For example, in 1994 Nebahat Akkoc was detained and tortured by the Turkish authorities. The reason was that the authorities had tapped phonelines and determined that she had spoken to the KHRP and myself. She, in fact, had a case pending in the European Court and was speaking to us about her case.

Q. But why do the Turkish authorities think the KHRP is linked to the PKK?

A. You know, I don't actually think that they do.

The work that the KHRP does is very damaging to the government. The KHRP conducts trial observations, fact finding missions and takes cases to the European Court. These things are done objectively and professionally, but they have been very damaging to Turkey. The Turkish Government has said that the Court cases alone have meant that millions of dollars have had to be paid out in compensation and costs. These cases have also been used by the European Parliament to justify the refusal of aid to Turkey.

I think that by tapping phones and then accusing those that call us of PKK links is intended to intimidate the callers and prevent them from calling us as the KHRP is the source of so much damage to the Turkish Government.

In fact the KHRP never intended to damage the Turkish government at all. By assisting hundreds of individuals to bring their cases before the Strasbourg organs and by monitoring the human rights situation, our activities actually help the Turkish state to reconsider its human rights record and its treatment towards the Kurds.

In addition, the outcome of the trial itself was that there was insufficient evidence of assisting the PKK and so the implication must be that the Court did not think that telephoning the KHRP amounted to assisting the PKK. The further implication is perhaps that the KHRP is not thought by the Court to be linked to the PKK.

Comment:

It appears that the allegation of PKK connections is merely a tactic to discredit an organisation that does political damage to Turkey and to intimidate those that would seek to use that organisation to seek redress against the Turkish State. It is telling that Amnesty International, when helping with legitimate cases before the European Court of Human Rights in Strasbourg, is also accused in open Court of being connected to the PKK. However, even the State Security Court, in its acquittal of the defendants seems to place no weight upon the fact that the IHD contacted the KHRP.

4.2 INTERVIEWS WITH THE RESIDENTS OF DIYARBAKIR

During the time spent in Diyarbakir it was possible for the trial observers to interview a number of individuals resident in Diyarbakir. The results of the interviews are set out below; as extracts from personal accounts written by the observers. It is hoped that these will provide a background, painted upon a personal canvas, that reveals the situation in south-east Turkey as seen by those directly involved in it. It is also intended to illustrate the need for the IHD in the area and therefore assist the reader in gauging the impact of its absence over a two year period. The boxed dates refer to the dates of interview.

21.12.98

"HADEP" DIRECTOR:
FERIDLIN CELIK (Mayor of Diyarbakir since 18.4.99)

"The HADEP offices were relaxed and welcoming. There were a number of elderly individuals quietly conversing over tea in the reception. We were shown into a room where Mr Celik uncomfortably got up from behind his desk, and extended his hand and a warm smile. He was struggling because his leg was in a plaster cast. He told us that he had had an accident on the street involving a car and thinks he was targeted by the authorities.

Tea was brought in and he began to tell us of his view: that prosecutions of the IHD were political in nature. He himself was currently being prosecuted as a suspected supporter of the PKK.

He told us of the detrimental effect the closing of the IHD would have as it worked on subjects impo-tant to HADEP. He said that they would try to carry on as before even though it had closed.

He told us of the difficulties the party has had and especially the raiding of the sister Diyarbakir office of HADEP in November 1998. The office was ransacked and individuals detained. A young boy died in custody, the explanation being a "heart attack".

Mr Celik wanted Kurdish identity to flourish, to be able to teach his children the Kurdish language and most of all, equality.

He asked us to disseminate the reality and wanted more people to come to Turkey and raise awareness of the problems. He added that this was not just a Turkish problem, but a global one."

THE DIRECTOR OF THE DIYARBAKIR BAR ASSOCIATION: MUSTAFA OZER

"Mr Ozer spoke of the practices in the DGM, on admissibility of evidence, and pronounced the following maxim: If it goes against the Government's case then it is inadmissible, and if not, it is admissible. He said that the State Security Court was not independent and he was not hopeful about the outcome for the IHD and the Defendants.

He reiterated that the Government wants to isolate the Kurdish people from NGOs and that the prosecution formed part of that attritional policy by the Government."

WORKERS' UNION FOR HOSPITALS

"We met the union late in the freezing evening and were ushered quietly into a large room. Seven men stood like silent spectres in the gloom, the only illumination coming from a small butane lamp in the adjacent room. They shook our hands and we moved into the dimly lit adjacent room that was filled by a table around which we all sat. The room was warmed by the proximity of bodies, but a freezing chill emanated from the floor and concrete wall.

The grouping comprised members of the executive committee, whose jobs ranged from technicians to nurses.

The atmosphere amongst these workers was markedly different from the previous meetings. They lacked the confidence of the advocate and politician. However, the seven faces around the table were absolutely serious and the atmosphere was intense.

They spoke in hushed tones about the inequities of the health service and the paranoia that the government had about doctors and nurses treating wounded PKK members. They said that they live in fear of being accused of such crimes or of enforced relocation. They told us of the dangerous work conditions and the lack of hygiene.

It was they who expressed the most impassioned loss at the closing of the IHD. Without it they feared they would lose the links they had with other unions, therefore diminishing their voice. They were not only interested in advancing worker rights but Kurdish rights also.

In relation to us being in Turkey they implored us to disseminate the account of what was going on here. They said that it was visitors like us that could take out the information because otherwise there is a media blackout on what happens in south-east Turkey."

22.12.99

PRESIDENT OF TEACHER'S UNION:
EBUBEKIN CELEBI

"The President told us that 17 teachers were now in prison, 107 were forced to go and teach in the West and 26 teachers had been killed. A small photograph of the faces of some of the dead teachers was positioned centrally upon the main wall.

A female teacher described the morning ritual that was performed with the children every day in south-east Turkey. Everyone goes out into the garden and all proclaim, "I am Happy. I am a Turk and I give my body as a present to Turkey". We were told that if the teachers did not do this then the matter would be investigated by the authorities.

The president remarked that the loss of the IHD means that people who have suffered have no place to go. He also noted that the IHD was a cultural centre. The teachers gave us some materials to take back to the KHRP because there was no guarantee that they could successfully send them out of Turkey."

9.2.99

CHAMBER OF ARCHITECTS

"We spoke to Ahmet Cengiz, chairman of the architecture chamber and Zulkuf Karatelin, chairman of Structural Engineers Chamber. The Office was gleaming white and sparsely appointed.

The Chamber was born in 1954 and the centre of the organisation is in Ankara. The Chamber was interested in building, environment and civil life.

Mr Cengiz told us about the nature of land ownership in Turkey and of certain trends in the area.

He told us that approximately 70 % of land is government owned and controlled, while the remaining 30 % is owned by a very few rich private individuals. Conversely 90 % of funding for building comes from private sources and the other 10 % is provided by the government on credit. The government retains the land by lending plots for, say, 49 years, allowing building upon it and then repossessing it at the culmination of the time period.

In Diyarbakir the rate of growth of buildings has doubled in the last 10 years. The increase has mainly been in residential housing in response to the housing crisis that began in 1990 as a result of the forced migration into the cities of Van and Diyarbakir. The migration peaked in 1993 but

has since slowed and while the housing crisis is still current – the squatter camps are a constant reminder – it is not worsening. There is nobody left to migrate.

Housing is obviously a priority but, in Diyarbakir, no structures are built to foster community spirit or promote geographical culture. There are no museums, no leisure centres, no community halls. In fact cultural history is earmarked for destruction in the area, under the auspices of the "GAP Project". The GAP project is a concerted effort to control and reclaim land in the south-east region. A current project is the erection of a dam and the flooding of land in order to provide hydropower and irrigate the area. However, as a consequence an area called "Hasankeyf", a remarkable historic Kurdish town consisting of a network of caves, will be submerged. The Chamber is not convinced of the "formal" explanation and say that everything has two faces.

We were told that factories in the area were not permitted unless they were government controlled. He said that the area was rich in natural resources but that the region remained poor. He gave as reason by example that Muzida was rich in phosphates, which are mined, turned into fertiliser in Izmir, and sold back to Kurdistan. He told us of the potential for farming that is wasted in the area. He told us of the migration out of the south east of professionals and businessmen and was saddened at their loss as with them he envisaged power. He said that the government try to keep them powerless."

CHAIRMAN OF UNION OF UTILITIES/ "TES-IS":
ALI ONCU

"Mr Oncu told us that he had been working for the Union (or "Tes-is") since 1989. He told us a familiar story of isolation. The union originally had 7,000 members spanning the six cities of Batman, Mus, Sirnak, Mardin, Siirt and Diyarbakir. However, the Turkish Federation of utility workers, who are pro-government, separated the unions into smaller units. Now, in the area, there is a joint union between Diyarbakir and Mardin of only 714 members. He said they were supported by the Unions in a number of European countries, but not in the U.K.

He told us that he has already received a 20 month suspended prison sentence and has eight cases that are continuing in the State Security Court. He had been detained a number of times."

JOURNALIST FOR "YENI ULKE"[24]

"We were shown into a room where a group of individuals sat below a collection of framed photographs: the pictures of their dead, their murdered. The photographs on the wall were journalists and paper sellers killed between 1992 – 1995.

To our left, hung upon the wall, was a large hand painted face of a sullen, tearful child, encircled in barbed wire. It was signed "Sevgi '98".

[24] See Ersoz and others v. Turkey where the European Commission of Human Rights found a breach of Article 10 in relation to the harassment by the authorities of the employees and offices of the newspaper.

A man behind a desk at the end of the room stood and greeted us. He was a chief journalistic contributor in Diyarbakir for the newspaper. Cigarettes were lit, tea was brought, and he related a fascinating story of censorship evasion.

In 1990 "Yeni Ulke" (New Country) appeared once a week as a paper that dealt with human rights issues. It reported real events with an objective eye and reported killings by the authorities in the villages and cities. It was closed by the authorities in June of 1992.

It re-emerged as "Ozgur Gundem" (Free Agenda) which was printed daily until it was closed at the end of 1993.

In early 1994 it re-appeared as "Ozgur Ulke" (Free Country) and managed to stay in circulation for one year, even through the bombings of two offices in Istanbul on 3rd November 1994 in which 20 workers were injured and one person killed. After the bombing a secret paper was uncovered which reported the prime minister as saying "do something about that newspaper". We were told that in 1998 responsibility for this bombing, and numerous other killings was accepted by the government.

April 1995 saw the birth of "Yeni Politika" (New Politics), which was only circulated for 5 months. We were shown large portions of past newspapers that were completely blacked out, having been censored by the government.

On 12th December 1995 the paper re-emerged as "Democrasi" (Democracy). The paper was consequently prosecuted and sellers were forbidden from selling the newspaper. A number of journalists were detained and tortured. The paper closed in June 1997 but, by 7th July 1997, "Ulkede Gundem" (Country's Agenda) was up and running. However, permission to transport the paper to other cities was revoked and members illegally transported the paper by air, only to be detained while the cargo was confiscated. Sellers were, again, discouraged and the paper's directors were detained.

The newspaper was officially banned by the Governor on 4th December 1997 in Diyarbakir, Tunceli (Dersim), Siirt, Sirnak, Hakkari and Van, i.e. the Kurdish cities. It did get into Ankara and Istanbul.

On 22nd June 1998 the office of the newspaper at Batman was bombed. Nobody admitted responsibility and a European delegation fruitlessly investigated the bombing.

In September 1998 the authorities stepped up the campaign to close and the paper was closed for 10 days. It was finally shut down for good in December 1998 by the prosecutor, who stopped the printing presses.

However, the newspaper is to be resurrected in February 1999. To this end, like before, all names and addresses must be changed. He said that they are the only objective paper as the others are scared of closure if they report the reality of events in their entirety.

The paper is a tradition: "For every person killed there will be another to replace them, and the paper will live on"."

DIYARBAKIR BAR ASSOCIATION

"Tahir Elci, vice chairman of the Bar Association, gave us his view on the trial of the IHD. Strangely, and in the alternative to most other views, he had a very optimistic view on the outcome of the trial.

He thought it was likely that the Diyarbakir Branch of the IHD would be re-opened, if the judge was apolitical, and the case against the executive committee dropped. He said the only reason for the adjournment of the proceedings was to postpone this conclusion and, in the meantime, keep the IHD Branch closed for as long as possible[25].

Mr Elci had arrived in Diyarbakir as a result of his experience in Cizre, a town on the border of Iraq, where he had been ill treated and tortured as a result of his profession. He is one of the 25 lawyers on trial in Diyarbakir[26]. He knows of 10 lawyers who have succumbed to the pressure and left Diyarbakir. Notwithstanding all of this he, like the others, seemed to shrug off his experiences and remain optimistic."

HADEP

"The HADEP trial had also been taking place today and as a result the Director of HADEP in Ankara, Selim Ozalp, was in Diyarbakir. He was optimistic about the upcoming elections as they needed only 10% of the vote in order to obtain 60 – 70 deputy parliamentarians in Parliament. He thought that the critical percentage might be reached[27].

We then spoke to M.Salih Yakinkaya, a director of HADEP in Diyarbakir. He told us of the mechanics of campaigning. Campaigning is forbidden until 20 days before the election but during that period HADEP will open information offices, visit towns and cities and have meetings and rallies. They will also be able to campaign over the media, but caution is needed as the government are looking for excuses to take members to the State Security Court. For example Mr Yakinkaya has a current case against him because he spoke in Kurdish over the telephone to MED TV, a pro-Kurdish television station that broadcasts from the U.K.

Before we left he said that he thought that Europe was inconsistent in the extension of their assistance to others. He mentioned the support in Kosovo and could not understand why the

---

[25] This comment by Mr Elci proved to be particularly astute given the outcome of the trial.

[26] Please see previous reports. A case in relation to this incident is currently before European Commission of Human Rights, and has been declared admissible.

[27] HADEP did not reach the 10% level in the elections on 18.4.99, but 7 members were voted in as mayors across the south east.

Kurds did not qualify for assistance. He suggested that a conference in Europe would raise the profile of the Kurdish situation."

11.5.99

FOUNDER OF "KA-MER" WOMEN'S CENTRE:
NEBAHAT AKKOC

In 1994 Ms Akkoc was a member of the political party, DEP where she worked for two years. She then went on to work for the IHD in Ankara for three years. She told us that she was struck by the fact that all the organisations she came across did not do anything specifically for women. In 1996 she conducted research in the east of Turkey and ascertained that women had no rights in family life and were often subjected to domestic violence. She formed her own, women only, group and began to speak on women's rights in the region. In August 1997 Ka-mer was born.

Ka-mer is based in Diyarbakir. It holds an open surgery three times a week to women and offers counselling for abused women, an employment service, legal advice and general support. In addition to this there are groups dedicated to raising consciousness of women's issues and regular "conversation days" where women meet and share their experiences. Ka-mer also has a restaurant, open to everyone, which is used to create jobs for women and finance the work of the organisation. This year they are providing self-defence classes. The organisation is very important as it is the only women's group in the East of Turkey.

Ka-mer has eight female lawyers who assist on a pro bono basis and two female psychologists. The rest of Ka-mer is made up of eight permanent members who work there full time. Altogether they have already dealt with 900 women and their problems. Ka-mer has been supported by Canada, Holland, Germany and Australia who have provided air conditioning, a dishwasher and a photocopier.

She told us that women face a lot of problems in Turkey, especially in the East. At least 75% of the women that seek out Ka-mer are victims of domestic violence from husbands, brothers and fathers.

Essentially men and women are seen equally in the law, with recent added protections for women in domestic abuse scenarios. However, she told us that women are reticent to bring cases against their husbands because if the men are either excluded from the family home or imprisoned then there will be no income upon which the women or their children can live.

V

CONCLUSIONS

Conclusions

Turkey is a signatory to the then Conference of Security and Co-operation in Europe (CSCE), now OSCE, Paris Charter (21.11.90) and the Moscow meeting of the CSCE Human Dimension Conference Document (3.10.91). Both documents emphasize the importance of NGOs. In December 1994 Turkey took part in the OSCE Budapest Conference decision to protect Human Rights NGOs. Despite this participation in international agreements the Diyarbakir Branch of the IHD was closed for two years while a prosecution, based upon insufficient evidence, ambled along.

The closure of the Diyarbakir Branch was an unwarranted attack upon a legitimate organisation reporting upon legitimate human rights issues in Turkey. Given the likely violations of the European Convention of Human Rights which arise from the trial, it is difficult to see the prosecution as anything other than a device by the authorities to switch off the spotlight that the Diyarbakir Branch points at Turkey, sometimes from the European Court of Human Rights, that illuminates embarrassing human rights abuses.

It is clear that the impact on the region has been profound. Diyarbakir Branch was the hub of the wheel of a regional network that linked various interest groups in south-eastern Turkey and co-ordinated human rights activities. It was also a symbol of hope for the people of the south-east region. Without the IHD the killings, the cultural and political suppression, the prosecutions, the enforced relocations and the media blackouts have gone unreported and unchecked. This is of even greater concern given the changeable attitude to international visitors to the region, illustrated by the turning back of the trial observers in March 1999.

The interviews in Diyarbakir revealed a sense of international isolation felt by the Kurds and a mystification as to why the Kurdish people do not qualify for the support of western governments. This mystification was even stronger given the current actions of the NATO countries in the Balkans.

The closure has had the effect of neutralising the coordinating role of the branch and thereby isolating various interest groups throughout the Kurdish region. The practical impact is therefore to break down the links between Kurdish groups indigenous to the region, which inhibits coagulation and promotes isolation. This of course, in turn, facilitates integration and assimilation into the indivisible, one Nation state.

VI

RECOMMENDATIONS

The Bar Human Rights Committee and the Kurdish Human Rights Project call upon the Turkish Government to:

1. urgently re-open the Diyarbakir branch of IHD;

2. continue to allow members of the international community to enter the south-eastern region of Turkey;

3. allow all legitimate non-governmental organisations, particularly human rights organisations, and their members to operate unhindered in pursuance of legitimate human rights aims;

4. ensure that all legitimate prosecutions are instituted in accordance with the law and are brought before fair, independent and impartial tribunals prescribed by law and that the conduct of such proceedings be in accordance with internationally recognised principles governing fair trials;

5. to undertake to repeal the broad definition of "terrorism" contained in "the Law to Fight Terrorism" to preclude prosecutions involving non-violent dissent;

6. ratify, without delay, the International Covenant on Civil and Political Rights and embark upon a process of legal reform in order to bring Turkish law and practice fully into accordance with the ECHR, ICCPR and other relevant international human rights laws and standards; and

7. amend all laws relating to National Security, Public Safety and Public Security and Access to Information, in order to reflect the standards contained in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.[28]

[28] Published by ARTICLE 19 (London, Nov. 1996)

APPENDIX

Annexe 1

TURKISH REPUBLIC
DIYARBAKIR
STATE SECURITY COURT
CHIEF PUBLIC PROSECUTOR

PREPARATION NO: 1998 / 422
SUBJECT NO : 1998 /
INDICTEMENT NO: 1998 / 28.09.1998

I N D I C T E M E N T

TO ( ) th NUMBER STATEE SECURITY COURT PRESIDENTSHIP
DIYARBAKIR

PLAINTIFF : PUBLIC LAW

DEFENDANTS : 1-MAHMUT SAKAR. Son of Muhittin and Sumbul, was born in 1966. Registered at Diyarbakir Ali Pasa Mah. and resides at 5 Nisan Mah. Hatboyu Cad. Dogu Yapi Koop. A/4 Blok, Kat .1 No:2. Diyarbakir Merkez.

2-SINAN TANRIKULU. Son of Naif and Munire, was born in 1966. Registered at Diyarbakir Merkez Bagpinar and resides at Kaynartepe Mah. Kosuyolu Cd. 30 Sk. Cem Yapi Koop. B Blok K:3 No:15 Diyarbakir.

3-VEDAT CETIN. Son of Mehmet Zulkuf and Salime, was born in 1961. Registered at Ergani District, Kemaliye Mah. and resides at Kurt Ismail Pasa Mah. 2 Sk. Aris Apt. K:1 No:8 Diyarbakir.

4-EZLEM CETIN.Born from Ibrahim Ethem and Saziye , was born in 1966. Registered at Cermik District, Akkoyunlu ByVillage and resides at 5 Nisan Mah. Emek Cd. Ceyhan Sk. Seyitoglu 7 apt No: 3/6 Diyarbakir.

5- PIRUZHAN DOGRUL. Born from Fahrettin and Hediye , was born in 1955. Registered at Eskiocak Village and resides at Baglar Emek Cd. Belediye Koop. B Blok No:8 Diyarbakir.

6- OSMAN BAYDEMIR. Son of Mehmet and Azize, was born in 1971. Registered at Merkez Elidolu Village and resides at Fabrika Mah. Yeniceri Sk. No:3 Diyarbakir.

7-MAZHAR KARA. Son of Yildirim and Lutfiye ,was born in 1963. Registered at Mus Province and Bulanik District -Gunduzu Village and resides at Hakan Sk. Hancer 1 apt. No: 3/11 Kucukcekmece- Istanbul.

8-DOGAN OZDEMIR. Son of Zeynel and Gazel ,was born in 1950. Registered at Tunceli Province and Mazgirt District - Ortaharman Village and resides at Sehitlik Mah. 2 Sk. Esra Yapi Koop. C/Blok No:11 Diyarbakir.

9- SALIH TEKIN. Son of Mehmet and Nadire ,was born in 1964. Registered at Mardin Province and Mazidagi District - Sakizli Village and resides at Sarguccu Sk. No:11 K:3 D:6 Aksaray.

0-BULENT UCAMAN Son of Abdurrahman and Kevi, was born in 1964. Registered at Lice District -Karahasan Mah. and resides at Savas Mah. Saatci Sk. 4/2 Diyarbakir.

OFFENCE: TO MAKE PROPOGANDA ON BEHALF OF OUTLAWED PKK ORGANISATION (TO HELP AND HARBOUR THE OUTLAWED PKK ORGANISATION)

DATE OF OFFENCE: On 22.05.1997 and before

TRANSFER ARTICLE: Article 7/2 , 7/3 and 7/4 of Law No 3713 and Article 31, 33 and 36 of Turkish Penal Code.

THE PREPARATION DOCUMENT IS ASSESSED

The defendants whose full identity outlined above are the administrators of Diyarbakir Branch of the Human Rights Association (HRA). The searches the premises and the accommodation addresses of the defendants have resulted in discovery of the many banned copies of *Hevi* newspaper, *Soz* magazine, Sosyalist Alternatif, *Medya Ginesi, Deng* magazine as well as two banned publications of Human Rights Association called *Turkiye'de Insan Haklari Panoramasi* and *Yakilan Koylerden bir Kesit* as well as *Olaganustu Hal Bolge Raporu* which is the a publication of the Diyarbakir Branch of the IHD.

- Following the searches in the houses of the members of the association defendants Mehmet Mefair ALTUNDAG, Haydar KILICOGLU, Mahmut SAKAR and Piruzhan DOGRUL who are, there has been a lot of discoveries of banned books and magazines.

- The computer disc which was confiscated in the house of the defendant Vedat CETIN has contained the records of the banned publications of the HRA and these publications were of the nature where security forces are being degraded and also containing pro-Kurdish nature which makes it separatist.

- The searches in the Work Place and the house of Sinan TANRIKULU have resulted in the discovery of the poems which started with the heading of *Anma Orhan TANRIKULU* [1] and finished as *D.Selamlar*[2] was a report which had a separatist nature and the poems discovered were of the nature that praise the illegal PKK organisation.

- During the searches in the Diyarbakir branch of the HRA with the discovery of two telephones which belonged to Fatma YILDIZ who is an ex-management committee member of the branch with a telephone number of 223 45 26, Abdullah KOC with the telephone number 223 45 26 as well as eleven telephone bills which belonged to Mehmet YILDIZ with the telephone number of 532 277 64 18 .

  The assessment of the telephone bills proved that telephone numbers which were dialled from the association telephone was 322 647 08 76 which belonged to the Kurdistan Committee in Brussels

  The telephone numbers of 325 314 12 79 and 325 364 13 79 belongs to the MED TV studios which broadcasts on behalf of the PKK.

  44 171 250 13 15 belongs to the Kurdistan Information Centre in London and 0171 734 49 27 belongs to Kerin Yildiz[3]- Kurdistan Human Rights.

---

[1] *Anma Orhan Tanrikulu* means "*In memory of Orhan TANRIKULU*"
[2] Translator has the opinion that "*D.Selamlar* 26. Kogus means *Revolutionary Greetings 26th Ward*"
[3] Translator is under the impression that Kerin meant to be witten as Kerim (KHRP Executive Director)

It has also been discovered that 31 20 689 33 01 belongs to Kurdistan Information Centre in Amsterdam.

44 171 287 27 72 belonged to the Kurdistan Human Rights Unit which is in London and that calls made to all of these numbers and the names that are stated on the document are the names that have been prosecuted by the security forces who have connections with the PKK or other outlawed organisations. The numbers on the document also proved that calls were made were same as the ones recorded on the papers that were confiscated in the possession of the organisation members (Istanbul 245 35 91, 251 96 46, 512 67 54,513 34 42 and 346 02 96).

APPENDIX
Annexe 2

Law No 3113 - Law to Fight Terrorism

LAW TO FIGHT TERRORISM

As published in Turkish in the Official Gazette (Remsi Gazete) on 12 April 1991

FIRST SECTION
Definition of the Crimes of Terrorism

Definition of Terrorism

Article 1 - Terrorism is any kind of action conducted by one or several persons belonging to an organisation with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by any method of pressure, force and violence, terrorisation, intimidation, oppression or threat.

An organization as described in this Law is constituted by two or more people gathering under a common aim.

The term organization also includes formations, associations, armed associations, gangs or armed gangs as described in the Turkish Penal Code and provisions of special laws.

Terrorist Criminals

Article 2 - A member of an organization, founded to attain the aims defined in Article 1, who commits an offence in accordance with these aims individually or with others or a member of such an organization, though not committing the intended crime, is called a terrorist criminal.

Those who are not members of the terrorist organization, but commit a crimein the name of the organization, count as terrorist criminals and are punished like members of the organization.

Terrorist Crimes

Article 3 - Crimes defined in Articles 125, 131, 146, 147, 148, 149, 156, 168, 171 and 172 of the Turkish Penal Code are terrorist crimes:

Offences committed for terrorist purposes

Article 4 - In applying this Law crimes defined in
a) Articles 145, 150, 151, 152, 153, 154, 155, 169 and the second paragraph of Article 499 of the Turkish Penal Code and
b) crimes defined in Article 9, part (b), (c) and (e) of the Law 2845 on the Foundation and Criminal Procedure at State Security Courts
are terrorists crimes if they are committed for terrorist purposes as described in Article 1.

Increase in sentences

Article 5 - Penalties of imprisonment and fines imposed according to respective laws in respect those committing crimes as described in Articles 3 and 4 are to be increased by one half. The penalties may exceed the maximum penalty for that particular or any kind of crime. However, in case of heavy imprisonment the penalty may not exceed 36 years, in the case of simple imprisonment 25 years, and in the case of light imprisonment 10 years imprisonment.

Disclosure and Publication

Article 6 - Those who proclaim the crime of a terrorist organization is aimed at certain persons be they named or unnamed, or who disclose or publish the identity of officials on duty to fight terrorism, or those who show these people as targets, are to be punished by a heavy fine of between 5 and 10 million Turkish Lira.(7,000 Turkish Lira = £1)

Those who print or publish leaflets and declaration of terrorist organizations are to be punished by a heavy fine of between 5 and 10 million Lira.

Those who, in contravention to Article 14 of this Law, disclose or publish the identity of informants are to be punished by a heavy fine of between 5 and 10 million Turkish Lira.

In the case one of the crimes defined above is committed by periodicals as described in Article 3 of Press Law No. 5680 their publishers are to be punished additionally by the following fines: for periodicals issued in less than monthly intervals the fine shall be 90% of the real sale of the previous issue; for printed works that are not periodicals or periodicals starting business the fine shall be 90% of the monthly sale of the highest selling daily periodical. In any case the fine may not be less than 50 million Turkish Lira. Responsible editors of these periodicals are to be given half the sentences of the publishers.

Terrorist Organizations

Article 7 - Under reservation of provisions in Articles 3 and 4 and Articles 168, 169, 171, 313, 314 and 315 of the Turkish Penal Code those who found organizations as specified in Article 1 under any name or those who organize and lead their activities, are to be sentenced by imprisonment of between 5 and 10 years and a heavy fine of between 200 million and 500 million Turkish Lira; those who join these organizations are to be sentenced by imprisonment of between 3 and 5 years and a heavy fine of between 100 million and 300 million Turkish Lira.

Those who assist members of organizations constituted in the manner described above or make propaganda in connection with the organization are to be sentenced by imprisonment of between 1 and 5 years and a fine of between 50 million and 100 milion Turkish Lira, even if their offence constitutes another crime.

In case that this assistance is provided in buildings, premises, offices or extensions of associations, foundations, political parties, professional or workers' institutions or their affiliates, or in educational institutions or students' dormitories or their extensions the sentences mentioned in paragraph 2 will be doubled.

In addition, activities of associations, foundations, trade unions and similar institutions, found to have supported terrorism, will be banned and the institutions will be closed down by a court's decision. Assets of these institutions will be confiscated.

If the offence of propaganda in connection with an organization as mentioned in paragraph 2 is committed by a periodical according to Article 3 of the Press Law No. 5680, their publishers are to be punished additionally by the following fines: for periodicals issued in less than monthly intervals the fine shall be 90% of the average real sale of the previous month, for printed works that are not periodicals of periodicals starting business the fine shall be 90% of the monthly sale of the most selling daily periodical. In any case the fine may not be less than 100 million Turkish Lira. Responsible editors of these periodicals are to be given half the sentences of the publishers and a sentence between six months and two years imprisonment.

Propaganda against the indivisible unity of the State

Article 8 - written and oral propaganda and assemblies, meetings and demonstrations aimed at damaging the indivisible unity ot the State of the Turkish Republic, its territory and as a nation are forbidden, regardless of the method, intention and ideas behind it. Those conducting such an activity are to be punished by a sentence of between 2 and 5 years imprisonment and a fine of between 50 million and 100 million Turkish Lira.

If the offence of propaganda as mentioned in the paragraph above is committed by a periodical according to Article 3 of the Press Law No. 5680, the publishers are to be punished additionally by the following fines: for the periodicals issued in less than monthly intervals the fine shall be 90% of the average real sale of the previous month, for printed works that are not periodicals of periodicals starting business the fine shall be 90% of the monthly sale of the most selling daily periodical. In any case the fine may not be less than 100 million Turkish Lira. Responsible editors of these periodicals are to be given half the sentences of the publishers and a sentence of between six months and two years' imprisonment.

SECOND SECTION

Criminal procedure

Competent court

Article 9 - Offences within the scope of this law are to be tried in state security courts; and for those committing one of these crimes or participating in these crimes, the provisions of this Law and the Law No. 2845 on Foundation and Criminal Procedures at State Security Courts will be applied.

Representation by and contact to a lawyer

Article 10 - In applying this Law

a) defendant and intervening party may be represented by a maximum of three lawyers.

b) Defendants in pre-trial detention or convicts may have contact with a lawyer under supervision of a detention centre or prison official.

Length of detention

Article 11 - People detained because of crimes according to provisions of this Law are to be presented to a judge within 48 hours; in case of collective crimes within 15 days, excluding the time it takes to bring the suspect from the detention place to the nearest court.

Testimonies of interrogators (those keeping records)

Article 12 - Police chiefs and officers interrogating suspects and witnesses of crimes within the scope of this Law or writing reports about the event or facts may, if necessary, testify in court as witnesses. However, if they are called to testify, their testimony has to be taken in a closed hearing.

Suspension and commutation to a fine

Article 13 - Sentences imposed under this law cannot be commuted to a fine, converted to other measures or suspended.

Non-disclosure of the identity of informants

Article 14 - The identity of those providing information about crimes or criminals within the scope of this law are not to be disclosed, unless the informant has given permission or the nature of the information constitutes a crime for the informant.

Trial without imprisonment

Article 15 - In case that chiefs and officers of police and intelligence or other officials on duty to fight terrorism are publicly prosecuted because of crimes allegedly committed during the course of their duty, they are to be tried without imprisonment.

In case that chiefs and officers of police and intelligence of other officials on duty to fight terrorism are publicly prosecuted because of crimes allegedly committed during the course of their duty, they are to be represented by a maximum of three lawyers whose fees are to be paid by the responsible institutions regardless of legal fees for lawyers.

In case that chiefs and officers of police and intelligence or other officials on duty to fight terrorism allegedly committed crimes during the course of their duty, the provisions of the Law on Prosecution of Civil

Servants will be applied in case of negligent offences and other failures, except for crimes of murder and attempted murder.

THIRD SECTION

Execution of sentences

Execution of sentences and preservation of pre-trial detainees

Article 16 - The sentences of those convicted under the provisions of this law will be executed in special penal institutions built on a system of rooms for one or three people.

In these institutions, free visits ae not allowed. Contacts with the convicts and communication with other convicts will be prevented.

Among the convicts who seved at least one third of their sentence eith good conduct and have less than three years to serve until their conditional release, may be transferred to other closed penal centres.

Those held in pre-trial detention for crimes within the scope of this law are to be kept in detention centres as described in paragraph 1. The provisions of paragraph 2 are also applied for pre-trial detainees.

Conditional release

Article 17 - Those convicted within the scope of this law are to be released conditionally after 36 years imprisonment, if their death penalty is not ratified by the Grand National Assembly of Turkey; after 30 years imprisonment, if they were sentenced to life imprisonment; or after three quarters of other terms of imprisonment, if they served their sentences with good conduct without a separate application.

Those among them who escaped during pre-trial detention or as convicts, or who attempted to escape, or who were convicted for insurrection against the prison adminstration and those who as a disciplinary punishment received three sentences of solitary confinement will not benefit from conditional release, even if their disciplinary punishment has been lifted.

Convicts under the provisions of this law who commit another crime within the scope of this law after their sentence has become legally binding will not benefit from conditional release.

The provisions of paragraph 1 and 2 of Article 19 and additional Article 2 of the Law No. 647 on the Execution of Sentences will not be applied to these convicts.

Construction of Prisons and Detention Centres

Article 18 - For the construction of prisons, detention centres and custodial buildings according to Article 16 of this law, the provisions of Article 89 of Law No. 2886 on Public Tender will be applied.

FOURTH SECTION

Miscellaneous provisions

Rewards

Article 19 - Those, to be specified by the Ministry of the Interior, who help to detain criminals within the scope ot this law or provide information about their whereabouts or identity will get a financial reward according to Law No. 1481 on the Prevention of Certain Crimes against Public Order.

The Ministry of the Interior will take measures to protect those receiving a reward.

Measures of Protection

Article 20 - The State will take necessary protective measures for officials involved in fighting terrorism and anarchism, for officials of the judiciary, intelligence, administration and military who carry out such duties, police chiefs and officers, the Director-General and deputy Director-General for Prisons and Detention Centres, prosecutors and directors of prisons and detention centres for terrorists, judges and prosecutors of state security courts and those who have left such duties and those who become or are made open targets for terrorist organisations and witnesses and informants who assist with disclosure of such crimes.

These protective measures include plastic surgery to change physical appearance, alteration of registration records, driving licences, matrimonial certificates, degrees and other documents, arrangement of military service, rights of mobile and immobile property, protection of social security and other rights.

In applying these measures the Minister of Interior and institutions concerned are bound by all rules of secrecy.

The basics and rules of protective measures will be specified in guidelines to be prepared by the Prime Ministry.

Officials as mentioned above are entitled to use arms in order to fend off attacks by terrorists on their lives, their wives/husbands and children, even if they have left their duty.

Pensions of invalids and support for spouse and orphans

Article 21 - In the case of officials being injured, left disabled, dying or being killed as a result of being confronted with terrorist activities in the course of their duty at home or abroad, even if they had abandoned their status, the provisions of Law No. 2330 on Monetary Compensation and Pension will be applied. In addition,

a) the total of the pension for invalids, or the spouse and orphans of those killed who are entitled to a pension may not be less than the pension of their colleagues on duty; if pensioners are killed the monthly payment

for their spouse and orphans may not be less than their monthly pension according to the Law. In case of deficiency the difference will be paid by the social security institutions and reimbursed by the Treasury.

b) those left invalid while benefitting from public accomodation at home or abroad and the spouse and orphans of those killed who are entitled to a pension, except those living in specially provided houses under the Law for Public Housing, will continue to benefit from public accomodation for one year. Those who, after that year leave public housing and those not benefitting from public accomodation and those living in specially provided houses will on application, be paid rent by the State for residence within the country for 10 years. Those living in specially provided accomodation abroad will on application be paid the rent abroad by the State for one year.

c) in connection with benefitting from accomodation loans, the provisions of additional Article 9 of the Law No. 2559 on the Duties and Competence of the Police will be applied; also for invalids of their spouses and, if their partners are not alive or have married, for their children.

d) Invalids, spouses and their minor children of those killed, travel free of charge on State Railroads, City Maritime Lines and on communal means of transport. In the case of spouses and orphans ceasing to be entitled to a pension according to the provisions of the institutions of social security, they will not be entitled to any other right provided in this Article.

Support for other people suffering losses from terrorism

Article 22 - Citizens who are not civil servants, but suffer from terrorist activities by loss of life or property will get priviliged support from the Fund of Social Welfare and Solidarity. The scope and amount of the support will be determined by the local authorities of the Fund.

FIFTH SECTION

Temporary provisions

Temporary Article 1 - In connection with crimes committed up to 8 April 1991:

a) Death sentences will not be executed. Convicts in this situation will have to serve 10 years of the sentences they have to serve according to Article 19 of law No. 647 on the Execution of Sentences.

b) Convicts sentenced to punishments restricting personal liberty will have to serve one fifth of their sentences of imprisonment. After serving these terms they will be conditionally released regardless of good conduct and without having to apply.

The times of pre-trial detention will be included when calculating the terms.

The provisions of reduction in additional Article 2 of Law No. 647 on the Execution of Sentences will not be applied for these convicts.

Temporary Article 2 - In connection with suspects in pre-trial detention because of crimes committed until 8 April 1991:

The minimum limit of the expected sentence provided in the law will be considered

a) at the stage of preparatory investigations according to the nature of the crime taken as the basis for the indictment,

b) at the stage of final investigations the crime expressed in the indictment or according to the changed nature of the crime, and if the pre-trial detainee has been imprisoned for a period as defined in Temporary Article 1, the detainee will be released within 30 days of this law entering into force,
1. before a public case was started by the prosecution
2. if a public case is continuing by the competent court,
3. if the case is pending at the appeal or military appeal court by the competent court or the chief prosecutor.

Defendants awaiting a public case or against whom a public case was started earlier will be tried. In the event that the defendant does not appear in court, the testimonies to the prosecutor or before a judge will be taken as sufficient. Following the final verdict at the end of the trial, the provisions of conditional release according to temporary Article 1 of this Law will be applied.

Temporary Article 3 - Those who, following the publication of this law, would benefit from the provisions of Temporary Article 1, but have received disciplinary punishment because of damaging actions against the prison discipline, will not benefit from the provisions of temporary Article 1 until their disciplinary punishment is lifted according to the Statute on Administration of Penal Institutions and the Execution of Sentences.

Temporary Article 4 - Those who until 8 April 1991:

a) killed or attempted to kill civil servants or officials on duty in actions defined in this law as terrorist actions, even if they abandoned their status, and those who participated in such crimes,
b) committed crimes according to Articles 125, 146 (except for the final paragraph), 403, 404-1, 405, 406, 407, 414, 416 (first) and 418 of the Turkish Penal Code.
c) violated provisions of the third chapter in the second part of the Turkish Penal Code, entitled "Crimes against the Administration of the State", and those who, in contravention to the Banking Law, unjustly and irregularly received money from banks, those who, in opposition to Law No. 1918 on the Prevention and Prosecution of Smuggling, obtained an advantage, those who conducted irregular, fraudulent and fictitious transactions of export, import and investment incentives and by doing so obtained unjust deduction of taxes, premiums, loans, difference of interest and similar advantages from public sources and those participating in such offences, regardless of whether or not the time limit for such offence was exceeded, unless they repaid the unjust and irregular advantage they obtained,
d) those who committed crimes according to Articles 55, 56, 57, 58 and 59 of the Military Criminal Code,

will not benefit from the provisions of temporary Article 1. However, death penalties imposed because of crimes mentioned in this Article will not be executed. These convicts will be released conditionally regardless of good conduct and without application; after 20 years if they were sentenced to death, after 15 years if they were sentenced to life imprisonment, and after one third of all other sentences of imprisonment.

The times of pre-trial detention will be included when calculating the terms.

The reducing provisions of additional Article 2 of Law No 647 on the Execution of Sentences will not be applied for thse convicts.

The provisions of temporary Article 2 (except for the reference in the last paragraph to Temporary Article 1) and Article 3 fo this Law will also be applied for these convicts.

Temporary Article 5 - In order that those who, according to chapter (g) of Article 25 of Law No 403 on Turkish Citizienship, lost their Turkish citizenship can benefit from the temporary provisions of this Law; there will be no condition for them entering the country within two years after the law has entered into force and their entry at the border will not be prevented.

Temporary Article 6 - Until special penal institutions have been built, pre-trial detaineed and convicts of terrorist crimes will be kept in other penal institutions.

Temporary Article 7 - The provision of Article 17 of this Law will be applied for those who commit crimes within the scope of this Law after this Law has entered into force.

Temporary Article 8 - The provisions of Article 21 of this Law will be applied beginning on the first day of the month following the entering into force of the Law for all those included in this Law since 1 January 1968.

Temporary Article 9 - The mobile and immobile property and the income from such property of Conferderations and Trade Unions affiliated to Confederations whose administration was handed over to an inspector by a court's decision prior to this Law entering into force and based on provisions lifted under Article 23 of this Law and all their monetary possessions will, according to Article 46 of Law No 2821 on Trade Unions, be handed over to the competent institution; the mobile and immobile property of associations and foundations will be handed over to the Treasury.

Provisions abolished

Article 23 -
a) Law No 2 on High Treason
b) Law No 6187 on the Protection of Freedom of Conscience and Meetings
c) Articles 140, 141, 142 and 163 of the Turkish Penal Code No 765

d) Article 5, chapter 7 and 8 and Article 6, chapter 2 of Law No 2908 on Associations
e) Law 2932 on "Publications in Languages other than Turkish"
are abolished

Entering into force
Article 24 - This Law will enter into force on the date of publication.

Implementation
Article 25 - This Law will be implemented by the Council of Ministers.

12 April 1991

PART 3

CONSEQUENCES OF CONVICTIONS AND MODE OF EXECUTION

31. Heavy imprisonment for more than five years disqualifies the convicted person from holding public office for life. Heavy imprisonment for three to five years disqualifies the convicted person from holding public office for a period equal to the sentence.

32. A sentence to twenty-four years' heavy imprisonment instead of punishment by death, under provisions of Article 59, requires the convicted person to be under police supervision for ten years.

33. Persons sentenced to more than five years' heavy imprisonment shall be civilly disqualified during the period of punishment and their property shall be administered in accordance with the provisions of the Civil Code regarding civil disqualification. The court may deprive such persons of paternal rights and the legal rights of a husband, during the period of punishment.

34. If a final conviction for a felony entails loss of the qualification to be elected to a political office or requires disqualification to hold public office, it also requires removal from such membership or service.

35. Except in cases where it is otherwise provided by law, sentences resulting from offenses committed by misusing an official title, or profession, or trade, the performance of which is subject to official license or certificate, shall also entail a disqualification to hold public office or perform a profession or trade, for a period equal to the conviction period, or equal to the period of imprisonment which should be imposed in case of non-payment of a fine. However, the maximum duration of these periods may not exceed periods indicated in Articles 20 and 25.

Law determines the cases in which the exercise of other professions and trades shall be prohibited.

36. In case of conviction, articles used or prepared to be used

in the commission of the felony or misdemeanor, or produced as a result of the commission of the act, will be seized and confiscated, if they belong to parties involved in the act.

Articles, the use, manufacture, carrying, keeping or sale of which constitutes a felony or misdemeanor, will be seized and confiscated even if a criminal conviction did not exist, or if they did not belong to the offender.

Weapons which may not be lawfully carried without license shall be seized and confiscated.

37. Conviction of an offender does not prejudice the right of those aggrieved by the offense from bringing an action for compensation for their damages or for restitution of their property.

38. In the event the offense has injured a person's or a family's reputation, the court, apart from restitution of property and compensation for damages, may decide, upon the request of the victim, for the payment of a sum to compensate for mental anguish, even if no material damages have resulted.

39. Court expenses are paid by the convict.

Persons who have been convicted of a felony or misdemeanor are responsible as joint sureties for the restitution of property, compensation for material damages, mental anguish, and payment of court expenses.

If several persons are convicted of various offenses by the same judgment, the responsibility of each one shall be restricted to his act which resulted in their joint conviction.

40. The period of detention imposed before conviction becomes final shall be deducted from the period of imprisonment.

If the offender is sentenced to banishment, one day's detention shall constitute a substitute for three days' banishment.

If the offender is sentenced to payment of a fine, a deduction for the detention period shall be made in accordance with the provisions of Article 19.

41. The punishment of disqualification to hold public office, or to perform a profession or trade, except as to the provisions regarding judgments by default, begins to run on the date the judgment becomes final.

TURKISH PENAL CODE

PART I

FELONIES AGAINST THE STATE

Chapter I

FELONIES INVOLVING INTERNATIONAL RELATIONS OF THE STATE

125. Whoever commits an act intended to put the entire or a part of the territory of the State under the sovereignty of a foreign State or to decrease the independence or to disrupt the union of the State or to separate a part of its territory from the Administration of the State, shall be punished by penalty of death.

126. A Turkish citizen who uses arms against the State or takes service in the forces of a State which is in war against Turkey, shall be punished by heavy imprisonment for life. A Turkish citizen who commands or conducts the forces of a foreign State, shall be punished by penalty of death.

A person who, when in the territory of a foreign country during a war, had to commit the aforementioned act by necessity of performing an obligation imposed by the law of that country, shall not be punished.

Those losing Turkish citizenship under provisions of this Part are also considered as Turkish citizens.

Political groups which are accepted as belligerents, even if they are not recognized as a State by Turkey, are considered as States in war against Turkey.

127. Whoever makes an agreement with a foreigner to bring about a foreign country's levying war or taking hostile actions against Turkey or conducts actions to serve the same purpose, shall be punished by heavy imprisonment for not less than ten years.

If war results, the death sentence shall be imposed. If only hostile actions occur, life imprisonment shall be given.

Whoever makes an agreement with a foreigner in order to compel Turkey to declare or maintain her neutrality or to declare war, shall be punished by heavy imprisonment for five to ten years.

If this agreement is made for the purpose of creating propaganda through the press, the punishment to be imposed shall be increased by not more than one third.

A Turkish citizen who receives, even indirectly, for himself or for other persons, money, or any other benefit, or promise of benefit, for acting against national interests, shall be, where his act does not call for a heavier punishment, punished by heavy imprisonment for three to ten years and fined from 500 to 2,000 liras.

The same punishment shall be applied to a foreigner giving money or procuring or promising other benefit.

In the following cases the punishment shall be increased by not less than one third:

1. if the act is done during a war;

2. if money or benefit was given or promised for making propaganda through the press.

128. Whoever recruits soldiers or performs hostile acts against any other State without the approval of the Turkish Government so as to expose the Turkish State to the danger of war, shall be punished by heavy imprisonment for five to twelve years. If war is declared, he shall be imprisoned for life.

Where the hostile acts are of a nature to violate only the good relations between Turkey and a foreign government or to expose Turkey or Turkish citizens to acts of reprisal, the punishment to be imposed shall be heavy imprisonment for two to eight years.

If diplomatic relations are broken off or reprisals occur, the punishment to be imposed shall be heavy imprisonment for three to ten years.

129. Whoever collaborates, during time of war, with a foreigner for the purpose of facilitating military operations of the enemy or harming military operations of Turkey, or commits acts to this effect, shall be punished by heavy imprisonment for not less than ten years. If the purpose is accomplished, the death sentence shall be imposed.

Whoever delivers to the enemy in time of war even indirectly, foodstuffs or other items which may be used against the interests of the Turkish State, shall be punished by heavy imprisonment for not less than five years.

Whoever, in time of war, participates in loans or payments made in favor of the enemy or facilitates the procedures related thereto, shall be punished by heavy imprisonment for not less than five years.

A Turkish citizen or a foreigner residing in Turkey, who, in time of war and in cases other than those mentioned in the second paragraph, trades even indirectly with citizens of hostile States, wherever the latter may be, or with other persons residing in the territory of a hostile State, shall be punished by heavy imprisonment for two to ten years and by a heavy fine of not less than 1,000 liras and five times the value of the subject merchandise.

The provisions of the second and third paragraphs shall not be applied to foreigners who commit acts mentioned therein outside of Turkey.

130. Whoever fails, in time of war, to fulfill, partially or entirely, his commitments to a Government office or to a public or any other institution performing public services, to render services or deliver goods for the requirements of the Armed Forces or of the public, shall be punished by heavy imprisonment for three to twelve years and fined a sum not less than 1,000 liras and equal to three times the value of the committed services or goods.

If the entire or partial non-performance of the commitment has resulted from negligence, the punishment shall be reduced by not more than one half.

The same provisions shall be applied to the sub-contractors, brokers or the representatives of contractors who have caused the non-performance of the commitment.

Whoever uses fraud in the fulfillment of the above commitments in time of war shall be punished by heavy imprisonment for not less than ten years and by fine of not less than 1,000 liras and equal to five times the value of the committed services.

131. Whoever entirely or partially destroys or renders useless, even if temporarily, vessels, air-transports, transportations, roads, institutions, and depots belonging to the military or assigned to military requirements or other military installations—even if their construction is not completed—shall be punished by heavy imprisonment for not less than eight years.

The death sentence shall be imposed in the following cases:

1. where the act is committed for the benefit of a State which is at war with Turkey; or,
2. where the act has jeopardized the war preparations or war power and capabilities or military operations of the State.

If the act has occurred or has been facilitated as a result of the negligence of the person possessing or in charge of the safe-keeping or supervision of the above said vehicles or installations such persons shall be punished by heavy imprisonment for one to five years.

132. Whoever, partially or entirely, destroys or annihilates or forges or uses for a purpose other than that for which they are designated, or takes by fraud, or steals, papers or documents connected with the security or internal or international policy of the State, shall be punished by heavy imprisonment for not less than eight years.

Whoever obtains information which should be kept in secrecy for the security of the State, shall be punished by heavy imprisonment for three to ten years. Information contained in government transactions not published for purposes of national or international policy are also included in the information which, according to this part of the Code, should be kept in secrecy for the benefit of the State.

Whoever obtains information, publication or dissemination of which is prohibited by appropriate authorities, shall be punished by heavy imprisonment for two to eight years.

If the above acts have exposed to danger the war preparations or war power or capabilities or military operations of the State, the death sentence shall be imposed.

133. Whoever obtains, with the intent of political or military spying, information which is to be kept in secrecy for the security or internal or international political benefits of the State, shall be punished by heavy imprisonment for not less than fifteen years.

In the following cases the death sentence shall be imposed:

1. where the act is committed for the benefit of a State engaged in war against Turkey;
2. where the act has jeopardized war preparations or war

power or war capability or military operations of the State.

Whoever obtains, with the intent of political or military spying, information, the publication or dissemination of which is prohibited by appropriate authorities, shall be punished by heavy imprisonment for not less than ten years.

Where the act, prescribed in the foregoing paragraph, is committed for the benefit of a State engaged in war against Turkey the offender shall be punished by heavy imprisonment for life.

If the act prescribed in the two foregoing paragraphs has jeopardized war preparations or war power or war capability or the military operations of the State, the death sentence shall be imposed.

Whoever obtains, with the intent of political or military spying, information kept in secrecy for the security or internal or international political benefits of a foreign State, for another foreign State, shall be punished by heavy imprisonment for not more than five years.

134. Where the commission of the crimes prescribed in Articles 132 and 133 has become possible, or facilitated as a result of the negligence of the person possessing the papers or documents or information, the offender shall be punished by heavy imprisonment for one to five years.

If the act; prescribed in the foregoing paragraph, has jeopardized war preparations or war power and war capability or the military operations of the State, heavy imprisonment for three to fifteen years shall be imposed.

Where the commission of the aforesaid offenses has become possible or facilitated as a result of the negligence of the person responsible for the protection and supervision of restricted places, or water, land or air areas, the offender shall be punished by the same punishment.

135. Whoever:

1. secretly or by ruse, enters into locations or areas of land, water, or air, where due to military reasons entrance is prohibited, or is

2. caught in possession of documents or of any other objects helpful in obtaining the information prescribed in paragraphs 2,

3 and 4 of Article 132, for possession of which good cause cannot be shown,

shall be punished by heavy imprisonment for one to five years.

Where the acts prescribed in the foregoing sub-paragraphs are committed in time of war, heavy imprisonment for three to ten years shall be imposed.

136. Those who disclose classified information prescribed in paragraphs 2, 3 and 4 of Article 132, shall be punished by heavy imprisonment for not less than five years.

If the act is committed in time of war or has jeopardized war preparations or war power and capability or military operations of the State, the punishment of heavy imprisonment shall not be for less than ten years.

If the offender has acted with the intent of political or military spying, he shall be punished, under the circumstances stated in paragraph 1 of this Article, by heavy life imprisonment; and under the circumstances stated in the second paragraph of this Article, by death.

The foregoing punishments shall also be imposed on persons actually obtaining the information prescribed in this Article.

If the act has occurred through the negligence of the offender, heavy imprisonment of six months to two years, under the conditions of paragraph 1, and heavy imprisonment of three to fifteen years, under the conditions of paragraph 2, shall be imposed.

137. Whoever discloses information, publication or dissemination of which is prohibited by proper authorities, shall be punished by heavy imprisonment for not less than three years.

If the act is committed in time of war or has jeopardized the war preparations or war power and capability or the military operations of the State, heavy imprisonment for not less than ten years shall be imposed.

In case the offender has acted with the intent of political or military spying, heavy imprisonment for not less than fifteen years, under the circumstances of paragraph 1 of this Article, and death, under the circumstances of the second paragraph of this Article, shall be imposed.

The aforesaid punishments are also applied to persons who actually obtain the information prescribed in this Article.

In case the act has occurred through the negligence of the

offender, heavy imprisonment for six months to two years, under the circumstances of paragraph 1, and heavy imprisonment for three to fifteen years under the circumstances of paragraph 2, shall be imposed.

138. A Government official or a person performing public service, who uses, for his or another person's benefit, the scientific discoveries or inventions or industrial developments which he has learned in the course of his duty or service, and which should be kept in secrecy for the security of the State, shall be punished by heavy imprisonment for not less than five years and shall be fined not less than 1,000 liras.

In case the act is committed in favor of a State engaged in war against Turkey or has jeopardized the war preparations or war power and capability or military operations of the State, the offender shall be punished by death.

If a person assigned by the Turkish State to perform governmental duties in a foreign country does not perform his duties with loyalty, and if it should be harmful to the national interests of Turkey, he shall be punished by heavy imprisonment for not less than five years.

Article 129 and the following Articles and Articles 153 and 161 are applicable also in the case where the offenses specified in those Articles are committed against a State allied or cooperating with Turkey in time of war.

Whoever, being informed that the crimes specified in the foregoing paragraphs would be committed by another, fails to inform the Government officials thereof, even if the offense does not go beyond the phase of attempt, shall be imprisoned for not less than six months.

139. Whoever maliciously violates the orders and decrees issued in time of war for the safety of the State, shall be punished by heavy imprisonment for one to six years.

140. A citizen who publishes in a foreign country, untrue, malicious or exaggerated rumors or news about the internal situation of the State, so as to injure its reputation or credit in foreign countries or who conducts activities harmful to national interests, shall be punished by heavy imprisonment for not less than five years.

141. 1. Whoever attempts to establish or establishes, or arranges or conducts and administers the activities of, societies in any way and under any name, or furnishes guidance in these respects, with the purpose of establishing domination of a social class over other social classes or exterminating a certain social class or overthrowing any of the established basic economic or social orders of the country, shall be punished by heavy imprisonment for eight to fifteen years.

Whoever conducts and administers some or all of such societies shall be punished by death;

2. whoever attempts to establish or establishes or arranges or conducts and administers the activities of, societies in any way and under any name, or furnishes guidance in these respects, with the purpose of totally exterminating the political and legal orders of the State, shall be punished by heavy imprisonment for eight to fifteen years;

3. whoever attempts to establish or establishes or arranges or conducts and administers the activities of, societies, or furnishes guidance in these respects, with the purpose, contrary to the principles of republicanism or democracy, of governing the State by one person or by a group of persons, shall be punished by heavy imprisonment for eight to fifteen years;

4. whoever attempts to establish or establishes or arranges or conducts and administers the activities of, societies, or furnishes guidance in these respects, the purpose of which societies is to abolish partially or entirely because of race, the civil rights provided by the constitution, or to exterminate or weaken nationalist feelings, shall be punished by heavy imprisonment for one to three years;

5. whoever joins the societies indicated in paragraphs 1, 2 and 3, shall be punished by heavy imprisonment for five to twelve years; and whoever joins the societies indicated in paragraph 4, shall be punished by imprisonment for six months to two years;

6. the punishment to be imposed on persons who commit the foregoing acts within government offices, municipalities, or within syndicates, schools, or among the officials, employees or members of such organizations, shall be increased by one third;

7. if any of the perpetrators of the crimes prescribed in this Article informs the respective authorities of the crime and identity of other perpetrators prior to the initiation of the final investigation and if his information is true, heavy imprisonment for not less than ten years instead of death shall be adjudged; and heavy imprisonment and imprisonment punishments shall be reduced by one fourth;

8. the societies mentioned in this Article are defined as two or more persons uniting for the same purpose.

142. 1. Whoever makes propaganda with the purpose of establishing the domination of one social class over others, exterminating any of the social classes, overthrowing any of the established basic economic or social orders of the country, or totally exterminating the political or legal orders of the State, shall be punished by heavy imprisonment for five to ten years;

2. whoever makes propaganda in any manner for the governing of the State, contrary to republicanism or to the principles of democracy, by one person or by a group of persons, shall be punished by the same punishment;

3. whoever makes propaganda directed to abolish partially or entirely civil rights, because of race, or to exterminate or weaken nationalist feelings, shall be punished by heavy imprisonment for one to three years;

4. whoever speaks favorably of the acts indicated in the foregoing paragraphs shall be punished, in those cases stated in paragraphs 1 and 2 by heavy imprisonment for not more than five years, and in those cases stated in paragraph 3, by heavy imprisonment for six months to two years;

5. the punishment for persons committing the acts prescribed in the foregoing paragraphs, in those organizations or among persons specified in paragraph 6 of Article 141, shall be increased by one third;

6. where the acts in the foregoing paragraphs are committed by means of publication, the punishment to be imposed shall be increased by one half;

7. if any of the participants of the crimes prescribed in this Article informs the proper authorities of the crime and the identity of other perpetrators prior to initiation of the final investigation, and his information is true, heavy imprisonment and imprisonment periods shall be reduced, depending upon the circumstances, by not more than one fourth.

143. Whoever establishes, organizes, regulates or conducts, without the permission of the Government, societies of international character or societies the headquarters of which are in foreign countries, shall be punished by imprisonment for fifteen days to six months and by a heavy fine of 500 to 2,000 liras.

If the perpetrator of the foregoing offense obtains such permission by means of a fraudulent or incomplete statement, he shall be imprisoned for one to five years and shall be fined by a heavy fine of not less than 1,000 liras.

Whoever participates in Turkey in societies or institutions or branches thereof organized without obtaining necessary permission, shall be fined by a heavy fine of 100 to 1,000 liras.

Turkish citizens residing in Turkey who participate, without permission of the Government, in societies or institutions located outside of Turkey, shall be punished by the foregoing punishment.

144. Turkish citizens who receive academic degrees or honors, titles or decorations or other honorary ranks or receive salaries or other benefits regarding the said degrees, honors, titles, decorations or ranks from a country engaged in war against Turkey, shall be punished by imprisonment for not more than one year.

145. Whoever, with the purpose of insult, removes from its place or tears or damages, or humiliates in any other manner, the Turkish flag or any other sovereign emblem of the State, shall be imprisoned for one to three years.

In the application of the Criminal Code, "Turkish Flag" is the official flag of the State or any other flag bearing national colors.

Whoever, with the purpose of insult, removes from its place or tears or damages, or humiliates in any other manner, the national colors on any object other than a flag, shall be punished by the foregoing punishment.

If the crime defined in this Article is committed in a foreign country by a Turkish citizen, the punishment shall be increased by not more than one third.

Chapter II

FELONIES AGAINST THE AUTHORITY OF THE STATE

146. Whoever attempts by force, to alter, modify, or abolish, in whole or in part, the Constitution of the Turkish Republic or to overthrow the Grand National Assembly organized by the said law or to prevent the Grand National Assembly from accomplishing its mission, shall be sentenced to death.

Whoever, in the manner or forms specified in Article 65, either solely or together with other persons incites people to commit these crimes, either by words or by writing or by actual conspiracy or by delivering speeches or putting up posters in public squares or streets or by making publications, even if these efforts do not go beyond the degree of attempts, shall be sentenced to death.

Accomplices to the crime specified in paragraph one, other than those specified in paragraph two, shall be punished by heavy imprisonment for not less than fifteen years and be disqualified to hold public office for life.

147. Whoever by force overthrows or prevents the performance of duty by the Council of Ministers of Turkey or incites others to commit the felonies specified herein, shall be sentenced to death.

148. Whoever, without the approval of the Government, enlists or arms Turkish citizens within Turkey, to be engaged in the services, or in favor of a foreigner, shall be punished by heavy imprisonment for three to six years.

The foregoing punishment shall be increased by not less than one third, if there are persons in actual military service or subject to military service among the persons enlisted or armed.

149. Whoever incites people to revolt against the Government by using arms or choking, burning or poison gases or explosives, or arms Turkish people against one another and incites them to kill one another, shall be punished by heavy imprisonment for not less than twenty years.

If, as a result of this incitement a revolt breaks out or people are killed, those who are responsible for the revolt or killings or who commanded the rebels shall be sentenced to death.

Persons who have only participated in the aforesaid felonies

shall be punished by heavy imprisonment for not less than six years.

Even if the arms or other objects specified in paragraph 1 were only stored at a place, the revolt shall be considered an armed revolt.

150. Whoever makes or invents or transports or prepares or imports from foreign countries into Turkey or conceals or carries arms, ammunition, knives, bombs or similar destructive or combustible or fatal instruments in order that a group of conspirators may accomplish its purpose, shall be punished by temporary heavy imprisonment.

151. Whoever learns about any of the crimes specified in the foregoing Articles, is required to inform the Government thereof immediately. Whoever fails to fulfill this obligation without a valid excuse shall be punished, if the conspiracy materializes into an overt act, by imprisonment for not less than one year; and if the conspiracy does not so materialize, by imprisonment for not less than six months.

Whoever knowingly brings conspirators into Turkey, through places other than certain locations, or transports conspirators from one place to another within Turkey, shall be punished by temporary heavy imprisonment.

152. Whoever, without an official status conferred by the Government, or without a valid reason, undertakes the command of a military unit or of the navy or of a war vessel, fort, harbor, or city; or disobeys, without a valid reason, a Government order to relinquish command and continues to assume command, shall be sentenced to death.

153. Whoever incites soldiers to disobey laws or to break their oaths, or to violate their military duties or other duties connected with their military profession or speaks in favor of and praises acts in violation of laws, of their oaths, or of discipline and of other military duties, shall be punished by heavy imprisonment for one to three years, provided his offense does not constitute a heavier felony.

Where the offense is committed overtly, the punishment to be given shall be heavy imprisonment for two to five years.

Where the offense is committed in time of war, the punishment shall be increased by not less than one third.

Where the offense is committed:

1. by means of the press or any other means of propaganda; or,

2. in public places or in places open to the public and in the presence of more than one person; or,

3. at a meeting which cannot be considered a private meeting because of the place of meeting or of the number of persons participating in the meeting or because of the subject or purpose of the meeting,

the offense, in the application of the Turkish Criminal Code, shall be considered as committed overtly.

The same provisions shall be applied to persons committing the above offenses against police forces.

154. Whoever is caught while prepared to publish, with the intention of conspiracy or with knowledge as to the contents, printed or unprinted pamphlets or documents, in order to incite people to commit the felonies defined in the foregoing Articles, shall be punished by imprisonment for one to three years.

155. Whoever, in circumstances other than those indicated in the foregoing Articles, publishes editorials to incite people to violate the laws of Turkey or endangers the security of the country, or makes publications or suggestions to cause unwillingness of the people to render military service or renders speeches to this effect in public meetings or in places where people have gathered, shall be imprisoned for two months to two years and shall be punished by a heavy fine of 25 to 200 liras.

156. Whoever assassinates or attempts to assassinate the President of Turkey, if, in the latter case the attempt is completed, shall be sentenced to death. If the attempt is incomplete, the sentence shall be life imprisonment.

157. Whoever, in cases other than those indicated in the foregoing Article, assaults the President of Turkey, shall be punished by heavy imprisonment for not less than five years, provided his offense does not involve a heavier punishment.

158. Whoever insults the President of Turkey in his presence, or engages in aggressive publication against the President of

Turkey, shall be punished by heavy imprisonment for not less than three years.

Whoever uses aggressive language against the President of Turkey in his absence, shall be imprisoned for one to three years.

Where the aggression is done by allusion or hint, without mentioning the name of the President of Turkey, if there is presumptive evidence beyond reasonable doubt that the aggression was directed toward the person of the President of Turkey, the aggression shall be considered as expressly made against the President.

Whoever acts indecently or disrespectfully toward, or whoever makes indecent or disrespectful publications about the office or the person of the President of Turkey, shall be punished by imprisonment for six months to three years.

159. Whoever overtly insults or vilifies the Turkish nation, the Republic, the Grand National Assembly, or the moral personality of the Government or the military or security forces of the State or the moral personality of judicial authorities, or overtly engages in aggressive acts which arouse suspicion about the legitimacy of the Grand National Assembly, shall be punished by imprisonment for one to six years.

If the name of the victim of the crimes specified in paragraph one is not explicitly mentioned, or if the words involving insult or aggression are not made explicit, in case there is undoubted presumptive evidence to the effect that one of the persons mentioned in paragraph one was insulted or degraded, it shall be treated as if the victim's name was explicitly mentioned and the words of insult, degradation or aggression were explicitly uttered.

Whoever overtly curses the laws of the Turkish Republic or the decisions of the Grand National Assembly, shall be punished by imprisonment for fifteen days to six months and by heavy fine of 30 to 100 liras.

Where the act of insult or vilification is committed in a foreign country by a Turk, the punishment shall be increased by not less than one third.

160. The authority to conduct a public prosecution against persons committing the offense prescribed in Article 157 and

against persons swearing overtly at the laws of the Turkish Republic or at the decisions of the Grand National Assembly, is vested in Public Prosecutors.

Initiation of a public prosecution for offenses prescribed in Article 158 and in paragraph one of Article 159, is subject to prior permission of the Ministry of Justice.

161. Whoever, in time of war, spreads or relates unfounded, exaggerated or intentional rumors or news in order to cause the excitement and unrest of the public or to demoralize the people or to decrease the resistance of the country against the enemy, or engages in activities harmful to national interests, shall be punished by heavy imprisonment for not less than five years.

If the above offense is committed:

1. by way of propaganda or by directing such acts to soldiers; or,

2. as a result of an understanding of the offender with a foreigner, the punishment shall be heavy imprisonment for not less than fifteen years.

Where the act is committed as a result of an understanding with the enemy, punishment shall be heavy imprisonment for life.

Whoever, in a manner to endanger the resistance of the nation against the enemy in time of war, engages in activities directed to weaken the circulation values of foreign exchanges or to affect the stock market, shall be punished by heavy imprisonment for not less than five years and by a heavy fine of not less than 3,000 liras.

If the above act is committed as a result of an understanding between the offender and a foreigner, the punishment shall be heavy imprisonment for not less than ten years; if it is committed as a result of an understanding between the offender and the enemy, the punishment shall be heavy imprisonment for not less than fifteen years.

Whoever, in time of peace, spreads or relates unfounded, exaggerated or intentional rumors or news so as to cause the excitement and unrest of the public, or engages in activities harmful to national interests, shall be punished by imprisonment

from six months to two years and shall be fined from 500 to 5,000 liras.

Initiation of a public prosecution concerning the foregoing felonies is not subject to prior permission and the trial thereof shall be held in general courts.

162. The conveying of a publication which is a felony by law, is an independent felony and its perpetrator is subject to the same punishment. Addition of a reservation that the contents of the publication have not been acknowledged or that the news is being related with precautions against its truth or that all responsibilities to arise were assumed by another person, shall not relieve the relator of news from responsibility.

163. Whoever, contrary to laicism, establishes, organizes, regulates or administers societies with the purpose of adapting, even partially, the basic social, economic, political or judicial orders of the State to religious principles and beliefs, shall be punished by heavy imprisonment for two to seven years.

Whoever becomes a member of such societies or urges others to become members of such societies, shall be punished by imprisonment for not less than six months.

Those who establish, organize, regulate or administer again under fictitious names or false appearance the societies mentioned above which have been ordered to be disbanded, shall be punished by the punishment prescribed in the foregoing paragraph increased by not less than one third.

Whoever, contrary to laicism, makes propaganda or suggestions with the purpose of adapting, even partially, the basic social, economic, political or judicial orders of the State to religious principles or beliefs, or with the purpose of obtaining political benefits or personal influences by making use of religion or religious sentiments or sacred things, shall be punished by heavy imprisonment for one to five years.

Where the above act is committed by means of publication, the punishment shall be increased by one third to one half.

In cases where taking into consideration the place of publication or means of publication or subject of publication, less harm is anticipated, the perpetrator shall be punished by imprisonment for six months to two years.

Chapter III

Felonies Against the Heads or Ambassadors of Foreign States

164. The punishment prescribed by law for a felony, shall be increased by one sixth to one third, where the felony is against the head of a foreign State.

In cases where conduct of a prosecution is subject to the filing of a complaint by the victim, a prosecution shall not be conducted unless requested by the foreign government.

165. Whoever, with the purpose of insulting, removes, tears or damages or otherwise humiliates, an officially masted flag or emblem of a foreign country, shall be punished by imprisonment for three months to one year. Institution of a prosecution is subject to the application of the government concerned.

166. Whoever commits a felony against ambassadors accredited to the Turkish Republic, because of their official title, shall be punished by the punishments prescribed by law for the same felonies committed against the Turkish Republic's officials because of their title.

Where the felony constitutes of defamation of character, the institution of a prosecution is subject to the written application of the defamed person.

167. Application of the provisions in this part of the Code is subject to the existence of the same rules in the law of the State of which the victim is a citizen.

Chapter IV

Joint Provisions Applicable to the Foregoing Chapters

168. Whoever establishes armed societies or bands or undertakes the duty of chieftain or command or any particular duty in such societies or bands, with the purpose of committing the felonies defined in Articles 125, 131, 146, 147, 149 and 156, shall be punished by heavy imprisonment for not less than ten years.

Other members of such society or band shall be punished by heavy imprisonment for five to ten years.

169. Whoever, in circumstances other than those prescribed in Articles 64 and 65, knowingly gives shelter, assistance, provisions, arms or ammunition to such a society or band or facilitates their actions shall be punished by heavy imprisonment for three to five years.

170. Whoever, prior to or after a warning made by the Government, disbands such a society or band or prevents the commission of the felony which the society or band aims at; or whoever, not having participated in the establishment of the society or band or undertaken a command therein, leaves the society or band by abandoning or delivering his arms prior to or after a warning of the Government, without any indication of resistance; or whoever after the search has been initiated facilitates the arrest of accomplices, shall not be punished.

171. Where two or more persons secretly conspire for the commission, by use of special means, of one or more of the felonies defined in Articles 125, 131, 133, 146, 147, 149 and 156, each of the accomplices shall be sentenced to the following punishments:

1. where the above indicated conspiracy is for the commission of the felonies defined in Articles 125, 131, 133 and 156, heavy imprisonment for eight to fifteen years shall be given.

2. where conspiracy is for the commission of the felonies defined in Articles 146 and 147, heavy imprisonment for four to twelve years and where it is for the commission of the felony defined in Article 149, heavy imprisonment for three to seven years shall be given.

Whoever withdraws from the conspiracy prior to the commission of the felony or the initiation of prosecution, shall not be punished.

172. Whoever, in circumstances other than those prescribed in Articles 64 and 65, overtly incites the people, in public squares or gathering places, to commit any one of the felonies defined in Articles 125, 131, 146, 147, 149 and 156, shall be punished if the act he incited is one of the felonies defined in Articles 125, 131 and 156, by heavy imprisonment for three to five years and if the act he incited is one of the felonies defined in Articles 146, 147 and 149, by heavy imprisonment for two to four years and in both cases shall be fined not less than 50 liras.

If the perpetrator has committed another felony during the commission of the crimes defined in Part 1 of this Code, the punishment resulting from the application of Article 78 shall be increased by one sixth.

173. Initiation of a prosecution for the felonies defined in paragraphs 3 and 4 of Article 127, paragraph 4 of Article 138 and Articles 128, 140, 143 and 161, is subject to permission of the Ministry of Justice.

In the application of the Turkish Criminal Code, the term "in time of war" covers actual hostilities without declaration of war, as well as the time of mobilization in the event war breaks.

The punishment of being put under police supervision shall be added to heavy imprisonment punishments prescribed for the felonies defined in Part 1, for a period of not less than one third and not more than the entire duration of such punishments.

The punishment to be imposed upon anybody who commits the foregoing crimes through publication shall be doubled.

Chapter II

Forming Societies with the Purpose of Committing Felonies

313. If five or more persons form a society with the purpose of committing felonies against the administration of justice or against public confidence or public welfare or public decency or marital institutions or persons or goods, each participant shall be punished by heavy imprisonment for not more than five years exclusively for forming such a society.

If the participants of this society wander on mountains, countryside or highways; or two or more of them carry arms on them or conceal arms at secure places, the punishment shall be heavy imprisonment for three to ten years.

The punishment for the instigators or leaders of the society, if any, shall be, in the event indicated in paragraph one, heavy imprisonment for three to eight years and in the event indicated in paragraph two, for five to twelve years. In addition to the punishment prescribed in this Article, the offender shall also be placed under police supervision.

314. Whoever knowingly and wilfully assists the participants of societies formed as indicated in the foregoing Article, through harboring the same or procuring food, arms and ammunition or in other manners, shall be imprisoned for not more than one year.

The foregoing punishment shall be reduced by one half to two thirds, for a person procuring food for or harboring relations who are descendants, ascendants, or his wife, husband, brother or sister.

315. The punishment to be imposed by application of Article 78, for felonies committed by all or some of the participants during the continuance or in compliance with the purposes of a society, shall be increased by one sixth to one third.

PART 6

CRIMES AGAINST PUBLIC CONFIDENCE

Chapter I

COUNTERFEITING OF MONEY, PUBLIC BONDS AND VALUABLE SEALS

316. Whoever,

1. counterfeits national money lawfully circulating in Turkey and money circulating in other countries in accordance with their laws;

2. makes an alteration on money to give it an appearance of greater value;

3. imports into Turkey or keeps in his possession or puts into circulation in any manner or mediates between a principal and the persons putting into circulation, counterfeited or altered money, through reaching an understanding with the counterfeiter or alterer or a mediator, provided that he has no participation in the act of counterfeiting or alteration;

4. purchases or obtains in any way from the counterfeiter or alterer or a mediator, the counterfeited or altered money with the purpose of putting it into circulation,

shall be punished by imprisonment for three to twelve years and a heavy fine of 1,000 to 10,000 liras.

The same provision is applied in the case of national gold ornament.

317. Whoever decreases the value of the money specified in the foregoing Article through alteration, or who, using such altered money, commits the offenses prescribed in paragraphs 3 and 4 of the foregoing Article, shall be punished by imprisonment for three to five years and a heavy fine from 500 to 1,000 liras.

318. Whoever imports into Turkey, purchases, accepts or keeps in his possession, counterfeited or altered money with the purpose of putting it into circulation or who puts such money into circulation in any manner, shall be punished, in instances other than

by its owner or wrongfully possessed by the offender, with the purpose of committing the offense or moving the stolen objects to another place; or,

3. larceny is committed in disguise; or,

4. larceny is committed by assuming an official title,

then the punishment shall be heavy imprisonment for three to eight years.

If the offenses specified in this Article are committed by more than two persons, or two or more of the conditions mentioned in the above paragraphs exist, the maximum punishment prescribed in the foregoing paragraph shall be given to the offender.

494. Whoever takes grain, crops or fruits left in the fields or on vines or trees after they have been harvested, but not yet completely stored in a building, shall be punished, upon the owner's complaint, by imprisonment for not more than one month or by a heavy fine of not more than 50 liras.

Chapter II

Plundering, Highway Robbery and Kidnapping

495. Whoever, by using force or violence or by threatening with great personal or material danger the possessor of personal property or any other person at the place of the offense, compels that person to give up the personal property or to keep silent while he, the perpetrator, takes possession of the same, shall be punished by heavy imprisonment for five to fifteen years.

Whoever, during or after plundering property, uses force or violence, or makes threats against the owner of the property or any person present at the place of the offense with the purpose of committing or completing the commission of the offense or taking away the property or saving himself or his accomplice from punishment, shall be given the same punishment as prescribed in the foregoing paragraph.

496. Whoever, by using force or violence or by threats of great personal danger or pecuniary loss, compels a person to deliver, sign or destroy a valid document so as to cause injury

to that or another person, shall be punished by heavy imprisonment for five to fifteen years.

497. If the felonies specified in the foregoing Articles are committed during the night or by threats with a weapon, the perpetrator shall be punished by heavy imprisonment for ten to fifteen years.

If these acts are committed by highway robbery or by more than two persons one of whom is apparently armed or by persons who are disguised, the duration of the heavy imprisonment shall not be less than twenty years.

498. Whoever, by threatening in any way with great harm to life, chastity or property or by showing a false government order, compels a person to send or put in a certain place or secure to the possession of the offender money or property or legally valid notes, shall be punished by heavy imprisonment for eight to fifteen years.

499. Whoever, with the intent of securing money, properties or a valid document, detains or takes to the mountain or to a solitary place, a person, shall be punished by heavy imprisonment for ten to fifteen years, if he could not attain his purpose. In case he attained his purpose, the maximum punishment shall be given.

500. Whoever, without previously informing the government, conveys written or oral correspondence, except in the cases specified in Articles 64 and 65, serving to secure the item which constitutes the purpose of kidnapping, shall be punished by heavy imprisonment for two to five years.

501. To cause a person, by any means, to lose consciousness or to become unable to defend himself, also constitutes force or violence when involved in larceny.

502. In the application of the Criminal Code night starts one hour after sunset and ends one hour before sunrise.