



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 15 April 2002 (05.06)
(OR. nl)**

7838/02

CIREA 24

NOTE

from : Netherlands delegation

to : CIREA

Subject : Official general report on Turkey (January 2002)

Delegations will find attached the above report from the Netherlands delegation ¹.

¹ Translated into English only.
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Official general report on Turkey

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1. Introduction

This official general report considers the present situation in Turkey in so far as is relevant in assessing asylum applications by individuals from Turkey, including whether it is reasonable to repatriate rejected asylum seekers from Turkey. This report updates earlier official general reports on the situation in Turkey (most recently that of 4 April 2001) and the intervening official report of 13 December 2000 on Turkey and Kurdish asylum seekers. Military service in Turkey was dealt with in a separate official report (of 5 July 2001).

In producing this official report, use has been made of on-the-spot conversations and findings and of reports obtained from the Netherlands Embassy in Ankara and the Netherlands consulate general in Istanbul, which consulted a network of contacts for this purpose. Use has furthermore been made of documents from sources including the UN Economic and Social Council, the UNHCR, the European Commission, the Council of Europe, the German Foreign Ministry, the US State Department, the UK Home Office, Amnesty International, Human Rights Watch, the Turkish human rights organisations IHD, TIHV and Mazlum- Der and the Economist Intelligence Unit. Specialist literature and media reporting have also been drawn upon. Where non-confidential sources are referred to, the text is in many cases also based on confidential intelligence.

Section 2 depicts the domestic political and economic situation in Turkey. Section 2.4 looks more specifically at the situation in south-eastern Turkey and section 2.5 then gives an account of social and economic conditions.

Section 3 describes the human rights situation in Turkey. After considering legal safeguards and international conventions to which Turkey is a party, it outlines the scope for monitoring.

Section 3.3 goes on to describe the human rights situation proper, including information on religious minorities, while section 3.4 addresses the position of ethnic minorities and other specific groups.

Section 4 discusses internally displaced persons and minors. It further describes the UNHCR's viewpoint and the policy of other European countries.

Section 5 contains an overall summary.

2. Country information

2.1. Basic details

2.1.1. Country and people

Turkey covers an area of around 780 000 km² and has a population of about 67 million ¹, approximately 60% of whom live in urban areas. The largest conurbation is Istanbul, with a population of 10 million according to the 2000 census, other major cities in western Turkey being the capital, Ankara (3,5 million), Izmir (2,7 million) and Konya (1,7 million).

The main cities outside that region are Adana (just over 2 million), Gaziantep (1,2 million) and Diyarbakir (1 million). Those cities have seen strong population growth in the nineties, as a result of a drift away from the countryside.

Turkey has a multiethnic, multi-religious society. Ethnically and linguistically, in addition to Turks and Kurds, Turkey also includes small groups of Armenians, Greeks, Turkmens, Circassians, Laz, Bulgarians, Georgians and Arabs. The Kurds number around 13 million ².

Numerically, the main religious distinction is between Sunnis and Alevis. There are also about 100 000 Christians and around 2 000 Yazidis.

Turkey, a NATO member, has common borders with eight countries in the Balkans, the former Soviet Union and the Middle East ³. The region is marked by a number of political and religious developments with an impact on the situation in Turkey.

¹ Figures from the State Institute for Statistics based on the population census of 22 October 2000 as reported by the Turkish press agency Anatolia on 2 January 2002.

² Kurds are commonly estimated to make up roughly 20% of Turkey's population. That percentage may be arrived at in part by extrapolating from the past.

³ Bulgaria, Greece, Syria, Iraq, Iran, Georgia, Armenia and Azerbaijan.

2.1.2. History

After some 700 years as an Ottoman sultanate, on 29 October 1923 Turkey became a western-style republic, led by Mustafa Kemal, who came to be known by the surname Atatürk. The Treaty of Lausanne, concluded with the western powers (on 24 July 1923), recognised and guaranteed the independence, integrity and sovereignty of the Republic of Turkey ¹. The borders established in that treaty almost entirely match Turkey's present borders ². The treaty also includes safeguards for three (non-Islamic) minorities living in Turkey: the Jews, Greeks and Armenians.

Western-inspired reforms were carried out in the fledgling republic. Turkey's leaders at the time made a radical break with Islamic-based rule, officially separating religion and state. The Arabic alphabet was abolished and replaced by a Latin script specially adapted to Turkish. Islamic laws were superseded by legislation along European (e.g. Italian, French and Swiss) lines. Dress regarded as religious-based was banned and replaced by western dress. Women working in public service were not allowed to wear headscarves. Use of western technology was also encouraged, as was female emancipation.

The Turkish army, seeing itself as the guardian of the Turkish state, has up until the present kept a strict watch over full adherence to Atatürk's basic principles concerning the secular, unitary nature of the republic.

¹ As a result of that new treaty, the 1920 Treaty of Sèvres, reducing the Turkish state to less than half its present territory and ensuring a state of their own for Kurds and Armenians, among others, ceased to apply.

² The only exception being Hatay province (adjoining Syria), which did not become part of Turkey until 1939.

On 12 September 1980, a military coup took place, led by General Kenan Evren. The new regime managed to curb the political violence which had already been raging for about ten years, but at the cost of established democratic rights. The adoption of a new, far tougher constitution in a 1982 referendum was followed a year later by the restoration of civilian rule.

During the 1995 elections the pro-Islamic Refah Partisi (Welfare Party), led by Necmettin Erbakan, was returned as the largest party, with nearly 25% of the votes cast. On 25 June 1996 a coalition was formed between the Refah Partisi and the DYP (Dogru Yol Partisi - the True Path Party) led by Tansu Ciller, with an arrangement that the leaders of the two parties would each hold the post of Prime Minister in turn. The first turn fell to Erbakan, the Welfare Party leader, with the result that Turkey then had its first pro-Islamic Prime Minister.

Pro-Islamic government was not to last long. Not only did the coalition have to cope with a great deal of infighting, but the army also took a hand. Through the National Security Council ¹, in which it has a very large say, the army forced Prime Minister Erbakan to sign, on 28 February 1997, a memorandum containing recommendations designed to safeguard the secular nature of the Turkish state. While he signed it, Erbakan was not subsequently as prompt as the army leadership would have liked in implementing it. A growing number of members of parliament from the Welfare Party's DYP coalition partner responded by putting an end to their cooperation with Welfare, with the result that on 30 May 1997 the coalition lost its parliamentary majority and Erbakan tendered his resignation under pressure from the army.

At the elections on 18 April 1999 the DSP (Demokratik Sol Partisi – the Democratic Left Party) came first, with 22,1% of the votes. The ultra-nationalist MHP came a surprisingly strong second, with 18,1%. The FP (Fazilet Partisi – Virtue Party), a pro-Islamic party established immediately after the Welfare Party was banned in January 1998, took third place (15,2%). The other big parties lost votes.

¹ See Section 2.2.

Six weeks after the elections of 18 April 1999 following what were by Turkish standards protracted negotiations, agreement was reached on a new coalition, led by Prime Minister Ecevit, which, in addition to the DSP, was composed of the MHP and the ANAP (Anavatan Partisi – Motherland Party). Both the MHP and the ANAP provided a deputy prime minister. Despite various internal wrangling, the coalition has so far held together.

On 10 December 1999, at the Helsinki summit, the European Union finally confirmed Turkey to be a candidate for EU membership. There can be no opening of accession negotiations until Turkey fulfils the political criteria for membership, as established in Copenhagen in 1993. On 8 November 2000 the European Commission published reports ¹ assessing Turkey's progress in the light of the Copenhagen criteria. The EU summit in Nice in December 2000 approved an accession partnership listing specific targets to be met by Turkey in the short or medium term. In this way, Europe is increasingly making its mark on Turkish politics. On 19 March 2001, under the accession 2000 partnership, Turkey submitted its national programme, stating what it means to do over the years ahead in order to fulfil the conditions ².

On 5 May 2000, after three rounds of voting in parliament, Ahmet Necdet Sezer, the 58-year old head of the Constitutional Court, was elected as Turkey's tenth President. Up to then, Sezer had never taken any active part in politics. In his position as head of the Constitutional Court, he had issued strongly worded calls for respect for human rights and for constitutional reform. Sezer was sworn in on 16 May 2000, since when he has already crossed swords with the government on a number of occasions, refusing to sign certain decisions which he considered unconstitutional.

¹ *Turkey 2000 Regular Report from the Commission on Turkey's Progress Towards Accession*, European Commission (8 November 2000) and *Turkey 2001 Regular Report from the Commission on Turkey's Progress Towards Accession*, European Commission (13 November 2000).

² *Avrupa Birliği Müktesebatının üstlenmesine ilişkin Türkiye Ulusal Programı* (Turkish national programme for the adoption of the European Union acquis (19 March 2001), also published in English.

Conflict with the PKK

The longstanding conflict between the PKK and the Turkish armed forces forms a very important factor in Turkey's recent history, having a noticeable impact right up to the present.

The PKK, standing for *Partiya Karkerên Kurdistan* (Kurdish Workers' Party), was founded by Abdullah Öcalan in 1978 with the aim of establishing an independent, socialist Kurdish state. The PKK was the only Kurdish organisation able to remain in operation after the military coup in 1980. Its leader, Öcalan, then settled in Damascus, from where he ran the PKK up to the end of 1998 with the Syrian authorities' knowledge and approval.

The PKK's armed operations in south-eastern Turkey, starting in 1984 and peaking from 1990 to 1994, involved attacks on civilian (in many cases Kurdish) and military targets, causing around 30 000 deaths. The PKK was guilty of atrocities, including murders, especially in rural parts of the south-east but also in other areas. The victims were mainly *jandarma*¹ officers, mayors, teachers, imams, village guards and their families, reluctant recruits, young villagers refusing to fight for the PKK and (former) PKK members acting as informers for the Turkish authorities.

The PKK attempted to make the south-east ungovernable, by systematically destroying economic and social infrastructure, etc. and by deliberately polarising the local population. Many village schools were closed down, not least as a result of the PKK's policy, up until 1996, of killing schoolteachers². No more schools are being closed at present and, according to the Turkish authorities' figures, the number of schools that are still closed has dropped from more than 2000 in 1998 to 78 in December 2001³.

¹ Re the *jandarma*, see section 2.2.2.

² *Human Rights Reports for 1999: Turkey*, US State Department (24 February 2000).

³ *Zaman* newspaper, 18 December 2001.

In order to cut off the PKK's roots and hamper supplies to PKK guerrillas in the mountains, numerous villages in south-eastern Turkey were cleared of their inhabitants and burned down by the armed forces, compelling many families from the region to resettle elsewhere in Turkey¹. From the outset, the Turkish army took tough action against the PKK. The combat against the PKK was often also accompanied by various other kinds of human rights violations by the security forces.

According to information from the Turkish authorities², a total of just over 23 000 PKK fighters and around 5 000 members of the armed forces and security forces have been killed since 1987 in the conflict with the PKK. Just over 4 400 civilians in all are reported to have been killed. The injured number just over 11 000 for the armed forces and security forces and around 5 400 civilians. No figures are given for injured PKK fighters.

The transfer of the PKK leader, Öcalan, to Turkey from Kenya in February 1999 dealt the PKK a severe blow, however, with ensuing demonstrations, hunger strikes and some actual or attempted attacks by PKK fighters in places such as Istanbul.

¹ See section 4.2.

² Details given on the state-of-emergency region super-governor's website (www.ohal.gov.tr) as at 31 January 2001.

On 29 June 1999 Abdullah Öcalan was sentenced to death, for high treason, by Ankara State Security Court in his trial on the island of İmralı. The Court of Appeal, which for all death sentences is automatically required to review the lower court's judgment, upheld the death sentence on Öcalan on 25 November 1999. The judgment had then still to be confirmed by parliament. Öcalan's lawyers stated that they would be appealing to the European Court of Human Rights against the judgment. The Turkish coalition partners agreed not to enforce the death sentence before the ECHR had given a ruling. The European Court held a preliminary hearing in the Öcalan case in November 2000. It found the case to be admissible and stated that it should be taken up for consideration. At the sitting on 28 September 2001 Öcalan's lawyers submitted their views in writing to the court. The Turkish authorities were given a deadline to react in writing ¹.

Öcalan is being held in a prison on the island of İmralı in the Sea of Marmara, where he is the only inmate. On 2 March 1999 the Council of Europe Committee for the Prevention of Torture visited the prison ². In November 2001 the pro-Kurdish daily Yedinci Gündem published photographs of Öcalan in his cell and in the exercise yard. According to the newspaper article he is locked up in a 6 square-metre cell, allowed a one-hour daily exercise session and permitted to talk to his lawyers and family members once a week ³.

There is still a second case pending against Öcalan, in which he stands charged, along with a hundred other defendants, of offences committed before the 1980 coup, with another death sentence sought against him. At the sitting on 30 October 2001 the case was adjourned until 24 December 2001 ⁴. Here too the sitting was adjourned and no judgment has been pronounced.

¹ Yedinci Gündem daily newspaper, 29 September 2001.

² For the Committee's findings see page 25 of the official general report on Turkey dated 4 May 2001, which includes a brief account of the *Report to the Turkish Government on the Visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 February to 3 March 1999*, Council of Europe (7 December 2000).

³ Yedinci Gündem, 10 November 2001. Can also be found on internet: www.yedincigundem.com/news.asp?id=6390.

⁴ Yedinci Gündem, 1 November 2001.

2.2. System of government

2.2.1. Legislature

Parliament

Legislative powers are exercised by the unicameral, 550-member parliament, its members being directly elected for a five-year term. Members of parliament may represent a political party or sit as independents. At least 20 seats are required in order to form a parliamentary group. The present breakdown of seats is as follows : DSP: 130; MHP: 127; DYP: 85, ANAP: 79; AK Partisi: 53, SP: 48, independents: 16; vacant: 12 ¹.

One of parliament's main tasks is to enact legislation by debating, amending and passing bills. Once adopted, a law has to be signed by the President within a fortnight. The President is entitled to refer back - unratified - to parliament a law submitted to him. If parliament again approves the law in unchanged form, the President must still sign it. Such a case did arise in late 2000 over the controversial amnesty law ².

Another of parliament's duties is scrutiny of the Council of Ministers. It has various means to this end, such as putting parliamentary questions or, as a last resort, overthrowing the government by means of a no-confidence motion backed by a parliamentary majority. Parliament has lastly to approve the annual budget, rejection of which counts as a motion of no confidence.

¹ Turkish press agency Anatolia, 9 January 2002

² On the amnesty law, see section 3.3.6.

Political parties

Turkey has over 20 political parties, many of which are of little significance and obtained less than 1% of the votes in the April 1999 elections. The party political scene is very fluid, with parties continually being set up and often quietly dissolved again. Members of parliament do not always show any very strong party attachment and it is not uncommon for members to switch parties. In many cases, provinces' representatives in parliament are thus often voted for by electors on account of their personal qualities rather than their party membership.

Parties in parliament

The six parties represented in parliament at present are, in order of size:

the DSP (Demokratik Sol Partisi – Democratic Left Party), led by the Prime Minister, Bülent Ecevit, with his wife, Rahsan Ecevit, as deputy leader; a nationalist-leaning social democratic party established on 14 November 1985 as a breakaway from Atatürk's CHP;

the MHP (Milliyetçi Hareket Partisi – Nationalist Action Party), led by Devlet Bahçeli; an extreme nationalist party established on 24 January 1992. The party has recently been attempting to move somewhat more towards the centre, but is still often associated with the "Grey Wolves";

the DYP (Doğru Yol Partisi – True Path Party), led by former Prime Minister Tansu Çiller; a conservative party established on 23 June 1983, engaged in constant rivalry with the ANAP, which shares virtually the same target electorate;

the ANAP (Anavatan Partisi – Motherland Party), led by Mesut Yılmaz; a liberal conservative party established on 20 May 1983, which enjoys extensive support among major industrialists.

The AKP (Adalet ve Kalkınma Partisi – Justice and Development Party ¹), led by Tayyip Erdoğan and set up in August 2001 immediately after the ban on the Islamic FP (Fazilet Partisi – Virtue Party). Following the ban the more reform-minded wing of the FP went over to the AK Partisi. On 9 January 2002 the Constitutional Court ruled that Erdoğan was not electable to parliament on account of a previous conviction ².

The SP (Saadet Partisi –Happiness Party), led by Recai Kutan. As in the case of the AKP, the SP was set up after the FP was disbanded. The more conservative former FP parliamentarians can be found in the SP.

Opinion polls held in October 2001 indicated that if fresh elections were held, none of the three governmental parties (DSP, MHP and ANAP) would obtain more than ten per cent of the votes ³ and that they would therefore remain below the voting threshold and would not be returned to parliament (see below).

Parties outside parliament

The Turkish electoral system involves a 10% threshold, which has prevented some parties with a reasonable share of the votes from gaining any seats in parliament. The following parties (in order of size) are not represented in parliament:

the CHP (Cumhuriyet Halk Partisi – Republican People's Party), led by Deniz Baykal; a social democratic party established on 9 September 1992 as a successor to the 1923 party of the same name, it sets great store by Atatürk's principles. Its predecessor was founded under the same name in 1923 by Atatürk himself as Turkey's first political party;

¹ The word AK means "white" in Turkish. This indicates having clean hands and being untainted by corruption.

² See section 2.2.1.

³ *Turkey. Country Report October 2001*. The Economist Intelligence Unit (October 2001), p. 15.

the HADEP (Halkın Demokrasi Partisi – People's Democracy Party), led by Murat Bozlak; a left-leaning pro-Kurdish party established in May 1994 as a successor to the previously banned HEP, DEP and ÖZDEP ¹.

The other parties all won less than 2% of the votes in the last general election: BBP, ÖDP, ATP, İP, DBP, DEPAR, EMEP, DTP, LDP, BP, MP, SİP, YDH, YDP, DKP, YP, DP and AP.

2.2.2. Executive

President

The President is elected by parliament, acting on a proposal by at least one fifth of its members, for a non-renewable seven-year term of office. Since 2000, parliament has been discussing a constitutional amendment for a five-year term, renewable for a further five years.

Under the Turkish system of government, the President enjoys extensive powers, being able to withhold his signature from a law, convene parliament as he sees fit and make appointments to a number of senior judiciary posts. The present President, Ahmet Necdet Sezer, has repeatedly stated that he considers those powers too far-reaching. This subject is still under discussion within the coalition.

Council of Ministers

The Council of Ministers consists of the Prime Minister, the departmental ministers and some fifteen junior ministers. The Prime Minister is always drawn from parliament, being designated by the President after elections. The other ministers are appointed by the President, acting on proposals from the Prime Minister. The entire government then has also to secure a vote of confidence in parliament.

¹ See section 1.3.2.

The Turkish Council of Ministers has had some of parliament's legislative powers delegated to it. The peculiarity of those powers in Turkey, however, is that in this way the government can even amend or repeal existing laws, by means of a "decree having force of law" (in Turkish: Kanun Hükmünde Kararname, often abbreviated to KHK). Those decrees do still ultimately have to be signed by the President. On a few occasions in 2000, President Sezer referred such a KHK back to the government, without signing it, stating that the matters in question should be dealt with by parliament in a proper law ¹.

Local government

Turkey is divided into 81 provinces (*il*), each headed by a provincial governor (*vali*). Provinces are subdivided into districts (*ilçe*), administered by a district governor (*kaymakam*). Districts may be further broken down into subdistricts (*bucak*). Governors are appointed for a number of years by the central authorities in Ankara, to which they are directly accountable via a chain of responsibility extending from district governor to provincial governor and on to the central authorities in Ankara. The role of governors is to represent the central authorities in the provinces. For the provinces in the state-of-emergency (OHAL) region as a whole, there is also a "super-governor" with very sweeping powers in that region ².

¹ One case involved provision for large-scale dismissal of pro-Islamic civil servants. See reports by Reuters, etc., in late August and early September 2000.

² See section 2.4.4.

Population records in Turkey are dealt with through the above structure, not at local authority level as in the Netherlands. Each district has a population registry, also known as the population office, ultimately coming under the Ministry of the Interior, where all the district's inhabitants are supposed to be registered. In practice, many people are entered in the population register for their place of birth or even their parents' place of birth. Since 28 October 2000 all citizens have had their own single, nationally registered, inalterable eleven-digit identity number ¹ Population registers do *not* include details of addresses. Limited records of addresses are kept by village or neighbourhood heads.

The population registry also has responsibility for issue of identity cards (in Turkish: nüfus cüzdanı), often referred to in other languages too as nüfus cards. The nüfus card is the only valid domestic identity document, with everyone required to carry it at all times. Births have to be reported to the population registry for the place of birth without delay, so that a nüfus card can be issued straight away.

In addition to centrally administered bodies, there are also decentralised authorities directly elected by the population, the main ones being the mayor and municipal council for a municipality (*belediye*) and the village or neighbourhood head (*muhtar*).

Every locality ² with over 2 000 inhabitants is entitled to elect a mayor and municipal council. The mayor enjoys limited powers in areas including infrastructure (public transport, water and gas supplies, etc.) and public works (parks and gardens, pavements, refuse collection, etc.). In some cases, mayors and provincial or district governors find themselves at odds with one another, with the former being more representative of local interests and the latter of central government interests.

¹ Turkey's Anatolia news agency, 24 October 2000.

² The same applies to areas within large cities.

Every village or neighbourhood has its own head, often known by the name "muhtar". The muhtar acts as an intermediary between the population and the authorities, being the sole keeper of address records. The only official document that a muhtar can issue is thus a residence certificate (*ikametgâh ilmühaberi*). In theory, anyone taking up residence in or leaving a particular neighbourhood or village is supposed to report this to the local muhtar. In practice, that is often not done, with the muhtar not being approached until a need arises for a certificate of residence somewhere.

Security forces

The various forces engaged in maintaining security are the police, the jandarma, the army and the village guards. There is also an intelligence service: the MIT (Milli İstihbarat Teskilati – National Intelligence Organisation).

The sphere of operation of the police, coming under the Ministry of the Interior, is confined to urban areas. For all cases involving political offences, with or without violence, each local police has a special anti-terror section (Terörle Mücadele Subesi). There are also mobile units, known in Turkish as *Çevik Kuvvet* (flying squad), to deal with demonstrations and disturbances of public order.

In the countryside, policing is performed by the *jandarma*¹, who take their orders from more than one source. For training and special duties, the *jandarma* come under the General Staff, for arms and equipment under the army and for security and public order under the Ministry of the Interior. Policing involves both maintaining law and order and investigating any offences committed. The *jandarma* are thus responsible for policing throughout 93,5% of Turkey². In addition to policing, the *jandarma* also have to combat smuggling, guard the outer perimeters of prisons and trace fugitives evading military service. Conscripts make up over 90% of their strength. The *jandarma* have their own intelligence service: the JITEM.

For the purposes of combating the PKK, the armed forces have some 200 000 troops stationed in the south-east, including highly trained commandos. There have also all along been special teams (Özel Tim, plural: Özel Timler), coming under the army, police or *jandarma*, involved in combating the PKK. Some 15 000 to 20 000 members of such teams, all of whom have volunteered upon completion of their national service, are heavily armed and specially trained in anti-guerrilla warfare³.

For auxiliary tasks and provision of information, the security forces have made extensive use of "village guards"⁴, recruited from among the local population.

¹ Also known as the gendarmes or gendarmerie.

² The Turkish armed forces' website: www.tsk.mil.tr/jandarma/gorev.html, as at 4 April 2001.

³ For a fuller description of the army, see also the official general report of 15 June 2000 on Turkey and military service, a new version of which was issued in summer 2001.

⁴ See section 3.4.7.

2.2.3. Judiciary

The organisation of the judiciary is constitutionally laid down. Turkey has civil courts, administrative courts and criminal courts, as well as special courts such as military courts and state security courts. From all courts, appeal lies to the Court of Appeal (in Turkish: Yargıtay). There are separate administrative court sections, against whose rulings an appeal may be lodged with the Council of State (in Turkish: Danıştay), which can uphold a judgment or overturn it and refer the case back to the original court. The Court of Appeal is the final tier, with no further legal remedy available against its judgments. Turkey also has a Constitutional Court.

Constitutional Court

The Turkish system includes a Constitutional Court to review the constitutionality of legislation. In recent years, legal principles laid down in various international human rights conventions have also been applied as a standard. In 2000 a law was annulled for failing to observe the principle of equality before the law, as enshrined in Article 10 of the constitution¹. Direct referral to the Constitutional Court is available to public institutions, governing parties and the main opposition party, but any member of the public may also raise a plea of unconstitutionality of a particular law in the course of judicial proceedings. In order for the matter actually to be referred to the Constitutional Court, the judge in those proceedings has to decide that referral is warranted. The Constitutional Court then as a first stage considers the admissibility of the complaint.

¹ On 21 September 2000 the Court struck down a law granting an amnesty to those guilty of certain offences. The amnesty required the offence to have been committed in the media. The Constitutional Court found that distinction to be unconstitutional.

Ordinary criminal courts

The nature and seriousness of any offence are key factors in determining which court has jurisdiction over it. Ordinary criminal offences are tried by three types of criminal courts ¹:

A local court for criminal cases (in Turkish: Sulh Ceza Mahkemesi), found in every provincial or district capital, consists of one judge and only tries offences carrying a fine or a short prison sentence.

A single-judge court for criminal cases (in Turkish: Asliye Ceza Mahkemesi), while officially consisting of a number of judges, in practice has only one.

A multiple-judge court for serious criminal cases (in Turkish: Ağır Ceza Mahkemesi), consisting of a presiding judge and two other members, has jurisdiction over offences carrying a maximum sentence of the death penalty, harsh-regime imprisonment or at least ten years' ordinary imprisonment.

State security courts

Jurisdiction over offences against overall state security lies with a state security court (in Turkish: Devlet Güvenlik Mahkemesi, or DGM for short). Under Article 143 of the Turkish constitution, these include: "offences against the indivisible integrity of the state with its territory and nation, the free democratic order or the republic whose characteristics are defined in the constitution and offences directly involving the internal and external security of the state ...".

¹ Erhan Günay, *Ceza Davalarında Usul ve Esaslar. Cumhuriyet Savcısı ve Ceza Hakiminin El Kitabı* (Trial Procedure and Basic Principles in Criminal Cases. Manual for Prosecutors and Judges) (Ankara, Seçkin Yayınevi, 1998), pp. 51-54 and 91.

The legal provisions coming within the state security courts' jurisdiction concern offences against the legal personality of the state, offences against "forces" of the state and some types of incitement to crime. They include, at any rate, Articles 125, 168 and 169 of the penal code and all articles of the anti-terrorism law ¹. Apart from that primary role, such courts also have jurisdiction over drugs-related offences, among others. On 15 November 2001 parliament passed a law removing the establishment of a criminal organisation for financial gain and the aiding and abetting of such organisations (Articles 313 and 314 of the penal code) from the state security courts' jurisdiction and transferring them to the ordinary criminal courts ². The bill was then referred back to parliament by President Sezer on the grounds that other courts also had a heavy caseload and the move would thus not bring any solution. After parliament re-submitted the bill to President Sezer unamended, he was legally required to sign it into law and duly did so.

State security courts consist of one presiding judge, two members and two alternate members. One of the judges in a state security court used always to be a military officer. This requirement was abolished on 18 June 1999, with the result that such courts now consist of civilian judges only.

State security courts are in principle governed by the same procedural rules as the ordinary criminal courts, save as otherwise explicitly stipulated in Law No 2845 on the establishment and rules of procedure of state security courts. The rules under that law restrict defendants' rights far more extensively than in the ordinary courts.

Turkey currently has eight state security courts, located in Adana, Ankara, Diyarbakır, Erzurum, İstanbul, İzmir, Malatya and Van ³. Before the law was amended on 13 November 1996, there were also state security courts in Erzincan, Kayseri and Konya, although those in Adana, Erzurum and Van had not yet been set up.

¹ Law No 3713 of 12 April 1991 on the prevention of terrorism.

² Turkish Daily News, 16 November 2001.

³ Article 1 of Law No 2845 of 16 June 1983 on the establishment and rules of procedure of state security courts.

Appeals in state security court cases lie to the ninth section of the Court of Appeal.

Since 1996, the time taken by criminal proceedings in single-judge courts for criminal cases, multiple-judge courts for serious criminal cases and state security courts, from the point at which cases come to court until the point at which judgment is handed down, has averaged 350 days ¹.

2.2.4. National Security Council

The National Security Council (in Turkish: Milli Güvenlik Kurulu, MGK for short) is an important body within the Turkish system of government and derives its rationale from Article 118 of the Turkish constitution, an article amended on 3 October 2001 ². Under the revised version of the article, the Council is composed of the President (who chairs it), the Prime Minister, the commander-in-chief of the armed forces, the Deputy Prime Ministers ³, the Ministers for Justice, for Defence, for the Interior and for Foreign Affairs and the commanders of the army, air force, navy and *jandarma* ⁴ (gendarmerie) respectively. The participation of the Deputy Prime Ministers and the Minister for Justice is a new feature under the constitutional amendment, leaving the MGK with more civilian (nine) than military members (five), instead of equal numbers of each as in the past. In January 2002 a bill was placed before parliament to put the amendment into practice in secondary legislation as well ⁵.

¹ Figures from the Turkish central judicial registry website (www.adli-sicil.gov.tr), as at 15 November 2001.

² On the package of constitutional amendments introduced on 3 October 2001, see section 2.3.3.

³ Of whom there were three in December 2001: the ANAP leader, Mesut Yılmaz, the MHP leader, Devlet Bahçeli, and a DSP member of parliament, Hüsamettin Özkan.

⁴ On the *jandarma*, see section 2.2.4.

⁵ Cumhuriyet newspaper, 25 January 2002.

If the subjects to be discussed at a Council meeting so require, others may also be invited to attend. As a rule, the National Security Council holds an ordinary meeting in the presidential palace at the end of each month. Extraordinary meetings may also be held as the situation dictates.

In accordance with the relevant article of the constitution, the task of the National Security Council is to "submit to the Council of Ministers its views on the advisory decisions that are taken and ensuring the necessary coordination with regard to the formulation, establishment and implementation of the national security policy of the state". Before the constitution was amended on 3 October 2001, the wording referred simply to "taking decisions" rather than "the advisory decisions that are taken". Even after that constitutional amendment, the very broad wording empowers the Council to extend its advisory role to virtually all affairs of state. In practice, the Council appears to have made very extensive use of this legal scope and thus had a say in almost all issues arising.

The article goes on to state that: "The Council of Ministers shall evaluate decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the state, the integrity and indivisibility of the country and the peace and security of society". Before the constitution was amended in October 2001, "evaluate" used to read " give priority consideration to". From this wording arose the practice that, when the Council of Ministers first met after a National Security Council meeting, government members would consider the subjects discussed at that meeting. It was also standard practice for the National Security Council's opinions to be endorsed in full by the government. Where a vote in parliament was required on an issue, too, the Council's opinion almost always resulted in the passing of an appropriate motion. It cannot as yet be ascertained whether the above constitutional changes will make any difference to that practice.

2.3. Political developments

2.3.1. Economic crisis ¹

In February 2001 Turkey was hit by the most serious economic crisis since it became a republic, sparked off by public disagreement between the President and the Prime Minister ². Within a short space of time, interest rates rocketed, share prices plummeted and, after being allowed to float freely, the Turkish lira lost almost 50% of its value against the US dollar. In April 2001 Kemal Derviş from the World Bank was appointed as a junior minister in charge of economic affairs. Under him, a recovery programme has been drawn up to put the Turkish economy back on an even keel. The programme includes wage restraint, restructuring of the banking industry and extensive privatisation.

Both the IMF and the World Bank promised financial aid totalling just over ten billion dollars, provided Derviş's programme is strictly adhered to. So far, Turkey has honoured its commitments to the IMF and the World Bank, with many necessary legislative amendments now having been introduced. The two institutions have thus in the meantime disbursed several billion dollars in loans to Turkey.

¹ On the social and economic situation, see also section 2.5.

² BBC News and Turkish Daily News, 20 February 2001, and Turkey's Anatolia news agency, 22 February 2001.

In his reform plans, involving many amendments to a raft of legislation, Derviş has on a number of occasions come up against reluctance or resistance on the part of the coalition. The nationalist MHP, in particular, strongly objected to various privatisations, as less state control of big business undermines the system of patronage widely practised throughout Turkey and especially deep-rooted in MHP circles. The MHP Minister for Transport and Communications, Enis Öksüz, for instance, attempted to thwart the privatisation of state-run Türk Telekom. Partly under pressure from the IMF and the World Bank; which deferred payment of promised loans, in July 2001 the government finally agreed to legislation opening the way for Türk Telekom's privatisation, and Öksüz was removed from office ¹. The junior minister in charge of privatisation, Yüksel Yalova of the ANAP, was also dismissed for standing in the way of Derviş's reform plans, after trying to block legislation reorganising the tobacco industry.

For a few months, the economic crisis and ensuing recovery programme monopolised Turkish politics, with many other items on the political agenda being left aside.

¹ Turkey's Hürriyet newspaper, 28 June 2001, Reuters, 29 June 2001, and Associated Press, 17 July 2001.

2.3.2. Prison conditions

According to the Minister for Justice, as at 23 May 2001, Turkey had 554 prisons: 513 closed institutions, 36 open prisons, one closed institution for women and children, one closed institution for young offenders and three "educational institutions" for juveniles. Prior to the amnesty in December 2001¹, the prisons had a population of 72 000, some 11 000 of them held for political offences and 3 000 of them minors. Around 40 people were in prison for offences of torture or maltreatment². As at 1 January 2002, according to the Turkish Minister for Justice, the prisons held a population of 56 616, including 8 461 convicted of "terrorist offences"³.

A traditional Turkish prison is made up of large dormitories with up to a hundred inmates. The outer perimeters of prisons are guarded by the *jandarma*, while surveillance in the corridors remains the responsibility of prison staff coming under the Ministry of Justice. The large number of prisoners per unit and the low level of supervision in the dormitories themselves have led to a state of virtual autonomy in these areas. On 21 April 2001 the President of the Council of Europe Parliamentary Assembly described the situation as follows: "the large collective dormitories in traditional prisons provide ideal conditions for parallel, self-organised and illegal prisoners' structures. These groups are based on absolute discipline, frequently maintained through ... intimidation."⁴

¹ On the amnesty, see also section 3.3.6.

² *Monthly Report of Human Rights in Turkey – January 2001*, Human Rights Foundation of Turkey Documentation Centre (January 2001), p. 38.

³ Turkey's Anatolia new agency, 2 January 2002.

⁴ Agence France Presse and Deutsche Presseagentur, 23 April 2001.

Political prisoners of the same persuasion are incarcerated together, so as to prevent conflicts between rival organisations or gangs. The daily programme, which is largely determined by the prisoners themselves, therefore usually includes a few hours' discussion of or instruction in the ideology of the group living in the dormitory. The degree of autonomy is illustrated by the fact that there are often items such as weapons or mobile 'phones to be found in cells. Internal disputes sometimes arise within a dormitory and have led to deaths and injuries in the past. In November 2000, for instance, there were five people killed and 20 wounded in a fight in Uşak prison ¹.

Physical conditions inside prisons are often very poor, with rooms overcrowded and sanitary facilities minimal. There is also in many cases a lack of proper medical care ². Prison staff are often poorly trained. There have frequently been riots in protest against such conditions, with fellow prisoners and prison staff taken hostage. In July 2000 there were 11 guards taken hostage at Bayrampaşa prison in Istanbul and in October 2001 over 40 prisoners taken hostage at that prison, while in the same month another 21 prisoners were taken hostage at a prison in Adana ³. In those cases the prisons were stormed by the *jandarma* and the uprisings crushed in what was often a heavy-handed manner.

¹ BBC News, 3 November 2000, and Turkish Daily News, 5 November 2000.

² *Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America. Report 2000 (Events of 1999)*, International Helsinki Federation of Human Rights (IHF) (2000), p. 51.

³ Associated Press, 5 July 2000, and Reuters, 23 October 2000.

In order to put an end to the situation described above and in implementation of Article 16 of the anti-terrorism law (under which those imprisoned for terrorist offences must be held in one or three-man cells and not allowed any contact with other prisoners), in 2000 the Turkish government began constructing cellular prisons, known as F-type prisons. In 1996, when the authorities were already contemplating cellular prisons, the Council of Europe Committee for the Prevention of Torture (CPT) also commented on the many drawbacks of the traditional dormitory system ¹.

Six F-type prisons have since been brought into operation: Sincan, Edirne, Kocaeli, Tekirdağ and the ones opened in Bolu and Izmir in mid-2001. The final touches are currently being put to five more prisons, including one in Diyarbakır, which are due to come on stream in mid-2002. In September 2001 the Turkish Minister for Justice announced that another fifty prisons would be converted into cellular ones, as well as new F-type prisons being built ².

¹ *Report to the Turkish Government on the Visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 23 August 1996 and Response of the Turkish Government*, Council of Europe (16 March 2001).

² *Monthly Report of Human Rights in Turkey – September 2001*, Human Rights Foundation of Turkey Documentation Centre (September 2001), p. 26.

Reservations regarding this type of prison have been voiced in various quarters from the outset. Human rights organisations, including Amnesty International ¹, Human Rights Watch ² and also the CPT ³, have expressed concern at the likelihood that prisoners will be held in isolated confinement, without any contact with others. There are fears, too, that the system will encourage torture, with monitoring made much more difficult under it. In the second half of 2000 and in 2001 repeated protests and demonstrations took place against the introduction of the system. Demonstrations were often brutally dispersed by the police. Turkish NGOs complain in particular of a lack of consultation with NGOs and staff associations regarding the design and construction of F-type prisons. They add that the aim of the cell system is not to improve conditions for detainees but to isolate those regarded as subversive elements.

Starting in October 2000, many prisoners went on hunger strike in protest at the introduction of F-type prisons. A number of prisoners threatened to starve themselves to death. In December 2000 the Minister for Justice, Mr Türk, agreed to postpone introduction of the system. However, the prisoners continued their campaign, demanding cast-iron guarantees.

¹ *Turkey: "F-type" prisons: Isolation and allegations of torture or ill-treatment (I)*, Amnesty International (20 April 2001).

² *Small Group Isolation in Turkish Prisons: an Avoidable Disaster*. Human Rights Watch (May 2000).

³ *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey from 16 to 24 July 2000*, Council of Europe (7 December 2000).

On 19 December 2000 the *jandarma* stormed the prisons in which the hunger strikers were being held. According to an official statement, the aim of the operation was to end the hunger strike. Thirty prisoners and two *jandarma* officers died during the various raids. According to the CPT, some of the deaths resulted from the excessive force used by the security forces, including arms and tear gas ¹. A press report published the contents of some forensic reports by the Turkish authorities, apparently coming to the same findings ². The CPT has found some of the deaths to have been caused by suicide rather than action by the security forces ³. In October 2001 the public prosecutor in Eyüp (Istanbul) brought criminal proceedings against 1 615 people on duty at the time of operations at Bayrampaşa prison, charging them with maltreatment and misfeasance ⁴.

Once the operations were over, despite earlier promises of postponement from the Minister for Justice, the transfer of prisoners to F-type prisons began immediately. In transferring them there, the authorities resorted to force ⁵. The Turkish authorities have confirmed that "there are convicts who had been injured during the operation and then transferred to the F-type prisons." ⁶.

¹ *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey in December 2000 and January 2001*, Council of Europe (16 March 2001).

² Radikal newspaper, 15 and 17 May 2001.

³ *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey in December 2000 and January 2001*, Council of Europe (16 March 2001).

⁴ *Monthly Report of Human Rights in Turkey – October 2001*, Human Rights Foundation of Turkey Documentation Centre (October 2001), p. 34.

⁵ *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey in December 2000 and January 2001*, Council of Europe (16 March 2001).

⁶ Quoted in *Turkey: "F-type" prisons: Isolation and allegations of torture or ill-treatment (I)*, Amnesty International (20 April 2001).

According to the Minister for Justice, most of the hunger strikers have now abandoned their campaign ¹. As at 14 January 2001, 46 people had died as a result of hunger strikes. Many of the hunger strikers had become so weak that they were discharged from prison early on medical grounds. In early November 2001 the number had risen to 300, many of them in a bad way. About 90% of those people have since accepted treatment and ceased their hunger strikes. In almost all cases, treatment is provided in privately run hospitals under TIHV auspices.

According to the press release by Amnesty International and HRW, prisoners in the new prisons appeared to remain in their cells for days on end without human contact and were regularly subjected to violence, with none of the prisoners transferred to F-type prisons having been let out of their cells for exercise. The CPT reports that, in the F-type prisons in Edirne, Kocaeli and Sincan, prisoners had access during daytime to the corridors leading to their cells, but there was no programme of activities ². A visit to the F-type prison in Sincan by Council of Europe rapporteurs revealed that, out of 340 prisoners, only 45 (all common criminals) participated in communal activities ³.

¹ Turkey's Anatolia news agency, 22 November 2001.

² *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey in December 2000 and January 2001*, Council of Europe (16 March 2001).

³ *Honouring of obligations and commitments by Turkey*, Council of Europe Parliamentary Assembly (13 June 2001), paragraph 127.

On 1 May 2001 parliament adopted an amendment to Article 16 of the anti-terrorism law, so as to allow prisoners to participate in communal sporting, educational and cultural activities ¹. Amnesty International and the Turkish human rights organisation IHD consider that the law does not go far enough ². According to official figures released on 13 November 2001, all F-type prisons have in the meantime been equipped with sports facilities and with libraries now actually containing books, in contrast to the previous situation, while Kocaeli and Tekirdağ prisoners reportedly now also have workshops. The same figures show the facilities to be used in particular by those in prison for ordinary criminal offences. According to official sources, those in prison for terrorist offences boycott such activities, on the orders of their organisations' leaders.

In June 2001 a law providing for local prison inspection committees was passed. So far as is known, however, that law had not been put into practice by the end of 2001 ³. On 18 May 2001 a law providing for the appointment of specialist magistrates to supervise enforcement of sentences was passed ⁴. Those magistrates' powers also include dealing with detainees' complaints about their treatment and conditions while in prison. Such a magistrate was already in place at a number of courts at the beginning of 2002.

¹ Associated Press, 1 May 2001.

² *Amnesty International concerns about proposed amendments to Anti-Terror Law*, Amnesty International press release, 27 April 2001.

³ On that law, see section 3.2.1 of this report.

⁴ Law No 4675 of 18 May 2001 on [sentence] enforcement magistrates.

2.3.3. Fazilet Partisi ban

The FP (Fazilet Partisi, or Virtue Party) was established on 23 February 1998 as a successor ¹ to the RP (Refah Partisi, or Welfare Party), dissolved by the Constitutional Court just over a month earlier for undermining the secular system of government. Like its RP predecessor, the FP is also an Islamic-based party.

On 7 May 1999 the public prosecutor at the Constitutional Court brought proceedings against the FP, seeking to have the party closed down on the grounds that it constituted a continuation of the banned RP and a focus of anti-secular activities ². A ban on any political activity by two of the party's members was subsequently sought ³.

On 22 June 2001 the Constitutional Court ruled that the Fazilet Partisi should be banned. The Court found that the party had indeed constituted a focus of anti-secular activities, as proved by a number of calls from its leaders for liberalisation of the wearing of the Islamic veil. Two of the party's members of parliament were removed from office and some of its other members, from outside parliament, debarred from politics for five years ⁴. The ban left the other ex-FP members of parliament unattached and they remained in parliament as independent members ⁵.

¹ Not officially as a successor, it being impossible in Turkey to establish a party as a successor to a banned party. The FP has thus always been at pains to try and avoid giving that impression.

² Cumhuriyet newspaper, 9 July 2000.

³ For a fuller account of the FP and the legal proceedings against it, see the official general report of 4 May 2001 on Turkey, section 2.3.1.

⁴ Turkey's Anatolia news agency and Turkish Daily News, 22 June 2001.

⁵ Turkey's Anatolia news agency, 22 June 2001, NRC Handelsblad, 23 June 2001, and Der Tagesspiegel, 24 June 2001.

The Constitutional Court ruling was condemned in various quarters. The Presidency of the Council of the European Union issued a declaration voicing its concern at the ruling, which according to the declaration has implications for democratic pluralism and freedom of expression in Turkey¹. The European Parliament also expressed its concern at the finding².

The ban brought to light the full extent of a pre-existing fault line running between conservatives and reformers within the former FP. On 20 July 2001 the conservative wing formed the SP (Saadet Partisi, or Felicity Party), led by Recai Kutan, who had also led the banned FP. Behind the scenes, former Prime Minister and RP leader Necmettin Erbakan wields considerable influence over the party. Having been debarred from politics for five years, Erbakan will not be allowed to hold political office again until 2003, although he has announced his intention of returning to politics³.

On 14 August 2001 the reformist members of parliament founded the AKP (Adalet ve Kalkınma Partisi, or Justice and Development Party)⁴, led by Tayyip Erdoğan, the former RP mayor of Istanbul⁵. By virtue of his conviction in 1999 for an offence under Article 312 of the penal code (incitement to religious hatred), he had been debarred from politics for life. In July 2001, however, the Constitutional Court ruled in another case involving someone covered by the December 2000 amnesty law⁶ that, having benefited from that law, he could also have the political ban lifted. On 9 January 2002, the Court nevertheless qualified its ruling by holding that Erdoğan cannot act as a founding member of the AKP or be elected to parliament.

¹ Declaration by the Presidency of the European Union of 26 June 1991.

² *European Parliament Resolution on the 2000 Regular Report from the Commission on Turkey's progress towards accession* (25 October 2001).

³ Turkey's Milliyet newspaper, 22 July 2001.

⁴ Also known as the AK Partisi, "ak" meaning white.

⁵ Turkey's Anatolia news agency, 14, 15 and 16 August 2001.

⁶ On this point, see section 3.3.6.

In its initial political pronouncements, the AKP was at pains to try and avoid openly pro-Islamic views and endeavoured to portray itself as a liberal centre party. Opponents nevertheless claim that points made by Erdoğan in the past, such as the impossibility of being at once secular and Muslim, show that his true intentions lie elsewhere and he does still advocate an Islamic state. On 27 August 2001 the AKP leader stated that he and his party's members did not plan to establish a state based on religious precepts ¹.

RP case at the European Court in Strasbourg

The FP's predecessor, the RP (Refah Partisi, or Welfare Party), was banned in 1998 on similar grounds, with its leader, Necmettin Erbakan, and seven other leading members debarred from politics for five years. The RP referred the ban to the European Court of Human Rights in Strasbourg, which gave judgment in the case on 31 July 2001.

The Court held that the ban on the RP did not infringe Article 11 (freedom of assembly and association) of the European Convention on Human Rights (ECHR). The Court found the RP to advocate the introduction of Islamic law (*shari'a*), finding proof of this in public statements by various party leaders and not in the party's rules, which do not include any such objective.

The Court held that a party advocating the introduction of Islamic law could hardly be regarded as an association living up to the democratic ideals underlying the ECHR as a whole ² and that the ban on the RP therefore came within the grounds in Article 11 of the ECHR for restricting freedom of assembly and association. The RP lodged an appeal against the Court's judgment, which the Court began hearing on 13 December 2001 ³.

¹ Turkey's Hürriyet newspaper, 27 August 2001.

² Judgment given by the European Court of Human Rights on 31 July 2001 in the case of Refah Partisi and others v. Turkey.

³ Milliyet newspaper, 14 December 2001.

2.3.4. Constitutional amendments

On 3 October 2001 the Turkish parliament passed a package of 34 amendments to the constitution. A parliamentary committee composed of representatives of all parties represented in parliament had proposed 37 such amendments, three of which fell in the second round of voting required in parliament. The first proposal not passed by parliament would have amended Article 76 of the constitution so as to allow those debarred from politics on account of a criminal record nevertheless to enter parliament. The second such amendment was to Article 83 of the constitution, to make it easier for parliamentary immunity to be waived. The third proposed amendment rejected by parliament was to Article 90, to give international law precedence over national legislation. That article needs to be adjusted in order to fulfil the political criteria for EU membership. According to President Sezer, it could still be adjusted at a later stage.

Having had the constitutional amendments submitted to him for approval, the President ratified 33 of the proposals passed, but withheld his agreement to an article providing for a pay increase for members of parliament. The 33 articles ratified by the President were published in the Turkish official gazette on 17 October 2001, thereby coming into force ¹. The article not ratified by the President was approved in an amended version in December 2001.

¹ Turkey's Türkiye newspaper, 18 October 2001.

In the preamble to the constitution, as a result of the amendments, the wording not allowing any "thoughts or opinions" to run counter to the underlying principles of the Turkish state has been replaced by "activity". Under the revised Article 13 of the constitution, fundamental rights and freedoms may be restricted "only by law and in conformity with the reasons mentioned in the relevant articles of the constitution, without infringing upon their essence. These restrictions shall not be in conflict with the letter and spirit of the constitution or the requirements of the democratic order of society and a secular republic and the principle of proportionality". The wording "without infringing upon their essence" comes from the 1961 constitution ¹, noted for being Turkey's most liberal constitution ever. At the time, the Constitutional Court built up a considerable body of case law on that wording, to which lawyers are now once again turning, following the constitutional amendment. The wording "democratic order of society" is based on the European Convention for the Protection of Human Rights and Fundamental Freedoms ². The present wording of Article 13 is less vague than the previous one and less open to broad interpretation. Article 14, on abuse of fundamental rights and freedoms, is also less vaguely worded than in the previous version.

The remaining amendments concern reduction of the length of pre-trial detention, prohibition of the use of languages other than Turkish, freedom of association and assembly, capital punishment, proscription of political parties, ratification of laws by the President, the position of the National Security Council and repeal of Provisional Article 15, allowing for constitutional review of laws introduced by the military junta from 1980 to 1983, such as the law governing political parties. Individual amendments will be discussed in this report in dealing with the topic in question (freedom of assembly, etc.).

In order to flesh out practical details of the constitutional amendments, adjustments to ordinary legislation will also be necessary in many cases. This is a far less laborious process than a constitutional amendment, since such adjustments need only a simple majority in one round of voting in parliament, in contrast to the qualified majority in two rounds of voting required for a constitutional amendment.

¹ Article 11 of the 1961 constitution, enacted under No 334 of 31 May 1961.

² Articles 8 to 11 of the ECHR.

In December 2001 a number of government officials announced that a package of amendments to secondary legislation would shortly be placed before parliament for approval. The package would include amendments to Articles 312 and 159 of the penal code and Article 8 of the anti-terrorism law, extensively used to punish free speech. It would also transpose the shorter detention period under the revised constitution into secondary legislation. The package was discussed by parliament's legal affairs committee in January 2002.

Should a legal case involve application of a law requiring adjustment as a result of the constitutional amendments but not yet adjusted, any party in the case may call for the constitutionality of the law applicable to be reviewed by the Constitutional Court ¹. This makes it possible to avoid application of an unadjusted law in its present form in a particular case. In January 2001 there were reports of individual cases in which the constitutionality of a law had been challenged on the basis of the revised constitution.

2.4. Security situation

The security situation in Turkey is affected by three main factors: the conflict between the security forces and the PKK; militant Marxist-Leninist groups; and armed radical Islamic movements. Turkey also faces considerable problems with drug smuggling and transit of refugees from countries including Iraq and Iran, as well as related organised crime. In south-eastern Turkey, the social fabric is such as to entail blood feuds and forms of traditional dispute settlement and rough justice. Kurdish clan customs result in frequent loss of life in vendettas, against which the local Turkish authorities cannot always provide effective protection.

¹ For an account of the procedure to be followed, see in section 2.2.3 the subsection on the Constitutional Court.

2.4.1. Conflict with the PKK

The longstanding conflict between the security forces and PKK fighters also caused many civilian casualties in the 1990s ¹.

The second half of 2001 brought a consolidation of the improved security situation and more peaceful conditions established since the PKK laid down its arms and largely withdrew its fighters from Turkey in late 1999. In urban areas of south-eastern Turkey, normal life is slowly resuming, with the return of peace and quiet also noticeable in rural areas. Normal life has still not entirely resumed in the countryside, however, as permission has in many cases not yet been given to return to evacuated villages ². Many highland pastures also still remain out of bounds to the region's inhabitants. A scaling down of the security forces' presence is clearly observable in the south-east. The number of checkpoints was further reduced in 2001, although many do still continue to operate.

The extent to which the heat has been taken out of the situation varies from province to province in the south-east, depending in part on the personality of each provincial governor. The atmosphere is least relaxed in Şırnak province, where some tension can still be felt. As this makes that province the odd man out, pro-Kurdish circles sometimes refer to it as "the Şırnak republic" ³.

¹ For an account, see in section 2.1.2 the subsection on the conflict with the PKK.

² On this point, see also section 4.1.

³ Yeni Gündem newspaper, 19 June 2000.

Isolated armed clashes between the Turkish armed forces and PKK fighters remaining in Turkey do still occur on a small scale. As the Council of Europe puts it, "... apart from occasional military action, large scale armed violence has stopped in south-eastern Turkey and ... notwithstanding the maintenance in four provinces of the state of emergency, the atmosphere has become less tense ..." ¹. A major clash took place in the Yedisu district of Bingöl province in May 2001, with about 20 PKK fighters killed². The pro-Kurdish media allege that the army used chemical weapons in that incident ³. According to the Turkish Minister for the Interior, a total of 71 PKK fighters and 19 members of the armed forces were killed during the first half of 2001 ⁴.

The number of civilian victims of sporadic hostilities between the armed forces and PKK fighters in 2001 cannot be established with any accuracy. In their accounts, the Turkish authorities class all victims not belonging to the Turkish armed forces as terrorists. In one case it transpired that the victims were not PKK fighters but two villagers (one aged 67) going to inspect their fields ⁵. The PKK has not since 1999 carried out any further terrorist operations causing civilian casualties.

¹ *Honouring of obligations and commitments by Turkey*, Council of Europe Parliamentary Assembly (13 June 2001), paragraph 181.

² Cumhuriyet newspaper, 24 May 2001.

³ Özgür Politika, 20 and 28 June 2001.

⁴ Human Rights Foundation of Turkey Documentation Centre, *Monthly Report of Human Rights in Turkey – July and August 2001* (August 2001), p. 17.

⁵ Cumhuriyet newspaper, 29 September 2001.

2.4.2. Hezbollah and other pro-Islamic groups

With a raid on a home in the Üsküdar area of Istanbul on 17 January 2000, the Turkish security forces launched a large-scale campaign against Hezbollah¹, a pro-Islamic group advocating establishment of an Islamic state by violent means. In the Üsküdar raid, the movement's founder and leader, Hüseyin Velioğlu, was killed and two others arrested. On the basis of evidence found in the home, a large number of searches of premises were conducted, revealing the bodies of thirteen missing business people. With many more corpses being uncovered in ensuing months, the public prosecutor was able to press charges on a total of 156 counts of murder in the major Hezbollah trial which opened on 10 July 2000².

Established in Batman in 1983, Hezbollah used to operate mostly in south-eastern Turkey and consists mainly of Kurds from the Sunni branch of Islam.

Hezbollah came to prominence and achieved notoriety as the adversary of the PKK, with which it repeatedly clashed violently, causing an estimated 400 or more deaths. When a major Hezbollah leader was killed by PKK fighters in 1991, a difference of opinion emerged within the organisation as to whether the time was yet ripe to wreak armed revenge on the PKK and also take up arms in pursuit of its own objective³.

One faction, centring on the Menzil publishing house, took the view that the organisation was not yet sufficiently well developed to pitch into armed struggle. That wing wanted to defer armed struggle for a while, in order to make further preparations. Both the PKK and the Turkish state were regarded as enemies by the Menzil group, which advocated an Islamic state along Iranian lines.

¹ Also known as Hizbullah and unrelated to the Lebanese Hezbollah.

² Turkey's Anatolia news agency, 10 July 2000 and 25 May 2000 (the list of charges having been finalised on the latter date).

³ Ruşen Çakır, *Derin Hizbullah. İslamcı şiddetin geleceği* (Hezbollah beneath the surface. The future of Islamic violence) (March 2001), pp. 109 et seq.

The other faction of Hezbollah did think the time ripe, following the 1991 assassination, for armed revenge on the PKK. That group revolved around the Ilim publishing house and thus came to be known as the Ilim group. Its idea all along was as far as possible to let the Turkish state do the dirty work for it in combating the PKK. The Ilim group bore particular responsibility for the atrocities committed by Hezbollah. The group had an ideological aversion to Iran, which adhered to Shia Islam, whereas the Ilim group was striving for a Sunni Islamic state.

The two factions soon locked horns after 1991. When the Ilim group managed to kill some of the Menzil group's main leaders in 1996, the Menzil group disintegrated and faded away. Some former Menzil members then joined the Ilim group and so, as from 1996, Hezbollah became synonymous with the violent Ilim faction.

According to sources including Human Rights Watch, while the army's campaign against the PKK was at its height, Hezbollah received at least passive support from the authorities ¹, being useful in combating the PKK - a claim denied by Turkish official sources. When the PKK no longer posed any threat, according to Human Rights Watch and various international observers, the time became ripe for a serious effort to tackle Hezbollah. A reported 130, 250 and 3 300 Hezbollah supporters were arrested in 1998, 1999 and 2000 respectively ². The number of security force operations against Hezbollah in 2000 amounted to 867, as against some 270 in 1999 ³.

¹ *What is Turkey's Hizbullah? A Human Rights Watch Backgrounder*, Human Rights Watch press release, 16 February 2000.

² The figure for 2000 was given at a press conference by the chief of police regarding police work in 2000, reported by Turkey's Anatolia news agency on 9 January 2001.

³ Ruşen Çakır, *Derin Hizbullah. İslamcı şiddetin geleceği* (Hezbollah beneath the surface. The future of Islamic violence) (March 2001), p. 77.

Hezbollah has been held responsible for a large number of disappearances and killings¹, targeting every conceivable opponent of its own or supposed opponent of Islam. Its victims included a former DEP member of parliament, Mehmet Sincar, and an Islamic feminist writer, Konca Kuris. After not being heard of for some years, Hezbollah found itself in the news in 1997 on account of a number of extortion cases in Istanbul. This showed it no longer to have its sights set solely on south-eastern Turkey.

The security forces' many operations against Hezbollah have inflicted heavy setbacks on it. According to a prominent former Hezbollah member, among others, the organisation had always relied very heavily on its leader, Hüseyin Velioğlu, and was rocked by his death². Many of Hezbollah's members have been arrested and are now in custody. As the police also seized a large part of Hezbollah's well-organised records in operations against the group in early 2000, the security forces hold a great deal of intelligence on members still at large. Much of the group's infrastructure has been destroyed, too, with arms caches dismantled, safe houses closed down and financial assets seized.

There were also a large number of security force operations carried out against Hezbollah in 2001: 588 in all, according to the Ministry of the Interior. A total of 1 382 arrests were made, with 832 of those arrested subsequently released again and 546 remanded in custody. Over the last ten years in the state-of-emergency region, a total of 2 626 operations have been conducted against Hezbollah, with 8 519 arrests made in all and 4 925 detainees released again in due course³.

¹ In its *Monthly Report of Human Rights in Turkey – January 2001*, the Turkish human rights organisation TİHV states that the Turkish authorities gratefully seized upon the security forces' campaign against Hezbollah as a way of also blaming Hezbollah for disappearances in which they themselves had a hand (see p. 21 of the report).

² A former Hezbollah member turned state's evidence, Abdülaziz Tunç, in Ruşen Çakır, *Derin Hizbullah. İslamcı şiddetin geleceği* (Hezbollah beneath the surface. The future of Islamic violence) (March 2001), p. 159.

³ Turkish Daily News, 8 January 2002.

Up to the time of the security forces' major offensive, there are no known instances of Hezbollah targeting the authorities in its operations. From that time on, however, the situation took on a different complexion, with the Turkish state now an explicit target for Hezbollah. A number of armed attacks on police officers were reported in 2000 and Hezbollah has also been linked with the attack on Diyarbakır province's chief of police, Gaffar Okkan, riddled with bullets on 25 January 2001¹. On 14 October 2001 a police car in Istanbul came under fire, with one of the officers later dying of his wounds and suspicion again falling principally on Hezbollah.

İslami Büyük Doğu Akıncılar – Cephe (İBDA/C)

The "Islamic Great Eastern Raiders' Front" is a smallish, pro-Islamic group opposed to the secular structure of the state and reportedly organised in small, isolated cells ("fronts"). It is said by the Turkish media to have connections with Bin Laden². The organisation has been linked with a number of terrorist attacks, especially in the early 1990s. It frequently makes use of explosives and Molotov cocktails in its attacks and has often targeted banks, casinos, Christian churches and Atatürk monuments.

The İBDA/C has been linked with the fatal bomb attack in October 1999 on a secular professor, Ahmet Taner Kışlalı, best known as a journalist for the Cumhuriyet newspaper. It also laid claim to the attack on two police officers in Istanbul on 1 April 2001³. Nothing has been heard of the organisation in the second half of 2001. The İBDA/C's leader, Salih İzzet Erdiş, otherwise known as Salih Mirzabeyoğlu, was sentenced to death on 3 April 2001 by the sixth section of Istanbul State Security Court⁴. The judgment was automatically referred to the Court of Appeal in October 2001⁵.

¹ Turkey's Cumhuriyet newspaper, 26 January 2001.

² Turkey's Akşam newspaper, 26 January 2001.

³ Turkey's Anatolia news agency, 3 April 2001, and Milliyet newspaper, 4 April 2001.

⁴ Turkey's Anatolia news agency, 3 April 2001.

⁵ Turkey's Yeni Şafak newspaper, 7 October 2001.

Malatyalılar

The radical splinter group Malatyalılar, also known as Şafak-Değişim, advocates establishment of an Islamic state. The group first attracted attention at demonstrations against the ban on wearing veils, in 1997 and 1998, and related disturbances in Malatya. Apart from Malatya, it is reportedly also active in Istanbul, Gaziantep, Erzurum and Kayseri. Its leadership is said to be engaged in talks with Hezbollah, with a view to combining forces ¹. In October 2000 the security forces carried out a large-scale operation against the group, arresting some 250 people in 28 provinces ². Although there have been no known Malatyalılar acts of violence up to now, a large number of arms were found in that swoop by the security forces.

Splinter groups

In connection with bomb attacks on the secular journalist Uğur Mumcu and Professor Ahmet Taner Kışlalı in 1993 and 1999 respectively, the finger has also been pointed at the Tevhid-Selam and Jerusalem Fighters (in Turkish: Kudüs Savaşçıları) splinter groups, said to have links with Iran ³. Police operations in May 2000 brought the arrest of some members and the discovery of various arms caches ⁴.

2.4.3. Marxist-Leninist groups

Marxist-Leninist revolutionary groups spring into action from time to time. Recruits to these groups, which operate in small cells, are drawn in particular from the poor parts of Istanbul and from among inmates of the various prisons ⁵. The main such groups are the DHKP/C, the TKP/ML-TİKKO and the MLKP.

¹ Turkey's Anatolia news agency, 2 October 2000.

² Associated Press, 4 October 2000.

³ Associated Press, 14 May 2000, Milliyet, 15 May 2000, and Hürriyet, 9 June 2000.

⁴ Turkey's Anatolia news agency, 24 May 2000

⁵ San Francisco Chronicle, 9 January 2001.

DHKP/C

The DHKP/C, standing for Devrimci Halk Kurtuluş Partisi/Cephe (Revolutionary People's Liberation Party/Front), was formed in 1993 as a splinter faction of the Devrimci-Sol (Revolutionary Left), founded in 1978, which went out of existence following the split. The other splinter faction, known as the THKP/C Devrimci Sol, is on hostile terms with the DHKP/C, but constitutes a far smaller group in scale and significance. Although the DHKP/C has since 1997 had a difficult relationship with the PKK, it has repeatedly expressed its solidarity with the Kurdish armed struggle ¹.

The DHKP/C seeks to overthrow the existing Turkish system of government by armed revolution and replace it with a Marxist-Leninist state. Its terrorist operations, carried out according to the US State Department chiefly in Istanbul, Ankara, Izmir and Adana ², are aimed in particular at the Turkish security forces and public figures, as well as at bodies seen by the group as "symbols of imperialism".

Many of those involved in the hunger strikes in Turkish prisons in late 2000 and early 2001 ³ came from among the DHKP/C's ranks. The group drummed up large-scale support throughout Europe for protests in connection with those events. In Turkey itself the protests included a bomb attack on a police station in Istanbul on 3 January 2001, following which the organisation announced that this was in retaliation for the death of 30 prisoners in the prison clearance operation ⁴. Turkey's Anatolia news agency reported that, according to a circular distributed to police stations in Istanbul, the organisation had planned further attacks ⁵.

Kamil Karataş, reportedly one of the leading lights in the DHKP/C, was arrested in Istanbul on 17 October 2001 ⁶.

¹ *Verfassungsschutzbericht Bayern 1999* [1999 Bavarian anti-subversion report], Verfassungsschutz Bayern [Bavarian Office for Protection of the Constitution] (2000), pp. 139-140.

² *Patterns of Global Terrorism 2000*, US Department of State (May 2001).

³ See section 3.3.6.

⁴ San Francisco Chronicle, 9 January 2001.

⁵ Turkish Daily News, 19 January 2001.

⁶ Turkey's Cumhuriyet newspaper, 18 October 2001.

TKP/ML-TİKKO

The TKP/ML, standing for Türk Komünist Partisi/Marksist Leninist (Communist Party of Turkey/Marxist-Leninist), founded in 1972, split into two wings in 1994: a partisan wing, retaining the old name TKP/ML, and an eastern Anatolian regional committee, assuming the almost identical name TKP(ML) ¹. Talks have been under way since late 1999 concerning reunification of the two wings.

Both wings regard themselves as the original TKP/ML's rightful heirs and thus share precisely the same ideology. In both its manifestations, the TKP/ML advocates doing away with the present Turkish system of government and establishing a people's democratic republic along Marxist-Leninist lines, with some Maoist trappings.

In order to achieve that aim, in 1972 the TKP/ML set up armed units, known as the TİKKO (Türk İşçiler Köylüler Kurtuluş Ordusu – Turkish Workers' and Peasants' Liberation Army), which are used by both wings alike in common for their terrorist operations.

There used to be a division of labour between PKK and TİKKO fighters, with the PKK carrying on the combat in south-eastern Turkey and the TİKKO in the Black Sea region ². In October 1999 the TKP/ML announced its complete disagreement with Öcalan's call to end the armed struggle ³. There are reported still now to be a few dozen armed TİKKO fighters in the mountains of Tunceli province, as well as small groups of fighters in some provinces in central and northern Anatolia.

¹ With the ML in brackets.

² *Verfassungsschutzbericht Nordrhein-Westfalen 1999* [1999 North Rhine-Westphalia anti-subversion report], Verfassungsschutz Nordrhein-Westfalen [North Rhine-Westphalia Office for Protection of the Constitution] (2000), section 4.1.4.

³ *Verfassungsschutzbericht Hamburg 1999* [1999 Hamburg anti-subversion report], Verfassungsschutz Hamburg [Hamburg Office for Protection of the Constitution] (2000), section 4.2.3.

Half a dozen members of the TKP/ML-TİKKO were arrested in Istanbul in May 2001, with a large arsenal of arms and explosives discovered where they had been living. According to Istanbul's chief of police, they formed the committee of the organisation's Istanbul branch ¹.

MLKP

The MLKP (Marksist Leninist Komünist Partisi, or Marxist-Leninist Communist Party), formed by a merger of another two groups in 1994, likewise seeks the armed overthrow of Turkey's present political system. The party also sees itself as representing the Kurdish community and wants to throw off the "fascist colonial yoke" by means of armed struggle, having its own armed wing, known as M-18 ².

Terrorist operations and armed clashes

Armed fighting between the security forces and members of such groups breaks out sporadically. February 2001 brought two armed clashes between the security forces and the TİKKO ³. June 2001 saw an armed clash between TKP/ML-TİKKO fighters and the security forces in Ordu province, on the Black Sea ⁴. September, October and November 2001 each produced an armed clash between the TİKKO and the security forces, in Tokat, Tunceli and Çorum provinces respectively ⁵.

¹ Turkey's Anatolia news agency, 2 May 2001.

² *Verfassungsschutzbericht Hamburg 1999* [1999 Hamburg anti-subversion report], Verfassungsschutz Hamburg [Hamburg Office for Protection of the Constitution] (2000), section 4.2.5.

³ *Monthly Report of Human Rights in Turkey – February 2001*, Human Rights Foundation of Turkey Documentation Centre (February 2001), p. 8.

⁴ Turkey's Milliyet newspaper, 26 June 2001.

⁵ Turkey's Zaman newspaper, 29 September 2001, Cumhuriyet newspaper, 22 October 2001, and Hürriyet newspaper, 10 November 2001.

Revolutionary groups also attract attention by means of attacks and shoot-outs, with incidents in 2000 in places such as Istanbul, Tokat and Tunceli ¹. The TKP/ML- TIKKO claimed responsibility for an attack on a police car on 11 December 2000, in which two policemen were killed ². Eight TIKKO members are on trial in Istanbul State Security Court for that incident, with the death penalty sought for four of them ³.

A number of attacks have also been carried out in 2001. In March 2001 the TIKKO launched an unsuccessful attack on a car carrying a *jandarma* general ⁴. The DHKP/C laid claim to an attack on a police car on 10 April 2001, which killed a passer-by and wounded two police officers. On 11 September 2001 a suicide bombing was carried out in Taksim Square, one of the busiest places in Istanbul, with the bomber blowing himself up, killing two nearby police officers and wounding 20 bystanders, including 13 police officers and a foreign tourist ⁵. The attack was claimed by the DHKP/C ⁶.

¹ As stated by the Turkish chief of police at a press conference, reported by Turkey's Anatolia news agency on 9 January 2001.

² Turkey's Anatolia news agency, 12 December 2000.

³ Yeni Şafak newspaper, 29 September 2001.

⁴ Turkey's Anatolia news agency, 23 March 2001.

⁵ Radikal newspaper and the International Herald Tribune, 11 September 2001.

⁶ Reuters, 20 September 2001.

2.4.4. State of emergency

A state of emergency ¹ (in Turkish: Olağanüstü Hal, or OHAL for short) has applied in some eleven provinces in south-eastern Turkey since being introduced in the mid-1980s. It remained in force in six provinces in 1999. Having been lifted in Siirt province in late 1999 and then in Van province in June 2000, the state of emergency since remains in force in four provinces: Diyarbakır, Tunceli, Şırnak and Hakkari. As recommended by the National Security Council on 30 October 2001 ², the government decided on 27 November 2001 to renew the state of emergency in those provinces for a further four months as from 30 November 2001 ³. The national programme for the adoption of the *acquis*, drawn up by Turkey in March 2001 on the basis of EU progress reports, provides for the state of emergency to be lifted altogether in the medium term, without setting any specific deadline.

The provinces in the state-of-emergency region as a whole are administered by a super-governor, working hand in glove with the security forces, with daily consultation between the super-governor and the regional military command, thus giving the security forces a considerable say in the administration of the region. Based in Diyarbakır, that governor takes precedence over individual provincial governors and is vested by law ⁴ with very sweeping powers, such as imposition of a night-time or daytime curfew, restrictions on press freedom, introduction of special identity checks, sealing off or evacuation of particular areas, control of theatre and cinema performances, searches of organisations' offices or closure of organisations, without specifying any reason, for up to three months. The super-governor also has special security powers in what are termed adjacent provinces ⁵, of which there are currently seven: Batman, Bingöl, Bitlis, Mardin, Muş, Siirt and Van.

¹ Also referred to as emergency powers.

² Türkiye newspaper, 31 October 2001.

³ Milliyet newspaper, 28 November 2001.

⁴ The powers are laid down in Law No 2935 of 1983, as amended in 1990.

⁵ *Country Reports on Human Rights Practices, 2000: Turkey*, US Department of State (26 February 2001).

Application of the state of emergency or otherwise also has legal implications. Under the Turkish code of criminal procedure, for instance, the period for which a suspect may be held in pre-trial detention in areas covered by the state of emergency is longer than in provinces not covered by it ¹.

Coverage by the state of emergency brings a province additional public financial assistance. Some provincial authorities have even on that account opposed the lifting of the state of emergency.

2.5. Social and economic developments

Turkey has a free market economy, within which many public corporations still operate, in spite of some recent privatisations, around half of heavy industry and banking being state-run. 35% of the labour force work in the agricultural sector. The official unemployment rate stood at 7,3% for 1999. The Economic Intelligence Unit puts unemployment at 6,6% for 2000 ², although the true figure is likely to be higher. According to the national statistical institute (DİE), per capita gross national product amounted to USD 2 181 for 2001 ³.

¹ Article 128 of the Turkish code of criminal procedure. For a fuller account of the administration of criminal justice, see section 3.3.5.

² *EIU Country Profile: Turkey*, the Economist Intelligence Unit (2001), p. 19.

³ Turkey's Anatolia news agency, 6 January 2002.

The economy, which since a crisis in 1994 had grown every year, showed a serious downturn in 1999, with 5,1% negative economic growth that year. The main reasons for this lay in the major earthquake in August 1999 and in disappointing tourism earnings as a result of publicity surrounding incidents following the arrest of the PKK leader, Öcalan, in late 1998. The fall was offset by 7,1% economic growth in 2000 ¹. The economic crisis into which the country plunged in February 2001 ² is expected to result in 8,4% negative economic growth for 2001 ³, with many businesses driven to the wall during the year ⁴.

The economic crisis and the tough reform programme have considerably shrunk public purchasing power in 2001. The minimum wage, adjusted every two years, is inadequate to make ends meet, particularly for families. The needy often have to rely on assistance from relatives and other acquaintances. They can also in some cases turn to religious institutions.

High inflation poses a major problem for the Turkish economy. Consumer-price inflation averaged 65% for 1999. The Turkish authorities' stabilisation programme brought a significant fall in the figure for 2000, with average consumer-price inflation of 56% for the year and a twelve-month moving average inflation rate down to 39% by December 2000. As a result of the economic crisis, inflation has risen sharply in 2001, with a twelve-month moving average inflation rate of 68,5% at the end of the year ⁵.

Average health-care standards in Turkey fall far behind those in western Europe. Provision of health-care facilities is restricted by chronic budget deficits and hampered by the fact that 40% of the population live in less-accessible areas. The social-security system is available to only 60% of the population. Social-security institutions face huge financial difficulties.

¹ *EIU Country Report, November 2001*, the Economist Intelligence Unit (2001), p. 6.

² On this point, see section 2.3.1.

³ *EIU Country Report, November 2001*, the Economist Intelligence Unit (2001), p. 6.

⁴ Turkey's Anatolia news agency, 10 April 2001.

⁵ Turkey's Anatolia news agency, 3 January 2002.

Prosperity in Turkey is unevenly distributed. According to a survey carried out in 2000 ¹, about 15% of the population have an average monthly disposable income of over USD 2 750, while about 18% of the population have less than USD 266 a month to live off. In July 2000 the United Nations Food and Agriculture Organisation (FAO) stated there to be around 13 million Turks living below the poverty line ².

Disproportionately large income differentials are to be found not only between social classes but also between regions, western Turkey being far more prosperous than the east of the country. Incomes and living standards in eastern Turkey contrast sharply with those in the industrialised north and west. In 1998 the per capita income of the population of Kocaeli (İzmit) in the industrialised north-west stood at USD 7 601 a year, while annual income in Ağrı province in the far east of Turkey amounted to USD 827 ³. Another divide separates town and countryside, with the countryside coming off worse.

The east-west divide is also reflected in differences in public facilities. Education and health care in south-eastern Turkey are in a sorry state, partly on account of staff shortages.

In south-eastern Turkey the combat against the PKK has had a disastrous effect on the development of the local economy. The unemployment rate is extremely high, partly owing to the poor economic situation in neighbouring Iraq. Another reason for unfavourable economic conditions and high unemployment in the south-east lies in "grazing bans", introduced during the state of emergency (OHAL), preventing any access to highland pastures, as a result of which many livestock farmers could no longer pursue their livelihood.

¹ Quoted in *Turkey, Country Profile, 2000*, the Economist Intelligence Unit (14 August 2000), p. 20.

² Reuters, 6 July 2000.

³ *Turkey, Country Profile, 2000*, the Economist Intelligence Unit (14 August 2000), p. 35.

Despite the cessation of armed conflict in late 1999, there has not been any kind of economic development of Turkey's south-eastern region. While the authorities have taken a variety of steps to attract business investment in the south-east, their efforts have proved of little avail ¹. Nor has any progress yet been made with the repopulation of villages and the lifting of grazing bans ².

2.6. Summation

Having come to power following the elections in April 1999, a DSP, MHP and ANAP coalition currently remains in government. In December 1999 Turkey was finally confirmed to be a candidate for membership of the European Union. In May 2000 Ahmet Necdet Sezer, a former judge, became Turkey's new President.

The Turkish system of government is highly centralised, with only a small role for local authorities. The army has a large say in the country's politics, via the National Security Council.

In 2001 Turkey was hit by its most severe economic crisis for decades, followed by the introduction of a tough economic reform programme. This has resulted in extensive structural change, but also constantly brought to the surface dissension within the coalition.

The after-effects of the storming of some prisons by the security forces in late 2000 and the continuing campaign in 2001 by hunger strikers protesting at the introduction of F-type cellular prisons caused quite a stir in 2001. As at 14 January 2002, 46 people had died as a result of hunger strikes.

¹ Associated Press, 20 November 2000.

² On this point, see also section 4.1.

On 22 June 2001 the Constitutional Court imposed a ban on the Islamic Fazilet Partisi (Virtue Party). Two of the FP's members of parliament were removed from office and its other sitting members regrouped in two new parties: the conservative Saadet Partisi (Felicity Party) (SP) and the more reformist Adalet ve Kalkınma Partisi (Justice and Development Party) (AKP). The European Court of Human rights found the ban on the FP's predecessor, the Refah Partisi, not to be in breach of the European Convention on Human Rights.

In October 2001 a package of constitutional amendments was introduced, improving the previous constitution in a number of ways, including an increase in the number of civilians sitting on the National Security Council and, in theory, a reduction in the weight carried by its recommendations. Many of the constitutional amendments require adjustments to secondary legislation.

The security situation in south-eastern Turkey is mainly affected by the longstanding conflict between the security forces and the PKK. A great deal of infrastructure has been destroyed and many villages were cleared of their inhabitants by the army. The rural population have moved in droves to the cities, where they live in the less salubrious parts of town under what are often poor conditions.

The second half of 2001 brought a consolidation of the improved security situation and more peaceful conditions established since the PKK laid down its arms and largely withdrew its fighters from Turkey in late 1999. Armed clashes do still occur on a very limited scale. There is little improvement to be seen as yet economically, however, with the south-east still lagging far behind the western part of Turkey. Repopulation of evacuated villages is not making any real headway and the ban on use of highland pastures has in many cases remained in force.

There are some militant revolutionary and pro-Islamic groups active in Turkey, attracting attention chiefly by means of bomb attacks. Large-scale campaigns by the security forces over the last two years have deprived pro-Islamic groups of much of their impact. Left-wing revolutionary groups have also carried out a number of attacks again in 2001.

3. Human rights

3.1. Legal background

3.1.1. Conventions

Turkey has acceded to most international human rights conventions. In a number of cases, Turkey has entered a partial reservation when ratifying them, e.g. for the Geneva Refugee Convention to make it applicable to people from Europe only. In August 2000 Turkey signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. On 18 April 2001 Turkey signed Protocol No 12 to the European Convention on Human Rights concerning the prevention of all forms of discrimination ¹. A senior official from the Turkish Ministry of Foreign Affairs stated in December 2001 that ratification of the above covenants and protocol had already been agreed in cabinet and would very soon be submitted to parliament for approval. On 28 December 2001 the International Covenant on Economic, Social and Cultural Rights was duly placed before parliament for ratification ².

¹ Turkey's Anatolia news agency, 18 April 2001.

² Zaman newspaper, 29 December 2001.

There are some human rights instruments which Turkey has not signed. These include Protocol No 6 to the European Convention on Human Rights concerning the abolition of the death penalty, the Council of Europe Framework Convention for the Protection of National Minorities, the Statute of the International Criminal Court and the UN Convention on the Elimination of All Forms of Racial Discrimination. In its national programme of 19 March 2001, Turkey announced its intention of signing the latter convention in the near future ¹, although it had still not done so by December 2001, reportedly on account of opposition from a number of MHP ministers.

Turkey does recognise the jurisdiction of the European Court of Human Rights. Turkish nationals who have exhausted all domestic legal remedies may bring an action for breach of the European Convention on the Protection of Human Rights and Fundamental Freedoms before the European Court of Human Rights in Strasbourg. The number of actions brought before the Court by Turkish nationals from 1 November 1998 to 29 June 2000 exceeds 2 500 ².

¹ *Avrupa Birliği Müktesebatının üstlenmesine ilişkin Türkiye Ulusal Programı* (Turkish national programme for the adoption of the *acquis* of the European Union) (19 March 2001), p. 13.

² Statistics from the Court, quoted by Aslan Gündüz in *The land of many crossroads. Human Rights and Turkey's future in Europe*, in *Orbis*, Volume 45, Issue 1 (winter 2001), p. 18.

In 1999 Turkey lost all eighteen cases brought against her and was condemned twelve times by the European Court of Human Rights, being ordered to pay considerable compensation to the victims in all cases . In one case Turkey has hitherto explicitly refused to pay the damages named in the judgment. ¹ The condemnations in 1999 virtually all related to violations of the right to freedom of speech in cases from the early 1990s. The verdicts in 2000, which related to cases between 1992 and 1996, included disappearances, extra-judicial executions, deaths in custody, torture and suppression of free speech. Although in most cases Turkey does pay the damages, up to the end of 2001 there had not been a single case of retrial on the basis of a judgment of the ECHR. In December 2001 a bill was to be presented to Parliament to make such retrials legally possible. The European Court considers that a number of judgments have not been completely implemented by Turkey because insufficient structural measures have been taken to prevent any repetition of the violations in question.

In 2001, 229 complaints against Turkey were dealt with. In 128 cases Turkey was condemned for violation of the right to property (Article 1 of the first protocol), in 28 cases for failure to guarantee a fair trial within a reasonable time (Article 6(1)), four times for violation of the right to life (Article 2), in one case for failure to have a defendant brought promptly before a judge (Article 5(3)) and in one case for the imposition of a penalty which was not clearly based on an article of law (Article 7(1)). In the remaining cases no violation was established. ²

¹ This was the Loizidou case of 1998 in which Turkey was ordered to pay compensation to Mrs Loizidou for violating her right to the peaceful use of her property in Northern Cyprus. Turkey claims not to be competent to implement the verdict.

² Information obtained from the website of the European Court www.echr.coe.int.

3.1.2 National legislation

Constitution

The Turkish constitution, which dates from 1982, recognises fundamental rights such as freedom of expression, press, religion, association and assembly, freedom of movement, freedom of communication, the right to privacy and the right to property, the right to a fair trial, protection from torture, inhuman treatment, house searches, arrests without warrant, arbitrary arrests, etc. On 3 October a comprehensive package of changes to the constitution was introduced.¹

However, the constitution does allow for those freedoms to be restricted. Pursuant to Article 13, which was amended on 3 October 2001, restrictions of fundamental rights may not conflict with the principles of a democratic social order and may not affect the essence of the right. Although the basic principle is that fundamental rights may only be restricted by order of the judiciary, in emergencies the executive is also accorded such powers. The constitutional provisions in question allow of tight restrictions on fundamental rights in regions where a state of emergency has been declared. Article 119 of the constitution provides, for instance, that in a region in which a state of emergency is in force, fundamental rights and individual freedoms are governed by law. Pursuant to Article 148, decrees of the Council of Ministers issued during a state of emergency are not subject to examination of their constitutionality by the Constitutional Court.

Other national legislation

Articles 243 and 245 of the Turkish Criminal Code make torture by police officers an offence. Article 254 of the Criminal Code provides that evidence obtained illegally by the prosecuting authority may not be admitted to trial. The Regulation on Apprehension, Police Custody and Interrogation² issued by the Prime Minister's Office on 1 October 1998 contains provisions which are intended to curb human rights violations in pre-trial detention.

¹ For changes to the constitution, see section 2.3.3.

² Resmi Gazete (Turkish Law Gazette), 1 October 1998.

Article 11 of Law No 2935 on the State of Emergency greatly restricts, *inter alia*, freedom of movement, freedom of association and assembly and freedom of speech by granting the governor of the region in which a state of emergency has been declared extensive powers in those fields ¹.

Articles 155, 159 and 312 of the Criminal Code and Article 8 of the Anti-Terror Law are used to make verbal statements of opinion an offence.

3.2 Monitoring

3.2.1 Government

Junior Minister, High Council for Human Rights

In June 1997 a junior minister for human rights was appointed. The current Minister is Nejat Arseven, a Member of Parliament for the ANAP. He is responsible for the coordination of all activities relating to human rights and is also Chairman of the High Council for Human Rights. The Council also comprises parliamentary under-secretaries from the Ministries of General Affairs, Justice, Interior, Foreign Affairs, Education and Health. The Council's secretariat is housed in the Ministry of General Affairs. The Council investigates violations nationwide and maintains contact with social organisations. Its work is taken as a basis for advising the government on improving human rights policy and possible amendments to legislation. From time to time the Council issues circulars on behalf of the Prime Minister, giving executive bodies instructions on complying with human rights. ²

¹ See section 2.4.5.

² *Report of fact-finding mission to Turkey, 17-23 March 2001*, Immigration and Nationality Directorate, Home Office UK (2001), p. 33.

Provincial human rights offices

At the end of 2000 the junior minister responsible for human rights was charged with creating a "petition bureau for human rights" ¹ in the offices of all separate province governors to which citizens may address complaints about violations. Bureaux have been opened in, among others, the provinces of Istanbul, Diyarbakır and Şanlıurfa. As part of the same scheme a special telephone number has been set up in the province of Gaziantep for reporting human rights violations ². For administrative purposes the bureaux come under the provincial governor. The head of the jandarma, directors from the Department of Education, Health and Social Security, a lawyer and some NGOs are among the members of the executive councils which investigate the complaints closely. However, human rights NGOs are not represented. The distribution of powers within the new bureaux is still uncertain. Whether the bureaux will really make a contribution to monitoring of the human rights situation remains to be seen.

Parliamentary Human Rights Commission

A Parliamentary Human Rights Commission set up by the Turkish parliament started work in December 1990. The Commission monitors compliance with national law and international treaties on human rights at home and abroad. The Commission also visits prisons and reports to the parliament on torture, ill-treatment and abuse. The Commission is composed of 25 members of parliament from government and opposition benches ³. At the end of 2001 one place was made for an independent member of parliament. In December 2001 that place had not yet been filled.

¹ Turkish Daily News, 6 December 2000.

² Turkish Anatolia News Agency, 27 March 2001.

³ Law No 3686 of 5 December 1990 on the Parliamentary Human Rights Commission.

In May 2000 the Commission published eight extensive reports on its findings following inspections of various police and judicial institutions in the provinces of Istanbul, Erzurum, Erzincan, Şanlıurfa, Elazığ and Tunceli in 1998 and 2000¹. According to the reports, instruments of torture were found in various interview rooms and a large number of detainees interviewed by the Commission stated that they had been victims of torture. The Commission repeatedly concluded in the various reports that torture and inhuman treatment are widespread, that suspects' right of access to a lawyer is regularly denied, that physical conditions in prisons still leave a great deal to be desired and that many torturers are not prosecuted. The reports maintain that those really responsible for this state of affairs are the provincial governors and public prosecutors. The Commission noted major improvements in the province of Tunceli in 1998 and 1999.

¹ *Kovuşturma, Yargılama, Ceza ve İnfazı Tunceli (resp. Elazığ, Şanlıurfa, Erzurum, Erzincan) Raporu. 1998 ve 2000* (Report on Investigation, Prosecution, Trials, Punishment and Enforcement in Tunceli, Elazığ, Şanlıurfa, Erzurum, Erzincan), *Bakırköy Kadın ve Çocuk Tutukevi Raporu 1998 ve 2000* (Report on the Bakırköy Prison for Women and Children in Bakırköy 1998 and 2000), *Elazığ Çocuk İslahevi Raporu 1998 ve 2000* (Report on the Young Persons' Penitentiary in Elazığ 1998 and 2000) and *Çalışma Raporu 1998 - 1999* (Activity Report 1998-1999), Turkish Parliamentary Human Rights Commission (May 2000).

In October 2000 the chairwoman of the Commission, Sema Pişkinsüt, who oversaw the drafting of the reports, was replaced by Hüseyin Akgül, a Member of Parliament for the nationalist MHP, which has broad support in police circles. Observers link her replacement to her progressive and critical attitude. Meanwhile, the Chief Public Prosecutor in Ankara has requested Parliament to withdraw Piskinsüt's parliamentary immunity in order to prosecute her for breach of Article 296 of the Turkish Criminal Code, "failure to provide the prosecuting authority with information appropriate to a preliminary judicial investigation" ¹. The reason is that she did not reveal the names of the prisoners to whom she had spoken during her investigations. ² Because Pişkinsüt left her party, the DSP, in September 2001 ³, she is no longer part of the Commission. In October 2001 she published a book which systematically reproduces all her findings during her chairmanship of the Commission. ⁴ On 25 January 2002 she declared her intention of setting up a new political party. ⁵

¹ Sema Pişkinsüt, *Filistin askısından fezlekeye. İşkencenin kitabı*. (From "Palestinian hangers" to request for withdrawal of parliamentary immunity. The book of torture.) (October 2001), pp. 467 et seq. The book contains the full text of the request for withdrawal of immunity.

² Turkish Daily News, 25 July 2001.

³ Turkish Anatolia News Agency, , 26 September 2001.

⁴ Sema Pişkinsüt, *Filistin askısından fezlekeye. İşkencenin kitabı*. (From "Palestinian hangers" to request for withdrawal of parliamentary immunity. The book of torture.) (October 2001)

⁵ Hürriyet newspaper, 25 January 2002.

The new chairman, Mr Akgül, declared that the Commission would continue to work in the same manner, but added that torture was not the only subject the Commission should deal with. Between August 2000 and August 2001 the Commission received 1442 petitions, of which 1078 were said to have been dealt with by August 2001. The largest proportion of the petitions (215) came from prisons. In addition, there were 151 complaints about criminal procedure and 79 relating to detention, torture and maltreatment. The other complaints related to matters such as pensions, headscarves, etc. ¹ In December 2001 the vice-chairman of the Commission stated that a further series of surprise visits to police stations was planned for 2002. A special website was also opened on 10 December 2001 to which complaints on human rights issues can be made known directly to the Commission via e-mail. ²

In January 2001 a Subcommission was set up to investigate the prison raids at the end of 2000 and "F-type" prisons. ³ In May the Subcommission reported back. *Inter alia*, the report mentioned maltreatment during transport of prisoners to F-type prisons. ⁴

Prison Inspection Committees

Special Prison Inspection Committees were set up pursuant to a law adopted in June 2001 ⁵. An inspection committee has to be set up for the area of jurisdiction of each criminal court. The committee is to be made up of five members chosen for four years by a commission of judges from the relevant area. The members must have university education and practise the profession of doctor, lawyer, psychologist or similar.

¹ Yeni Şafak newspaper, 19 August 2001.

² Website of the Turkish parliament via www.tbmm.gov.tr/komisyon/insanhak/insanhaklari.htm, as at 11 December 2001.

³ For F-type prisons, see section 2.3.2.

⁴ Radikal and Milliyet newspapers, 17 May 2001.

⁵ Law No 4681 of 14 June 2001 on Committees for the Monitoring of Prisons and Detention Centres.

The committee's tasks consist in carrying out bi-monthly inspections of the circumstances in which convicted prisoners or persons remanded in custody are kept. Once every three months a written report of findings must be submitted to the Ministry of Justice, the court and the public prosecutor's office of the area of jurisdiction in which the relevant committee operates and, if necessary, to the Parliamentary Human Rights Commission.

The Law adopted in June 2001 which governs the setting up of these committees provides that the committees must be active within six months. In August 2001 the Minister of Justice published a circular calling for the committees to be set up as soon as possible.¹ In December 2001 the elections for committee members had not yet been completed in many places. In some places in which the membership of the committees has become known, it emerges that some police officers are included. For example, the committee in Hakari is chaired by the local police commissioner.²

Consultative Body for Human Rights

In addition to the organisations mentioned above, there is also a Consultative Body for Human Rights, which was created as a body for consultation between the authorities and the NGOs active in the area of human rights. According to the most important human rights NGOs in Turkey, the effectiveness of the Consultative Body is very limited.

¹ Cumhuriyet newspaper, 11 August 2001.

² Milliyet newspaper, 19 December 2001.

3.2.2 Turkish NGOs

In Turkey various non-governmental organisations are active in the field of human rights. Two of the most prominent are the Turkish Human Rights Foundation (TİHV ¹) and the Human Rights Association (IHD ²). In addition to IHD and TIHV, many human rights organisations are active. Mazlum-Der ³ is an organisation with Islamic leanings which has sixteen branches in the whole of Turkey and also regularly reports on abuses. The Turkish Democratic Foundation (TDV ⁴) and the Helsinki Citizens' Assembly (HCA) work from Istanbul and Ankara respectively. Another human rights organisation is the Association of Contemporary Jurists (ÇHD ⁵). There are also human rights centres associated with Turkish universities.

IHD

The IHD was set up in 1986 with the general aim of promoting human rights in Turkey. The organisation's main activities are to collect and verify information on human rights violations. It publishes monthly reports and press releases on arrests, torture, disappearances in custody, violations of freedom of expression and so on. The IHD also organises courses for teachers and lawyers which cover, *inter alia*, procedures for the right of individual petition. The IHD has over 30 provincial branches spread throughout Turkey and has over 20 000 members. Within the IHD there is a very strong Kurdish current which maintains close ties to the Turkish-Kurdish opposition.

¹ Türkiye İnsan Hakları Vakfı (TİHV or IHV). The abbreviation HRF is used in English.

² İnsan Hakları Derneği (İHD). The abbreviation HRA is used in English.

³ Mazlum-Der is an acronym of "İnsan Hakları ve Mazlumlar İçin Dayanışma Derneği", which means: Organisation for Human Rights and Solidarity with Repressed People.

⁴ Türkiye Demokrasi Vakfı.

⁵ Çağdaş Hukukçular Derneği.

The IHD is regularly harassed and obstructed by the authorities, notably the security forces. In recent years some IHD regional offices have been (temporarily) shut down and criminal proceedings have been brought against various IHD workers for separatist propaganda or support for illegal organisations.

In 1999 and 2000 various IHD offices, including the regional offices of Mardin and Gaziantep, Malatya, Van, Konya, Izmir and Bursa were forced to close. During 2000 and 2001 various offices opened again. On 26 November 2001 the office in Bursa opened again, with the result that only the Gaziantep branch is currently still closed. The Diyarbakir branch, which was closed from 1997 apart from a brief interval in April and May 2000, re-opened on 11 October 2000.

Other IHD branches have been raided by the police. On 22 December the police confiscated a large amount of material in a raid on the regional office for Ankara province. In January 2001 it was the turn of the IHD head office in Ankara following media reports that the IHD was receiving funding from Greece. From the material confiscated during the raids, the Turkish judicial authorities have drawn the conclusion that the IHD was guilty of support for the revolutionary organisations the DHKP/C, TKP/ML and MLKP, which were all involved in the prison riots and hunger strikes at the end of December.

In February 2001 the public prosecutor instituted proceedings to ban the IHD. The charge was that the IHD allegedly dealt with matters that were not included in its statute and aims by conducting activities in connection with the hunger strikes and prison riots. On 22 October 2001 the public prosecutor decided to drop the case against the IHD, with the result that the threat of closure was averted.

The entire management of the Ankara branch and a few other IHD workers are being prosecuted for infringements of Article 169 of the Criminal Code regarding support for illegal organisations. The next hearing is planned for 25 February 2002.

Criminal proceedings are brought with great regularity against individual executive members of local IHD branches. These cases often relate to press statements made by these members, the content of which is seen by the authorities as support for terrorist organisations or insulting state institutions (Articles 159 and 169 of the Turkish Criminal Code).¹

From time to time the IHD or directors of the association are targets of threats or attacks by third parties. On 10 April 2001 Amnesty International reported that Eren Keskin and Osman Baydemir, lawyers and chairmen of IHD branches in Istanbul and Diyarbakır respectively, had repeatedly been receiving death threats by 'phone from anonymous callers². After Amnesty International initiated urgent action the threats stopped. In November 2001 the IHD branch in Istanbul was attacked by a man armed with a pistol and a knife. The man, who belonged to the "Ülkü Ocakları", the youth branch of the MHP, also known as the "Grey Wolves", was overpowered by workers in the building and handed over to the police. He is also suspected of other attacks.³

TİHV

The TİHV grew out of the IHD in 1990 and its main purpose is to provide medical treatment for torture victims. For that purpose it runs five medical centres in Turkey in the towns of Adana, Ankara, Diyarbakır, Istanbul and Izmir, where victims are examined. The foundation uses doctors, who document evidence of torture or maltreatment and subsequently treat the victims in existing hospitals. The TİHV also has a documentation centre and publishes daily and monthly reports on the human rights situation in Turkey.

¹ In this connection, see also section 3.3.1.

² *Death threats/Fear for Safety*, Amnesty International Urgent Action, 10 April 2001.

³ Yeni Evrensel newspaper, 16 November 2001.

Pressure on the TIHV is also continuing unabated. Because it is legally a foundation, it is answerable to the Directorate-General for Foundations of the Ministry of Foreign Affairs. TIHV branches are regularly inspected by officials connected with that Directorate-General.¹ In September 2001 there was talk for a short time of closing all treatment centres except for the one in Diyarbakır as no authorisations for medical treatment had been given. After the TIHV was able to prove that only an initial check took place in the centres and actual treatment was confined to existing hospitals, the threat was warded off.

On 7 October 2001 the security forces together with the tax investigation department raided the TIHV office in Diyarbakır, confiscating 365 files relating to torture victims. On 10 October the police headquarters in Diyarbakır returned the files to the TIHV. In January 2002 a legal action was brought against one of the officials of the TIHV branch in Diyarbakır for opening a health centre without authorisation. The case was due to come to court in March 2002.

Mazlum-Der

Mazlum-Der also encounters opposition on the part of the authorities from time to time. For instance, in January and May 1999 the regional offices in Şanlıurfa and Malatya were closed indefinitely². The office in Şanlıurfa re-opened at the end of 2001.

¹ See the daily human rights report of the TIHV of 26 October 2001.

² *Annual Report 2000*, International Federation for Human Rights (2000)

3.2.3 International

It is possible for representatives of international human rights organisations to monitor respect for human rights. The Turkish government cooperates with unannounced visits to prisons, etc. by the Committee for the Prevention of Torture (CPT) set up under the aegis of the Council of Europe. In 2001 the CPT visited Turkey three times, in January, April-May and September. In the past Turkey has repeatedly refused to release CPT reports for publication or has not given permission for publication until years after the visits. This changed in December 2000 when the Turkish government authorised the publication of the CPT report on the visit from 27 February to 3 March 1999 and the preliminary observations by the CPT concerning a visit from 16 to 24 July 2000¹. On 16 March 2001, in addition to the CPT's preliminary observations on a visit in December 2000 and January 2001, a report on a CPT visit in 1996 was made public². On 8 November 2001 the Turkish authorities authorised the publication of the reports of the CPT mission from 16 to 24 July 2000 and the reports of visits between 1990 and 1996.³

¹ *Report to the Turkish Government on the Visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 February to 3 March 1999*, Council of Europe (7 December 2000) and *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey from 16 to 24 July 2000*, Council of Europe (7 December 2000).

² *Preliminary Observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey in December 2000 and January 2001*, Council of Europe (16 March 2001) and *Report to the Turkish Government on the Visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 23 August 1996 and Response of the Turkish Government*, Council of Europe (16 March 2000).

³ Turkish News Agency, Anatolia, 8 November 2001.

The Turkish government also cooperates with United Nations special rapporteurs on their visits to Turkey. A ten-year exception to this rule was the UN Special Rapporteur on Extra-Judicial Executions, whom the authorities refused permission to visit Turkey after 1991. In February 2001 this situation changed. Special Rapporteur Ms Asma Jhangir visited Turkey and, *inter alia*, investigated the recent disappearance of two HADEP officials in the town of Silopi¹. At the end of 1999 the UN Special Rapporteur for Religious Intolerance visited Turkey. He published a rapport of his findings in 2000.²

Human rights monitors may, in principle, talk freely to members of the public. In the south-east, the authorities sometimes impose restrictions on monitoring. Particularly in the south-east of Turkey workers in local human rights organisations and their contacts are subject to occasional intimidation.

¹ See section 3.3.8.

² *Report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of religious intolerance and of discrimination based on religion or belief. Addendum 1: Situation in Turkey*, United Nations A/55/280/Add.1 (2000).

3.3 Observance and violations

3.3.1 Freedom of expression

The Turkish constitution guarantees freedom of expression. Article 26 of the constitution states that "Everyone has the right to express and disseminate his thought and opinion, by speech, in writing or in pictures or through other media, individually or collectively". That freedom is restricted by Article 155 (incitement to civil disobedience and alienating people from the institution of military service), Article 159 (insulting the army, parliament and other state institutions) and Article 312 (incitement to racial or religious hatred) of the Criminal Code and Article 8 of the Anti-Terror Law (propaganda against the indivisible integrity of state and nation). An oft-heard criticism of these two articles is that the definition of the offence is so broad that it leaves scope for wide interpretation.¹ Recently there have been criminal prosecutions for verbal or written offences pursuant to Article 169 of the Criminal Code (support for an illegal organisation).

Statistics from the Turkish Judicial Records (*Adli Sicil*) show that in 2000 there were 351 cases brought for violations of Article 312 of the Criminal Code (in 1999 there were 480) and 324 cases for Article 159 violations (in 1999 there were 307). In 2000 23 cases were brought before a non-military court for violation of Article 155². At the beginning of 2002 there was a bill before Parliament providing for amendments to Articles 312 and 159 of the Criminal Code.

¹ See *Honouring of obligations and commitments by Turkey*, Parliamentary Assembly of the Council of Europe (13 June 2001), paragraph 51.

² Figures from the website of the Turkish Central Judicial Records (www.adli.sicil.gov.tr).

There is a huge array of media on offer in Turkey. There is a multitude of national newspapers and a wide range of local dailies ¹. In addition to state radio and television there are many local radio stations and television channels which reach almost the entire population in the farthest corners of the country. Internet is widely available. Since September 2001 some major Internet providers are said to have blocked their subscribers' access to various sites belonging to pro-Kurdish newspapers, for example. ²

A substantial part of the media is in the hands of one company, the Doğan media group, which is mostly loyal to the government. At the beginning of 2001 a number of other media companies ran into financial trouble, leading to thousands of redundancies among journalists.

The media often openly voice harsh criticism of the government and administrative apparatus. This can often go unpunished. There are restrictions on freedom of expression in the two areas regarded by the political and military establishment as the greatest threat to the state, namely Kurdish separatism ³ and Islamic fundamentalism ⁴. Anyone who publicly makes critical statements on either of these subjects runs the risk of prosecution. In 2000 a total of 50 journalists were arrested and released shortly afterwards, and 13 journalists were remanded in custody ⁵. On 12 April 2001 charges were brought against the journalist Fehmi Koru for infringement of Article 312 of the Criminal Code. In a television programme he had interpreted the earthquake of August 1999 as God's punishment. According to the prosecution this amounted to "incitement to religious hatred". On 27 November 2001 the case against him was again adjourned until 5 March 2002.

¹ It is known that local newspapers occasionally print articles which have been "ordered" in return for payment. These are sometimes submitted in connection with asylum applications.

² Human Rights Foundation of Turkey Documentation Centre, *Monthly Report of Human Rights in Turkey – September 2001* (September 2001), p. 18.

³ See section 3.4.1.

⁴ See section 3.3.3.

⁵ *2001 Annual Report*, Reporters Sans Frontières (3 May 2001).

Critical reporting of F-type prisons and hunger strikes also led to prosecutions in 2001. In November 2001 a bill was being prepared providing for heavy penalties for anyone supporting hunger strikers in prisons.

There have been many cases in which human rights activists, politicians, and others who have made public statements about the Kurdish question, the role of Islam in society or other sensitive issues such as the role of the army or the death of thousands of Armenians in the early twentieth century¹ have been prosecuted on the basis of the aforementioned legal provisions, particularly Article 312. Convictions are frequent but acquittals are also frequent, chiefly in prominent cases with extensive media coverage. A number of cases have been brought before various courts in connection with the book, *Düşünceye Özgürlük* (Freedom of Speech–2000).² Among the sixteen publishers of the book who are on trial are well-known names from Turkish society, such as the singer Şanar Yurdatapan, originator of the book, and the chairmen of the human rights organisations IHD, TIHV and Mazlum-Der. The military court in Ankara has already acquitted the defendants, but at the State Security Court a case is still in progress on the basis of Articles 169 and 312 of the Criminal Code and Article 8 of the Anti-Terror Law, *inter alia*.³ In December 2001 the case was adjourned until 26 March 2002.

A large number of publications such as books and newspapers have been banned for their contents. An article which gives rise to objections can result in a temporary or permanent ban on publication. Writers and publishers of such publications are regularly prosecuted. In the first six months of 2001, 136 publications were banned or confiscated.⁴ In the first *eight* months of 1999 and 2000 the figures were respectively 217 and 211⁵.

¹ See section 3.3.3, under Armenian Orthodox Church.

² See official general report on Turkey of 4 May 2001, p. 62.

³ Yeni Evrensel newspaper, 20 October 2001 and *Turkey 2001 Regular Report from the Commission on Turkey's Progress Towards Accession*, European Commission (13 November 2000), p. 24.

⁴ *Balance Sheet of Human Rights Violations for the first six months of 2001*, IHD (23 August 2001).

⁵ *Balance Sheet of Human Rights Violations for the first six months of 2000*, IHD (2000) and *Balance Sheet of Human Rights Violations for July and August 2000*, IHD (11 October 2000).

One of the powers of the emergency region Governor is to ban the import, distribution and sale of various publications in the region. The daily newspaper *Yedinci Gündem*, which has been in circulation since May 2001, and other Turkish and Kurdish-language pro-Kurdish periodicals are not available in the state of emergency region. In any case, such publications can be accessed freely on the Internet, even in that region, although various major Internet providers have blocked their subscribers' access to a number of these sites, as mentioned above. The Governor of the state of emergency region can apply to the Ministry of the Interior for a ban on the distribution of any news which he thinks does not accurately reflect the situation in the region. This and the threat of prosecution have led to a high degree of self-censorship in the various media.

Radio and television broadcasts are regulated by the High Board of Radio and Television (RTÜK). The Board closely monitors broadcasts and often orders the closure of radio stations and television channels for short or long periods on grounds of insulting or coarse language, libel, separatist propaganda and broadcasting in the Kurdish language ¹. In the first six months of 2001 the Board imposed a broadcasting ban of a total of 2 836 days on television channels and radio stations ².

In June 2001 the Turkish Parliament adopted a law considerably restricting media freedom and providing for penalties in the form of very high fines. The fines are so high that for many, especially smaller, broadcasters, it would not be possible to recover from the financial loss. For these reasons *inter alia*, President Sezer used his veto and sent the law back to Parliament. The bill has not come up for discussion again and seems to have disappeared from view. ³

¹ See section 3.4.1 on restrictions on the Kurdish language.

² *Türkiye’de insan hakları: Ocak-Haziran 2001 değerlendirme raporu* (Human rights in Turkey: Evaluation report January-June 2001), TIHV 2001.

³ *Neue Zürcher Zeitung*, 13 June 2001, and Associated Press, 18 June 2001.

All education must comply with the principles of the Turkish Republic. The fundamental principles of the Republic must not be challenged in scientific research either. This restricts academic freedom. There is a central Council of Higher Education (YÖK) which, *inter alia*, appoints deans of universities. The Council, at least one of whose members is appointed by the Chief of General Staff¹, also has the power to dismiss lecturers and researchers, for which it has a special ten-member Committee of Experts.

In the past, various professors have been dismissed, *inter alia* for pro-Islamic publications. The universities are free to set their own research programmes but there is a high degree of self-censorship on sensitive topics, in faculties such as political science and history.

3.3.2 Freedom of association and assembly

Freedom of association and assembly is guaranteed by the constitution but is subject to certain restrictions. Following the October 2001 amendment of the constitution, Articles 33 and 34 of the constitution, relating to freedom of association and assembly, contain less stringent provisions than the old text of the law. However, this flexibility still has to be transferred to the subordinate legislation on the same subject.

Freedom of association

The Council of Europe reported in June 2001 that freedom of speech is in general less endangered than in previous years, but is still not completely respected, particularly in the south-east, which may be a consequence of the state of emergency there.²

¹ *Turkey 2000 Regular Report from the Commission on Turkey's Progress Towards Accession*, European Commission (8 November 2000).

² *Honouring of obligations and commitments by Turkey*, Parliamentary Assembly of the Council of Europe (13 June 2001), paragraph 50.

NGOs in Turkey may have the legal form of an association or a foundation. However, the number of foundations is very limited. Pursuant to Article 33 of the constitution and Article 4 of the Law on Associations, anyone may set up an association without prior authorisation. Legal personality comes into being when the memorandum and articles of association are submitted to the provincial governor.¹ The latter sends an acknowledgement of receipt and has 30 days in which to examine the articles of association for irregularities and legal breaches. If the association intends to carry out its activities in more than one province, the provincial governor forwards the memorandum and articles of association to the Ministry of Foreign Affairs, which has 90 days to examine the articles. If a legal breach is found, the founders of the association are notified and given the opportunity to correct it. If that does not happen, the provincial governor or the Ministry of Foreign Affairs can apply to the public prosecutor to demand that the association be closed down.² If no legal breaches are found, the founders of the association are informed accordingly in writing.

Depending on the provincial governor, it occasionally happens that founders of an association receive no acknowledgement of receipt of the memorandum and articles of association they have sent, with the result that no legal personality can come into being. Thus, freedom of association may be restricted by administrative means.

The provision in Article 33 of the constitution to the effect that associations and foundations may not carry on any political activities or any activities which are not explicitly mentioned in their articles of association has lapsed because of the October 2001 amendment of the constitution. The new text of the article also includes a provision to the effect that the closure of an association by an administrative body must be referred to a judge within 24 hours and that the latter must review the closure within the following 48 hours.

¹ Law No 2908 of 6 October 1983 on Associations, Article 9.

² Law No 2908 of 6 October 1983 on Associations, Article 10.

In its 2000 Annual Report, the International Federation for Human Rights notes that a large number of associations and foundations have been banned for political activities or the content of speeches given on public occasions ¹. In particular, NGOs concerned with human rights ² or Kurdish culture seem to fall victim to such prohibitions. In these cases they are frequently accused of lending support to terrorist organisations or spreading separatist propaganda (Articles 169 and 312 of the Turkish Criminal Code and Article 8 of the Anti-Terror Law).

NGOs may associate with international NGOs only after authorisation from the Council of Ministers. NGOs from outside Turkey may operate in Turkey only after authorisation from the Ministry of the Interior ³. In May 2000 Amnesty International submitted a request to the Turkish Ministry of Foreign Affairs to set up an office in Turkey. On 18 November 2001 the persons setting up the office received a letter from the Council of Ministers stating "since the projected Council of Ministers decree submitted for signature to the Council of Ministers has not been completed, the procedure has been suspended" ⁴. According to observers, this means that several ministers in the Council, thought to belong to the MHP, refused to sign the decree, thereby making it impossible at present to open Amnesty International's Turkish office.

¹ *Annual Report 2000*, International Federation for Human Rights (2000).

² See section 3.2.2. of this official report.

³ Law No 2908 of 6 October 1983 on Associations, Articles 11 and 12.

⁴ Compare press report of Amnesty International's Turkey Initiative of 20 November 2001.

The right to form political parties without prior permission is enshrined in law ¹. Political parties must, however, obey the basic principles of the constitution, which, *inter alia*, guarantee the secular nature of the state, and the Law on Political Parties, which forbids parties to place one social class above another or discriminate on the grounds of religion, race or region. Furthermore, party names which contain words such as communist, anarchist, fascist or the name of a religion, region or ethnic group are forbidden ². Parties allegedly contravening this law come into conflict with the authorities and are proscribed by them as a result ³. The Turkish Communist Party was compelled to change its name for that reason. Members of the armed forces and public servants are not allowed to join political parties. In particular, the political party HADEP has since its foundation been the subject of prohibition threats and opposition from the authorities ⁴.

The constitutional amendments of October 2001 make it more difficult for the courts to ban political parties. Article 69 of the constitution was amended so that parties can be prohibited only if a particular forbidden activity is perpetrated frequently by party members or if the activity is approved by an official party body. Article 149 of the constitution was also amended, as a result of which a political party can be banned only if seven of the eleven Constitutional Court judges vote in favour of such a ban. Previously, six judges had been sufficient. In addition, Article 69 of the constitution provides for possible alternative sanctions against political parties. For example, a party may be punished by having its government funding completely or partly cut off.

¹ Law No 2820 of 22 April 1983 on Political Parties, Article 5.

² Law No 2820 of 22 April 1983 on Political Parties, Article 96.

³ In December 1999 the ECHR in Strasbourg ruled that Turkey had violated freedom of association by proscribing ÖZDEP, a forerunner of HADEP, in 1993
See *Turkey 2000 Regular Report from Commission on Turkey's Progress Towards Accession*, European Commission (8 November 2000).

⁴ See section 3.4.4 of this official report.

Anyone is free to join a trade union. Workers have the right to strike, although this right does not apply to public servants. Collective bargaining, which can only be conducted through trades unions with a certain number of members, must precede any strike action. Demonstrations for higher pay and better working conditions are also permitted in principle. However, such demonstrations are sometimes banned by provincial governors. For instance, in February 2001 in the province of Bingöl, the civil service trade union, KESK, was allowed to give a press statement in public about the recent economic crisis, whereas this was forbidden in the provinces of Ankara and Samsun, leading to various arrests ¹. Since July 1995 trades unions and professional associations have been allowed to engage in political activities, and university staff and students have been able to join political parties.

In some cases, trades unions have been suspected of supporting illegal movements such as the PKK or DHKP/C. In such cases arrests have been made, criminal charges brought and administrative sanctions imposed. Siyami Erdem, the former chairman of the civil service trade union, KESK, and Salim Uslu, chairman of the trade union Hak İş, are among the group being prosecuted in connection with the book "Freedom of Expression 2000". In the first two months 33 teachers who were members of the teaching union Eğitim-Şen were transferred from the state-of-emergency region to schools elsewhere in Turkey. The trade union members claimed that this transfer was politically motivated ².

In regions where a state of emergency has been declared, the authorities responsible for security may search the premises of political parties and organisations as a matter of course. This has frequently occurred in recent months, with, *inter alia*, parts of archives being confiscated.

¹ Özgür Politika (daily newspaper), 28 February 2001

² *Monthly Report of Human Rights in Turkey – February 2001*, Human Rights Foundation of Turkey Documentation Centre (February 2001) p. 7.

Around the time of the prison incidents that took place at the end of 2000 and the beginning of 2001, the suppression of dissident NGOs, political parties and trade unions increased¹. In January 2001 the headquarters and various branches in Istanbul of TAYAD, the Solidarity Association of Prisoners' Families, was closed after it had held weekly demonstrations over a period of months against the introduction of the new cell system in prisons². At the same time, various executive members were arrested³. The authorities regard TAYAD as a cover for the revolutionary DHKP/C⁴. The organisation was consequently proscribed for a few years in the early 1990s.

Freedom of assembly

According to law,⁵ no authorisation need be applied for in order to hold a demonstration, but written notice of meetings must be submitted to the governor of the relevant province or district at least 72 hours in advance if they are to take place outside the headquarters. The same rule applies to the distribution of pamphlets, the giving of press statements or the circulation of publications⁶. The governor issues the organisers with an acknowledgement of receipt, which is sufficient for the demonstration to take place. Refusal to issue such a receipt is confirmed in writing by a notary and the notarial instrument is regarded as acknowledgement of receipt⁷.

¹ *Monthly Report of Human Rights in Turkey – January 2001*, Human Rights Foundation of Turkey Documentation Centre (January 2001), p. 33.

² See section 3.3.6.

³ *Monthly Report of Human Rights in Turkey – January 2001*, Human Rights Foundation of Turkey Documentation Centre (January 2001), p. 36, and Associated Press, 15 January 2001.

⁴ See section 2.4.3.

⁵ Law No 2911 of 6 June 1983 on Assembly and Demonstrations.

⁶ *Turkey, Human Rights and the European Union Accession Partnership*, Human Rights Watch (September 2000).

⁷ Law No 2911 of 6 June 1983 on Assembly and Demonstrations, Article 10.

Planned demonstrations are regularly stopped from going ahead. The governor must inform the organisers of the ban at least 24 hours before the start of the demonstration ¹. The Turkish authorities may oblige the organisers to restrict certain meetings to particular locations. A ban on demonstrations for up to a maximum of three months may also be announced for an entire region. Since the constitutional amendments of October 2001, this provision has no longer been embodied in the constitution, although it is still contained in the Law on Assembly and Demonstrations ². The governor of Ankara province used this power on 11 April 2001 to ban demonstrations for a month ³. Shortly before, there had been mass demonstrations in the capital prompted by Turkey's economic crisis.

Grounds for banning demonstrations are laid down by law. These include disrupting public order, national security, activities directed against the character of the republic, potential use of force, and threatening the indivisible unity of the Turkish state ⁴. While the provision that associations and trades unions may not organise demonstrations concerning subjects which do not fall within their objectives was removed from the constitution in October 2001, it is still contained in the Law on Assembly and Demonstrations ⁵. These provisions leave considerable leeway for banning demonstrations.

Meetings which are held despite a ban are dispersed by the security forces. In the past they have often used force to this end. According to the 2000 report by the US State Department, the use of force by security forces in breaking up demonstrations has fallen considerably since 1999, and by 2000 there were only a few cases in which force was used ⁶. The staging of unauthorised demonstrations may also lead to prosecution.

¹ Law No 2911 of 6 June 1983 on Assembly and Demonstrations, Article 18.

² Law No 2911 of 6 June 1983 on Assembly and Demonstrations, Articles 16 and 17.

³ BBC World News and Anatolia, Turkish Press Agency, 11 April 2001. Re the economic crisis, see section 2.3.1.

⁴ Law No 2911 of 6 June 1983 on Assembly and Demonstrations, Article 17.

⁵ Law No 2911 of 6 June 1983 on Assembly and Demonstrations, Article 21.

⁶ *Country Reports on Human Rights Practices 2000. Turkey*, US Department of State (26 February 2001).

However, demonstrations against the introduction of the F-type cell-blocks and in support of the hunger strikers have provided recent examples of police intervention involving force ¹. On several occasions the riot police were heavy-handed in dealing with demonstrators and made numerous arrests. Most of those arrested were released shortly afterwards.

At the beginning of November 2001, the police used force to enter several houses in the Küçükarmutlu district of Istanbul. The houses contained hunger strikers who were protesting against the introduction of the F-type prisons. Part of the area surrounding the houses in question had been barricaded by demonstrators. Four people were killed and a number injured when the security forces broke down the barricades and entered the houses. A number of arrests were made. This was followed over a week later by a second operation by the security forces, again with people being injured and arrests made. The Istanbul police chief claimed that he was forced to undertake such operations because public order had been seriously disrupted and the area more or less occupied by the demonstrators ².

Since the end of 1999 scarcely any demonstrations in support of the Kurdish cause have been held. Demonstrations for the release of the PKK leader Öcalan on 15 February 2001, the second anniversary of his arrest, were only a small-scale affair. Arrests were made, however.

¹ See section 2.3.2.

² Turkish Press Agency Anatolia, 5 November 2001, daily newspapers Radikal 6 and 7 November 2001, Cumhuriyet 7 November 2001 and daily human rights reports from the TIHV 6 and 13 November 2001.

In previous years the authorities have always taken tough action against public meetings during Newroz¹, the new year celebrated by Kurds, Persians and in Central Asia on 21 March. However, in many cities in 2000 no ban was imposed on demonstrations, which, moreover, seem to have gone off peacefully. It was only in Istanbul that the scheduled demonstration was banned. In 2001 Newroz was also generally calm. Apart from in Siirt and Istanbul, HADEP was allowed to organise large-scale festivities for the second year running. The meetings organised in various places by HADEP attracted many thousands of participants². There were incidents in Istanbul, Siirt, Antalya and Mersin, where the police reportedly intervened when participants threw stones at cars or shouted slogans for the PKK or the PKK leader, Öcalan³.

On 1 September 2001, HADEP was in many places banned from organising meetings to mark World Peace Day. The party responded by deciding to read out a press statement at the place where the demonstration had been scheduled to take place. HADEP supporters travelling from around the country to attend in Ankara were obstructed by the police. In the incidents that followed, four were injured and one person killed. A large number of arrests were made. In other places too, skirmishes took place and arrests were made⁴.

¹ The Turkish spelling is "Nevruz", the Kurdish spelling "Newroz".

² Reuters, 21 March 2001, Agence France Presse, 21 March 2001, and Turkish Daily News, 21 March 2001.

³ Turkish news channel NTV via Internet (www.ntvmsnbc.com), 21 March 2001.

⁴ *Monthly Report of Human Rights in Turkey – September 2001*, Human Rights Foundation of Turkey Documentation Centre (January 2001), 20-21.

3.3.3 Freedom of religion

As stated in the US State Department's latest report on this subject, there have been no significant changes in the area of religious freedom in the recent period ¹. The Turkish constitution describes Turkey as a secular state and provides guarantees for the freedom of belief, worship and the expression of personal religious convictions. Although there is no law explicitly prohibiting proselytising or religious conversions, prosecutions sometimes take place on the basis of Article 312 of the Criminal Code on incitement to religious hatred. To our knowledge charges brought for acts of conversion have, however, never actually led to a conviction by the courts.

The secular character of the state, laid down as one of the cornerstones of the state structure (often referred to as secularism in the context of Turkey), also means that government policy may not be based on religious considerations. The authorities are very much on the alert with regard to anyone who advocates a role for Islam in the state. So as to short-circuit people who entertain such notions, the Turkish state provides for a sort of state-controlled Islam. Secularity in Turkey does not mean a strict division of "church" and state, but rather state control of the official form of Islam. The state body set up for that purpose is the Directorate for Religious Affairs (Turkish: *Diyanet İşleri Müdürlüğü*, often abbreviated to *Diyanet*), which answers directly to the Office of the Prime Minister.

Anyone arguing in favour of a greater role for Islam in the Turkish state structure can expect a reaction from the authorities. Criminal charges are often brought in such cases, even if no force was involved.

¹ *Annual Report on International, Religious Freedom for 2001: Turkey*, US State Department (October 2001).

Almost the entire Turkish population is Muslim. Only the Jews, Greek Orthodox and Armenians, in accordance with the Turkish interpretation of the 1923 Treaty of Lausanne, have official status as recognised minorities in Turkey, although that is not explicitly laid down in the Treaty. Other minorities do not exist in this scheme of things. The right to freedom of religion for the remaining non-Muslim population is guaranteed by law in the article of the constitution which states that all citizens are equal before the law.

There is no persecution solely on religious grounds in Turkey. In general it can be said that the legal guarantees for freedom of religion are respected in practice. However, religious minorities can encounter practical restrictions such as administrative difficulties in managing church buildings or other real estate. It has also been known for a difference in religious background to induce a discriminatory attitude on the part of the local population or (lower) government officials. In such cases the authorities can usually be contacted.

Although the state and the education system are secular, Islamic religious and moral instruction is compulsory for Muslims. For years now, members of the Armenian, Greek and Jewish minorities have been able to gain exemption from compulsory instruction on presentation of a written declaration of their non-Muslim background. In recent years this possibility has been increasingly open to Christians of other denominations¹. Alevis are regarded as Muslims by the authorities and, despite the fact that their beliefs differ from those taught in the lessons on almost every point, they must attend religious instruction.

¹ *Report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of religious intolerance and of discrimination based on religion or belief. Addendum 1: Situation in Turkey, United Nations A/55/280/Add. 1 (2000).*

The real estate of the three officially recognised minorities belongs in its entirety to foundations set up in 1936 (singular *vakif* and plural *vakiflar* in Turkish). The councils of those foundations are appointed from local religious communities. If for five successive years a community does not manage to select a council or cannot demonstrate that there are enough adherents to use the buildings, the property reverts to the Turkish state, which continues to administer it under the Office of Foundations. The property can be returned to the community when the conditions have been fulfilled again. This has actually happened several times.

Leaders of the Armenian and Greek religious communities claim that the authorities have created a whole series of administrative hurdles to overcome when electing a council for a foundation, with the result that no council can be formed and the property reverts to the state. The foundations formed by the recognised minorities are not allowed to acquire immovable property as an inheritance or gift, nor are they allowed to buy any. The reasons given by the Turkish authorities are that foundations did not include the acquisition of property as a possible activity in their 1936 statutes.

In 1998 legislation was adopted which formally puts checks on the building and administration of mosques. For the construction of new mosques permission must be obtained from the Directorate of Religious Affairs, which also has full authority over mosques and the training and appointment of religious officials.

A ban dating back 50 years on the wearing of head coverings in government offices and public buildings is being increasingly enforced. Secularists view head coverings as a symbol of political Islam and a threat to the secular nature of the Turkish constitution. This sensitive question in Turkey has already been the subject of national debate for some time. Nurses, teachers and other women in the public sector have been dismissed for wearing headscarves. Students, lecturers and other staff in universities have suffered similar fates.

Members of the Turkish armed forces who have a demonstrable involvement in Islamic fundamentalist activities are mostly dismissed, but suspicion of an Islamic outlook, which the military authorities deem incompatible with Kemalist principles, can give cause for dismissal. Fear of Islamic infiltration into the military apparatus plays a role here. The Turkish army, which is viewed as the guardian of the secularity of the Turkish state, is strict in making sure that no threats to the secular system arise within its own ranks. In practice, it turns out that sometimes the wearing of the headscarf by a woman can lead to her husband's dismissal from the armed forces.

Alevis

The Alevis or Alawis form a heterodox current within Islam in which Ali, the son-in-law of the prophet Mohammed, plays a central role. Some Muslims think that they are very far removed from the Sunni current of Islam, which is widespread in Turkey, to the extent that they are recognised as Muslims at all and not regarded as heretics.

In any event, the Turkish state does not regard the Alevi faith as a separate religion, and the Alevis are not an officially recognised religious minority. Alevis' identity cards have "Islam" indicated as their religion. According to a February 2001 report on Alevitism from the Directorate for Religious Affairs, Alevis are counted as Sunni Muslims and at first simply attended the mosques but have recently replaced them with *cemevleri* (see below)¹. Some Alevis think that the Turkish government does not do them justice by regarding them merely as a cultural group.

¹ Özgür Politika daily newspaper, 5 March 2001.

Alevis do not have mosques but use houses of worship instead (*cemevi* in the singular and *cemevleri* in the plural), which also act as socio-cultural centres. In smaller communities meetings are also held at home. In general, Alevis are considered very liberal on a religious level. Politically they have a traditional tendency to associate with groups which endeavour to curtail Sunni domination. In recent decades this has also been evident in associations with left-leaning political parties and left-wing resistance movements.

There are no official Turkish estimates of the number of Alevis. According to their own information, there are twelve to twenty million Alevis living in Turkey, which would make almost one third of the Turkish population Alevi. Other sources report that a considerably smaller proportion of the Turkish population is Alevi. A fully accurate estimate is difficult if not impossible ¹.

Alevis live across the whole of Turkey, with concentrations in the western provinces of East Anatolia. In addition to the communities in Kahraman Maraş there are sizeable Alevi communities in the provinces of Hatay, Sivas, Tunceli, Erzincan, Malatya, Çorum and Elazığ. An estimated 4,5 million Alevis live in Istanbul. There are also large numbers of Alevis in other big cities.

The paradox in the position of the Alevis, who are by Turkish standards liberal, is that they generally support the secularism advocated by Atatürk yet believe that cultural and religious rights in the current state system are not adequately respected. For instance, many Alevis accuse the Turkish Directorate for Religious Affairs of being geared solely towards the Sunni faith. Nor does the Turkish education system allow any room for the Alevi interpretation of Islam. Alevis are increasingly in favour of making religious instruction more objective.

¹ See also *International World Directory of Minorities*, Minority Rights Group (London, 1997), p. 379.

In recent years the degree of organisation within the Alevi community has increased. In 1995 the Alevi organisation Cem Evi was set up. The foundation does not experience any problems or opposition from the government as regards its publications and activities. The same applies to the small number of other Alevi organisations. The exception to this is the case brought against the Cultural Alevi-Bektashi Union (ABKB) on 2 October 2001 with the aim of closing down the organisation on account of its alleged incitement to religious hatred ¹. The public prosecutor in charge decided a little over three weeks later to drop the case.

Alevis occasionally have a tense or even polarised relationship with the Sunni majority. Since the end of the 1970s Alevis have sometimes felt poorly protected by the authorities. This is related to three incidents directed against Alevis in 1978, 1993 and 1995 in Kahraman Maraş, Sivas and Istanbul. There were 30 deaths in the incident in Sivas. No further incidents overtly victimising Alevis are known to have occurred since these three ².

Christians ³

An estimated 100 000 Christians live in Turkey, most of whom belong to the Armenian Orthodox and Syriac Orthodox denominations. The Christian minorities are largely concentrated in Istanbul. The economic situation of Christians in Istanbul does not greatly differ from that of their Islamic counterparts.

Members of the Christian minorities and parishes are slightly disadvantaged. Certain professions are not open or are more difficult to gain access to for some. Christian schoolchildren often hide their religious background for fear of repercussions as a result of possible discrimination by Islamic teachers.

¹ Cumhuriyet daily newspaper, 2 October 2001.

² Cumhuriyet daily newspaper, 25 October 2001

³ For a description of Christian groups in Turkey, see also Appendix 1.

Activities such as the restoration of Christian churches are not subsidised by the Turkish government. Until 1999 permission had to be sought from the authorities for construction work exceeding USD 200 000. This rule was abolished at the end of 1999 ¹.

Syriac Orthodox Church

Syriac Orthodox Christians are not a recognised minority in Turkey. Only the Greek Orthodox, Armenian and Jewish communities are officially recognised minorities. Syriac Orthodox Christians are therefore not allowed their own schools, for example. A limited amount of religious instruction and teaching takes place in church language and in the vernacular in Istanbul. In 1998 such instruction was prohibited in the monasteries in Midyat and Mardin. In reality, however, instruction simply continues and is tolerated by the local authorities.

The relative peace brought about by the cessation of armed hostilities by the PKK at the end of 1999 (as described earlier) has also had a positive impact on the position of the Syriac Orthodox Christians living in Tur Abdin. While in the past they were caught between the Turkish government and the PKK, the situation is now reasonably calm. In August 2001 the Turkish media reported that the number of tourists in Tur Abdin in that year showed a 150% rise by comparison with the previous year. Between April and August 2001, 10 000 tourists were reported to have visited Midyat ². The Syriac Orthodox priest, Yusuf Akbulut who recently faced prosecution on account of incitement to religious hatred, was acquitted on 5 April 2001 ³.

¹ *Annual Report on International Religious Freedom for 1999: Turkey*, US State Department (9 September 1999).

² Turkish Press Agency Anatolia, 30 August 2001

³ Regarding Akbulut, see official general report on Turkey of 4 May 2001, pp. 50 and 51.

In May 2001 the local security forces ceased to allow foreigners and Syriac Orthodox Christians residing abroad to enter the villages of Tur Abdin. After protests from the international community, Prime Minister Ecevit issued a circular on 12 June 2001 stating that access to the villages must be guaranteed and that Syriac Orthodox Christians living abroad could return to their villages if they wished. The circular also urged official bodies to safeguard the rights of the Syriac Orthodox population in Turkey ¹. In 2001 President Sezer gave permission for a second Syriac Orthodox church to be opened in Istanbul ².

In June 2001, a Syriac Orthodox man living abroad was arrested on suspicion of disseminating separatist propaganda while making video recordings in the area where he had been born ³. The man was detained for two weeks before being released ⁴. As far as is known, the case against him had still not been completed at the beginning of 2002.

Armenian Orthodox Church

The Armenian community can practise its religion freely but is faced with some administrative restrictions. The Armenian Patriarchate does not have legal personality. Since 1972 there has not been any training for Armenian priests in Turkey, while the rule is that every Armenian priest in Turkey must have Turkish nationality. This has produced a shortage of priests in the community. The Armenian Patriarch has recently argued in favour of setting up an expert group of Armenian theologians in the theology department of one of the existing Turkish universities ⁵. For primary and secondary education, every Armenian school must have a Turkish deputy head and the curriculum is set by the state.

¹ Turkish Press Agency Anatolia, 12 June 2001.

² *Turkey 2001 Regular Report from the Commission on Turkey's Progress Towards Accession*, European Commission (13 November 2000), p. 27.

³ Radikal daily newspaper, 16 June 2001.

⁴ Compass Direct Press Agency, 5 July 2001.

⁵ *Interim report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of religious intolerance and of discrimination based on religion or belief. Addendum I: Situation in Turkey*, United Nations (11 August 2000).

In 1915 hundreds of thousands of Armenians were driven out of Anatolia by the Ottoman government. Many thousands died. Many Armenians and others characterise these events as a deliberate genocide. The Turkish government strongly denies this and claims that the incidents merely involved the expulsion of people from outside who had come into conflict with the Ottoman Empire.

The Armenian communities abroad attach great importance to having these events recognised as genocide by the international community, and success was achieved in 2001 when a law was adopted in France branding them as genocide. At a press conference held on 30 January 2001 by all the Armenian communities living in Turkey, the latter announced that they were unhappy with all the foreign interference in this matter ¹. The same sentiment was expressed in a recent letter sent from 48 Armenian organisations to President Chirac of France. The Armenian community in Turkey has experienced no additional problems as a result of these events, a fact which was also emphasised at the aforementioned press conference. In February 2001 Patriarch Mutafyan was received by the President, the Prime Minister and the Chief of the General Staff, among others ². Mutafyan assessed the visit very positively, declaring that the members of the government had taken due note of the grievances he had expressed.

Greek Orthodox Church

The Greek Orthodox Patriarch told the UN Special Rapporteur on Religious Freedom that his community enjoyed freedom of religion but that there were a few restrictions. Although the Greek Orthodox Church recognises the Patriarch as leader of the world-wide church, Turkey refuses to accord him that status and regards the Patriarch merely as head of the Greek Orthodox community in Turkey. The Patriarch and other priests are required to have Turkish nationality. As the only Greek Orthodox seminary has been closed by the authorities since 1971 and has not re-opened despite numerous efforts, there is a shortage of new clergy for eventual leadership.

¹ Cumhuriyet daily newspaper, 31 January 2001.

² Turkish Press Agency Anatolia, 14 February 2001.

On Boxing Day, Christmas 2000 and 2001, permission was given for a service to be held in a church in İznik (classical Nicea), which is now under state management and has been converted into a museum.

Protestant Church

Protestant meetings are often held in homes or converted shop premises. Under a law which permits religious activities only in designated buildings, some locations at which Protestants have held meetings have been closed. In September 1999, for instance, a meeting in İzmir was disrupted and the entire congregation of forty arrested. Ultimately they were not prosecuted. Two weeks later a room in which gatherings were held in the Istanbul district of Zeytinburnu was also closed. On 23 March 2001 the meeting room of the Protestant community in Gaziantep was closed by the authorities for the same reasons ¹. According to a spokesman for the Protestant community, in December 2001 the authorities wrote to all Protestant churches not using official church buildings stating that the premises they used could no longer be used for that purpose because such use contravened various local development plans. The communities appealed against the decision to the administrative court.

In December 2000 the highest court in Turkey, the Danıştay, approved the creation of an official foundation (vakıf) by a Protestant community in the Bostancı district of Istanbul. This community was thus the first Protestant community to acquire legal status ². In November the Spanish leader of the community was granted a work permit as pastor. For the first time in Turkey, the local authorities in Diyarbakir gave permission for the construction of a Protestant church. The building is expected to be ready for use in the first half of 2002 ³. However, according to a spokesman for the Protestant community, building work was discontinued on 25 November 2001 because it had been alleged in a television programme that the church was being built without there being a community to use it.

¹ Compass Direct press agency, 24 March 2001.

² Compass Direct press agency, 17 January 2001.

³ Press release by the Protestant community in Diyarbakir, 20 August 2001.

People who engage in conversion activities are sometimes prosecuted on charges under Article 312 of the Criminal Code which forbids incitement to hatred on religious grounds. To our knowledge the courts have never made any convictions in such cases to date.

At the beginning of March 2000 two people were arrested in Izmir for distributing bibles. After being held in custody for thirty days, they were eventually acquitted ¹. In Diyarbakir in December 2000, criminal charges were brought against Kemal Timur, a Turkish Christian, for distributing bibles ². The last sitting of the case took place on 4 October 2001, when it was adjourned until 5 February 2002 ³.

Jehovah's witnesses

There are some 1 500 Jehovah's witnesses in Turkey. They live mainly in the cities of Istanbul and Izmir. As a result of around fifty court cases which they have won over recent decades, Jehovah's witnesses are now *de facto* accepted as a separate religious group. The group is nevertheless hampered in its activities by the local authorities from time to time. For instance, local authorities in the cities of Mersin and Tethiye have forbidden Jehovah's witnesses to hire rooms for meetings. An appeal has been lodged with the courts against these decisions.

Individual Jehovah's witnesses are occasionally prosecuted for proselytising – which is a duty for Jehovah's witnesses according to their beliefs. There have been no convictions so far but there are cases in which Jehovah's witnesses have spent periods in custody.

¹ The Irish Times, 10 April 2000, and Compass Direct press agency, 11 April 2000.

² Press release by the Alliance of Protestant Churches in Turkey, January 2001.

³ Christian Human Rights Organisation Middle East Concern, 7 October 2001.

According to a spokesman for the Jehovah's witnesses, there have recently been much fewer problems with the performance of military service. In general it is accepted that Jehovah's witnesses may not use weapons because of their faith. They are allotted administrative or back-up tasks. There are individual cases of harassment, according to the spokesman.

Jews

Estimates of the number of Jews in Turkey range from 3 000 to 25 000. Some of the predominantly Sephardic Jews still speak Judeo-Spanish, the language of their country of origin, sixteenth-century Spain. Turkish Jews live mainly in Istanbul and Izmir. Small numbers of Jews live in Ankara and Bursa. Some Jewish businessmen play an important role in the Turkish commercial world. They enjoy full freedom of religion and are not bothered by any harassment or similar problems. Radical Islamic publications sometimes contain anti-Semitic statements.

Yezidis

There are approximately 2 000 Yezidis in Turkey. Most of them live in the provinces of Batman, Şanlıurfa, Diyarbakir and Mardin. However, the majority of Turkish Yezidis live outside Turkey. There are an estimated 25 000 Yezidis in Germany and some 2 000 in the Netherlands.

The faith of the Yezidis ¹, who are wrongly known as devil-worshippers, contains elements of various religions in the region such as Zoroastrianism, Christianity and Islam. Malak Ta'us, the Peacock Angel, has an important position in their religion. Unlike their coreligionists in Iraq, Turkish Yezidis have no religious hierarchy. As in Iraq, Yezidis are usually regarded as being of Kurdish ethnic origin. Some play a prominent part as Kurdish nationalists. For a few years now many Yezidis have, however, regarded themselves as a separate people ².

¹ Various known in English as Yazidi, Azidi, Zedi or Izdi.

² M. van Bruinessen in NRC Handelsblad, 17 June 1999.

In Turkey Yezidis originally resided in the south-east, where in the past, just like Syriac Orthodox Christians, they had suffered from the conflict between the Turkish armed forces and the PKK. The Yezidis also had to deal with Kurdish Muslims who tried to confiscate their land and other property. While in the past Yezidis enjoyed a degree of protection thanks to solidarity between the villages which were mainly inhabited by fellow worshippers, they must now frequently do without such protection ¹, and the mostly old Yezidis who still live in south-eastern Turkey depend for the necessary protection on the local authorities, which in most cases will be able to provide it.

In Istanbul and elsewhere outside south-eastern Turkey there are reportedly still a few hundred followers. Yezidis in Turkey are not eligible for exemption from compulsory Islamic instruction. Their identity cards often contain the entry "xxx" in the box for religion.

3.3.4 Freedom of movement

The freedom of movement of Turkish citizens is guaranteed in the constitution. This applies both home and abroad. Freedom of movement may be restricted in the case of a national emergency and, for instance, military service, criminal investigation or prosecution.

In regions where a state of emergency has been declared, freedom of movement within the country may be restricted by the governor of the region. Travel to areas in the south-east can sometimes be forbidden for security reasons. The number of roadblocks and checks in south-eastern Turkey depends on the prevailing security situation and has in recent times fallen considerably.

¹ *Asylmagazin 5/99*, Informationsverbund Asyl/ZDWF e.V (May 1999), pp. 19-20.

There were a number of cases in November 2000 in which the authorities prevented HADEP officials from travelling to Ankara, where the national party conference was being held. In addition, on 1 September 2001 HADEP members were prevented by the security forces from going to Ankara to mark World Peace Day.

Every individual must go through border controls on entering Turkey. This applies equally to former asylum seekers returning to the country. Like everyone else they must have valid travel documents.

The names of individuals entering or leaving Turkish territory via the international airport at Istanbul and other borders are checked by computer or other means. Despite checks, couriers do succeed in smuggling others illegally out of the country, *inter alia* via Bulgaria and Greece.

The exit tax payable by Turkish nationals which had been abolished years ago was re-introduced with effect from 1 August 2001. Since then, every Turk leaving Turkey to travel abroad has had to pay US \$ 50 at the border. In the midst of the economic crisis which has hit Turkey, this measure was taken as a way of gathering extra revenue for the government ¹.

Travel documents

Everyone who has Turkish nationality has the constitutional right to possess a passport, which has to be applied for at the local police of the province in which the person is recorded in the population register. Police clearance is required for passport issue. Turkish subjects can legally leave the country only if in possession of a valid passport.

¹ Turkish Daily News, 13 July 2001.

3.3.5 Judicial process

By law, everyone has the right to a fair and public trial. The independence of the judiciary is enshrined in the Turkish constitution. In general, the law courts act independently of the legislative and executive branches. However, there is room for political influence, *inter alia* in the appointment of judges and prosecutors. Judges and public prosecutors are appointed by a "High Council of Judges and Public Prosecutors", which contains a number of senior judges appointed by the President and which is presided over by the Minister of Justice.

Trials which attract great public attention sometimes appear open to political influence. In some cases the evidence has been dubiously handled. Proof rests largely on confessions by the suspect often extracted under duress and much less on other evidence. Forensic investigation in Turkey is not very well developed. The roles of public prosecutors and judges are also confused to a considerable degree. For instance, prosecutors attend judges' deliberations in chambers.

A characteristic of Turkish criminal law is that sentences may be imposed cumulatively. This means that if several offences are prosecuted simultaneously the sentence imposed is not the highest but rather the sum of the sentences for each separate offence. Nevertheless, the maximum prison sentence actually served is generally 36 years.

Trials

In principle trials are open to the public. The public are usually also admitted in cases relating to state security. In political cases the audience usually includes some representatives of human rights organisations and diplomatic staff from various countries. Criminal cases against children, however, usually take place *in camera*. For instance, the first sitting of the State Security Court in Diyarbakir on 5 April 2001 in the Viranşehir case, in which 13 minors were prosecuted for chanting PKK slogans, took place behind closed doors.

The main rule is that the suspect must always be present at the trial unless he has been heard by the judge on a previous occasion. If he is not present the trial may not proceed, no verdict may be pronounced and the case is adjourned until further notice. There are a few exceptions to this rule. The trial may continue if the suspect has already been heard by the court in an earlier session or if he has been questioned by a judge on the facts of the case during preliminary inquiries before the trial. In cases in which only a fine may be imposed or in which it is clear that there will be an acquittal, the trial may take place *in absentia*.

A trial may also proceed without the presence of the accused in cases being dealt with by the State Security Courts on condition that the suspect has already been heard by the judge on a previous occasion ¹.

Officially only the Turkish language is used during legal proceedings. Members of ethnic minorities who have little or no command of Turkish may be at a disadvantage given the varying quality of interpreters and translators.

¹ Keskin, *Devlet Güvenlik Mahkemeleri*, p. 102.

3.3.6 Arrest and detention

Pre-trial detention

According to the Turkish Code of Criminal Procedure, a suspect may be taken into custody in two ways ¹.

The first is for a judge to order that the suspect should be taken into custody in a criminal case being investigated by the Public Prosecutor's Office. In such cases the court issues an arrest warrant (Turkish: *tutuklama müzekkeresi*). If the suspect is already in detention he remains there. If the suspect is at large he is arrested as quickly as possible on the basis of the warrant.

The second way of taking a suspect into custody is through arrest by the security services without a warrant issued by the courts. In such cases the suspect must be brought before a judge as quickly as possible in order to rule whether the arrest was justified. Such arrests may be made only in emergencies, e.g. if there is a risk that the suspect will abscond.

In cases in which a suspect is arrested by the security services on their own initiative for an ordinary offence, he must be brought before a judge within 24 hours. For offences which come under the jurisdiction of the State Security Courts, this period is 48 hours. Under the constitutional amendment of October 2001, offences committed by several people together, detention may last for up to four days. Previously this had been seven days. On 27 December 2001 the Minister of Justice issued a circular calling on all officials to comply with the new time limits.

¹ Turkish Code of Criminal Procedure (CMUK), No 1412 of 4 April 1929, Articles 104 to 131.

Moreover, the provision whereby the period of detention may be extended if the offence was committed in a state-of-emergency (OHAL) area is still contained in the new Constitution ¹. The retention of the old system was expressly confirmed in a State Security Court judgment in January 2002 ². This means that in OHAL provinces pre-trial detention may extend to a maximum of ten days. When the suspect is brought before the court, a decision is taken as to whether remand in custody is necessary.

According to Sema Pişkinsüt, the former chairman of the Parliamentary Human Rights Commission, despite the above rule the security forces hold suspects for longer before bringing them before the courts if they consider it necessary ³. In Annual Report 2000, the TIHV states that in the year 2000 pre-trial detention was from one to three days in 78,0% of cases (compared to 55,2% in 1999) and longer than eight days in 20,3% of cases (as opposed to 21,9% in 1999) ⁴.

If a case is not referred to the courts within six months, by law the suspect must be released. If the case is taken to court, the suspect may be remanded in custody during the proceedings for a maximum of two years. The judge may extend this period if necessary. During that period a judge must examine once a month whether the grounds for remand continue to obtain.

¹ Turkish Constitution, Article 19.

² Radikal daily newspaper, 15 January 2002.

³ Sema Pişkinsüt, *Filistin askisından fezlekeye. İşkencenin kitabı* (From Palestinian hangers to a request for the lifting of parliamentary immunity. The book of torture.) (October 2001), p. 31.

⁴ *Türkiye İnsan Hakları Tedavi ve Rehabilitasyon Merkezleri Raporu 1999* (1999 Report from the TIHV Treatment and Rehabilitation Centre), TIHV (July 2000), pp. 28 and 29 and *Türkiye İnsan Hakları Tedavi ve Rehabilitasyon Merkezleri Raporu 2000* (2000 Report from the TIHV Treatment and Rehabilitation Centre), TIHV (July 2000), p. 24.

The Turkish Constitution and the Turkish Code of Criminal Procedure provide that the suspect's next of kin be must be quickly informed of the arrest or remand in custody. The old text of Article 19 of the Constitution laid down that if there was a risk that such notification could reveal the type or extent of the criminal investigation, the duty to inform might be waived. As a result of the constitutional amendment of October 2001, this provision lapsed and it was laid down that next of kin be informed immediately in all cases. However, the Code of Criminal Procedure still contains a provision that permits the suspect's next of kin not to be notified in some cases¹. This article needs to be amended in accordance with the Constitution.

There is a systematic failure to notify suspects' families². This is attributable to the fact that records kept in police and *jandarma* stations are forged, incomplete or in some cases completely missing. Sometimes police offices deny for hours or days that a person has been arrested. In recent years, according to the HRW report, there has been some improvement in this respect³. In July 2001 the Minister for the Interior issued a circular to all provincial governors, the national police headquarters and the chief of *jandarma* urging that the rules on informing suspects' next of kin and keeping pre-trial detention records be conscientiously implemented.

For ordinary offences a suspect has the right of access to a lawyer from the moment of his arrest. For offences falling under the jurisdiction of the State Security Courts, this right only applies after four days. This means that in such cases the suspect can be held "incommunicado" for a maximum of four days.

¹ Turkish Code of Criminal Procedure, Article 207.

² *Turkey. Human Rights and the European Union Accession Partnership*, Human Rights Watch (September 2000). *Report to the Turkish Government on the Visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 February to 3 March 1999*, Council of Europe (7 December 2000) and *Turkey – An end to torture and impunity is overdue!*, Amnesty International (8 November 2001), p. 11.

³ *Turkey. Human Rights and the European Union Accession Partnership*, Human Rights Watch, (September 2000).

According to a recent Human Rights Watch report ¹, persons suspected of offences within the jurisdiction of the State Security Court are in practice still denied access to a lawyer even after the period of four days. Occasionally a brief encounter in the presence of police officers is permitted, but it is almost unknown for lawyers to be present during interrogation, according to HRW. Moreover, according to the same report suspects are often told that it will be to their advantage if they waive their right to legal counsel. Investigations by the Turkish Parliamentary Human Rights Commission at the police headquarters in Erzincan, Erzurum and Tunceli indicate that, with one single exception, in all cases suspects waived the right to a lawyer ². HRW also notes in its abovementioned report that people suspected of ordinary offences were apparently told by police officers that if they requested a lawyer their charges would be converted into charges falling under the State Security Courts, with the result that they could be held incommunicado for four days. The report also notes that it is known for detainees to be held incommunicado for up to six days. The aforementioned circular sent by the Minister for the Interior in July 2001 also presses for the rules on this point to be more strictly applied.

¹ *Turkey. Human Rights and the European Union Accession Partnership*, Human Rights Watch (September 2000).

² *Soruşturma, Kovuşturma, Yargılama, Ceza ve İnfazı Tunceli, (resp. Erzurum, Erzincan), Raporu. 1998 ve 2000* (Report on Investigation, Prosecution, Trials, Punishment and Enforcement in Tunceli, Erzurum, Erzincan), Turkish Parliamentary Human Rights Commission (May 2000).

A lawyer has the right by law to consult the file on the preliminary inquiry and can obtain a copy of each document he requires free of charge. The district judge may restrict this right at the request of the public prosecutor if it would harm the investigation ¹. In cases falling under the jurisdiction of the State Security Courts, a lawyer only has access to documents once the case has reached the phase of the main investigation. In other words, the preliminary investigations must have been concluded and the case must be pending with the State Security Courts ². The lawyer representing the person who has been convicted may always obtain copies of the final judgement in a case.

According to Human Rights Watch, since 1997 it has also become more common for detainees to be interrogated in unofficial places of detention such as vacant buildings, construction sites or in open land outside cities ³.

Release on bail from pre-trial detention is possible under Turkish criminal law and is frequent. Decisions are taken by the judge, who also determines the amount of bail, taking account of the burden of proof against the accused. If the judge considers that the case will culminate in an acquittal or a light sentence, he may order release with or without bail. In that case the suspect is called to the hearing by means of a summons as soon as the actual trial commences. This procedure is often followed in Turkey, including for political offences. There are even cases in which people accused of treason (Article 125 of the Criminal Code) are released during the preliminary inquiries.

¹ Sedat Bakıcı, *Olaydan Kesin Hükme Kadar Ceza Yargılaması ve Ceza Kanunu Genel Hükümler* (Criminal Procedure and the General Provisions of the Criminal Code from the Offence to the Verdict) (3rd printing, Ankara 2000), p. 500, and the Turkish Code of Criminal Procedure, Article 143.

² Law No 2845 on the Establishment and Rules of Procedure of the State Security Courts, Article 16.

³ *Turkey. Human Rights and the European Union Accession Partnership*, Human Rights Watch (September 2000).

As repeatedly noted in the abovementioned reports by the Turkish Parliamentary Human Rights Commission, the (sanitary) conditions in which detainees are kept in pre-trial detention are often very poor. There is often little daylight or ventilation.

Amnesty

In December 2000 Parliament adopted the amnesty law, which entered into force on 21 December of that year ¹.

The Amnesty Law provides that the perpetrators of certain offences committed before 23 April 1999 will have their sentences reduced by ten years and that those who have less than ten years left to serve will be released immediately. It also provides for the release of those in pre-trial detention for certain offences within one month and the conditional suspension of the charges against them, and for the conditional suspension of prosecution of those against whom charges have not yet been brought for those specific offences. Article 2 of the Law extends the scope of an earlier partial amnesty law to illegal public statements ².

The scope of the Law also includes Article 169 of the Turkish Criminal Code, affording assistance and shelter to an illegal organisation. This led to the release of 1 660 people convicted on the basis of that Article for support to the PKK prior to 23 April 1999 or to the dropping of charges on that basis. Infringements of the Anti-Terror Law are not covered by the Amnesty Law because the constitution lays down that no amnesty is possible for such offences.

Under Article 2 of the Law, a large number of people imprisoned for illegal utterances have been released or had charges dropped. Those convicted of torture (Article 245), rape or corruption were not covered by the amnesty. Article 243 of the Criminal Code (ill-treatment) does, however, come within the scope of the law.

¹ For more details, see the general official report on Turkey of 4 May 2001, section 3.3.6. under "Amnesty".

² See section 3.3.1.

The Amnesty Law stipulates that fugitives from justice against whom proceedings are pending must report within one month of the entry into force of the Law ¹. The deadline expired on 22 January 2001 ². According to the Minister of Justice a total of 3 761 individuals have availed themselves of this opportunity as at 13 March 2001 ³. There is no known case law relating to instances of people having reported after that date.

In the meantime a number of petitions have been filed with the Constitutional Court concerning the unconstitutionality of the Amnesty Law because it excludes certain articles ⁴. On 18 July the Court ruled that Articles 188, 191, 240, 298 and 383 of the Turkish Criminal Code must be covered by the Amnesty ⁵. These articles concern intimidation, abuse of office and material damage.

3.3.7 Ill-treatment and torture

Torture and ill-treatment are punishable under Articles 243 and 245 of the Turkish Criminal Code. Evidence in a criminal case that is obtained by means of torture or ill-treatment is inadmissible as such by law.⁶ Turkey is also a party to a number of international conventions prohibiting torture.

Nevertheless, torture in Turkey is still widespread. This was confirmed in May 2000 by the report published under the auspices of the Turkish parliament by the Parliamentary Human Rights Commission, which encountered cases of torture in all of the prisons it visited.

¹ Law No 4616 on the conditional release and the suspension of trials and sentences for offences committed before 23 January 1999, 21 December 2001, Article 1(9).

² Anatolia News Agency, 6 January 2001, and daily newspaper Radikal, 22 January 2001.

³ Anatolia News Agency, 20 April 2001.

⁴ Anatolia News Agency, 20 April 2001.

⁵ Turkish Daily News, 19-7-2001.

⁶ Article 135a of the Turkish Code of Criminal Procedure.

Reporting on the first nine months of 2001 by the Turkish human rights organisation IHD shows that the number of cases of torture and ill-treatment known to it increased by comparison with the two previous years. Between January and September 2001, 762 people were victims of torture and ill-treatment. The number for the first nine months of 1999 was 472, and in the whole of 2000 there were 508 known cases¹. The number of cases of torture and ill-treatment had already begun to rise at the end of 2000. Over 40% of the torture and ill-treatment cases reported to the TIHV occurred in the last three months of 2000. The TIHV regards the hard line taken by the security forces and the large number of arrests that took place in connection with the hunger strikes in the prisons as the main reason for this increase, which has carried through into 2001².

Torture and ill-treatment occur mainly during the period of incommunicado custody at the beginning of pre-trial detention at police headquarters, where the Anti-Terror Branches are based, and at local police stations. This period lasts for a maximum of four days for people suspected of offences falling under the State Security Court³. Pre-trial detention until the suspect is brought before a judge may be increased to ten days in the state of emergency region and, since the constitutional amendment of October 2001, to four days in the rest of the country⁴. People accused of offences under State Security Court jurisdiction are in principle interrogated by the special Anti-Terror Branch of the police. According to the TIHV, 95,1% of all people who contacted the organisation to report that they had been tortured or ill-treated claimed to have been tortured or ill-treated on account of political offences. 4,9% stated that ordinary offences provided the pretext¹.

¹ IHD Chairman Öndül, as quoted by the Turkish Press Agency Anatolia, 21 November 2001.

² *Türkiye İnsan Hakları Vakfı Tedavi ve Rehabilitasyon Merkezleri Raporu 2000* (Annual Report 2000 by the TIHV Treatment and Rehabilitation Centre), TIHV (June 2001), p. 18.

³ See section 3.3.6.

⁴ See section 3.3.6.

Türkiye İnsan Hakları Vakfı Tedavi ve Rehabilitasyon Merkezleri Raporu 1999 (1999 Report by the TIHV Treatment and Rehabilitation Centres), TIHV (July 2000), p. 28.

Statements made by a suspect during that period, which he often signs while blindfolded ¹, are frequently used as evidence in the subsequent trial. Because the arresting officer is responsible for interrogating the suspect, officers frequently resort to ill-treatment and torture to obtain a confession so that the police or *jandarma* can justify the arrest.

2001 showed an increase in the number of cases of ill-treatment and torture of prisoners who were transferred to a detention centre after being convicted and sentenced by a court. In the conventional prison system, convicted prisoners had little reason to fear torture, partly thanks to their being virtually untouchable in the large dormitories populated by prisoners. However, the introduction of the F-type prisons seems to have changed the situation. Many of the complaints mentioned relate to verbal violence and assaults during transfer to other prisons or while being brought to, for example, court hearings, overzealous body searches during which the prisoner is often forced to undress, isolation, being forced to obey senseless orders such as standing to attention for hours and being deprived of medical treatment when ill ².

¹ *Turkey. Human Rights and the European Union Accession Partnership*, Human Rights Watch (September 2000).

² *Türkiye İnsan Hakları Vakfı Tedavi ve Rehabilitasyon Merkezleri Raporu 2000* (Annual Report 2000 of the TIHV Treatment and Rehabilitation Centre), TIHV (June 2001), p. 28 and the *Monthly Reports of Human Rights in Turkey*, Human Rights Foundation of Turkey Documentation Centre (2001)

A wide range of methods of torture and ill-treatment is used. They include beatings, being stripped naked and blindfolded, hosing with pressurised ice-cold water, electro-shock torture, beating the soles of the feet, death threats, sexual intimidation and hanging by the arms¹. The Turkish Parliamentary Human Rights Commission found concrete evidence of the latter method on its visit to the police station in Gaziosmanpaşa district in Istanbul in the shape of so-called "Palestinian hangers"², from which prisoners were hung. For instance, sandbags are used for beating instead of truncheons, thus leaving fewer bruises. This was confirmed at the beginning of 2001 by a spokesman of the Turkish human rights organisation TIHV. Women are regularly subjected to sexual intimidation and in some cases rape³.

The Council of Europe's Committee for the Prevention of Torture (CPT) found in its latest report⁴ that the use of the most cruel forms of physical violence has diminished in Istanbul. Nevertheless, methods such as sleep deprivation over periods of days, prolonged standing and verbal threats still persist according to the CPT. The Turkish Parliamentary Commission reported that while the situation remains unchanged in Erzincan, Şanlıurfa and Erzurum, there have been considerable improvements in Tunceli province and a reduction in the number of cases in the province of Elazığ⁵.

¹ *Annual Report 2000. Turkey*, Amnesty International (2000).

² *Yargılama, Ceza ve İnfazı İstanbul Raporu 2000* (Report on Investigation, Prosecution, Trials, Punishment and Enforcement in Istanbul), Turkish Parliamentary Human Rights Commission (May 2000), p. 33.

³ See section 3.4.3.

⁴ *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey from 16 to 24 July 2000 and the response of the Turkish Authorities, European Committee for the Prevention of Torture (CPT)*, (7 December 2000) p. 7, and *Soruşturma, Kovuşturma, Yargılama, Ceza ve İnfazı Tunceli (resp. Erzurum, Erzincan) Raporu. 1998 ve 2000* (Report on Investigation, Prosecution, Trials, Punishment and Enforcement in Tunceli, Erzurum, Erzincan), Turkish Parliamentary Human Rights Commission (May 2000).

⁵ *Kovuşturma, Yargılama, Ceza ve İnfazı Tunceli (resp. Elazığ, Şanlıurfa, Erzurum, Erzincan) Raporu. 1998 ve 2000* (Report on Investigation, Prosecution, Trials, Punishment and Enforcement in Tunceli, Elazığ, Şanlıurfa, Erzurum, Erzincan), Turkish Parliamentary Human Rights Commission (May 2000).

According to figures from the Turkish human rights organisation TIHV, there were five deaths in detention in the first nine months of 2001¹. In 2000 the TIHV had not recorded a single case², after 18 cases in 1999³. A known case of a prisoner dying in detention concerned trade unionist Süleyman Yeter, who died on 7 March 1999, two days after being taken into custody. This led to criminal charges being brought against the officers on duty during his detention. Proceedings had still not been concluded in December 2001.

Medical examinations

Individuals in pre-trial detention who claim to have been ill-treated or tortured are often unable to corroborate their claims with medical documents. In a number of cases this is because medical examinations are conducted too late. In many cases – in breach of current regulations – a police officer is present during medical examinations, thus hindering an objective examination. Also, suspects may be given a medical examination before being questioned, so that no traces of ill-treatment are found⁴. Sometimes medical reports are destroyed by police officers and doctors are obstructed or intimidated. In some cases doctors are charged or taken into custody themselves⁵. This is alleged to have happened in January 2001 to Doctor Zeki Uzun, who asked the attending police officer to leave the room during the examination. A few days later he was arrested, and beaten and deprived of sleep for three days⁶.

¹ *Human Rights in Turkey. January-September 2001*, TIHV (2001).

² *Country Reports on Human Rights Practices 2000. Turkey*, US State Department (26 February 2001).

³ *Human rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America. Report 2000 (Events of 1999)*, International Helsinki Federation of Human Rights (IHF) (2000) p. 49.

⁴ Sema Pişkinsüt, *Filistin askisından fezelekeye. İşkencenin kitabı*. (From Palestinian hangers to a request for parliamentary immunity to be lifted. The book of torture). (October 2001), p. 28.

⁵ *Turkey: the duty to supervise, investigate and prosecute*, Amnesty International (20 April 1999).

⁶ Associated Press, 14 January 2001.

Medical examinations carried out by doctors affiliated to the Ministry of Justice, who conduct the majority of examinations of detainees in pre-trial detention, are extremely cursory and often last just a few minutes. There have even been cases in which a medical report has been drawn up without the detainee actually having been seen by the doctor. Medical reports are very summary. They are often a sort of standard report stating in virtually all cases that no traces of beatings or violence can be found.

Prosecution

In the case of torture or ill-treatment, criminal charges are brought under Article 245 (ill-treatment) and Article 243 (torture) of the Criminal Code. In addition, Article 243 falls under the Amnesty Law of December 2000 ¹. However, violations of the law are often not investigated, with the result that convictions are rarely secured. This is linked to the legal provision whereby an official accused of such practices can only be prosecuted with the consent of his superiors, who have 45 days to institute an administrative investigation ². Permission is refused in many cases.

Another factor at work is that victims are often pressured into not filing a complaint about torture or ill-treatment. It is also the case according to local observers, particularly in the smaller provincial towns in south-east Turkey, that the district public prosecutor does not bring charges against those suspected of torture or ill-treatment for fear of exacerbating relations with the security forces.

¹ With regard to the Amnesty Law, see section 3.3.6.

² Law No 4483 of 2 December 1999 on the Judicial Examination of Civil other Public Servants is an improvement on the Law of the Judicial Examination of Civil Servants which was previously in force and which invariably required the consent of the provincial administration headed by the provincial governor.

Victims of torture often have difficulty in identifying the perpetrators since they are frequently blindfolded during torture. It is also frequently impossible to establish who was on duty at the time because in many cases records are kept sloppily ¹.

Cases against government officials accused of torture or ill-treatment often last for years and in many cases end in an acquittal. If officials are convicted sentences are frequently lenient. Officials charged with such offences often remain on duty as usual. According to official statistics only 10 of the 577 officials prosecuted for torture between 1995 and 1999 were actually convicted (1,7%). Of the 2 851 people prosecuted for ill-treatment, 84 were convicted (2,9%) ². According to the TIHV, fourteen new cases against perpetrators of torture and ill-treatment were brought to court in the first nine months of 2001. On 1 October 2001 9 old cases were still pending. Six were concluded in the first nine months of 2001. In these cases, two people were acquitted, one sentenced to three months' imprisonment and three months' suspension from duty and seven were found to be covered by the Amnesty Law of December 2000 ³. In its Progress Report, the European Commission reports that the number of prosecutions for torture or ill-treatment in recent years has increased ⁴. On 26 December 2001 Arseven, the minister responsible for human rights, declared that in 2000 and 2001 criminal charges had been brought against a total of 1 472 officials on the grounds of ill-treatment and against 159 because of torture. He went on to state that at the end of 2001, 36 of these had been sentenced to imprisonment and 50 relieved of their duties ⁵.

¹ *Failures at Fifty: Impunity for torture and ill-treatment in Europe on the 50th anniversary of the European Convention on Human Rights*, Amnesty International (November 2000), p. 30.

² *Failures at Fifty: Impunity for torture and ill-treatment in Europe on the 50th anniversary of the European Convention on Human Rights*, Amnesty International (November 2000), p. 30.

³ *Human Rights in Turkey. January-September 2001*, TIHV (2001).

⁴ *Turkey 2001 Regular Report from the Commission on Turkey's Progress Towards Accession*, European Commission (13 November 2000), p. 22.

⁵ Evrensel newspaper, 27 December 2001.

In November 2000 a verdict was pronounced in an important court case against ten police officers suspected of torturing a group of school children in pre-trial detention in Manisa. The officers were handed down prison sentences ranging from 5 to 10 years. A few weeks later the school children - whose trial before the Court of Appeal in Izmir for suspected revolutionary propaganda had been adjourned until the verdict in the case against the police officers - were acquitted of the charges against them because they had confessed under duress and torture ¹. Those concerned are suing the government for wrongful arrest and detention ². On 2 May 2001 the Court of Appeals referred the case back to the lower court owing to procedural errors ³. On 23 January 2002 the case was again adjourned, this time until 23 March 2002 ⁴. As a number of the officers cannot be traced and thus the case cannot proceed further, there is a danger that the case may be time-barred ⁵.

Government measures

The government has taken several measures in recent years to curb torture and ill-treatment. For example, on 6 March 1997 the law was amended to reduce the time limits for pre-trial detention, and on 1 October 1998 and 13 August 1999 the Prime Minister issued guidelines containing measures relating, inter alia, to more thorough medical examinations and an improved procedure for recording pre-trial detention ⁶. In addition, human rights have for several years formed part of the police training curriculum. In 2001 the duration and the level of police training courses were adjusted to improve the calibre of officers.

¹ Associated Press, 16 and 28 November 2000, and Turkish Daily News, 29 November 2000.

² Associated Press, 12 March 2001.

³ Milliyet daily newspaper, 3 May 2001.

⁴ Radikal daily newspaper, 24 January 2002.

⁵ Cumhuriyet daily newspaper, 9 December 2001.

⁶ Yakalama. Göz Altına Alma ve İfade Alma Yöntemliği (Guideline on Arrest, Remand in Custody and Interrogation) of 1-10-1998, and as amended on 13-8-1999.

At the beginning of 2001 the Ministry of Justice decided that in cases where Turkey was condemned by the ECHR because of torture, the relevant public prosecutor would be liable for the amount awarded by the Court as compensation ¹. In July 2001 the Minister of the Interior issued a circular to all provincial governors, the national police headquarters and the chief of *jandarma*, in which he referred to a number of cases in which Turkey had been condemned by the European Court of Justice in Strasbourg and called on them to ensure that torture no longer took place, and that all rules and regulations pertaining to pre-trial detention, medical examination and the right to a lawyer were carefully adhered to. Under the constitutional amendments of October 2001, the maximum period of pre-trial detention was reduced from seven days to four in regions where the state of emergency was not in force ².

3.3.8 Disappearances

According to the IHD, there were two disappearances in the first nine months of 2001. The two people in question were Serdar Taniş and Ebubekir Deniz, two local HADEP officials in Silopi on the Iraqi frontier. On 25 January 2001 the two officials were summoned to the local *jandarma* on 25 January 2001 and have not been seen since. Following initial denials by the authorities that both of them had actually reported to the *jandarma* station, it was later announced that they had been there but had left after just half an hour. The HADEP leadership holds the *jandarma* responsible. The case has now been brought before the European Court in Strasbourg and has also come to the attention of the UN Special Rapporteur for Disappearances and Extra-Judicial Killings, who happened to be visiting Turkey when the incident was in the news. Up until December 2001, there had been no new developments with regard to these disappearances. In June 2001 the local office in Şanlıurfa of the Turkish human rights NGO, Mazlum-Der, reported that there had been another disappearance.

¹ Turkish Daily News, 10 March 2001.

² See section 3.3.6.

In the first eight months of 2000, the Turkish human rights organisation IHD recorded 7 disappearances. In the same period in 1999 there had been 19. In previous (full) years there had been 29 (in 1998) and 66 (in 1997). The UN Special Rapporteur on Disappearances and Extra-Judicial Executions, Ms Asma Jhangir, visited Turkey in February 2001. It was the first time in ten years that Turkey had allowed a UN Rapporteur with that portfolio to visit the country. One of her preliminary conclusions was that there had been a considerable improvement in the area but that vigilance was still required. The final report on her visit is due to be published in summer 2001.

Most disappearances have occurred in south-eastern Turkey. They are often linked to the *jandarma* or MIT intelligence agency. The fact the next of kin were often not notified of their relative's arrest plays a role ¹. The fundamentalist Hizbullah also has some disappearances on its hands. Some Hizbullah victims who had gone missing were found brutally murdered a few months later ².

In November 1996 the Turkish Ministry of the Interior set up a special missing persons bureau. The office, which is open 24 hours a day, makes monthly reports on cases of disappearances and has made serious efforts to investigate such cases. In most of the disappearances investigated the office found explanations which did not involve government authorities. Since 1996 the Turkish government has investigated 425 missing persons cases. Of these, 88 were found alive, 18 were in prison, 46 had died and 273 were still missing in early 2001 ³.

¹ See section 3.3.6.

² See section 2.4.2.

³ *Country Reports on Human Rights Practices 2000. Turkey*, US State Department (26 February 2001).

Most families of persons who have disappeared hold the Turkish authorities responsible for the disappearances and consequently do not contact them. Although members of the security forces are in many cases allegedly responsible for disappearances, they are seldom or never prosecuted. The human rights organisation IHD supports families of missing persons and reports on disappearances to the Ministry of the Interior.

3.3.9. Extra-judicial executions

There are fairly regular reports of extra-judicial murders by representatives of the Turkish government. Raids on alleged terrorist safe houses have often led to the death of people found there, sometimes due to excessive force by security forces ¹. At the beginning of November 2001, the police used force to enter several houses in the Küçükarmutlu district of Istanbul. The houses contained hunger strikers who were protesting against the introduction of the F-type prisons. Part of the area surrounding the houses in question had been barricaded by the demonstrators. Four people were killed and a number injured when the security forces broke down the barricades and entered the houses.

There have in the past been deaths in prisons when the *jandarma* have entered to restore order. Here too, the force used by the authorities was in some cases disproportionate. There are known to be cases in which the police have fired on people who were fleeing, in some cases with fatal consequences. The security forces often argue that the call to surrender is ignored ². A 1996 law which authorises police officers to shoot immediately in such cases was struck down by the Constitutional Court in January 1999 ³.

¹ *Country Reports on Human Rights Practices 2000. Turkey*, US State Department (26 February 2001).

² *Türkiye de İnsan Hakları. 1999 Yılı Analizi*. Human Rights in Turkey.1999 Survey) Mazlum-Der (200).

³ *Country Reports on Human Rights Practices 2000. Turkey*, US State Department (26 February 2001).

For the first nine months of 2001, the Turkish human rights organisation TIHV reports 27 cases of extra-judicial executions¹ In the first six months of 2001, the Turkish human rights organisation IHD recorded 31 cases of extra-judicial executions (including deaths in custody)². In the first eight months of 2000, 112 cases were recorded. In the first eight months of 1999, 127 cases were recorded. The number of cases reported for the whole of 1998 was 128.

The Turkish authorities are also linked to various unsolved murders in the past, particularly in south-eastern Turkey. A number of cases concerned local politicians, journalists, HADEP members, Kurdish businessmen and prominent members of the Kurdish community in the region³. Generally, the involvement of the authorities cannot be proved. Human rights organisations claim that the Turkish authorities do not give priority to solving these cases. According to observers no similar cases of the unexplained death of prominent figures occurred in 2000⁴. For 2001 no cases are known either. The Hezbollah in particular, but also other armed and terrorist organisations tend to be held responsible for such murders and attacks⁵.

¹ *Human Rights in Turkey. January-September 2001*, TIHV (2001).

² *Ocak-Haziran 2001 İnsan Hakları Bilançosu* (Human rights balance January-June 2001) İnsan Hakları Derneği (2001).

³ *World Report 1999: Turkey*, Human Rights Watch (1999).

⁴ *Country Reports on Human Rights Practices 2000. Turkey*, US State Department (26 February 2001).

⁵ See section 2.4.2.

3.3.10 Death penalty

Turkey's status as a candidate country for EU membership has rekindled the long-standing debate on the abolition of the death penalty. The Accession Partnership document published by the European Union, which lays down the conditions Turkey must satisfy for membership, includes the abolition of the death penalty as one of the medium-term criteria, i.e. which must not necessarily be accomplished in the course of 2001¹. According to the National Programme published by the Turkish government the abolition of the death penalty is planned to take place within the next five years².

In October 2001 the Constitution was amended to reduce the number of cases where the death penalty can be imposed to war, imminent threat of war and terrorism³. Retention of the latter case is the reason why the Turkish Constitution is still not in line with Protocol 6 to the ECHR.⁴ According to a statement by a spokesman of the Turkish Ministry of Foreign Affairs, the current text of the Constitution was the best that could be achieved under the ruling coalition government, which included the ultra-nationalist MHP. The latter argues fervently for carrying out the death sentence on PKK leader Öcalan and is therefore against total abolition of the death penalty. In November 2000 a senior officer of the MIT intelligence agency declared himself against the execution of the death sentence on Öcalan⁵. There is fairly broad support for the PKK leader's execution in Turkish society.

¹ *Turkey: 2000 Accession Partnership*, Council of the European Union (6 December 2000).

² *Zaman* and *Yeni Gündem* daily newspapers and NTV-MSNBC websites, 20 March 2001.

³ Article 38 of the Constitution.

⁴ See section 3.3.1.

⁵ Reuters, 28 November 2000, and *Turkish Daily News*, 29 November 2000.

A number of offences carry the death penalty under the Turkish Criminal Code. These include some offences related to treason (Articles 125, 126, 146 and 147) and first-degree murder (Article 450).

A number of those articles will need adjusting following the October 2001 constitutional amendments. Since then, there have reportedly been at least two cases – in December 2001 – where a court invoked the redrafted Constitution in order not to impose the death sentence, even though the offence in question still carried the death penalty. In 2001 too, there were regular calls for the death sentence, which was imposed in a number of cases.

In the first nine months of this year the death sentence was sought against 160 persons ¹. In the first eight months of 2001 the courts handed down the death sentence in 17 cases ². However, since 1984 no death sentences have been carried out.

A death sentence pronounced by the court is always reviewed by the Court of Appeal. If the Court of Appeal upholds the sentence the verdict is referred to the Prime Minister, who then submits it for approval by the Parliament. If the Parliament confirms the verdict the President must sign it. At the end of September 2001 a number of the 117 death sentences approved by the Parliament had not yet been carried out. This figure includes 72 persons convicted of terrorist offences, which continue to carry the death penalty despite the constitutional change of October 2001³. The Amnesty Law of 21 December 2000 ⁴ provides that death sentences handed down for offences committed before 23 April 1999 should not be executed.

On 25 November 1999 the Court of Appeal upheld the death sentence on the PKK leader, Öcalan; the case was then forwarded to Prime Minister Ecevit, who after consulting his coalition partners decided not to submit the case for a vote by Parliament until the European Court in Strasbourg had delivered its judgment ⁵.

¹ *Human Rights in Turkey. January-September 2001*, TIHV (2001).

² *Turkey 2001 Regular Report from the Commission on Turkey's Progress Towards Accession*, European Commission (13 november 2000), p. 22.

³ *Death Penalty News. September 2001*, Amnesty International ACT 53/004/2001 (September 2001), p. 3.

⁴ See section 3.3.6.

⁵ See section 2.4.6.

3.4 Position of specific groups

3.4.1 The Kurds

Although there are no exact figures, the number of Kurds living in Turkey is estimated at some thirteen million. The Kurds originally came from the south-east of the country. The great majority of the Kurdish population speaks Kurmanci, while Zaza, which is unintelligible to Kurmanci speakers, is spoken in the provinces of Tunceli, Elazığ, Diyarbakır, Bingöl and Şanlıurfa. Most of the Kurdish population is Sunni Muslim. The remainder, namely speakers of Zaza, are Alevi¹. The traditional tribal and feudal social structure of the Kurdish population still remains largely intact. In its initial regions of origin the Kurdish population is divided into tribes under the leadership of an ağa, who wields great authority over tribe members.

In the 1920s and 1930s some Turkish Kurds were deported to central Turkey (to the province of Konya). In a later period a large number of Kurds migrated to the urban areas in western and southern Turkey for economic reasons. Kurdish organisations estimate that Istanbul has three to five million inhabitants who have Kurdish roots. Urbanisation and the traditional flight from the countryside have accelerated in recent decades, *inter alia* as a result of the numerous military operations in south-eastern Turkey², during which many villages were torched and families living there forced to move elsewhere in Turkey. This development has blurred the boundaries of the earlier geographical demarcation of the Kurdish population.

¹ See section 3.3.3.

² See also section 2.4.

A determining factor in the position of Kurds in Turkey is the government's concept of state and society. One of the constitutional cornerstones of the Turkish state is the principle of Atatürk's nationalism ¹. According to this form of nationalism the term "Turk" means an individual who is part of the national community into which individuals can be integrated regardless of their ethnic background. Every citizen living inside the borders of the Republic is regarded as a Turk. This is conveyed in the proverb frequently heard in Turkey, "*Ne mutlu Türküm diyene*", which roughly translates as "Happy is he who *says*: I am a Turk", but *is* not actually a Turk. Being Turkish can therefore mean that a person's ethnic origins take second place. As a Turkish Member of Parliament put it: "Turkish identity is an umbrella identity".

Atatürk was generous in granting Turkish nationality to anyone who wanted it but failed to foresee a solution for those who were not prepared to relinquish their original ethnic identity for the new national concept. Since the inception of the Republic an overwhelming majority of individuals who feel first and foremost a strong affinity with the Turkish identity despite their ethnic origins have come to live side by side – even though every ethnic group in Turkey has had its individuals who have attached primary importance to their own ethnicity. The only large group which – though not in their generality – have not undergone this process are the Kurds.

However, some Kurds, i.e. those who migrated to the west of Turkey in the distant or recent past, have been successfully integrated into Turkish society and have fully adopted the language, values and social order of the Republic. Nowadays Kurds are active in all spheres of social and political life and are even represented in the ranks of the Turkish nationalist MHP ². Many members of parliament are also of Kurdish origin.

¹ Article 1 of the Constitution: "The Republic of Turkey is a democratic, secular and social State governed by the rule of law; ... loyal to the nationalism of Atatürk ..."

² Svante E. Cornell, "*The Land of Many Crossroads. The Kurdish Question in Turkish Politics.*" in *Orbis*, Vol. 45, No 1 (winter 2001).

The government in Turkey does not persecute Kurds solely because they are Kurds. This would, moreover, be incompatible with the abovementioned concept of the state, according to which a person's ethnic origins do not matter as long as they comply with the principles of the Turkish Republic. All Turkish citizens (including the Kurds) thus also have equal access to public institutions such as health care and authorities responsible for issuing official documents.

Despite the conflict between the armed forces and the PKK, which raged for years in south-eastern Turkey, there has almost never been ethnic strife between Turks and Kurds in the civilian population. An exception to this rule occurred during events in April 2001 in Susurluk in western Turkey. When rumours circulated that the murderer of an eleven-year old girl came from Diyarbakır, several thousand inhabitants took to the streets, set fire to the suspected murderer's house and chanted anti-Kurdish slogans. The mayor of the town spoke of *agents provocateurs* trying to stir up anti-Kurdish sentiment ¹. 158 of the demonstrators were arrested, 22 of whom were remanded in custody for suspected violations of Article 312 of the Criminal Code, incitement to racial hatred ².

Public and political Kurdish nationalist statements are repressed by the Turkish authorities. The Turkish government views Kurdish nationalist aspirations as a threat to the indivisibility of the unified Turkish state and as causing a rift between Turkish citizens on the grounds of ethnicity. Kurdish origins as a basis for recognition as a separate ethnic group are considered incompatible with the basic concept of the Turkish state, which allows no room for a separate Kurdish minority. Support for the Kurdish cause is also a criminal offence under Articles 125, 168, 169 and 312 of the Criminal Code or Articles 6, 7 and 8 of the Anti-Terror Law, depending on the type of support afforded. The penal provisions apply to everyone in Turkey, regardless of whether they are of Turkish or Kurdish origin.

¹ Turkish Daily News and Yeni Evrensel daily newspaper, 10 April 2001.

² Anatolia News Agency, 11 April 2001.

The Turkish authorities do not so much focus on whether a certain person is a Turk or a Kurd but rather on whether he harbours separatist sympathies. The Turkish authorities' definition of separatism is broad and not always unequivocal.

In practice, people from any of the provinces in south-eastern Turkey are more frequently accused of separatist sympathies. An individual's province of origin is entered in his identity card and can also often be told from appearance or accent. In its report on the province of Tunceli, the Turkish Parliamentary Human Rights Commission notes that inhabitants of the province are convinced that they are often regarded with more suspicion by the security forces simply because Tunceli is entered in their identity cards as their province of origin ¹. Ethnic (and therefore also Kurdish) origin is not officially recorded anywhere and is not entered in any identity papers or other official documents.

The publication of books, periodicals and newspapers in Kurdish has been authorised since 1991. Newspapers and magazines with a Kurdish slant are, however, often difficult to get hold of and are frequently not admitted to the state of emergency area. Potential readers sometimes shy away from buying Kurdish publications because possession can be interpreted as proof of Kurdish sympathies. The content of Kurdish publications is closely monitored by the government. Publications and materials which concern Kurdish history, culture or ethnicity are often confiscated or lead to prosecution since the authorities regard them as threatening the indivisible unity of the state ².

¹ *Soruşturma, Kovuşturma, Yargılama, Ceza ve İnfazı Tunceli Raporu. 1998 ve 2000* (Report on Investigation, Prosecution, Trials, Punishment and Enforcement in Tunceli), Turkish Parliamentary Human Rights Commission (2000), p. 15.

² *Turkey Country Report on Human Rights Practices for 1998*, US State Department (26 February 1999), p. 26.

Since 2000 there has been a broad debate in the context of EU accession on whether Kurdish-language television programmes and education in Kurdish should be allowed. Some senior government officials, including the head of the intelligence service MIT, have argued in favour ¹. In a speech on 25 April 2001 the President of the Constitutional Court declared that teaching in the Kurdish language was unconstitutional ². The constitutional amendments of 3 October 2001 seem to be paving the way for radio and television broadcasts in Kurdish. The provisions of Articles 26 and 28 of the Constitution, which stipulated that a language forbidden by law (i.e. Kurdish) could not be used for expressing and disseminating thoughts or for radio and television broadcasting, have been repealed as a result of these changes. Subordinate legislation in this area had not yet been adapted at the end of 2001.

However, Article 42 of the Constitution, which provides that no language other than Turkish shall be taught as a mother tongue to Turkish citizens, has not been amended; consequently, no room is being afforded for freedom of Kurdish-language education. The campaign for Kurdish-language education launched by the Kurds at the end of 2001 is therefore strongly disapproved of by the authorities. A number of campaigners have meanwhile been arrested for giving support to the PKK. The authorities see the call for Kurdish-language education as a veiled PKK attempt to gain a better foothold in Turkey ³.

Consequently, television and radio broadcasts in Kurdish are still banned under subordinate legislation. For some years, however, a blind eye has on occasion been turned to radio broadcasts. The playing of Kurdish music is allowed, yet many songs are banned for their (political) content. In February 2001 for the first time the Minister for Culture gave permission for a Kurdish-language film to be shown nationwide ⁴.

¹ Turkish Daily News, 29 November 2000, and Hürriyet daily newspaper, 30 November 2000.

² Radikal daily newspaper, 26 April 2001.

³ Source: Turkish press agency Anatolia, 27 January 2002.

⁴ Milliyet daily newspaper, 27 February 2001.

Following a ruling of the Unity of Law Division of all Civil Appeals Courts on 4 March 2000 Kurdish names can be entered in the population registers ¹. On 31 March 2001 Prime Minister Ecevit took action against the use of Kurdish place names in correspondence from local authorities ². All places have been given Turkish names in the last few decades but the Kurdish designations are frequently used in popular speech.

The Kurdish Institute of Istanbul, a private institution which conducts research into the Kurdish language, has more or less been tacitly tolerated for years. However, in November 2000 proceedings were commenced against the Institute and its director, Hasan Kaya, for allegedly providing instruction in a language which, according to the Education Law, cannot be taught. Kaya testified in court that no instruction was being given but that research was simply being conducted into Kurdish. He quoted a report by the education inspectorate stating that it was impossible to give language instruction in the rooms available. At the end of December 2001 Kaya was acquitted by the criminal court, but the case was then referred to the State security court to check whether the Anti-Terror Law had been contravened ³.

3.4.2 Members of PKK and left-wing or Islamist military groups

There has been no change in the Turkish authorities' attitude towards the PKK since it withdrew its fighters outside Turkey's borders, altered its objectives and renounced violence ⁴. Like members of militant left-wing or Islamist organisations, PKK members still face criminal prosecution by the authorities.

¹ Hürriyet daily newspaper, 5 March 2000, and Tageszeitung, 6 March 2000.

² Associated Press, 31 March 2001, and Frankfurter Rundschau, 1 April 2001.

³ Yedinci Gündem newspaper, 29 December 2001.

⁴ As stated in by the PKK at its seventh party congress in February 2000. See the 10 February 2001 edition of the Özgür Bakış newspaper.

Whoever can be shown to be a member of the PKK, a radical left-wing group such as DHKP/C or TKP/ML or a militant Islamist group such as Hezbollah will be prosecuted under Article 168 of the Criminal Code in conjunction with Article 5 of the Anti-Terror Law. Under Article 168 the penalty is imprisonment for a minimum of ten years and, in the event of aggravating circumstances, a maximum of fifteen years. The penalty is increased by half under Article 5 of the Anti-terror Law. The above Articles impose heavier penalties on leaders of such organisations. They will also be prosecuted under Articles 125 or 146 for attempted armed subversion of the established constitutional order, which is punishable by the death penalty.

Individuals who have criminal proceedings pending against them and are wanted by the authorities are recorded in the central Judicial Records System, so that the authorities are informed nationwide when a person is wanted.

3.4.3 Persons engaging in marginal activities on behalf of the PKK and left-wing or Islamist militant groups

Persons who are being prosecuted under criminal law on account of marginal activities on behalf of the PKK, a left-wing radical group such as DHKP/C or TKP/ML or a militant Islamist group such as Hezbollah may be sentenced under Article 169 of the Turkish Criminal Code (aiding and sheltering members of an illegal organisation) to a maximum of three years and nine months imprisonment.

Case law in such proceedings gives a varying picture. Some State Security Courts are relatively quick to assume involvement with an organisation while there are also cases in which the courts have acquitted suspects when there was sufficient proof for a conviction. One such case involved a Turkish national who was found in possession of PKK pamphlets but was nevertheless acquitted. Article 169 of the Criminal Code is covered by the amnesty measures of 21 December 2000, which led to the release of many convicted of such offences and the suspension of many pending proceedings¹.

¹ See section 3.3.6.

As stated in the previous paragraph, the authorities are informed nationwide when a person is wanted because there are criminal proceedings pending against him.

3.4.4 HADEP members and sympathisers

The pro-Kurdish HADEP ¹ was established in May 1994 as a successor to the successively banned HEP, DEP and ÖZDEP. The party has around 60 000 members and draws its support mainly from among Kurds, enjoying a considerable following in south-eastern Turkey especially. Some 4,7% of the electorate voted for the HADEP in the elections on 18 April 1999. The party remains unrepresented in parliament because in April 1999, as in the December 1995 parliamentary elections, it failed to clear the 10% hurdle. However, in local elections also held on 18 April 1999, HADEP candidates won the mayorship of six main cities ² in south-eastern Turkey as well as of various smaller towns.

The HADEP campaigns for greater cultural rights for Kurds and a peaceful solution to the Kurdish issue. It has kept to that position by never resorting to violence. The party runs local branches in many provinces and districts, as well as women's and youth wings in a large number of localities. The Turkish authorities regard HADEP as the PKK's political wing. They therefore view this party with suspicion. The HADEP has no direct ties with the PKK, but relies largely on the same supporters ³.

¹ HADEP stands for Halkın Demokrasi Partisi (People's Democracy Party).

² The towns of Diyarbakır, Bingöl, Batman, Siirt, Hakkari en Şırnak.

³ Selahettin Deli, HADEP representative in the Netherlands, wrote in the same terms in the magazine "*De Koerden*" (The Kurds'), a bi-monthly publication by the *Kurdish Instituut* Volume 1, No 2 (October 2001, p.). 9.

At national level the HADEP occasionally meets with opposition from the authorities. In June 2000 Prime Minister Ecevit launched an attack on the HADEP, condemning it in a speech in which he implied that it was a party¹ based on racial segregation (which is forbidden in Turkey). In December of that year, Ecevit went on to comment that desirable changes had not yet taken place in the HADEP². However, according to HADAP spokesmen, the party's main office in Ankara was able to function undisturbed throughout 2001.

On 29 January 1999 the then chief prosecutor at the Constitutional Court, Vural Savaş, brought a case in that Court against the HADEP, charging it with recruitment of guerrillas for the PKK and seeking to have the party closed down. The case is currently still pending. The outcome of these closure proceedings is largely dependent on two other criminal cases pending against (former) executives of the party. One case is about the taking down of the Turkish flag at a HADEP party congress in 1998, and the other about a symbol depicting Kurdistan on a calendar published by the HADEP. If these cases lead to convictions, a ban on the party will be easier because it will then already have been proved that it is "the focus of separatist activities". Actually, the constitutional amendments of 3 October 2001 have made it harder to ban a political party³.

¹ Milliyet newspaper, 13 June 2000, and Özgür Politika newspaper, 14, 15 and 16 June 2000.

² Superonline Nethaber (Turkish Internet site), 11 September 2000.

³ For this constitutional change, see section 3.3.2.

At local level, the HADEP regularly meets with opposition. Thus, HADEP mayors are frequently ignored by provincial authorities and security forces. HADEP mayors in south-east Turkey complain that those bodies make little attempt to cooperate with them at local level. Local HADEP party offices too suffer obstruction. A request to set up a HADEP branch in Şırnak province was reportedly ignored for eight months¹. In October 2001 the security forces prevented the opening of HADEP offices in Cizre and Kızılağaç (Muş province)². Since the beginning of 2001 the HADEP branch in Silopi has been under increasing pressure from the local authorities because of organised protests against the disappearance of two of its officials.³

A number of raids are known to have been made on HADEP offices by the security forces. On 11 and 12 January 2001 the HADEP offices in Erzurum province and Osmaniye district (Adana province) were raided by the security forces⁴. During these raids an amount of material was seized and some arrests made. The HADEP branch in Hakkari was raided by the police in June⁵. In October 2001 the security forces raided the HADEP-offices in Çigli/Izmir, Hınıs/Erzurum and Kahramanmaraş⁶. The office in Karakoçan/Elazığ was raided on 8 December 2001⁷ and those in Muş and Urfaen on 13 January 2002⁸. The Bursa office was raided on 23 January 2002⁹.

¹ Yeni Gündem newspaper, 19 June 2000 and 6 July 2000.

² *Monthly Report of Human Rights in Turkey – October 2001*, Human Rights Foundation of Turkey Documentation Centre (October 2001), pp. 28, 29.

³ See section 3.3.8.

⁴ *Monthly Report of Human Rights in Turkey – January 2001*, Human Rights Foundation of Turkey Documentation Centre (January 2001), p. 34.

⁵ *Monthly Report of Human Rights in Turkey – July-August 2001*, Human Rights Foundation of Turkey Documentation Centre (August 2001), p. 42.

⁶ *Monthly Report of Human Rights in Turkey – October 2001*, Human Rights Foundation of Turkey Documentation Centre (October 2001), pp. 28, 29.

⁷ Yedinci Gündem newspaper, 9 December 2001.

⁸ Dagbald Yedinci Gündem, 15 January 2002 and Milliyet newspaper, 16 January 2001.

⁹ Yedinci Gündem newspaper, 25 January 2002.

In 2001 too, large numbers of HADEP members were arrested. Many were released again after a short while, with a small number eventually being detained. According to Human Rights Watch, ill-treatment is common in such cases ¹. The cases in question involved charges including separatist propaganda and supporting the PKK. Prosecutions were thus brought not for membership of the HADEP but for activities or comments construed by the authorities as separatist in nature. Persons who have criminal proceedings pending against them are known to the authorities nationwide and, cannot therefore evade prosecution by moving elsewhere in the country. According to international observers, the large number of arrests of HADEP members, who were subsequently released, may be seen as a form of harassment by the local authorities. Harassment of this kind by the local authorities can be avoided by settling elsewhere in Turkey, in particular outside the south east.

HADEP sympathisers who make their sympathies clearly known may also face harassment by local authorities and security forces, particularly in south-east Turkey. This can be avoided by settling outside the region. Criminal prosecution on account of HADEP sympathies does not occur.

¹ *World Report 2001*, Human Rights Watch (December 2000).

3.4.5 Relatives of members of the PKK or of left-wing or Islamist militant groups

Those known to have or suspected of having one or more family members in the PKK can expect some attention from the authorities. Depending, among other things, on the degree of kinship and the (suspected) position of their relative(s) within the PKK, family members may be subjected to varying degrees of intimidation, harassment, official obstruction, questioning and similar problems. It is perfectly conceivable, even probable in many cases, for the families of (suspected) PKK members to be kept under observation by the authorities or questioned and interrogated, for instance about the whereabouts of their fugitive relatives, but also because they could as often as not be potential suspects themselves. In many cases the Turkish authorities assume that some relatives of PKK supporters harbour sympathies for the party. However, if the authorities are convinced that relatives of (suspected) PKK members do not have any links to the PKK they are not persecuted.

Countless people in Turkey have one or more relatives in the PKK without having any significant problems with the authorities as a result. The families of prominent PKK supporters such as Abdullah Öcalan and Şemdin Sakık were probably always under intensive surveillance by the authorities and lived under a certain degree of pressure, but they were not actually persecuted for their relationship with the PKK leaders. Öcalan's family attended his trial on Imralı Island. One of Sakık's brothers is openly politically active.

The above also applies to relatives of members of left-wing or Islamic militant groups.

3.4.6 Relatives of HADEP members

Relatives of HADEP members need not fear persecution by the Turkish authorities solely because one or more of their relatives is a member of HADEP. In certain cases, however, it cannot be ruled out that, for example, first or second degree relatives of HADEP members who are active at local level are closely watched by local authorities because of their relatives' activities.

3.4.7 Village guards

When the state of emergency was declared in 1985 a system of village guards was also established in the south-east whereby villages, though not forcibly, supplied adult men to guard the villages and provide general assistance and information. Village guards were thus supposed to work together with the army and *jandarma* in their fight against the PKK. The willingness of the local population to take part in the village guard system has always largely depended on tribal loyalties. Some Kurdish tribes voluntarily supplied village guards while other tribes have constantly refused to participate because of their PKK sympathies. This has led to entire villages refusing requests to supply village guards while others voluntarily cooperate.

The village guard system has always been highly controversial. Not infrequently villages which had shown reluctance to become involved in the conflict have suffered reprisals, including the burning of villages. The village guard system also makes for abuses of power. Many village guards have been involved in crimes ranging from murder, supporting the PKK and drug smuggling to bride abduction. Thousands of proceedings are pending against village guards, with almost 24 000 having been dismissed since the system was introduced in 1985.

According to representatives of the Turkish human rights organisations TIHV and IHD as well as international observers, since the beginning of 2001 no more new village guards are being recruited to the existing ranks of approximately 70 000. However, according to an IHD spokesman, existing village guards who wish to end their activities sometimes meet with opposition from the (local) authorities. Those concerned are allegedly pressured to continue their activities.

The abolition of the village guard system has been contemplated at government level for some time now. A few small-scale retraining projects for village guards have recently been announced. However, the village guard system generates a steady income equivalent to some EUR 300, which people will not always be keen to give up. Furthermore, disarmament will give rise to problems since village guards come from different tribes which not infrequently have difficult or poor relations with each other. It is assumed that none of the tribes will want to be the first or only ones to surrender their weapons.

In the past individuals recruited as village guards have sometimes been caught in the crossfire. On the one hand their refusal to serve as village guards could be interpreted as implicit support for the PKK, while on the other hand their acceptance of the office could make them PKK targets. Since the withdrawal of PKK fighters from Turkey at the end of 1999 there has been practically no further pressure to speak of from the PKK. Now that the recruitment of village guards has ceased, this issue is no longer of any great importance. In fact, in the past refusal to serve as village guard never used to lead to sanctions from the national authority. Pressure from local authorities following refusal to serve as a village guard can be avoided by settling elsewhere, for instance in one of the major cities outside south-east Turkey. This also applies to persons who are under pressure from the local community because they agreed in the past to serve as a village guard.

3.4.8 Women

Pursuant to the constitutional amendments of October 2001, the equality of men and women is now also guaranteed by the Constitution¹. In November 2001 Parliament approved an updated Civil Code, which entered into force on 1 January 2002. The new law ensures equality of men and women in all respects. Thus, the man is no longer referred to as head of household and loses the right to decide where his family is to settle².

Women make up almost half of the working population and receive equal pay. There are some female district governors. The number of women members of parliament is low (of the 530 seats occupied in December 2001, 22 were held by women)³, although in the early the 1990s Turkey did have a female Prime Minister in the person of Tansu Çiller, who is still leader of the Doğru Yol Partisi (True Path Party). In 2001 women accounted for well over 25 % of the total working population⁴. In Turkey the literacy rate for women is 78%, compared with 94% for men. In rural areas 50% of women are illiterate. However, women from rural areas are catching up. Women from rural areas now constitute 35% of the student population at universities⁵.

¹ See Article 41 of the Constitution.

² Anatolia News Agency, 23 November 2001.

³ Turkish Parliament website via www.tbmm.gov.tr/develop/owa/milletvekili.dagilimlar, situation at 11 December 2001.

⁴ Cumhuriyet newspaper, 16 December 2001.

⁵ *Country Reports on Human Rights Practices 2000. Turkey*, US State Department (26 February 2001).

In Turkey women are often exposed to various forms of violence within marriage. Abuse is a frequent occurrence. According to a survey by Istanbul University in March 2000, at least ten per cent of women experience violence on a daily or weekly basis ¹. In January 1998 the Criminal Code was amended to make spousal abuse illegal. Despite the new law, spousal abuse is still considered a private matter involving the family honour.

Women rarely file charges for assault or sexual abuse. Ingrained ideas make it difficult to prosecute sexual assault cases. Societal taboos and a lack of trust in the authorities are frequently the reason why cases are not reported. There are now a total of nine shelters and six consultation centres for battered women in Turkey.

Women who in their relatives' eyes have blackened the family name by supposed unchaste conduct continue to be murdered in rural areas and urban districts with a large population of rural origin. Another problem which arises among the rural population is the high percentage of suicides among young women forced into marriage. In July 2001 the Minister for Public Health pleaded for the reintroduction of the traditional practice of "virginity testing" in the case of candidates for nursing training ². The Disciplinary Board of the Ministry of Education reaction was to reject such practices outright ³.

¹ *Country Reports on Human Rights Practices 2000. Turkey*, US State Department (26 February 2001).

² NTV Turkish news channel via internet www.ntvmsnbc.com and Daily Telegraph, 18 July 2001.

³ Hürriyet daily newspaper, 17 July 2001.

Sexual assaults on women are often committed by government officials. Women in pre-trial detention are often victims of sexual intimidation and on occasion more serious forms of sexual abuse. Women are often forced to strip, are touched, insulted and threatened with rape. A poll conducted by the IHD indicated that three-quarters of women who had been in pre-trial detention claimed to have experienced sexual intimidation. According to the survey only one-sixth reported it to the authorities ¹. At a conference in Diyarbakır on 25 February the president of the Law Association's Women's Committee declared that 123 women had filed charges for sexual intimidation or rape while in pre-trial detention in 2000 ². A lawyer's association which has been trying to win convictions for such offences has not had a single success in the three years of its existence. In March 2001 two women who had denounced being raped by the police were charged with having insulted the security forces ³ In the past village guards have allegedly committed rapes in south-eastern Turkey.

3.4.9 Homosexuals, transvestites and transsexuals

Homosexuals

There is no legal provision making homosexuality punishable. Article 419 of the Turkish Criminal Code does, however, allow for the prosecution of anyone who acts shamelessly in public or publicly engages in certain sexual acts. However, no difference is made according to sex or sexual orientation. In 2000 there were 175 cases in which charges were brought on the basis of that Article. More than eighty per cent of the suspects were male ⁴

¹ *Country Reports on Human Rights Practices 2000. Turkey*, US State Department (26 February 2001).

² *Monthly Report of Human Rights in Turkey – February 2001*, Human Rights Foundation of Turkey Documentation Centre (January 2001), p. 33.

³ Associated Press, 22 March 2001.

⁴ Figures from the website of the Turkish Central Judicial Records (www.adli-sicil.gov.tr/Istatistikler/1996/ac_cik/00tacilan.htm).

There is a certain ambivalence towards homosexuality in Turkey. 'Active' sexual partners are not usually considered homosexual. In the eyes of many Turks, only 'passive' sexual partners are homosexual. Many homosexual prostitutes complain that men willingly make use of their services, but then scorn and slander them in public ¹. In Turkey not everybody draws a distinction between transvestites and transsexuals.

In general homosexuals need not fear official persecution by the Turkish authorities. There is no policy actively directed against homosexuals in Turkey. Nor is there any policy on the basis of which homosexuals have less access to public institutions or fewer rights to practice a profession than other Turks. In practice, however, people may lose their jobs when it becomes clear that they are homosexual. Homosexuals are at risk of harassment and obstruction by local government representatives who allow their personal views to override legal regulations. It is therefore common for homosexuals to try to conceal their proclivities.

Rural areas, as well as relatively conservative places, such as Konya, are not very tolerant of homosexuals. Individuals experiencing problems in their social environment because of their sexuality appear to escape them to some extent by moving to places like Istanbul, Izmir or Ankara, where there is now a fairly well-developed homosexual scene.

¹ See NRC Handelsblad, 26 June 2001.

There are some homosexual rights organisations. The most important are Lambda, founded in 1993, in Istanbul, and Kaos GL in Ankara ¹. They organise weekly activities, and national demonstrations take place several times a year. Since 1994 Kaos GL has published an eponymous bi-monthly magazine which is available in alternative bookshops in many cities. Interest groups are tolerated but claim that local authorities have been obstructive in the past. In 1995 and 1996 public demonstrations were forbidden by the police. However, in 1999 and 2000 they were allowed to take place ².

Transvestites

Turkish law does not prohibit transvestism. Nor does government policy discriminate against transvestites in any way.

As in the case of homosexuals, attitudes to transvestites in Turkey are also ambivalent. Some nationally known transvestites from the world of show-business are highly regarded in Turkey. Huysuz Virjin is a famous transvestite who presents a popular talk show on television. The transvestite singer Zeki Müren, who died in 1996, was given a state funeral for his services as a singer. Less famous transvestites face more difficulties. Often those who are open about their transvestism cannot find work. A large proportion of transvestites in Turkey support themselves through prostitution. A known spot for them to ply their trade is the E-5 ring road near Istanbul. From time to time, transvestite prostitutes are attacked by customers, passers-by, or local police officers ³. There are at least two known cases of transvestites who have reported police misconduct and where the police officers have actually appeared in court ⁴. One of them is the Police Chief with the nickname "Hose Süleyman", who is alleged to have beaten transvestites with a length of hose. A sentence of 27 years is being called for in his case, which has not yet closed.

¹ Cumhuriyet daily newspaper, 2 March 2000.

² Lambda website at www.lambdaistanbul.org, as at 15 March 2001.

³ See the series of articles entitled "Üçüncü cins" (The third sex) in the daily newspaper, Milliyet, 22 to 26 October 2001

⁴ See Tageszeitung, 16 October 2000 and the daily newspaper Yeni Gündem, 24 February 2001.

A considerable number of people who are currently going through life as transvestites would like to have a sex change but are unable to because it is too expensive (approx. US\$ 5 000) ¹.

Transsexuals

Transsexual operations are legally permitted and may be performed in Turkey subject to a number of conditions. The new Civil Code, which entered into force on 1 January 2002, imposes stricter conditions than in the past. Candidates must submit a medical certificate stating that the sex change is necessary for the mental health of the person concerned ². Persons who have undergone a sex change can record this fact in the civil register and are allowed to marry afterwards.

The ambivalent social attitude towards transvestites also applies to transsexuals. The famous singer, Bülent Ersoy, who had a sex change in 1980 and married as a woman in 1999, is idolised but less well-known transsexuals face the same difficulties as transvestites. Their position in Turkish society is also generally comparable to that of transvestites.

3.4.10 Conscripts

Military service in Turkey is dealt with in a separate official report ³. A new official report on the subject is due in summer 2002.

¹ Nicole Pope, "Turkey's Gay Culture Slowly Emerges", on the website of the Turkish news channel NTV, www.ntvmsnbc.com, as at 7 September 2000.

² Turkish Civil Code, No 4721, Article 40.

³ General Official Report on Turkey, 5 July 2001, reference DPC/AM-723941.

3.4.11 Returned asylum seekers

It is a known fact that thousands of (illegal) Turkish nationals are returned to Turkey from western Europe each year. They also include rejected asylum seekers. In 1999 and 2000 respectively the Netherlands returned to Turkey 137 and 191 rejected asylum seekers and a few hundred individuals who had resided illegally in the Netherlands.

There are no indications that Turkish nationals are persecuted in Turkey purely because they applied for asylum abroad. The Turkish authorities are aware that many citizens leave the country for economic reasons and apply for asylum elsewhere. However, people who have engaged in activities abroad which the Turkish authorities regard as separatist are at risk of persecution if the Turkish authorities find out.

The criminal records of Turkish-Kurdish asylum seekers who are returned to Turkey are checked on entry just like those of other Turkish nationals. The records may concern criminal convictions by a Turkish court, but can also be related to official judicial preliminary inquiries or investigations by the police or *jandarma*. Draft evaders and deserters are also on record at the border posts.

If a person is found to have a criminal record or incorrect border-crossing documents, to have left Turkey illegally in the past or been expelled from another country, the Turkish border authorities often interrogate the person concerned. Questioning is often intended to establish or check personal particulars, reasons for and time of departure from Turkey, grounds for seeking asylum, reasons why the application was rejected, any criminal records at home and abroad, including (drug-related) offences, and possible contacts with illegal organisations abroad. If, however, there is no definite suspicion, as a rule the person is released after an average six to nine hours' detention.

Anyone suspected of having committed criminal offences is transferred to the relevant investigative authority. In Istanbul this is mostly the Police Headquarters, which is located in Bakırköy, not far from the airport. Persons suspected of membership of the PKK, left-wing radical organisations such as the DHKP/C or TKP/ML, militant Islamic groups, or anyone suspected of giving support or shelter to one of those organisations is handed over to the Anti-Terror Branch, which is housed in the Police HQ mentioned above. Torture or ill-treatment of suspects at the Police Anti-Terror Branch cannot be ruled out ¹.

From time to time, asylum seekers rejected from western Europe claim to have been maltreated or tortured after their arrival in Turkey. A limited number of the claims of ill-treatment or torture after expulsion to Turkey from western European countries (in 1999 and 2000) have been investigated by the relevant western European authorities. On the basis of a medical examination in Turkey in one of those cases – which involved a person being sent back from Germany – it was concluded that the complaints and symptoms pointed to torture. In the remaining cases in which investigations into claims have been completed either there are doubts as to the veracity of the claims asserting ill-treatment or torture, or such declarations were found incorrect or implausible.

The media in the Netherlands also contained reports on similar claims. Among the "Tilburg eight" who were named in a report by Vrij Nederland on 12 August 1999, of the four people under investigation, three were able to travel freely within Turkey. One was apparently in detention in Albania. Investigations into an asylum seeker named in an article in the Volkskrant on 8 October 1999, who turned up again in the Netherlands bearing signs of torture on his back a few months after expulsion to Turkey, were completed in March 2001. The investigation was unable to establish clearly who was responsible for the torture. Since that incident, there have been no new known instances of the Turkish authorities torturing or maltreating asylum seekers removed from the Netherlands.

¹ See section 3.3.7.

The treatment in the army of returnee military service objectors is detailed in the General Official Report on Turkey/Military Service of 5 July 2001. A new official report on military service is due to be submitted to the State Secretary for Justice in summer 2002. The question of the claimed ill-treatment, discrimination or death of returnee military service objectors in the army should not be confused with the abovementioned issue concerning treatment of returnee asylum seekers at the Turkish border.

3.4.12 Summation

Human rights are guaranteed by the Turkish constitution subject to a few restrictions. Most of the recent constitutional amendments constitute a liberalisation. Turkey is a party to most international human rights treaties and cooperates in international monitoring of them. Human rights NGOs are frequently harassed, shut down or prosecuted. In November 2001 permission to set up an Amnesty office in Turkey was refused.

In practice, the constitutional freedom of speech is restricted notably with regard to the Kurdish question and the role of Islam in society. Objectionable statements regularly lead to persecution or a ban on publication. The freedom of association and assembly enshrined in the constitution is regularly restricted. Freedom to found political parties is restricted by the proviso that they must be secular and must not discriminate *inter alia* on grounds of different ethnic origins or class. Trades unions enjoy freedom but are sometimes suspected of supporting illegal movements. Because of the situation surrounding the F-type prisons, there has been increased pressure on NGOs since the end of 2000.

According to the constitution there is freedom of religion in Turkey. Alevis and non-Islamic minorities as a rule enjoy that freedom in practice. However, there are administrative restrictions and in some cases discrimination on the part of the general public or government officials. Islamic headscarves are not tolerated in universities, *inter alia*.

During detention the right of access to a lawyer and prompt notification of next of kin is often not respected. The prisons are currently being converted from a ward system to a system with small cells. Fear of torture, *inter alia*, has led to protests and prison riots culminating in the storming of prisons by the security forces and transfers to the new prisons. Ill-treatment allegedly took place in the process.

An amnesty announced in December 2000 provides for ten-year reductions in sentences or the cessation of prosecution for a large number of offences (including those pursuant to Article 169 of the Criminal Code, support for illegal organisations), provided they were committed prior to 23 April 1999.

Ill-treatment and torture are still widespread and occur notably at the beginning of pre-trial detention. Torture is often inadequately documented by doctors and the perpetrators are rarely convicted. The government has in past years taken several steps to prevent torture which, however, still rarely have any impact in practice. The number of disappearances has fallen to almost zero in recent years. In early 2001 two HADEP officials disappeared without trace. The death penalty is authorised by law and can be enforced in the event of war, threat of war and terrorism. The death penalty has not been enforced since 1984.

The government does not persecute Kurds solely on the grounds that they are Kurdish. The Turkish government is more focused on separatist sympathies than ethnic background. People from the south-east are more readily suspected of such sympathies. Ethnic origin is not recorded on any official document. The recruitment of new village guards has now ceased. The disarmament of current village guards meets with great reluctance and has not really got off the ground.

Women are frequently victims of marital violence. Moreover, they are often confronted with forms of sexual intimidation in pre-trial detention. In rural areas women are sometimes murdered in questions of honour. Homosexuals, transvestites and transsexuals are not persecuted for their sexuality or preferences, although they are regularly victims of harassment and sometimes physical violence. Legal channels do exist to counter such victimisation.

Members of the PKK, militant left-wing radical organisations and Islamic groups, or anyone suspected of giving them support or shelter are prosecuted. Relatives of PKK members are not persecuted but possibly have to live with attention from the authorities and sometimes face questioning, harassment, intimidation, etc. Relatives of HADEP members need not fear persecution by the government although close family of prominent HADEP officials can be the object of special attention from the local authorities.

Returnee asylum seekers have their criminal records checked on arrival at the border, are often interrogated for several hours and then released or transferred to the prosecuting authority depending on whether there are criminal proceedings pending against them. In the event of suspected activities for the PKK or other proscribed organisations, once they have been handed over to the Police Anti-Terror Branch, they may be threatened or tortured.

4. Migration

4.1 Intake of internally displaced persons

Evacuation of villages

To deprive the PKK of its breeding ground and choke off supplies to PKK fighters in the mountains, many villages in south-east Turkey have been evacuated and burned down by the armed forces. Many families have thus been forced to settle elsewhere in Turkey. In June 2001, the European Court in Strasbourg ordered Turkey to pay considerable compensation on that score to a number of villagers, from the district of Lice in the province of Diyarbakir, who had been victims of forced evacuation ¹. According to the Turkish Parliamentary Commission on Migration, 401 328 people were forced to leave their original villages in 1998 ². At the end of 1999 official government figures were some 85 000 lower. The highest number was cited by the IHD, which gave an estimate of three million in 2000. The US Committee for Refugees considers that this figure probably includes the large-scale economic migration from the region to the large cities and says that 500 000 is a credible estimate of the number of displaced persons ³.

¹ See the Turkish daily Radikal, 16 June 2001.

² Turkish Daily News, 7 June 1998.

³ *Worldwide Refugee Information, Country Report Turkey*, US Committee for Refugees (January 2000).

Since the return of peace in south-eastern Turkey at the end of 1999, the forced evacuation of villages has come to a halt. Whereas in the first eight months of that year, 27 villages were evacuated, no new evacuations took place during the remainder of 1999. In 2000 there were no new evacuations with the exception of one incident, when inhabitants who had returned to their village of origin had to leave again six months later. There were a few incidents in 2001. In July, two villages in the district of Beytüşşebap in the province of Şirnak were evacuated by the security forces after a mine explosion killed one and injured two members of the security forces. A few villages in the province of Hakkari are reported to have been evacuated in August ¹.

Living conditions for IDPs

Families from the evacuated villages have settled mainly in the large cities in south-eastern Turkey and in the cities of Istanbul, Ankara and Izmir. Cities in south-eastern Turkey in particular have scarcely been able to cope with the influx of migrants ². For instance, from 1990 to 1997 the population of the south-eastern provincial capital Diyarbakir grew from half a million to three times as many ³. Most of the rural population are camped out in the poorer areas on the outskirts of the city, where facilities such as running water are scarce. The rate of unemployment is high. Some of the forced migrants have succeeded in making a reasonable life for themselves in the city.

¹ *Monthly Report of Human Rights in Turkey – July-August 2001*, Human Rights Foundation of Turkey Documentation Centre (August 2001), page 5.

² See section 4.2.

³ *Worldwide Refugee Information, Country Report Turkey*, US Committee for Refugees (January 1999).

Scope for return to former residences

Some people who have left or been displaced from the south-east say that they want to return to their old homes. However, this can be problematic. The Ecevit government has expressly declared that it wants actively to promote returns, including through financial aid, but observers note that not much has been done so far to carry out those plans. Another obstacle to returning is that village guards who have occupied land in empty villages are not inclined to return it to the original owners ¹.

The official resettlement programme has the disadvantage that it aims to relocate many people in so-called "central villages". These are places between a village and a town in terms of size which, according to Prime Minister Ecevit, offer an ideal structure for rebuilding. However, in all likelihood these central villages are to be built in strategic locations from which the army can continue to exercise easy control of the local population. There are also various reports that the possibility of resettling in such villages is tied to a loyalty test so that it is the (former) village guards who can avail themselves of this possibility ².

Most of the villagers who want to return do not want to live in the central villages but simply wish to return to their old villages and rebuild their lives there. Financial assistance for construction and new livestock is needed. So far, little or no aid has been forthcoming. The authorities often refuse permission to return to original villages for security reasons ³. In the few cases where return has been authorised, problems have arisen with residents being denied access to land and high pastures because of a ban on grazing which has existed for years.

¹ *Monthly Report of Human Rights in Turkey - January 2001*, Human Rights Foundation of Turkey Documentation Centre (January 2001), p. 8.

² *Worldwide Refugee Information, Country Report Turkey*, US Committee for Refugees (January 2000), and *Turkey. Human Rights and the European Accession Partnership*, Human Rights Watch (September 2000).

³ *Monthly Report of Human Rights in Turkey - January 2001*, Human Rights Foundation of Turkey Documentation Centre (January 2001), p. 8.

Replying to a question in the Turkish parliament, in July 2001 Deputy Prime Minister Yilmaz said that in 2001 a total of 77 families had returned to their home villages in the south east. He also said that a construction project was being undertaken which would benefit 2 859 families ¹. In August 2001, the super-governor of the state-of-emergency region announced that, in various villages in the area, a total of 5 853 new residences had been built to accommodate returnees ². On 17 December 2001 the Ministry of Foreign Affairs published figures for returns to villages. According to these statistics, 30 244 returned between June 2000 and October 2001³.

In a circular issued in June 2001, Prime Minister Ecevit instructed the local authorities to give members of the Syriac Orthodox community who wanted to return to their villages in Tur Abdin every scope to do so and to guarantee them unhampered use of their property ⁴. Part of the property of the Syriac Orthodox community which left the villages was appropriated by the local population which had stayed behind and the local village guards and, in most cases, they were not prepared to give it back.

4.2 Minors

Children whose parents for whatever reason are unable to exercise custody are usually looked after by the family. In almost all cases the child's relatives are willing to take care of the child. This also applies to unaccompanied minor asylum seekers who have been sent back to Turkey from the country in which they applied for asylum. Of those who claimed to be unaccompanied minors when applying for asylum in the Netherlands in the last two years, it was possible to trace the parents or legal guardians in almost all cases.

¹ Anatolia press bureau, 23 July 2001.

² Turkish Daily News, 8 August 2001.

³ Dagblad Zaman, 18 December 2001.

⁴ Anatolia press bureau, 12 June 2001.

Nevertheless it can happen that in occasional cases no adequate care is possible within the family. In that case the Turkish authorities may provide care. Turkish law provides for state care for unsupported minors ¹. Only if care is not possible elsewhere may the case be referred to the Social Services and Child Protection Agency (*Sosyal Hizmetler ve Çocuk Esirgeme Kurumu*) coming under the Ministry of General Affairs. The Agency refers the minor's case to the court, which takes the ultimate decision on care ².

Under Turkish law, depending on the length of their education unsupported minors can be taken into care at least up to the age of 18 and at most up to the age of 25. Children up to the age of 18 may register or be registered with the Social Services Directorate (*Sosyal Hizmetler Müdürlüğü*), to be found in every province. There are children's homes (*Çocuk Yuvaları*) for children up to the age of 12 and training institutions (*Yetiştirme Yurtları*) for children aged 12-18. There are currently an estimated 70 children's homes in Turkey with a total of roughly 7 000 children, and 91 training institutions with 5 000 young adults. In some cases young adults who do not have their own home on reaching the age of 18 may be allowed to stay longer.

The quality of care in homes varies from province to province. In some parts of the country there are fewer facilities for the placement of minors than in others. There are examples of provinces in which personal intervention by the governor has led to an acceptable or even good care system (in Kayseri, for instance), while in other provinces care can only be described as minimal. It is difficult to judge how far care in general is adequate by Turkish standards since levels of care vary so much. Turkish authorities responsible for care and assistance to unsupported minors often have to cope with a lack of funding.

¹ This is governed by Law No 2828 of 24 May 1983 on the Social Services and Child Protection Agency.

² Law No 2828 of 24 May 1983 on the Social Services and Child Protection Agency, Article 21.

According to law, care and assistance to unsupported minors are provided by the state, but various charitable organisations also provide care for minors. The Social Services Directorates are responsible for authorising the establishment of and monitoring such institutions. The Directorates regularly consult such organisations in order to streamline care. UNICEF and other international organisations are also active to some extent in the field of care for unsupported minors.

4.3 UNHCR policy

Since the publication of the last official general report on Turkey in May 2001, the UNHCR has not announced any new policy positions with regard to Turkey. It has, however, published a new background paper on Turkey ¹.

According to the UNHCR, Kurds and members of Christian minorities from the south-east of Turkey do have an internal flight alternative outside the region "... unless the case in question is of a prominent nature or it is perceived by the authorities to have real or alleged links with the PKK or other main Kurdish parties" ² "UNCHR considers that" ... the group most likely to be exposed to harassment/prosecution/persecution are Kurds suspected of being connected with, or sympathisers of the PKK. The articles of the Anti-Terror Law (...) have been used (...) to persecute and imprison persons who expressed their opinion peacefully. Persons who are suspected of having the slightest links to the PKK are often detained and kept in detention. They are at times subjected to torture and/or ill-treatment. Cases of extra-legal executions have also been reported." ³. UNHCR points out that "... the recent developments linked to Mr. Öcalan seem to have no impact on the substance of the (...) possibility for Turkish asylum seekers originating from the eastern provinces of the country to find an internal flight alternative in other parts of Turkey." ⁴.

¹ *Background Paper on Refugees and Asylum Seekers from Turkey*, UNHCR Centre for Documentation and Research (Geneva, September 2001).

² Letter from the UNHCR in The Hague to Amnesty International, 4 December 1995.

With regard to returns to Turkey of rejected asylum seekers from that country, the UNHCR "... does not have any objection to returns of Turkish asylum seekers who after a fair and efficient asylum procedure have been found not to be refugees nor to be in need of international protection on other grounds."¹ With regard to people who have not been granted asylum on the grounds of Article 1(F) of the Convention on Refugees, the UNHCR adopts the position that "In accordance with standing jurisprudence, a person who has been excluded from refugee status on the grounds of Article 1(F) of the 1951 Convention should, nonetheless, not be returned to Turkey if it can be established that he/she is likely to be submitted to torture or inhuman or degrading treatment or punishment in violation of Article 3 of the UN Convention on torture, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights."²

In the light of the UNHCR's findings with regard to an internal flight alternative, the organisation explains that "... it is essential to find out if Turkish asylum seekers, if returned, would be at risk of being suspected of connection to or sympathy with the PKK. If this is the case, they should not be considered as having been able to avail themselves of an internal flight alternative."³

¹ UNHCR Geneva, fax report of 21 May 1999, and UNHCR The Hague, letter to the Ministry of Foreign Affairs, 9 August 1999.

² Letter from the UNHCR to the Home Office, Country Information and Policy Unit, Ref. 600 Turkey (22 March 1999).

³ Letter from the UNHCR in The Hague to Amnesty International, 4 December 1995, and letter from the UNHCR in The Hague to Stichting Rechtsbijstand Asiel, OC Den Haag, 25 January 1999. See also: UNHCR Position Paper on Relocating Internally as a Reasonable Alternative to Seeking Asylum, February/March 1999.

4.4 Policy of other European countries

In Europe, Germany, France, the United Kingdom, Switzerland and the Netherlands receive the most applications from Turkish asylum seekers. Those countries recorded 10 095, 4 885, 2 856¹, 1 823 and 1 331 asylum applications respectively from persons originating from Turkey in the first eleven months of 2001².

Categorical persecution of certain groups is confirmed only in a few cases. In Germany and Switzerland, Yezidis who are actively practising and committed to their religion are always admitted as refugees. Moreover, courts in a small number of German *Länder* consider that Syrian Orthodox Christians from Tur Abdin are subject to blanket persecution. In all other cases, all countries judge asylum applications on their individual merits. With the exception of France, all Member States take the view that, apart from persons wanted for political reasons, all asylum seekers from south-eastern Turkey can settle in the west of the country. France does not have the concept of "resettlement alternative".

In Germany high-ranking PKK members, known to be wanted by the Turkish authorities because of their activities, are granted an *Abschiebehindernis* (decree impeding deportation) on the basis of paragraph 53 of the German law on aliens. Refugee status is not granted.

Since 7 January 2002, the United Kingdom has added Turkish asylum seekers to the list of asylum nationalities to be dealt with under the fast-track asylum procedure. The fast-track procedure is limited to asylum seekers who claim asylum on the basis of Kurdish ethnicity alone, refusal to perform military service, involvement of family members in an illegal organisation, membership of HADEP or simply religious grounds.

All countries in western Europe return rejected asylum seekers to Turkey.

¹ This figure is for the first *nine* months of 2001.

² Source: Intergovernmental Consultation Group, an international association for cooperation between immigration offices.

4.5. Summation

In the 1990s a large number of villages in the south east were evacuated by the security forces. As a result, many families were forced to settle elsewhere. Apart from a few incidents in 2000 and 2001 there have been no new evacuations of villages since the end of 1999. Families from the evacuated villages have settled in the cities in south-eastern Turkey and in Istanbul, Ankara and Izmir, where they generally live in conditions of great poverty. Unemployment is high. Return to the villages is not making much headway. The government's construction of townships seems to be motivated by a desire to control the area easily and settlement in the villages appears to be tied to a loyalty test. Return to the original villages is impossible in many cases. On the basis of a circular issued by the Prime Minister, members of the Syriac Orthodox community from Tur Abdin are theoretically entitled to return to their villages. However, international observers expect obstruction from local forces if they do actually return.

In most cases, minors can be cared for by relatives. If they cannot, the Turkish authorities may provide care. The quality of state care varies from province to province.

With the exception of the Yezidis in Germany, no other European country accepts group persecution as a ground for asylum for any other group and those countries judge all cases on their individual merits. All European countries except Italy remove asylum seekers who have exhausted all legal remedies to Turkey. The UNHCR emphasises the specific risks faced by individuals with (suspected) PKK links and has no objection to the return of asylum seekers to Turkey if they have been refused after a careful asylum procedure.

5. Summation

Turkey is a centrally governed secular, unified state in which the army plays an important role. It allows no room for Kurdish nationalism or the development of political Islam. The position of pro-Kurdish and Islamic parties can suffer constraints as a result.

In 2001 there were four important political developments. In February 2001 Turkey entered its deepest economic crisis ever. This overshadowed many other issues for some time. The hunger strikes protesting against the introduction of the F-type prisons lasted throughout 2001.

In October 2001 a package of constitutional amendments was implemented constituting a liberalisation of fundamental rights in a number of respects. These amendments have yet to be transposed in subordinate laws and in daily practice. In July 2001, the Virtue Party (Fazilet Partisi) was outlawed. Two similar parties were immediately set up by way of response.

The improved security situation and the calm which followed the PKK's laying down its arms and the withdrawal, to a large extent, of its fighters from Turkish territory at the end of 1999 were consolidated in the second half of 2001. However, in economic terms the south east still lags far behind the western part of the country. There are a number of minor terrorist groups, particularly of left-wing and pro-Islamic extremist persuasion active in Turkey. Their influence has diminished in the last two years as a result of various measures taken by the security forces.

The human rights situation in Turkey is clearly deficient in a number of respects. Many human rights violations are related to the Kurdish question, which is defined by the government as separatism. For a large part they concern restrictions on freedom of expression and freedom of assembly and association, which are not respected in a number of cases when they touch on matters concerning the unity and secularity of the Turkish state. The situation surrounding the F-type prisons has had a negative impact on the human rights situation in the last year. As a result, human rights NGOs have less freedom to operate.

Ill-treatment and torture are widespread and occur notably during pre-trial detention. Frequently, insufficient action is taken against the perpetrators of ill-treatment and torture. In 2001 the number of disappearances fell to three. The death penalty has not been carried out since 1984. In December 2000 an amnesty was decreed which also covered Article 169 of the Criminal Code (support for illegal organisations). This led to over 23 000 people being spared further punishment.

Kurds are not officially recognised as a minority in Turkey. However, the government does not persecute Kurds simply and solely because they are Kurds. Despite the cessation of armed struggle by the PKK in 1999, the Turkish authorities' attitude towards the PKK has shown no change. Members of the PKK or anyone who gives them support or shelter face prosecution, as do supporters of militant left-wing and Islamic groups.

In the 1990s the security forces evacuated a large number of villages in south-eastern Turkey. The inhabitants moved to the cities in south-eastern Turkey and to Istanbul, Ankara and Izmir, where they often live in the poorer suburbs. Only very limited headway is being made with return to the evacuated villages.

With the exception of the Yezidis in Germany, no other European country accepts group persecution as a ground for asylum for any other group and those countries judge all cases on their individual merits. All European countries except Italy remove asylum seekers who have exhausted all legal remedies to Turkey. The UNHCR emphasises the specific risks faced by individuals with (suspected) PKK links and has no objection to the return of asylum seekers to Turkey if they have been refused after a careful asylum procedure.

Annex I: List of Christian minorities

Syriac Orthodox church

Turkey has 17 000 to 21 000 Syriac Orthodox Christians, of whom approximately 15 000 to 16 000 live in Istanbul and at most 2 000 in Tur Abdin. A few live in Ankara, Izmir, Iskenderun and Antakya.

The number of Syriac Orthodox Christians who traditionally lived in the villages near the city of Midyat in Tur Abdin has fallen significantly as a result of steady migration by Christians. In 1998 numbers were quoted estimating 70 Syriac Orthodox families in Midyat and 60 in Mardin. Spokesmen of the Syriac Orthodox church say that the population has remained fairly constant in the last two years.

The Patriarch of the Syriac Orthodox church, whose title is the Syriac Orthodox Patriarch of Antioch and All the East, took up his seat in Damascus in 1959. The current Patriarch (since 14 September 1980) is Mor Ignatius Zakka I Iwas. Other spiritual leaders are the Metropolitan Filüksinos Yusuf Çetin, Archbishop of Istanbul and Ankara, and Archbishop Timoteyos Samuel Aktaş in Tur Abdin. Syriac Orthodox Christians in Istanbul are divided into seven parishes. Church buildings of other Christian communities are sometimes used. The community in the Kadiköy district in the Asian part of Istanbul is the most thriving.

Syriac Catholic church

The Syriac Catholic community in Turkey consists of a few hundred people who live mainly in Istanbul and Tur Abdin. Patriarchal Vicar Monsignor Sağ resides in Istanbul.

The Syriac Catholic Church assumed its final form in 1783 when the Syriac Orthodox Archbishop of Aleppo, Michail Jarweh, and four other bishops converted to the church of Rome. The centre of the Church is in Charfeh monastery in Lebanon, which is the residence of the head of the Church, Ignatius Mûsa I Da'ûd, who has the title Patriarch of Antioch. He took up office in October 1998.

There are a fair number of affluent people among the members of the Syriac Catholic Church in Istanbul. They allow the Syriac Orthodox community, with which they otherwise seem to have little contact, to use their only church in Kumkapi ¹. This community has nothing to do with the population growth from the south-east of Turkey. The Church has a strong Latin influence ².

Church of the East (Assyrian Church)

There are an estimated 1000 to a maximum 4000 members of the Church of the East in Turkey, also known as Assyrian Christians or Nestorians. Until the First World War some hundreds of thousands of Assyrians lived mainly in the south-east provinces of Van and Hakkari. In the period after 1915, they were either killed or emigrated to what are now Syria and Iraq.

The Church of the East came into being in 431, when teachings which were later to become the official doctrine in Persia were condemned by the Council of Ephesus. This group/Church is often called "Nestorian" after bishop Nestorius, who was an important advocate of that doctrine. For a long time its centre was just to the east of the East Roman Empire and it is therefore also known as the Church of the East.

In 1968 the Church splintered once more. The reason was a dispute over which calendar should be used. One faction wanted to use the "western" calendar as a guide for the church year. This group, led by Patriarch Mar Dinkha IV, who resides in Detroit, Chicago, and occasionally in Tehran, is known as the New Calendarists. The other group, led by Patriarch Mar Adday in Baghdad, wanted to keep the classical calendar. These "Old Calendarists" named their Church the "Old Church of the East". The official name of the New Calendarists' Church is the Holy Apostolic Catholic Assyrian Church of the East, often known as the Assyrian Church of the East. It should be noted that, although the word Catholic is used, there are no links with Rome. The word catholic is used to mean "general".

¹ J. Roldanus, *De Syrisch Orthodoxen in Istanbul. Een volk uit een ver verleden overgebleven.* (The Syriac Orthodox in Istanbul. A people from a distant past.) (Kampen: Kok, 1985), p. 112.

² H. Teule, *Istanbul, (As)Syrische kerken en de mogelijkheden van een binnenlands vluchialternatief* (Istanbul, (As)Syrian churches and the possibilities of an internal flight alternative) in *Het Christelijk Oosten* 47 (1995), p. 244.

There has not been a spiritual leader in Turkey for some time now ¹. Nor is the Church represented as an institution ². The group seems somewhat introverted and is not involved in inter-church relations ³.

Some use the term "Assyrian" to denote nationality rather than a religious tendency. These more nationalist Christians no longer call themselves Syriac Orthodox, Syriac Catholic or Chaldeans, but Assyrians. This self-designation imbues the term "Assyrian" with a much wider meaning which spans all of the aforementioned groups and unites them under a single identity ⁴. On encountering the word "Assyrian" it is important to be sure how it is intended, either in the narrow sense to denote Assyrian Christians, or in the broader sense to denote Christians of all Syriac and Assyrian Churches.

Chaldean Church

There are from 1 500 to a maximum of 7 000 Chaldean Christians still living in Turkey, mainly in Istanbul and a few in the province Mardin.

The Chaldean Church came into being when a section of the Church of the East (Assyrian Church) united with the Roman Catholic Church. Its union with Rome had its origins in 1533 and finally became official in 1830. The Church was nevertheless allowed to continue conducting mass in its own language. The Chaldean Patriarchate was originally established in Alqosh in Northern Iraq, but moved to Baghdad in 1930. The current Patriarch is Mar Raphael I Bidawid, who has held the office since 1989.

¹ Peter Alford Andrews (ed.), *Ethnic Groups in the Republic of Turkey*. (Wiesbaden, Reichert Verlag 1989). [Beihefte zum Tübinger Atlas des Vorderen Orients, Reihe B Nr 60], p. 465.

² H. Teule, "Istanbul, (As)Syrische kerken en de mogelijkheden van een binnenlands vluchtalternatief" in *Het Christelijk Oosten* 47 (1995), p. 244.

³ J. Roldanus, *De Syrisch Orthodoxen in Istanbul. Een volk uit een ver verleden overgebleven*. (Kampen: Kok, 1985), p. 108.

⁴ H. Teule, "Kroniek Noord-Irak" (Chronicles of Northern Iraq) in *Het Christelijk Oosten* V47 N1-2 (1995), p. 143.

The number of Chaldeans in Istanbul is estimated at 600 to 1000. The community consists of two clearly distinct groups, namely Chaldeans who have already been settled in Istanbul for a long time and are well-integrated, and Christians from East Turkey who have recently migrated to Istanbul (between 1965 and 1980).

The first group is generally well-off, speaks good Turkish and works in the textile sector. There is a concentration of this group in the Kurtuluş district. Some of them attend the Chaldean church on Sundays. Those who do not live in the neighbourhood increasingly attend other (Latin) Catholic churches.

The second group of some 130 people is relatively poor. They are concentrated in the Tarlabaşı and Kurtuluş districts. They have not adjusted to life in Istanbul and often speak almost no Turkish. Their richer coreligionists have little inclination to look after them.

The Chaldean community does not to date have its own church building. It uses the Latin Antonius Church on the İstiklal Caddesi, the most famous shopping street in Istanbul. Patriarchal vicar Paul Karataş, bishop of Amida/Diyarbakir, resides in Istanbul. He is the community's leader and only priest.

Apart from meetings after Sunday church services, which are attended by some 500 to 600 people, no organised cultural activities are known of. Unlike the Syriac Orthodox Church, the Church does not have its own magazine. There is no institutionalised contact with the much bigger and well-organised Syriac Orthodox community.

Armenian Orthodox Church

The Armenian Orthodox Church, which is officially recognised as a minority, forms the largest Christian minority in Turkey. At present, the size of the Armenian population is a steady 50 000 or so, the vast majority of whom live in Istanbul. The Armenian Orthodox Patriarchate is also established in Istanbul ¹. The current Armenian Patriarch is Mesrob II ². He has been in office since 1998.

The Armenian community in Istanbul consists chiefly of shopkeepers and businessmen, is fairly well-off and maintains numerous contacts with Armenian communities outside Turkey. According to Turkish government statistics ³, the community in Istanbul has 51 church buildings, 35 of which are actually in use, and 19 primary and secondary schools with a total of roughly 4 000 pupils and 300 teachers. There is also an Armenian hospital and two orphanages. The Armenian community, according to these government statistics, publishes two newspapers and six periodicals, including the weekly newspaper, *Agos*, which contains articles in both Armenian and Turkish.

In the rest of Turkey, the smaller Armenian communities only succeed in maintaining their identity in a few big cities. There are nine Armenian churches outside Istanbul, six of which are still in regular use ⁴. In many places, however, Armenians live in very small groups with no church or priest. These groups often no longer speak Armenian, using only Turkish or Kurdish ⁵. They have nevertheless not become Muslims.

¹ The terms Gregorian or Apostolic are often used to mean Armenian Orthodox.

² Sometimes known as Mesrob Mutafyan II.

³ *Interim report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of religious intolerance and of discrimination based on religion or belief. Addendum 1: Situation in Turkey*, United Nations (11 August 2000).

⁴ *Interim report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of religious intolerance and of discrimination based on religion or belief. Addendum 1: Situation in Turkey*, United Nations (11 August 2000).

⁵ Herman Teule and Anton Wessels (ed.), *Oosterse christenen binnen de wereld van de islam* (Eastern Christians within the world of Islam) (Kampen: Kok 1997), p. 309.

Armenian Catholic Church

Istanbul has an Armenian Catholic community of some 5 000 souls spread over ten parishes. The spiritual leader is Archbishop Tcholakian, who is answerable to the Pope in Rome via the Patriarch of Cilicia in Beirut ¹. The community has 13 church buildings, one of which is a cathedral. The community's six primary and secondary schools have approximately 1 800 pupils. Their circumstances are similar to those of the Armenian Orthodox community. The small number of adherents means that the obligation for priests to have Turkish nationality weighs especially heavily on the Armenian Catholic community. Finding a successor to the archbishop, who is now well over eighty, will be very difficult.

Greek Orthodox Church

The Greek Orthodox community in Turkey, almost all of whom live in Istanbul, is now very small. Estimates of the number of members of the Greek Orthodox Church in Turkey range from 2 500 to 4 000. According to the Turkish government the community has 73 churches, 19 schools with 267 pupils and approximately 65 other foundations ². The head of the Greek Orthodox Church in Turkey is Patriarch Bartholomeos I. The Patriarchate is often called the Patriarchate of Phanar after the district of Istanbul where it is situated.

Greek Catholic Church

There is a small Greek Catholic community which has one church. They follow Byzantine rites during mass. The Latin-rite Vicar Apostolic of Istanbul heads the community.

¹ The Patriarchate was established in Istanbul until 1931.

² *Interim report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of religious intolerance and of discrimination based on religion or belief. Addendum I: Situation in Turkey*, United Nations (11 August 2000).

Arabic Orthodox Church

There are an estimated 8 000 to maximum 17 000 Arabic Orthodox Christians, who mostly live in Hatay province. The community has a few church buildings. The Arabic Orthodox community in Hatay is ethnically Arabic but its religion must be regarded as Greek Orthodox. Church services are held in Arabic. The Greek Melchite Patriarch of Antioch, who resides in Damascus, is the spiritual leader.

Bulgarian Orthodox Church

The Archmandrite of the Bulgarian Orthodox Church is established in Istanbul. The exact size of the small Bulgarian Orthodox community is not known.

Bulgarian Catholic Church

The spiritual leader of the very small Bulgarian Catholic Community, who resided in Istanbul until his death some time ago, has no successor. The Bulgarian Catholic community has one church in Istanbul.

Maronite Church

Maronites were originally the followers of the hermit Maron who lived in the fifth century. The spiritual leader of the Maronites in Turkey resides in Beirut. The Maronites recognise the Pope as the highest authority. The Maronite Patriarch of Antioch resides in Lebanon. There are very few Maronites in Turkey. Some live in Hatay and Mersin.

Roman Catholic Church

Apart from the abovementioned Churches which are united with Rome, the Roman Catholic Church has one to two thousand followers in Turkey. There is an Archbishop in Izmir. There are Roman Catholic churches and establishments throughout Turkey. Twelve parish churches are in use in and around Istanbul. There are also churches, chapels, schools, hospitals, etc. elsewhere in Turkey.

Anglican Church

There is a small Anglican Church community in Turkey which consists mainly of foreigners.

Protestant Church

There are a few thousand Protestants in Turkey. Some stem from existing Christian groups such as the Armenian or Syriac Orthodox and have already been Protestants for generations.

Approximately one thousand Armenian Protestants live in Istanbul, where they have three church buildings¹. There is also a small number of Syriac Protestants in Turkey. There is a Syriac Protestant church on Midyat Square in the Tur Abdin region of south-eastern Turkey, which is currently not in use for lack of a minister and parishioners. In recent decades many Syriac Protestants have joined the Syriac Orthodox Church or the new Protestant communities which have sprung up.

Another section of the Protestant community in Turkey is the product of Protestant preaching over the last four decades. Local Protestant communities have emerged in the large cities in Turkey. The largest communities are in Istanbul and, to a lesser extent, in the cities of İzmir and Ankara. The ten church communities scattered around Istanbul have a total membership of a few hundred². Some members come from existing traditional churches and have a partly Islamic background. These new Protestant communities cooperate well in Istanbul with the existing (Armenian) Protestant community. There is also a national association of Protestants with a joint spokesman.

¹ M. Numan Malkoç, *Istanbul'daki Protestan Kiliseler* (Protestant Churches in Istanbul), (Istanbul 1999), pp. 82, 87 and 92.

² M. Numan Malkoç, *Istanbul'daki Protestan Kiliseler* (Protestant Churches in Istanbul) (Istanbul 1999).

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