



Extrait du FIDH - Worldwide Human Rights Movement

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# IHD Annual Report 2012

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## **Description :**

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**On the 11th of April 2012, we presented the Report on Human Rights Violations in Turkey and indicated that the country had become a typical police state, with government's authoritarian practices reaching their peak. A quick look at the 2012 Report shows that the police state has not changed much since 2011. Since public opinion strongly criticised these authoritarian practices, the Third Judicial Reform Package was introduced to put an end to unjustified and unlimited detention. But wrongful practices by the judiciary prevented these reforms from being successful. Furthermore, overcrowded prisons prompted a change to the law through the introduction of freedom under court supervision, and in 2012 close to 20,000 prisoners were released. In January 2013, in application of the new regulation, close to 15,000 inmates were released from the open prisons.**

This attitude of the government provided a short-term, but not a permanent solution; this indicated that the government was not willing to tackle the problem at the root. The Third Judicial Reform Package, created assize courts in 11 regions, in application of article 10 of the anti-terrorism law, thus replacing the assize courts that existed in 8 regions, in application of article 250 of the Turkish Penal Code. This indicated that the judicial system was not going to change and that it was gradually being institutionalised. Since the procedures do not conform to the principle of the rule of law, there are alarming violations of the right to a fair trial. The government has not abandoned its policy of "pressure through the judiciary".

The Third Judicial Reform Package did nothing more than replace a certain form of "entryism" into the legal system to facilitate the creation of other structures. These judicial practices are clear evidence of continued resistance to the jurisprudence established in the European Convention on Human Rights and the European Court of Human Rights. The Fourth Judicial Reform Package, which was created to solve this problem, gave false hope but, as a result of public opinion, was sent to the Parliamentary sub-committee.

We would like to stress that we give great importance to the development of discussions started at end 2012 between the PKK leader Abdullah Ocalan and the State/Government, which seem to have reached a veritable negotiation phase. As opposed to the poor record of violations in 2012, 2013 seems to be a period of some improvement as concerns the right to life; growing prospects of the democratisation of the republic will unquestionably be decisive in the fight against these violations.

There have been important developments. On 21 March, the day of the Newroz celebration in Diyarbakir, Abdullah Ocalan declared an end to hostilities in order to seek a political solution. The PKK proclaimed an armistice on 23 March. This on-going process will exert pressure on the government to improve the human rights situations, especially with regard to the right to life.

Progress in the democratic process to solve the Kurdish issue must entail due consideration of serious human rights violations committed in the past, justice, appropriate apologies to the victims and the creation of a truth commission. It would be useful to set up an oversight commission to monitor the withdrawal of the PKK armed forces beyond the Turkish borders, and studies should be made to contribute to social peace building.

It should be recalled that the search for a solution to the Kurdish problem will oblige Turkey to recognise the reality of the mass graves, investigate the fate of the enforced disappearances, explain extrajudicial executions, identify persons responsible for massacres such as the recent Roboski massacre, return villages whose inhabitants were forced to flee and facilitate their return, eliminate the village surveillance system and clear the mined areas. In this process it is essential to create a truth commission and establish a reparatory justice system.

The 2012 Violations Report shows that the practices of the police state persist, but the peace process resumed in 2013 has rekindled hope.

### VIOLATIONS OF THE RIGHT TO LIFE

A detailed study shows that the police forces are still violating the right to life. In 2007, amendments to law on the attributions of the police force made it easier for the police to use arms, which is one of the main explanations of this increase in the number of violations. Since the culture of impunity still prevails, nothing has changed in this field.

People are still dying in prisons and detention centres. Sick prisoners die in prison for lack of medical care, which proves the insensitivity of the public authorities and their "let them rot" policy. Out of 411 sick prisoners, 124 need to be released immediately because of their life-threatening disease. Furthermore, 121 prisoners are very sick and need intense care. There are 245 very sick prisoners who expected to be released because of their illness, have not been. Law no. 6411 of January 2013 indicates that a sick prisoner who is not able to fare for her/himself may be released if s/he does not represent a danger for the safety of the community. This provision shows that the political authorities have continued to apply a very severe policy.

In 2012, the death of 9 people in the prisons showed that the police state was still going strong, and that impunity was still commonplace. The adoption by the Parliament of the last draft law (which had been left pending) on controlling the police force should contribute somewhat to solving the problem.

The continued existence of the village guards system means continued violation of the right to life. In 2012 the village guards killed two people and wounded three. The impunity policy is also being continued in this sector. The village guards system should be eliminated and a democratic solution should be found to the Kurdish problem.

In 2012, the explosion of bombs and abandoned mines showed the seriousness of the situation in which 19 civilians were killed (including 8 children) and 85 were wounded. In 2009, a regulation was adopted on clearing the minefields at the Syrian border, but nothing was done to tackle the real problem, i.e. clear the mined zones inside the country. In 9 provinces of Turkey, near the civilian residential zones, there are many mined fields. According to the Ottawa Conventions, these fields are supposed to be clear by 2014, but no actions have been taken yet.

In 2009, the Republic of Turkey officially recognised the Kurdish problem. Yet, the fact that no constitutional or legal measures have been adopted to ensure a peaceful, democratic solution to the problem has made the matter worse and led to increased violence. The number of people who died in the armed conflict rose from 338 in 2011 to 507 in 2012. The collapse of the negotiations started in 2011 led to more armed conflict and deaths.

As for the Kurdish question, the liquidation/alienation policy should be ended immediately and replaced by a recognition policy in which the State and government should show their determination to solve the problem through constitutional and legal means.

In 2012, like in 2011, there was a risk of civil war when the government responded to the Kurds' decision to solve their problem through civil disobedience by adopting a sort of state of emergency (although not called by this name). The Government's "undeclared" emergency state was continued in 2012. In 2013, the negotiations with Abdullah Ocalan were resumed which showed that both sides were truly anxious to find a solution to the problem.

The unsolved Kurdish problem and the armed conflict, which have been going on for years, have led to a culture of violence, and increased nationalism and chauvinism. Because of this situation, there has been a significant increase in suspicious suicides among the police and the military personnel.

In 2012, 69 suspicious suicide cases were identified. This increase in the number of suspicious suicides among the military personnel show that Turkey has a structural problem. The first is that the right to being a conscientious objector is not recognised in Turkey. In the *Bayatyan v Armenia* case (Request no. 23459/013) the European Court of Human Rights, sitting as a Great Chamber, clearly recognised the right to conscientious objection to military

service, and stated that member states of the Council of Europe must conform to this right by virtue of Article 9 of the European Convention of Human Rights.

Young people may object to military service for reasons of feelings, convictions, conscience, belief, political opinion, and philosophy, but this should not lead to suicide. Conscientious objectors should have their rights recognised immediately and should be excused from military service.

Second, discipline in Turkey is very forceful and difficult for young men to bear. There is an urgent need for new regulations. By virtue of Law no. 6413 of 31 January 2013 of the Turkish Armed Forces Disciplinary Law, solitary confinement called "Disko" is no longer listed as a disciplinary measure; this is a welcome change. But we have to remember the role that the solitary confinement played in the 2221 cases of suicide over the last 20 years. This explains the great need for further improvements.

Third, there are no regulations on hate crimes in Turkish law. Especially in the military, we very well know what happened to soldiers who were subjected to discrimination because of their ethnic, religious or denominational identity, or their political or philosophical opinion. With this in mind, "hate talk" should be banned immediately, and anyone who violates this banning order should be prosecuted.

Fourth, impunity for crimes committed, especially in military zones has reached insufferable heights. Violations of the right to life, violations of physical integrity, and torture, committed in military zones, are not sufficiently investigated or prosecuted. The number of suspicious suicides among army personnel is evidence of the following: military courts have no dissuasive effects, and the death rate is constantly on the rise. The people who cause these deaths and the murderers are not prosecuted or investigated; it is quite clear that no military deterrents have been used. Hence, and in compliance with the principle of the supremacy of the rule of law, the military tribunals should be closed.

Subsequent to the impact of the culture of violence and the alienation of the Alévis, there has not been any investigation or prosecution for the attempted lynching of the Alévis family in Surgu near Malatya, which shows that the discrimination policy is still very applicable

The very fact that attacks of this sort could be launched against the Alévis is evidence of the lack of public security. The attempted lynching of Kurds in Afyon / Sultandag and Karabuk in early 2013 and attacks against members of the Executive Committee of the Peoples' Democratic Congress in Samsun and Sinop prove that the "special war agents" are still on their beat. These incidents show that public security was violated by illegal groups that are tolerated by the State.

Unfortunately, there is an increase in the number of violations of women's and children's right to life. The Government's various initiatives to adopt special laws have not succeeded in saving lives. Honour crimes, suicides, the death of women and children are problems that can only be resolved in a non-conflictual environment with strong political will to overcome the culture of violence.

In 2011, the most significant example of violations of the right to life was the IHD report on several mass graves. According to IHD figures, in that year 3248 people were identified, buried in 253 community mass graves. The political authorities have not shown any interest in opening these graves, in compliance with the Minnesota Autopsy Protocol. The procedure for opening these mass graves has not yet been determined. That is why in 2012 the political authorities were expected to express their position on this matter.

Between 12 September 1980 (date of the military coup d'état) and 2004, IHD continued its sit-ins and campaigns to investigate the forced disappearances and to bring the perpetrators to justice. The government has remained silent on this issue.

The campaigns of the IDH and the Turkish Human Rights Foundation are still underway to adopt the principle of non-applicability of the statutory limitation with regard to unsolved murders. The Fourth Judicial Reform Package

provides for the elimination of this prescribed time period; this is very important, but is incomplete. There should be no time limitation for crimes against humanity, and Article 7/2 of the European Convention on Human Rights needs to be applied.

Remember that to fight effectively against violations of the right to life in Turkey, Turkey needs to recognise the competency of the International Criminal Court and ratify the United Nations International Convention of the Protection of All Persons against Enforced Disappearance and the Optional Protocols to the Geneva Conventions.

### TORTURE AND ILL TREATMENT

In 2012, there were many allegations of torture, ill treatment and inhumane and degrading treatment and punishment. The 12 September regime and the subsequent armed conflict led to an impunity policy that with time, turned into a culture of impunity. As long as nothing is done to fight widespread impunity, allegations of ill treatment and the fight against torture cannot be expected to change. The government's "zero tolerance of torture" has only been given lip service; no real fight has been waged against torture. This is confirmed in the official statistics.

According to statistics published by the Minister of Justice, 707 people have been judged for crimes of torture and ill treatment in 2009; 755 in 2010 and 800 in 2011. This increase in numbers for torture and ill treatment is clearly shown in our association's annual report. These data show that the government has not played its due role in preventing torture. However, in application of Article 265 of the Turkish Penal Code, there were 22,195 people were judged to what is called "resistance to the police force", the figure rose to 25,497 in 2010 and 27,753 in 2011. These figures show that the culture of impunity is still very much alive.

In compliance with the Optional Protocol to the Convention Against Torture (OPCAT), Turkey was supposed to have created a national prevention mechanism by 27 October 2012. We are growing increasingly alarmed by that fact that this mechanism has still not been created. The problem has not been solved by the creation of the Turkish human rights institution in 2012 (created despite opposition from the human rights organisations) which has been tasked to set up a unit to combat ill treatment and torture. Turkey must create a separate institution, a National Prevention Mechanism.

The increasing use of torture and ill treatment in prisons and public areas is clearly a threat for all Turks. The fact that the number of allegations of torture and ill treatment rose to 2571 in 2012 proves that only the venue, (not the nature), of torture has changed.

### FREEDOM OF THOUGHT, SPEECH AND THE PRESS

In articles 134, 214, 215, 216, 217, 218, 220/6,7 and 8, 222, 277, 285, 288, 300, 301, 305, 314/3, 318 and 341 of the Turkish Penal Code, there are very precise rules that restrict these freedoms, by virtue of the anti-terrorism law, the laws on various offences, law no. 2911, the law on political parties, the law on labour unions, the law on associations and the law on the protection of Atatürk. In 2012, the government did not make any major changes to these laws. In application of the Third Judicial Reform Package, consideration of "propaganda offences" committed before 31 December 2011 have been postponed, thus leaving a little breathing space, but does not settle the real problem. According to the official statistics of the Ministry of Justice, in 2011, there were 140 people put on trial for violating Article 301 of the Turkish Penal Code. Again in 2011, in application of the anti-terrorism law, 11,657 people were put on trial for publicity in favour of illegal organisations. There are thousands of journalists being investigated because of their work. As a result of bans on freedom of speech, many politicians, trade unionists, human rights defenders, journalists, lawyers, intellectuals, writers, students and mayors are being accused of "illegal activities".

In 2012, access to 6661 Internet sites was blocked. The government's determination to totally control access to Internet through filters has been weakened, for the time being by pressure from public opinion. Article 6 of the anti-terrorism law, that authorised obstruction to the publication of newspapers and was roundly criticised by the

European Court of Human Rights was somewhat, but not sufficiently amended through the Third Judicial Reform Package. The Fourth Judicial Reform Package that was submitted to the Grand National Assembly of Turkey in March 2013 did not live up to expectations, and now hope lies with future packages.

### THE RIGHT OF DEMONSTRATION AND ASSEMBLY

In 2012, violations of the right to demonstration and assembly reached a peak. There were serious violations while the police broke up demonstrations and meetings, mainly in the east and south-east region of Anatolia where the police intervened 424 times. The official statistics of the Ministry of Justice confirm the steady increase in violations of the right to demonstration and assembly. According to data from the Ministry, there were 3,294 people judged in 2007, 3,778 in 2008, 8,251 in 2009, 11,462 in 2010 and 13,479 in 2011 for violated the law on the right to assembly and demonstration.

The public authorities refuse to accept criticism and use force to disperse protest demonstrations. Besides this antidemocratic attitude of the political powers, there has been a change in the Chamber of the Court of Cassation that deals with cases of violations of law no. 2911. These cases now fall under the Ninth Criminal Chamber where there is a greater risk of more severe sentences. But in an order from the Court of Cassation, in application of the 2012 law, the Ninth Criminal Chamber stemmed the repressive penal policy of the political authorities, albeit only partly, by declaring that the right to assembly and demonstrations was a special form of the right to freedom of speech. A report on "violation of rights at the Newroz event in 2012" published by IHD on 2 April 2012 shows that the public authorities do not respect the right to demonstration and that demonstrations are severely repressed.

According to statements by the Turkish physicians union, the excessive use of tear gas had the effect of chemical weapons on the demonstrators. The use of weapons made from chemical agents must be ended immediately. The European Court on Human Rights condemned Turkey for violating the ban on torture and ill treatment by using tear gas. Statements by the Minister of Internal Affairs encouraging the police to use tear gas show that ill treatment and torture are protected at a very high level. In 2012 the tear gas used to disperse groups of people and demonstrations killed four people, which show the seriousness of the situation.

### FREEDOM OF ASSOCIATION

In 2012, 18 actions were filed for the dissolution of associations. Unidentified persons attacked the parties' and associations' buildings 68 times.

The political parties' system in 2012 did not change; the 10% threshold for the elections systems was maintained for the parliamentary elections.

The laws on union rights which were amended despite the opposition of the workers' confederation created new problems; and the number of trade unions authorised to negotiate collective bargaining agreements dropped as the sectors expand, which indicated that violations of the right of associations still persist.

### RIGHT TO FREEDOM AND RIGHTS OF PRISONERS

The steady increase in the number of persons in jail in Turkey is a clear indication of the pressure exerted on the society. There were 128,604 prisoners at the end of 2011. The figure rose to 130,617 by February 2012. 42.30% of these detainees were under arrest; this figure includes 2309 minors; 2100 of them, i.e. 90.94% were under arrest. This rate shows that Turkey has not complied with the criminal justice regulation for children.

Because of the increase in the number of prisoners, the law on judicial supervision was applied, thus facilitating the release of detainees. In the first phase, 20,000 people were released. Nevertheless, the number of detainees rose again towards the end of the year. In application of law no. 6411, adopted in January 2013, an additional 15,000 prisoners from released from the open prisons.

In 2012, the most recent event in the prisons has been the hunger strike by the Kurdish political prisoners between 12 September and 18 November. The strike, which started with demands for the elimination of solitary confinement in the Imrali prison, and the right to defence in one's native language ended on the 68th day in response to the appeal from Abdullah Ocalan, who wanted to avoid strikers' deaths. The hunger strike led to partial acceptance of the prisoners' demands: solitary confinement in the Imrali prison was ended, visits were authorised and the right to use one's native language was recognised.

In order to conceal the high rate of persons in remand among the detainees, the Ministry of Justice started listing the accused persons whose cases were before the Court of Cassation as "persons sentenced" instead of listing them as "in remand by judicial decision"; this is seriously fraudulent. Judging the accused, who are in remand is still common practice in Turkey. In mid-March 2013, there were 127,284 detainees in prison in Turkey and, considering that this was after 35,000 prisoners had been released, we see that this figure is really very high.

The Third Judicial Reform Package closed the special assizes courts, which were a sort of continuation of the State Security Courts. But by virtue of Article 10 of the anti-terrorism law, these courts were replaced by special new assizes courts with the same jurisdiction. This "legal fraud" institutionalises a legal system designed to create a repressive penal system.

According to data from the Ministry of Justice, in 2008 there were 3659 persons taken to court for belonging to an illegal armed group. In 2009 this figure rose to 4624, in 2010, 7689 and in 2011, 8301. In four years, a total of 24,273 people were taken to court; this is indicative of the abusive, arbitrary manner in which Article 314 of the Turkish Penal Code is being applied.

Further, between 2007 and 2011, legal proceedings were launched against 46,231 people for the crime of "making propaganda" in application of Articles 6 and 7 of the anti-terrorism law. This shows that special assizes courts are manipulated to meet the needs of the political powers. To ensure the right to a fair trial, these courts absolutely must be closed.

No legal regulations were adopted on hate crimes and no initiatives were taken to fight discrimination in 2012.

In 2012 the individual's right to freedom was severely violated with 12,300 people, including 550 children, being placed in police custody. Of the 12,300, 2788 (including 125 children) were arrested. Most of the people in police custody and under arrest were Kurds whose right to freedom of assembly and speech were violated.

Arrests and remands since 14 April 2009 are clear examples of serious oppression by the judiciary. In 2009, there were 7718 remands and 1923 arrests, in 2010 there were 7100 and 1599, and in 2011 12,685 and 2922. According to IHD data, the total for the last four years was 39,803 remands and 9232 arrests. Most of the people affected were Kurds or members of the BDP (Peace and Democracy Party).

Dozens of lawyers including 9 deputies, numerous human rights defenders, dozens of journalists and mayors, hundreds of members of municipal councils and provincial general councils, over a hundred trade unionists, hundreds of students, academics, intellectuals and writers are now under arrest.

### RIGHTS OF REFUGEES AND ASYLUM SEEKERS

Since 2012, no tangible changes have been made in this field. The draft law on foreigners has not yet been put on the agenda of the Grand National Assembly of Turkey. The high residence tax levied on refugees is still a major problem. Turkey is a transit country. In 2012, 17,540 refugees and asylum seekers, of which 14,024 come from Syria, were placed in police custody. A joint report by human rights organisations informed the public opinion and the public authorities about the problems of Syrians fleeing their country to find refuge in Turkey since 2011.

### PRESSURE ON HUMAN RIGHTS DEFENDERS

In 2012 pressure was still being exerted on human rights defenders. The Vice President of IHD, Muharrem Erbey, a lawyer from Diyarbakir has been in prison since December 2009. Rosa Erdede, a leader of the IHD branch in Diyarbakir was released in June 2012. Aslan Özdemir has been in prison since April 2009. Abdulkadir Curgatay, the head of the IHD branch in Mardin and leaders of the IHD branch in Aydin are still under arrest. In 2012 Osman Isci, who represented IHD on the Executive Committee of the Euro-Mediterranean Human Rights Network was remanded in custody on 25 June 2012 and then arrested together with 28 trade unionists. Ali Tanrıverdi, the Director of the IHD office in Mersin was arrested on 21 September 2012.

Several investigations and legal proceedings are currently underway against IHD leaders and members. These investigations and legal proceedings show that Turkey does not apply the Declaration on the Protection of Human Rights Defenders that was adopted by the U.N. General Assembly, of which Turkey is a member. In spite of Circular no. 2004/139 of the Ministry of the Interior, pressure is increasing and the government's approach to human rights is still clearly driven by concerns for security. In 2011, the draft law on the institution of human rights in Turkey (which the human rights organisations opposed) was not adopted by Parliament and was rendered null and void. But, in 2012 it was resubmitted, unchanged, to the Grand National Assembly of Turkey, and was adopted.

In conclusion, 2012 was a year of visible deterioration in the human rights situation, as explained above. We hope that the number of violations of human rights will decline as the process to find a democratic solution to the Kurdish issue is reactivated. Further, as the new democratic constitution is being prepared for adoption, we will continue our fight in 2013 to improve the alarming situation of human rights in Turkey.

GENERAL EXECUTIVE BOARD OF THE HUMAN RIGHTS ORGANISATION (IHD)  
EXECUTIVE BOARD HUMAN RIGHTS FOUNDATION OF TURKEY (TIHV)