



Anti-terrorist repression in Turkey: excessive and unlawful

credit :Al Arabiya



iHD

İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFÊN MIROVAN

Table of contents

Introduction.....	4
A)Presentation.....	4
B)Methodology.....	5
C)Background.....	5
The rise of the authoritarianism.....	5
Turkish cultural mosaic	7
Rule of Law: small progress, great retreat.....	7
Attempted coup d'état: terrible repression.....	9
State of emergency: disproportionate and irrational	10
A)Legal framework.....	11
International: possible derogations during exceptional periods.....	11
Domestic scope: Abusive measures.....	11
B)Administrative closures and unfair dismissals.....	12
Organization and institution.....	12
Unfair dismissal.....	13
Ineffectiveness of the commission.....	13
Disproportionate police measures.....	14
Presumed guilty : penalties without laws.....	15
A)Legal framework.....	16
International legal framework.....	16
Multiple reforms on the anti-terrorism law.....	16
B)Approximation of the Turkish anti-terrorist law.....	17
An unintelligible definition.....	17
Propaganda terrorism: the criminalization of the contradictory.....	18
Condemnable several times for the same act.....	19
Systematic violations of the right to a fair trial.....	20
A)Legal framework.....	21
B)Dependence and partiality: Turkish justice strangled.....	21



İHD

İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

Political selection of judges and prosecutors.....	21
Climate of terror within the institutions.....	22
C)Procedural Requirements: Imbalance of parties at trial.....	23
Equality of arms and the right to an adversarial trial: the defense flouted.....	23
Use of anonymous witnesses.....	24
Non-verification of testimonies and advantages granted.....	25
Practice of torture in spite of prevention tools.....	26
A)Legal framework.....	27
International legal framework.....	27
Torture theoretically prohibited.....	27
B)The resurgence of torture	28
Permissive measures encouraging degrading treatment.....	28
Cases torture of post coup attempted.....	28
The south-east is a no-law zone where impunity prevails.....	29
Enforced disappearances and mass graves.....	30



iHD

İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFÊN MIROVAN

INTRODUCTION

A) *Presentation*

IHD is a non-profit, non-profit Turkish organization with 29 branches, 3 representative offices and more than 1,000 members and activists. IHD aims to protect the fundamental and inalienable rights of citizens and has been doing so for more than 30 years.

The guiding principles of the organization are:

- IHD affirms that human rights are universal and indivisible
- IHD is a non-governmental organization `
- IHD remains independent of any political party or movement
- IHD supports all individuals, people, nations, sexual minorities and oppressed social classes
- IHD is opposed to the death penalty without any derogation regardless of the place or circumstances
- IHD is opposed to torture no matter where and under what circumstances
- IHD defends the right to a fair trial for all, regardless of the circumstances
- IHD supports the idea that the right to self-determination is an integral part of human rights
- IHD policy is based on humanitarian Law and calls on the belligerent parties to the application of the Geneva Conventions and especially Article 3
- IHD unconditionally defends the right to freedom of expression
- IHD unconditionally defends the right to freedom of worship.

IHD received several awards for its actions:

- 1989 Prize for Those at the Top by the journal “Nokta”
- 1991 Prize for Those at the Top by the journal “Nokta”
- 1991 Bruno Krensky Human Rights Prize
- 1991 Orhan Apaydin Law and Human Rights Prize
- 1995 Partners Award by the Human Rights Law Group



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

B) Methodology

Between November 2016 and May 2017, IHD interviewed Turkish civil society actors. These interviews were conducted in Turkey and in Iraq. The survey is the result of a series of interviews with a panel of professionals and actors in society such as lawyers, judges, academics, teachers, syndicate members, journalists, doctors, activists and citizens. Some of them are currently awaiting a court ruling, others have been convicted and are currently under threat of executing their sentences. All participants were informed of the purpose of the interview. According to the current atmosphere in Turkey IHD has protected identity of those interrogated and occasionally withheld information such as the exact location and circumstances.

This analysis highlights the systemic dysfunction of the anti-terrorist repression in Turkey for several years and especially since the coup attempt of July 15, 2016.

IHD noted a growing instrumentalization of the fight against terrorism aimed at muzzling all dissonant forms of expression against political institutions. By opposing international commitments with Turkish domestic law and the practice of the authorities, IHD has documented numerous violations of the fundamental principles of human rights that constitute the irremovable basis of a democratic society.

Convinced that the corollaries of criminal law and procedure, such as respect for physical integrity, the right to a fair trial, the right not to be arbitrarily detained, respect for the rights of the defense, the legality of Penalties are as many safeguards guaranteeing the sustainability and viability of a just society especially when it is going through a period of crisis, IHD deplores and condemns the disregard of these fundamental freedoms by the Turkish regime.

The possibility of expressing a contradictory point of view from that promoted by the current power is one of the prerequisites for the establishment of alternative and progressive solutions; these divergent opinions would actively address and resolve current systemic issues in Turkish society, particularly those relating to terrorism

C) Background

The rise of the authoritarianism

Due to pervasive corruption, Turkish electorate turned to the AKP (the party for development and justice), a political entity claiming to be based in conservative. Established in 2002 following the ban by the Constitutional Court of the party "Islamist of virtue" called Fazilet, the party won the legislative elections. Abdullah Gul was elected as the prime minister as a substitute for Recep Tayyip Erdogan, who after being incarcerated for incitement to religious hatred, was legally unable to assume the position. Nevertheless, following a reform of the electoral laws in 2003, Erdogan was appointed as the Prime Minister and has not left power since.

In 2007, the legislative elections offered a large victory to the AKP with 47% of the votes, then in October the Turks adopted, by referendum, the election by universal suffrage of the President of the Republic.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

The "Ergenekon" case shook Turkey in 2007, as members of this organization are suspected of plotting to overthrow the government, initially targeting the police and the military: hundreds of arrests are recorded with 280 convictions against military elites. In addition, intellectuals from academia and the press are also targeted and imprisoned after the trials as are secular elites of the country, most of whom stand in polar opposition to Ergenekon organization doctrine.

The municipal elections of 2009 benefit the pro-Kurdish party DTP, but are quickly followed by a wave of arrests against the elected under the label of the party. In June 2011, the Erdogan party won the legislative elections for the third time with 49% of the votes, but this result is not enough to enable it to reform the Constitution to establish the presidential regime. In 2013, the events of "Gezi" gathered a heterogeneous protest group challenging an urban project requiring the destruction of the famous park of Istanbul. The demonstrations spread throughout the country and crystallize against the ruling party, clashes erupt and cause the death of 8 people 8,000 wounded and 3,000 arrests.

As he is ineligible for a fourth term as head of government, Erdogan runs for the presidential election in 2014 and is elected in the first round with more than 50% of the vote.

In June 2015, the AKP suffered a first electoral setback, crippled by a corruption scandal involving the entourage of Recept Tayip Erdogan, the AKP is unable to form a government despite the dealings with the ultra- Nationalist MHP. In addition, by surpassing the 10% threshold, the pro-Kurdish party HDP enters parliament with 13% of the vote and thus obtains 80 seats. With 2/3 of the deputies being required for a constitutional reform, the arrival of the HDP in parliament hinders the Erdogan project to establish a presidential regime. As a result in November of the same year, the president dissolved the assembly and launched early parliamentary elections. In doing so, he takes advantage of a climate of conflict and mistrust, a time when Turkish military offensives are ravaging Kurdish towns of the south-east where more than 2,000 people lose their lives.

Very serious human rights violations were identified, human rights organizations were denied access to the areas concerned. [The Office of the United Nations High Commissioner for Human Rights reported "serious violations of human rights", including "mass destruction and extrajudicial executions"](#). In the legislative elections in November 2015, the pro-Kurdish HDP party, held responsible by the pro-government medias for the latent war in the south-east of the country, suffer a setback lose 21 seats in parliament.

On 9 and 15 January 2017, under cooperation between the AKP and the ultra-nationalist party MHP, the parliamentary majority of 3/5 is acquired and allows the referendum process to be validated in an irregular voting. Indeed, the votes took place over a very short period of time, the opposition MPs filmed some parliamentarians as well as the health minister voting with open ballot despite a constitutional ban. Following the recording of this sequence, AKP deputies reacted violently, leading to the hospitalization of several opposition MPs. In spite of the requests of the opposition the vote was not canceled.

The campaign was conducted in an extremely tense climate, opponents of the presidentialization of the regime have been victims of numerous physical attacks, including firearms. Without any justification, more than 150 people were put in custody as a result of political activities on the streets and on social media.

The YES vote won 51% in highly-contested elections, the OSCE (Organization for Security and Co-operation in Europe) and the EPP (Parliamentary Assembly of the Council of Europe)



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

reported failures in the conduct of the ballot mean the election did not meet European standards.

This disputed victory now gives a series of [new prerogatives to the president](#). Tayyip Erdogan can now make decrees without the approval of the National Assembly, the Head of State can dissolve the National Assembly without motion of censure as counter power. Moreover, the judicial system already criticized for its lack of independence is now under the increased influence of the president of the republic, indeed among the 15 judges of the constitutional court the head of state pronounces the appointment of 12 members directly and 3 indirectly. The Higher Council of the Turkish Magistracy is also heavily impacted with the direct appointment of 6 of the 13 members as well as 7 indirectly.

Turkish cultural mosaic

On the model of the social contract theory, Turkey is rich in diversity with several ethnic minorities living alongside the Turks, centuries of migrations composing the Turkish cultural mosaic.

Kurds account for 20% of the 87 million Turkish, claims for recognition of their cultural and linguistic identity have emerged for decades. Nevertheless, since the creation of the Turkish nation, these aspirations have been perceived as threats against the integrity of the territory. The creation of the PKK (Workers' Party of Kurdistan) in 1984 accentuated this distrust, and for more than 30 years, PKK fighters and Turkish forces fight regularly. This conflict has already caused the death of more than 45,000 people.

In 2009, after 25 years of war, Tayip Erdogan announced the implementation of reforms in favor of the Kurdish community. That same year, for the first time, members of the PKK were allowed to return to Turkish territory from the Iraqi camps, but a resumption of the conflicts would quickly revert any progress made. Nevertheless, in 2012 discussions are under way with the head of the PKK organization Abdullah Ocalan. On 8 May 2013, PKK fighters officially withdrew from Turkey after Abdullah Ocalan called on members to stop carrying out armed actions in the country. The draft constitutional reform suggested the possibility of a decentralized state, inferring the creation of regional assemblies. Nevertheless, the war in Syria has wiped out the historical progress made by both parties.

In July 2015, the Suruc bombing aimed directly at the Kurdish progressive community and revived tensions between the warring parties. This attack, which killed 30 people, was perceived as a symbolic attack on the Kurdish armed resistance facing the Islamic state organization in Syria. Kurdish fighters were particularly notable at the Battle of Kobane. A few days later, the PKK claims the assassination of two Turkish police officers accused of cooperating with the Islamic state organization. The difficult progress of the peace process was reduced to nothing but the resumption of hostilities and the final cessation of negotiations.

Rule of Law: small progress, great retreat

In 1999, the Helsinki Council officially recognized Turkey's application for membership of the European Union. Six years later, negotiations began with the Member States. The Copenhagen criteria defines the standards required to join the European Union, particularly in the political field. Turkey launched a series of penal reforms and promulgated a new Civil Code, including the abolition of the death penalty in 2004, reform of the Penal Code to prohibit torture and other



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

crimes, as well as the abolition of special tribunals and the reduction of the control of the military in the political sphere. These remarkable reforms, and others, brought Turkish law closer to European standards. Nevertheless in 2007, the blockage of France and Germany, added to the resumption of the conflict with the Kurds, slowed this reformist momentum. After significant efforts, progress is again reduced to nothing.

Turkey is a party to most UN treaties relating to the protection of human rights. In addition, as a member of the Council of Europe, Turkey has signed and ratified most of the 221 international conventions, including the European Convention on Human Rights. The member countries of the European Convention on Human Rights are automatically linked to the judgments issued by the Strasbourg Court. Turkey, also a member of the OSCE, must follow the guidelines issued by the organization.

In accordance with Article 90 of the Constitution, international instruments are an integral part of Turkish domestic law, and therefore the violation of a convention or treaty is directly open to challenge to Constitutional Court. Nevertheless, the supposed scope of International Law seems to be disregarded by citizens as well as by judges. [In a report on the containment of discrimination against women of 25 July 2016](#), the Office of the High Commissioner for Human Rights is concerned about "the lack of information on judicial proceedings, including direct requests to the Constitutional Court since September 2012, when the provisions of the Convention were directly invoked or applied, which may indicate persistent disregard among society in general and women in particular, and a lack of knowledge of the Convention by the members of the Constitutional Court Judicial system, despite the training programs provided by the School of Magistracy".

Turkey is frequently condemned by the ECHR and, since the coup attempt of 15 July 2016, the requests have increased significantly in part due to the purging by the authorities, the media sector has been severely hampered the right to freedom of expression.

Indeed, with nearly 160 journalists incarcerated according to the NGO Platform 24, Turkey is the top jailer of journalists. In 2017 Reporters Without Borders placed [Turkey 155/180](#) in its annual ranking evaluating freedom of expression. The Turkish authorities have shut down most of the opposition press organizations: since 15 July 2016 there have been 150 closed and banned media outlets.

Freedom of association is also threatened. In November 2016, 375 associations and NGOs were closed by decree, including women's rights organizations and legal associations. Human rights activists are regularly harassed, sometimes held in police custody, and even imprisoned.

Contrary to its international commitments, the Turkish state largely hinders the freedom to demonstrate. Ostensibly for security reasons, movements opposed to the government are often forbidden to meet. For example, the 1st May Day and the pride march have been banned in Istanbul since 2015. The police regularly carry out mass arrests and severely repress any protest movement. On June 25, 2017 the police fired with rubber bullets at the demonstrators who had decided to march in Istanbul for the pride march. This example highlights the disproportionate use of force in Turkey. It is common for soldiers to use ammunition to disperse demonstrators, as was the case in Diyarbakir on 4 November 2016 after the arrest of the elected representatives of the HDP (Pro-Kurdish political party).

IHD also deplores extrajudicial executions, arbitrary detentions, torture in the south-eastern provinces of the Kurdish-majority country. The Office of the United Nations High Commissioner



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

for Human Rights refers to "allegations of mass destruction, murder and many other serious human rights violations committed between July 2015 and December 2016 in southeastern Turkey. According to the report, between 355,000 and 500,000 people have been displaced in camps without being relocated decently. IHD also noted the establishment of an urban plan by the authorities to avoid the relocation of displaced persons.

Attempted coup d'état: terrible repression

On July 15, 2015, a group of 500 men with six F16 fighter jets, ten helicopters and about 50 armored vehicles attempted to overthrow the government. The night of 15 to 16 July cost lives to 234 people and injured 2,192 people, the parliament was bombed by aviation and the national media were also under the control of the putschist group. In rapid succession, dissenting military forces were defeated in the face of the popular uprising responding to the call of R. Erdogan on social networks.

Almost immediately, the preacher Fethullah Gullen was accused of orchestrating the coup attempt. The 75-year-old imam, exiled in the USA, led a very influential movement called "FETO", which governed a network of schools, NGOs, banks very active in the business world, also police and justice. The authorities announced a crackdown on the organization "FETO".

A purge is launched within the public services, the military, the police, civil servants and also private actors. [According to Amnesty International](#), 43,000 people have been detained, there are also 100,000 dismissed workers, including 33,000 employees from the Ministry of Education, 5,000 academics, 24,000 police and other members of the Interior Ministry, 8,000 military and 6,000 doctors and personnel affiliated to the Ministry of Health, 4,000 judges, prosecutors and other personnel related to the Ministry of Justice. Already criticized for its lack of independence, the Turkish judicial system gradually saw its capabilities annihilated by a climate of terror prevailing in the country, including within its own institutions. The removed staff have not been informed of the reasons for the dismissal, so far no personal motivation has been issued by the authorities.

On the basis of obviously political criteria, the repression was not limited to the so-called "FETO", in fact the arrests and dismissals spread to the whole civil society. Gradually, the events of July 15, 2016 became a pretext to muzzle any form of opposition.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

STATE OF EMERGENCY: DISPROPORTIONATE AND IRRATIONAL



Credit: Huffington post



iHD İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFÊN MIROVAN

A) Legal framework

International: possible derogations during exceptional periods

Rights and was subsequently developed by the case law of the European Court of Human Rights. As a result, a country may, under certain conditions, derogate from some of its international commitments. To be legal, this derogation must respect several conditions: in fact the danger must be imminent and directly threaten the existence of the nation, urgency must be officially proclaimed by an official act.

Nevertheless, the declaration of derogation does not in any case enable a State to ignore the commitments to which it has subscribed as a whole. A State can not go against other international commitments and no discriminatory measures can be taken. Moreover, the measures must remain proportionate and strictly necessary. The Civil and Political Covenant also establishes rights that can not be derogated from in Article 4 § 2 such as the right to life, the right not to be subjected to cruel, inhuman or degrading treatment or punishment Degrading punishment, the prohibition of retroactivity of the criminal law and the right to freedom of thought, conscience and religion. In addition, the Human Rights Committee has added rights to those previously cited, such as the prohibition of collective punishment, respect for the presumption of innocence and the right to a fair trial. HRW says in its report that the authorities formally announced that they would derogate from the protections of the European Convention on Human Rights (ECHR), without specifying which ones, and later, that they would derogate from 13 articles of the International Covenant on Civil and Political Rights (ICCPR) including those relating to humane treatment of detainees and the right to a remedy.

Domestic scope: Abusive measures

Article 120 of the Constitution announces the possibility of resorting to the state of emergency "in case of serious indications of widespread acts of violence aimed at the destruction of the democratic order established by the Constitution or rights and freedoms or a serious deterioration of public order due to acts of violence; The Council of Ministers, under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months ". The state of emergency has been declared 3 times throughout the country, nevertheless it has also been declared repeatedly in the south-eastern area of the country.

Article 121 of the Constitution indicates that the Council of Ministers meeting under the President of the Republic may issue decrees with the force of law, these decrees are subject to the approval of the Turkish National Assembly. According to the same article, the law on the state of emergency governs "the restriction or suspension" of rights and freedoms. In addition, changes can be made to the staff regulations.

The Decree on the State of Emergency was promulgated by the Council of Ministers on 20 July 2016, several Decree-Laws dated 20, 22, 22, 25 July, 1 August and 1 September then mentioned the measures organizing the repression.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

B) Administrative closures and unfair dismissals

Organization and institution

Legislative Decrees announce the closure of all organizations or entities, federations or unions, universities, schools, health centers belonging to, joining or coming into contact with the Fetullahist (FETÖ / PDY) terrorist organization or constituting a threat For national security. Moreover, these decrees shut down NGOs, health centers, companies, universities, schools that would be linked to a terrorist organization or threaten national security.

In November 2016, the authorities closed down almost 400 NGOs in Turkey, citing a fight against terrorism. In the organizations targeted by the Executive Decree there are associations for the protection of children's rights, associations providing food aid for internally displaced people in south-eastern Turkey, and also associations for the protection of women's rights.

These administrative closures are an escalation against human rights organizations. The closure of these organizations should be put into perspective with ongoing harassment of the various actors of civil society. Our offices are also subject to harassment, as police sometimes encircle the building when press conferences are held. Many activists find themselves threatened, put in custody, under judicial control, and sometimes incarcerated. For example, IHD members Haklari Smail Akbulut , IHD president Mersin Ali Tanriverdi were arrested. Also IHD Vice President Diyarbakir Raci Bilici was arrested in March 2017, accused of membership to a terrorist organization, detained in police custody and then placed under judicial supervision. This arrest is a consequence of IHD cooperation concerning the survey carried out by OHCHR in the south-east of the country. On 5 July, Amnesty International's director Idil Eser was arrested along with eight other activists near Istanbul. While attending training on management and computer security, the police intervened by invective the people present and then seized the computer equipment. Amnesty International's director was arrested one month after Amnesty International's Turkish branch president, Taner Kilic, was taken into custody.

« Le fait de s'attaquer à l'une des principales organisations internationales de défense des droits humains est un signal extrêmement inquiétant des autorités turques qui montrent que rien ne protège les voix critiques. Même pas l'appartenance à une organisation internationalement reconnue dans le domaine des droits humains. Il y a vraiment une fuite en avant où toute voix critique qui peut s'exercer, qui irait à l'encontre des autorités devient systématiquement poursuivie en justice. »

Nicolas Krameyer, responsable du programme Libertés chez Amnesty International France

Since the coup attempt a genuine purge was launched against the media not directly supporting the regime. Thus, since July 15, 2016, 150 newspapers, TV channels, web media and press organs have been closed without justification.

Often, the mere fact of expressing an opinion contrary to the government can lead to an administrative closure, with editorialists interviewed confessing to self-censorship. Pro-Kurdish media have been particularly affected by the purge, for example the DIHA agency or the daily newspaper Özgür Gündem. In addition, satellite TV channels have been banned from broadcasting, including some broadcasting in the Kurdish language, such as Van TV, Van Genç TV, Azadi TV, Denge TV and Mezopotamya TV. In addition, the Zarok TV channel broadcasting cartoons for children was also victim of this decision.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

According to the Committee for the Protection of Journalists, Turkey is the biggest jailer of journalist worldwide. In such a climate, investigative journalism becomes very difficult, with the disclosure of information automatically leading to prosecution. For example, the revelation by Wikileaks of a corruption case involving the son-in-law of Tayyip Erdogan was relayed by the newspaper such as Birgün, Ozgur, Gündem, Evrensel and Cumhuriyet. Following this publication the members of the newspaper were accused of being members of terrorist organizations. The trial will take place in October 2017 in Istanbul, and the defendants will have to defend themselves from being members of three different organizations (FETO, PKK, KCCHK) that are ideologically opposed.

Unfair dismissal

The decree-laws relating to the state of emergency, frames the suspension of officials suspected of links with the organization called "FETO". The decree retains the dismissal of those who are members, have a relationship, link or contact with a terrorist organization, group, entity or organization that would be likely to threaten the nation. Since July 15, 2016, more than 100.000 officials have been dismissed accused of links with "terrorism".

The approximation of this decree lets to the national security council, in charge of the decisions, a total freedom concerning the assessment of the degrees of implication. Most often these decisions are made by considering discriminatory criteria such as ethnicity, unionism or political ideas, with multiple investigations revealing the arbitrary procedures underlying these indictments. Suspended mayors, deputy mayors and councilors were replaced by administrative tutors appointed by the prefects directly subordinate to Ankara. [According to a survey carried out by the Kurdish Institute of Paris](#), a hundred mayors were suspended and for the most part arrested.

Due to widespread fear, few employers risk hiring these former officials whose name is published on the internet. Prohibited from leaving the country and without means of subsistence, the fired staff find themselves in a precarious situation and must count on the solidarity of their community. Finally, it should be emphasized that the action of the National Security Council had the effect of silencing any form of opposition rather than punishing the perpetrators of the coup attempt of 15 July 2016.

Ineffectiveness of the commission

The decree of 23 January 2017 created the commission to check the "merits/reality" of the closures of organizations and dismissals of personnel since the failed coup dated 15 July 2016. According to the decree, the commission is composed of 7 members, 3 of whom are appointed by the Prime Minister, one member by the Minister of Justice, one member by the Minister of the Interior and two by the Judicial Council. The members, appointed for a two-year term, shall not refrain from rendering decisions concerning the dismissals of civil servants, military personnel, judges and police officers, NGO closures, economic cooperations, confederations, private medical institutes, private schools, Universities, the media. Requests for protests must be sent within 60 days of the closure or dismissal. The decision can be appealed to the Administrative Tribunals of Ankara and subsequently to the Council of State.

The independence of the commission is compromised not only by the appointment process but also by the revocability of its members. Indeed, if the members of the commission are supposed



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFÊN MIROVAN

to be irrevocable, the decree allows for immediate revocation if a link is established between them and an organization likely to destabilize national security.

Given the current climate in Turkey, it will be very difficult for members to decide freely. Indeed, in the event of a decision such as the reinstatement of officials or the re-opening of press organizations, members could be accused of supporting terrorism, as it was the case for some judges who had acquittals in certain trials. IHD expresses serious doubts about the effectiveness of this commission, not only because of its lack of independence but also for technical reasons. The Commission will not be in a position to deal, within a reasonable time, with the hundred thousand files with the advertised staff. Furthermore, the committee will analyze the situation of individuals on the basis solely of the information presented in the file submitted to them by the authorities, it will not hear the people concerned and the defense will not have the right to participate. This suggests expeditious and arbitrary decisions. Far from a genuine desire to restore justice, the creation of the Commission is a means of depriving individuals of a possible remedy at ECHR. The Strasbourg Court only accepts applications after all domestic remedies have been exhausted. Waiting times can be very long and may leave people in a precarious situation in a sustainable way.

Disproportionate police measures

In the first decrees the custody could be extended to 30 days, a new decree reduced this period to 7 days likely to be renewed 7 additional days. In the name of public security, the law also provides the possibility of registering interviews between lawyers and suspects, the direct supervision of a police officer during the exchange, and the seizure of files held by the lawyer and / or suspect. This breach of secrecy between the lawyer and his suspect derogates from the fundamental rules of the right to a fair trial. Moreover, the possibility of the police to search law firms is an outrageous violation of the rights of the defense. As a result, the measures established by Turkey are in contradiction with its international commitments.

The measures put in place by the Turkish regime do not respect the international standards relating to the system of derogation set out in the Pact of Civil and Political Rights. In fact, based on Article 4, the National Committee for Human Rights enshrines essential principles of the doctrine concerning derogation from human rights. In this case, the measures taken must be proportional to the threat which means that these measures must be strictly necessary. In addition to the dramatic effects of the repression instigated by the authorities, the measures are in any event largely disproportionate and not adapted. The authorities could indeed have taken less intrusive and equally effective measures for public order.

The principle of non-discrimination has also been advanced by the National Human Rights Committee, which prohibits discrimination on the basis of color, social origin, language, religion and gender. Kurdish media, elected officials and officials have been particularly targeted since the establishment of a state of emergency. This repression of the Kurdish community is a flagrant violation of the principles of the Human Rights Committee of UN.

Furthermore, the Human Rights Committee has stated the right to a fair trial as a right which no State party to the Treaty may derogate from. However, the exceptional police measures taken by the regime are in direct violation of established international standards.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MİROVAN

PRESUMED GUILTY : PENALTIES WITHOUT LAWS



İHD İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

A) Legal framework

The principle of legality is considered to be the cornerstone of criminal law, it implies the definition of the offense, the legislator has to state the incriminating behavior, moreover these terms must be defined clearly and precisely.

In its judgment of 2 August 1984, the ECHR states that "a law can not be regarded as a standard enunciated with sufficient precision to enable a citizen to regulate his conduct". An essential principle of criminal law, the principles of intelligibility and accessibility of the law are the pillars of the principle of the legality of offenses and penalties. The principle of legality also implies the non-retroactivity of criminal law. Thus, an act is only reprehensible when it is prohibited by law, if a behavior is tolerated and then prohibited, the individuals who performed the act can not be sentenced at the time when the act was legal. Moreover, the law prohibits multiple judgments for the same act, logically an act is judged only once and can not be reconsidered once the decision has obtained "authority of res judicata" that is to say a definitive status which is not subject to appeal.

International legal framework

The principle of legality is protected by various international instruments signed and ratified by Turkey. The Universal Declaration of Human Rights and the Citizen enshrines in article 11, paragraph 2, that "No one shall be convicted of any act or omission which, at the time when it was committed, did not constitute a criminal offense, After national or international law ". Article 9 also stipulates that "No one shall be deprived of his liberty, except for reasons and in accordance with the procedure laid down by law".

Article 7 of the European Convention on Human Rights states that "No person shall be convicted of an act or omission which, at the time when it was committed, did not constitute an offense under national or international law. Nor shall a higher penalty be imposed than that which was applicable at the time when the offense was committed ".

The European Court of Human Rights has compelled the Member States by its decisions to develop abundant jurisprudence on the subject of legality. The Strasbourg Court stresses the importance of the accessibility and predictability of the rule of law for litigants and the need for a judicial interpretation clarifying the rule. The Court sanctions all "extensive interpretations to the detriment of the accused" in the case of an analogue interpretation which would not be compatible with the substance of the offense. In the explanatory memorandum to Article 7, the ECHR refers to the fact that inconsistency in the case-law would lack the precision necessary to avoid any risk of arbitrariness and also to enable everyone to foresee the consequences of his actions.

Multiple reforms on the anti-terrorism law

The Turkish anti-terrorist law has been the subject of several amendments in 1995, 1999, 2003, 2006 and 2010 since its first enactment in 1991. Its primary aim was to contain separatist actions, many amendments have been done since its first promulgation. The Turkish legal system distinguishes two types of terrorist offenses: terrorist offenses with certain offenses against the territorial integrity of the State and offenses committed with terrorist aims.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

The former are considered to be terrorist offenses per se, while the latter can only be treated as such when committed within the framework of a terrorist organization and / or to achieve its objectives.

Under the Act, sanctions against terrorist offenses and offenses for terrorist purposes are aggravated and special rules of procedure and enforcement apply. The penalties attributed to the offenses have a maximum and also a minimum quantum, that is to say, in case of proven guilt, the judge can not impose a penalty lower than the minimum penalty defined in the Penal Code. In addition, sentences are cumulative, so a person sentenced for two offenses see his penalties added.

B) Approximation of the Turkish anti-terrorist law

An unintelligible definition

The definition of a terrorist offense is established in Article 1 of the Anti-Terrorist Law: "Any criminal action carried out by one or more people belonging to an organization for the purpose of modifying the attributes of the Republic as specified in the Constitution, the political, legal, social, secular or economic system, degrading the indivisible unity of the State with its territory and its nation, compromising the existence of the Turkish State and the Republic, weakening, destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, damaging the internal and external security of the State, public order or general health".

Afterward, the anti-terrorist law establishes the offense of belonging to a terrorist organization; Article 2 of the Anti-Terrorism act provides that any person who, as a member of an organization pursuing the objectives of Article 1, commits a crime in the pursuit of these objectives or Commits not this crime, if it belongs to the terrorist organization it is thus defined like terrorist offender. Moreover, people who are not members of a terrorist organization but commit a crime on behalf of the organization are considered terrorist delinquents and de facto members of the terrorist organization.

These articles, which are at least ambiguous, do not provide any details as to the constituent elements of the infringement. According to the ECHR, the principle of legality implies that offenses and sentences are clearly defined, and the use of too vague criteria in the interpretation of a legislative provision may make that provision incompatible with the predictability principle of the law. Judges of the Turkish criminal courts frequently resort to the criminalization of Article 2 by proceeding by analogy; the analogical interpretation is the fact of bringing an act to infringement which is not regarded as such in order to condemn an offense.

As a result, a series of acts was found to constitute the offense in an absurd and irrational manner. Human rights defenders, members of Amnesty International, were arrested on 5 July 2017 and held in detention under the charge of "acting on behalf of a terrorist organization". Accessed by lawyers, the indictment file does not contain any significant material, the terrorist organization for which the human rights defenders supposedly acted is not even specified.

Thus many people are convicted of belonging to a terrorist organization without ever having been in contact with any such entity. For example, people participating in the funeral ceremonies of people suspected of terrorism are frequently prosecuted under the pretext of



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

being members of a terrorist organization, such membership being justified simply by the fact that they have attended the funeral of a member presumed.

During the repression orchestrated against the members of the organization called FETO, some individuals were condemned because of the only use of an encrypted messaging application called Bylock. According to the judicial authorities, this application was used by members of the Feto community, obviously downloading this application does not in any way certify membership in any organization. Nevertheless, the judges reasoned their decisions, considering that downloading this application was sufficient to constitute the offense.

The lawyer Ali Aktas was also prosecuted for belonging to a terrorist organization because of a phone call to his client. Indeed, his client had used the Bylock application in the past and was charged for these reasons, the lawyer was accused of being a member of the FETO organization for the simple fact of having phoned one of his clients who had used the Bylock application in the past.

Moreover, IHD also interviewed humanitarian workers convicted of terrorism because of their medical interventions in conflict zones in the south-east of the country. In 2015, during the bombing of the Turkish artillery on the city of Cizre and the district of Sur in Diyarbakir, voluntary doctors, trained in association and bearing explicit signs of belonging to a NGO intervened to take care civilians. Following humanitarian aid, some doctors and other members of the medical teams were charged and convicted under the charge of terrorist action. These convictions are a violation of international humanitarian law and in particular of the Geneva Conventions.

Propaganda terrorism: the criminalization of the contradictory

Article 7 of the anti-terrorist law punishes terrorist propaganda from 1 to 5 years. Moreover, this penalty is likely to be increased by half if it is published by means of "mass communication".

The term "propaganda" is not defined by law, the incrimination states that a person who creates propaganda for a terrorist organization in a way that encourages the use of violence, threat and coercion is punishable. Thereby the condemnations relating to terrorist propaganda are now daily in Turkey, decisions are roughly justified and without recalling the facts of the offense.

People active on social networks are particularly the target of these lawsuits. Indeed, several people calling for an end to violence in southeast Turkey have been condemned for terrorist propaganda. The hashtag regarding military exactions "stop killing children" has served as evidence in several lawsuits condemning users of Twitter.

Newspapers are also victims of judicial harassment, the mere publication of a military photograph illustrating an article explaining the fighting carried out by the YPG in Syria is being pursued. Again regarding organizations such as PKK / YPG, the use of the word "guerrilla" instead of "terrorist" in a press article is also considered as an act of terrorist propaganda.

The newspaper "Demokrasi" published the conclusions of the report of the United Nations reporting the massive abuses carried out in the south-east of Turkey between 2015-2016, following this publication the prosecutor of Istanbul opened a Investigation into terrorist propaganda, according to him the publication of the report would encourage the armed struggle of the PKK in the region. More absurd, in June 2015, three people were investigated because of their dress: the individuals in question wore red, yellow and green clothing. According to the



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

reasons of the decision, these colors promote the PKK and are thus constitutive of the propaganda offense.

Condemnable several times for the same act

IHD gathered several reliable testimonies from citizens convicted of belonging to a terrorist organization because of a demonstration, several years after being acquitted of this charge in a previous trial. No appeals had been lodged at the first trial, no new evidence was adduced, nevertheless the facts were retried in a new trial where the individuals were convicted.

The authority of *res judicata* refers to the impossibility of reversing a previously judged act, it intervenes after all means of appeal have been exhausted. The judges have disregarded this universally recognized criminal principle, proscribing to bring an individual twice before a criminal court for the same acts.

Other individuals interviewed claim to have been sentenced by the Criminal Court of Van twice for the same events. Indeed, the judge did not retain a single qualification, so he pronounced a conviction for belonging to a terrorist organization and belonging to a terrorist organization with a high level of responsibility. As a result, instead of retaining the most serious qualification, the judge retained both and accumulated the penalties incurred by the two incriminations. The fact of judging an individual twice for the same acts is a serious violation of the principle of legality, and, moreover, if the plurality of qualification is exceptionally possible, the circumstances of the above example allow only one qualification and prohibit the accumulation of penalties.

The approximation of the articles correlated with the "ultra extensive" interpretations of certain judges leaves a field conducive to arbitrary decisions. Investigations are open from the moment when a behavior is considered dissonant to the political will of the regime. Terrorism-related incriminations no longer have any substance in that they cover all acts connected with the exercise of a counter-power. The ignorance of the principle of legality creates a climate of terror where all behavior is now incriminable. Moreover, since the purge launched after the July 15, 2016 coup d'état, the judicial aberrations already present, have flourished and now seem to anchor arbitrary justice that investigates on politically, ethnically and visibly discriminatory criteria.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

SYSTEMATIC VIOLATIONS OF THE RIGHT TO A FAIR TRIAL



Credit: Huffington post



iHD İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

A) Legal framework

The right to a fair trial has three major aspects: it means being able to be tried within a reasonable time, the right to an impartial and independent court and respect for the adversarial process between the parties during the criminal proceedings. The right to a fair trial is enshrined in many international instruments, and Article 10 of the Universal Declaration of Human Rights states that "everyone has the right to a fair and equitable and publicly by an independent and impartial tribunal, which shall decide either on its rights and obligations or on the merits of any criminal charge against it ". The Pact of Civil and Political Rights enshrines the independence and impartiality of the courts in Article 14 "All are equal before the courts. Everyone has the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, which shall determine the merits of any criminal charge against him ". A series of prerogatives that should be available to the defense in the event of a criminal charge are also listed in the same article, as well as any person accused of a criminal offense, including the right to be informed promptly in a language which it understands, of the nature and grounds of the charge against it, of the time and facilities necessary for the preparation of its defense and of communicating with the counsel of its choice; to be tried without undue delay, to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. Article 6 of the European Convention on Human Rights states that "everyone shall have the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, Decide, ... on the merits of any criminal charge against him ". It is also stated that "Everyone charged with a criminal offense has the right, inter alia, to have: the time and facilities necessary for the preparation of his defense, to examine or have examined witnesses against him and to obtain the summoning and interrogation of defense witnesses". The jurisprudence of the European Court of Human Rights is also rich in numerous judgments, supporting the interpretation of the right to a fair trial.

B) Dependence and partiality: Turkish justice strangled

To be independent, a court is supposed to be free from any pressure from parties or political authorities. Judges must be able to rule without being influenced by any external pressure. Impartiality can be defined as the rule which prescribes independence from state authorities and neutrality towards the parties to the trial. While progress has been made in Turkey's rapprochement with European Union standards, including the adoption in 2005 of a Code of Criminal Procedure, the country has moved away from this reformist stream to a radical change that undermines the rule of law.

Political selection of judges and prosecutors

Article 159 of the Constitution states the procedure for the appointment of the members of the Judicial Council (HYSK) and its functions. Before the last constitutional reform, the council of the magistracy was composed of 22 members accompanied by 12 substitutes, the council was divided into three chambers. The members had a 4-year term of office, 3 members and 3 substitutes were elected by the Court of Cassation, 1 member and 1 substitute by the Academy of Justice, 7 members and 4 substitutes elected by the judges and prosecutors as well as 4



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

nominated members directly by the President. Since the constitutional reform, the number of members has been reduced, they are now 13 members established in two chambers without the assistance of substitutes. The appointment process is now under the control of the executive, since the president directly appoints 4 members, 7 members are appointed by the National Assembly majority composed of the AKP, also the Minister of Justice and his deputy Secretary are member.

In contradiction with [the Venice Commission's opinion on the judicial appointment of 16 March 2007](#), the recent constitutional reform increases the power of the executive on the appointment of judges and prosecutors. Indeed, according to the commission, the members of the council should be majority elected by the judges and prosecutors themselves. The reform has replaced this procedure to establish a quasi-direct mode of appointment controlled by the executive. Moreover, the presence of the Minister of Justice in the Council is of great concern in that it infuses direct pressure on the other members especially in disciplinary issues.

Article 159 of the Constitution sets out the prerogatives of the Supreme Council of Judges and Prosecutors. It deals with assignments in judicial and administrative courts, appointments and transfers, advancement and promotion in the first class, the distribution of posts, decisions on the fate of those whose maintenance is deemed undesirable, to disciplinary sanctions and to the removal of magistrates. It decides on the proposals of the Ministry of Justice concerning the abolition of courts or posts of judges or prosecutors and modification of the territorial jurisdiction of the courts.

According to the report of the Venice Commission on judicial appointments of 16 March 2007, the direct appointment of judges by the Judicial Council is a valid model insofar as the independence and autonomy of the Council is guaranteed. Nevertheless, given the appointment processes correlated with the climate of fear prevailing in Turkey, the Judicial Council is not in a position to claim to be independent. Indeed, following the dismissals of the 5,000 judges and prosecutors, reliable testimony asserts that the recruitment and placement of judges and prosecutors is based on obviously political criteria with some insufficient academic and professional training.

Climate of terror within the institutions

Since the failed coup d'état of 15 July 2017, the judicial bodies have been particularly targeted by mass dismissals by Ankara. A climate of suspicion and fear has gradually spread through the Turkish courts. For example, a judge was incarcerated because of the decision he had made, the President of the Criminal Court, ruled that there was insufficient evidence against the suspect accused of being a member of the FETO organization and accordingly he acquitted him. Following his decision, he was arrested, put in custody and then imprisoned for belonging to a terrorist organization. This abject arrest reveals the atmosphere of suspicion prevailing in Turkish judicial bodies. IHD was able to collect the testimony of a judge from the Kurdish community and who is still in office. He said he had already been forced to convict defendants for PKK propaganda because he fears himself of being accused of terrorism.

"Today I had to judge two cases related to terrorism, I sent these two people to prison for terrorist propaganda, I pronounced this condemnation because of a publication on the social network Facebook, according to me they were not guilty but I am kurdish, thereby I have to prove that I am not a member of the PKK, if I do not condemn them, the authorities will see there a form of solidarity with the PKK".



The investigation conducted by IHD highlights a growing violation of the rights to a fair trial. Turkish courts are now dependent on political power, constitutional reform has reinforced the mistrust felt by citizens towards judicial institutions. The Supreme Council of the Magistracy appoints, sanctions and acts on political criteria that manifestly neglect the competence of judges and prosecutors.

These edifying examples illustrate the impossibility of judges and prosecutors to investigate and decide impartially. In such a climate, more and more inquiries are opened and the acquittals are less and less pronounced. According to the ECHR, the criterion of impartiality can be assessed by an objective approach and consists in determining whether the judge has sufficient guarantees to exclude any doubt. In view of the conditions, not only of appointment but also of the threat to all judges and prosecutors, it is clearly impossible for them to rule impartially. The purge carried out instigated a feeling of terror within the institutions. As a result, it becomes impossible to carry out impartially the prerogatives that emanate from their functions, this atmosphere removes all objectivity and influences the intimate conviction of judges and prosecutors.

C) Procedural Requirements: Imbalance of parties at trial

Equality of arms and the right to an adversarial trial: the defense flouted

Equality of arms and the right to an adversarial trial are inherent in the notion of the right to a fair trial, in Foucher against France the ECHR defines equality of arms as the possibility for each part of being able to present his argument in conditions that do not place himself in a situation of disadvantage compared to his opponent. The right to an adversarial trial is linked to the notion of equality of arms and is defined as the possibility for the parties to be provided with all the evidence and observations submitted by the parties. The principle of equality of arms pending the conduct of the investigation.

In this disastrous climate, many lawyers refuse to defend the presumed members of the FETO organization, sometimes this refusal is advanced for ideological reasons but very often because of the climate of fear prevailing within Turkish bars. Indeed, lawyers defending alleged members of this organization are likely to be assimilated as members once they agree to defend. For example, a lawyer was placed in custody in Istanbul because of an "overly committed" plea.

In addition, S.Demirtas's lawyers, leader of the HDP, were also prosecuted for "harming the image of Turkey and the supposed link with a terrorist enterprise", the lawyers met and decided to share their bill at restaurant, police investigators analyzed this as a terrorist financing, the prosecutor's office of the criminal court of Bursa did not find it absurd and even supported these allegations at the time of the trial dated May 18, 2017.

During the investigation, IHD found numerous instances in which the defense was not able to access the documents. The authorities justify these restrictions in the name of public order and security, the communication of the file would be considered dangerous. This exception to the disclosure of documents in the file has now become common in criminal proceedings when terrorism charges are brought. As a result, lawyers interviewed by IHD expressed their dismay concerning the inaccessibility of the evidence and minutes contained in the file. Indeed, lawyers are only able to consult the case file a few minutes before the trial begins and sometimes even after the commencement of the trial. Faced with this constraint, it is therefore very difficult for



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

them to be able to argue in an equitable way with the prosecutor who sets up the indictment several years in advance.

The accusation is generally not notified to the defense, lawyers and suspects are not in a position to know the case which means the material facts charged by the prosecution. In these circumstances it is impossible for the defense to prepare adequately a coherent argument at trial.

In addition to very limited access to the prosecution's cases, access to evidence is also very difficult, testimony gathered assert that it is impossible to read the evidence in the indictment, the results of police investigations may be consulted only after the commencement of the trial. As a result, it is more difficult for lawyers to detect inconsistencies in the prosecution case. For example, a person convicted of terrorism has told us that after the trial he has become aware of the impossible nature of the evidence against him, in this case one of the same photographs was an evidence of two terrorist acts committed in two different countries. While restricting access to evidence is possible in certain cases to preserve the security of an individual or of public order, the Turkish judiciary makes routine use of this procedure even though the circumstances do not justify an absolute necessity of use.

The lawyers interviewed also expressed the growing difficulty in intervening in police custody, making it more and more difficult to be able to talk privately with their clients at police stations.

Even when the maintenance rooms are free, the police tell us that they are not and we have to de facto speak to us among the other officers who are sometimes investigators"

Lawyer from Istanbul

In addition, if the anti-terrorist law requires the presence of a lawyer from the first interrogation at the police station, some police officers circumvent this law by using forms originally intended for witnesses. As a result, some inmates with little information about their rights can sometimes provide usable information against them during the trial. This subterfuge developed within the police stations runs counter to the right not to contribute to its own criminal offense, which is one of the procedural safeguards.

Use of anonymous witnesses

The concept of witnesses naturally includes witnesses but also accused persons, co-defendants, victims and experts. According to the ECHR, the right to a fair trial enshrines the obligation to produce and communicate at the public hearing all the evidence before the guilt establishment of the suspect. If exceptions are possible, they are admissible subject to the rights of the defense, the absence of a witness must be justified on serious grounds. Moreover, in the event that this witness is the main cause of a conviction, the right of defense is breached. Anonymous witnesses are not prohibited by the jurisprudence of the European Court of Human Rights however the modalities of the use of anonymous witnesses are strictly regulated. The judicial authorities must put forward reasons sufficiently relevant to maintain the anonymity of the witness, the interests of the witness must be taken into consideration but also be weighed against those of the accused.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

The use of anonymous witnesses is frequent in Turkey, the individuals interviewed by IHD have mainly been convicted on the sole deposition of one or two anonymous witnesses, some have received sentences of several decades of imprisonment. The use of this method by the authorities is often justified by the public order or the security of the witness, very often the judges do not authorize the challenge of the veracity of the depositions.

Non-verification of testimonies and advantages granted

The cases documented by IHD illustrate this, for example, an individual convicted of terrorism based on an indictment based solely on anonymous testimony testified to the presence of the accused on the during the course of the proceedings and the trial, the accused attempted to challenge these allegations by, inter alia, requesting an analysis of the geolocation of his mobile phone at the time of the events. The judge refused to grant his requests and no further investigation was carried out. Accordingly, on the sole basis of this testimony, the suspect was convicted and sentenced to more than 45 years' imprisonment. Another individual expressed dismay: condemned to more than thirty years in prison on the evidence of a secret witness, the witness testified that he had seen the individual at the scene of a bomb attack. However, at the time of the crime, the individual was already serving a prison sentence in Diyarbakir Detention Center, the judge considered the incarceration but nevertheless condemned the individual on the grounds that he had participated in the organization.

In addition, counterparts in exchange for testimony are also granted for terrorism-related investigations, which allow an accused to obtain benefits, including immunity or a reduction in sentence.

These counterparts granted in exchange for information are very sensitive, indeed with the depositions subjected to non-disinterested manipulation in order to obtain a reduction of sentence and / or to take revenge on someone. The testimonies collected demonstrate the common use of denunciations, many interlocutors claimed to have been convicted on the basis of these interested testimonies.

The rights of the defense are seriously affected by the situation, from the arrest of the individual until the trial, the entire course of the proceedings is full of irregularities. The investigation conducted by IHD highlights the disarray of lawyers in the face of increasing numbers of violations of the defense rights. In trials related to terrorism, only the prosecution is entitled to the chapter ignoring the requests of the defense. Convictions involving heavy sentences are not thoroughly investigated, based on anonymous testimony which sometimes award counterparties, these decisions reinforce the climate of skepticism towards justice in Turkish society.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFÊN MIROVAN

PRACTICE OF TORTURE IN SPITE OF PREVENTION TOOLS



Credit: 20 minuten



iHD İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

A) Legal framework

International legal framework

While torture is now unanimously condemned on a global scale, the practice is nonetheless performed in spite of the many international instruments that prohibit it. According to the Convention against Torture, torture means “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”. The Universal Declaration of Human Rights prohibits these crimes by providing in article 5 that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. According to the statutes of the International Criminal Court, torture committed as part of a widespread or systematic attack against the civilian population constitutes a crime against humanity. The four Geneva Conventions, as well as the Covenant of Civil and Political Rights, prohibit this practice, in particular Article 7 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

In addition, the European Convention on Human Rights prohibits torture in article 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”, although this article may seem short, is not devoid of substance, indeed the court doesn't neglect its scope. Thus it has repeatedly stated that Article 3 enshrines one of the most fundamental values of a democratic society. The ECHR clearly punishes the most serious cases of torture, but also attacks on physical integrity and human dignity. According to the Strasbourg case-law, for example, persons who may be extradited to a third country and those who have abstained from protecting victims from private individuals.

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is an organization of the Council of Europe. The Committee has carried out several periodic visits and Adhoc in recent years. [The latest visit of 10 May 2017](#) was aimed at checking several places of deprivation of liberty in Turkey and observing the changes that had taken place within its premises since the coup attempt of 15 July 2016. CPT publishes its reports only with the authorization of the government of the State concerned. Thus the Turkish government, which had been in the habit of authorizing these publications until 2013, now refuses to publish these reports since 2013. As a result three Adhoc visits and the last periodic visit of May 2017 are still inaccessible .

Torture theoretically prohibited

The Turkish Constitution in Article 17 enshrines the inviolability and physical and spiritual integrity of the individual. Moreover, it is theoretically possible to file an application before the Constitutional Court in case of torture. The Code of Criminal Procedure in Articles 147 and 148 provides for the illegality of evidence obtained under torture and details the investigation which must result from such acts.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

The Turkish Penal Code, promulgated in 2005, introduces a third section penalizing torture. Article 94 renders any state agent who would cause physical, psychological, dishonor, loss of ability to act or think of a third party. Nevertheless, IHD deplores the absence of a reference to consider as an act of torture an act which would also aim to intimidate another person (third party) as the tortured person. The penalty of 3 to 12 years of imprisonment punishable by this offense may be increased due to the effects of torture, for example if there are consequences on the physical or mental integrity of the victim, then the quantum may be increased.

B) The resurgence of torture

Permissive measures encouraging degrading treatment

While Turkey has made significant progress since 2002 with respect to the law, notably by penalizing torture and degrading treatment, torture is nonetheless practiced. The ECHR has already condemned Turkey a hundred times for acts in violation of Article 3 of the Convention. Indeed, if the legal tools that Turkey has adopted seem appropriate and relevant, these legal instruments are at present little or not applied. In addition, a series of measures responding to the coup attempt directly affected arrests, police custody and detentions. As a result, these exceptions granted to police and military officers reinforce the feeling of impunity already present in the judicial bodies before the events of July 2016.

The extension of the custody's period to 30 days and currently 14 days reinforces the permissive climate prevailing in the police stations. Moreover, following the attempted coup, a person in police custody could not consult his lawyer for a period of five days, this period has now been reduced to one day. The fact that the exchanges between detainees and lawyers are no longer secretive also increases the mistrust of individuals to evoke the violence they have been the victims of. Moreover, since the attempted coup, a sense of impunity has spread within the country's police stations, the ineffectiveness of the instruments of prevention of torture plus the inviolability enjoyed by the police and military accentuates the risk of these criminal practices.

Cases torture of post coup attempted

In the weeks following the night of 15 July, there is ample evidence that torture has been carried out in places of detention, sometimes unofficial, by police, gendarmes and military personnel.

"I was arrested and brought to the sports center of Gazi University. We were 50 people in one room. I heard prisoners yelling in pain, I stayed two days but it was like an eternity. I have suffered a chronic illness, I was not allowed to take my medication. Then, when I was getting worse, they forced me to take a tranquilizer. On the spot, I remember an old man, very old, who needed an artificial respirator. He was just lying on the floor like an animal. "

Foreign journalist arrested

Lawyers interviewed by IHD spoke of threats, verbal and physical violence against them as well as those of detainees. In the days following the coup, the lawyers who were able to talk with the suspects saw the appearance of stigmata, scars and wounds. The authorities replied that the injuries had been caused during the night fighting of 15-16 July, however the victims of violence were certified to have been injured as a result of violence during their detention.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

Indeed, reliable testimonies collected by IHD correlated with reports from NGOs attest to various processes such as violence with arms, sexual assault, rape, deprivation of sleep, water and food. [Human Rights Watch has documented 17 cases of torture](#), IHD also received 1458 complaints from people alleging torture. Given the scale of the phenomenon, our teams have not been able to document all the complaints received. Nevertheless, the interviews conducted by IHD confirmed the use of the different methods of torture cited above.

Physicians who routinely conduct medical examinations of individuals placed in police custody are now advised to examine patients directly at the place of detention and no longer, as before, in the hospital. Some physicians interviewed said they were not in a position to report traces and stigma of the violence that would have been committed against individuals in detention. Indeed, on the basis of security measures, certain medical examinations take place with the presence of a police officer. As a result, the physician under pressure can not exercise his expertise freely and sometimes minimizes the injuries found, sometimes even denying them. This practice runs counter to the [Istanbul Protocol](#), which sets out a series of guidelines guiding documentation of cases of torture. The presence of a public official in the medical examination room is strictly prohibited by the Convention. In addition, it is impossible for inmates to obtain a copy of the findings. This request is frequently refused by the public prosecutor because of the secrecy of the investigation. In addition, Turkish courts are subject to increased tolerance for confessions obtained under torture. Indeed, several individuals met by IHD assured that they were condemned by confessions extorted under the violence. Some witnesses tortured in police custody returned to their confessions during the hearings following police custody, explaining the circumstances in which they had been obtained. Nevertheless, some judges did not take account of the victims' accounts, contrary to the formal case-law of the ECHR on this subject: "Consequently, the use in a criminal trial of depositions obtained as a result of a violation of Article 3 - whether those misdemeanors are described as torture, inhuman treatment or degrading treatment - automatically deprives the proceedings as a whole and infringes Article 6

The south-east is a no-law zone where impunity prevails

In July 2015, violent clashes between the PKK and the Turkish army in the south-east of the country caused 3,000 deaths according to [the organization Crisis Group](#). The state of emergency has been declared in the region and accompanied by curfews in certain areas and cities. Numerous human rights violations have been reported in the region. Law 6722 passed by the Turkish Parliament grants the anti-terrorist armed forces immunity from prosecution for acts committed during operations in the southeast. This immunity, granted to the Turkish forces, makes it impossible to prosecute the abuses committed in the region, this immunity formalizes the impunity already present in this region. Documented cases collected by IHD highlighted the practice of torture, inhuman and degrading treatment in the Kurdish-majority southeast regions.

"I was arrested several times for an identity check. Even if we are in good standing, we are likely to be beaten by the police, the violence takes place in the panzeres (armored police cars); I never filed a complaint for fear of retaliation. "

Diyarbakir citizen

[In a report published on 29 August 2016](#), The IHD teams documented various cases of torture in the prisons of Urfa and Siverek. The detainees are beaten by the police, handcuffed and kneeling for hours, verbally and physically intimidated, deprived of sleep, food, water and medication. Some of them have also been victims of sexual violence, including rape. Other



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN

detainees claim to have been threatened and humiliated, denuded and then photographed. The police then threatened to publicly disclose these shots if they did not acknowledge the allegations against them.

Enforced disappearances and mass graves

A number of disappearances have been reported. The United Nations working group on enforced or involuntary disappearances expressed concern at its visit in March 2016. Indeed, allegations of disappearances and extra-judicial killings were reported to the committees, Human rights NGOs present in Turkey. Van's IHD office documented the case of a burnt woman in her home. The Turkish authorities have denounced the PKK. Nevertheless, the investigation carried out by the office demonstrated that it was not the PKK. A pregnant woman was accused of belonging to the PKK: the police then surrounded the house and stormed, the woman was injured and then died on the way to the hospital.

"These cases are emblematic of the 20 or so assassinations of women in Van province in 2016. Even if there were women fighters among these women, this does not justify such acts. The same procedure is followed by the police: total encirclement of the area where the suspect is found, absence of negotiation, assault and execution of the person".

IHD Van

From the east to the west of the Syrian border, military troops are deployed to watch the passages to Syria. Testimonies of torture of persons arrested at the border have increased in recent months. A video showing young Syrians who were threatened, insulted and beaten very violently provoked outrage. Following this video, the authorities assured that an investigation would be launched. Photographs were also posted showing Syrians arrested by soldiers, who had forced the detainees to wear female underwear in order to humiliate them.

IHD expresses its deep concern about the situation on the Syrian border. Indeed, an increase in the number of reports of cases of torture was observed despite the difficulty of access to information in these areas.

The Diyarbakir IHD branch also [surveyed and mapped](#) in 2011, 348 mass graves, and buried more than 4,000 corpses. Every year new mass graves are discovered, particularly in southeastern Turkey. They are the result of extra-judicial executions carried out by the army. These exactions were, in fact, a "state policy" in the 1990's. In 2009 as an example, excavations revealed the existence of a mass grave in Sirnak province, following the discovery of a trial opened against seven defendants, including a colonel of Gendarmerie, accused of participating in the summary executions of 20 people in the 1990s. Several complaints have been filed by IHD and families of missing persons against former Turkish leaders, including former Turkish President Suleyman Demirel, former Prime Minister Tansu Ciler, following the confession of Atilla Kiyat, retired vice-admiral of the squadron. Nevertheless, judicial actions against the military rarely result in convictions.



İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFËN MIROVAN