

ANTI-TERROR - WORKING SESSION 9

Current Situation:

The new Turkish Anti-Terror laws, signed into law in July 2006, have received international criticism from NGOs, human rights defenders and others since the day they were proposed. The new laws amend the Law on the Fight against Terrorism (Act 3713), which was first passed in 1991. KHRP was among those who objected to the new legislation, and highlighted its concerns in a letter sent to President Sezer on 14 July 2007. The issues raised in that letter remain unaddressed by the Turkish government, and have allowed for the hindering of freedom of expression and association, the interruption of legal civil and political events and the harassment of dissidents who are not in any way linked to terrorism. Indeed, even a briefing skimming of this report reveals how the Turkish government has used the new Anti-Terror law to prosecute and harass national minority groups, political dissidents, members of the media, students and human rights defenders who are wholly unconnected with terrorism. This result is due in large part to the way in which the Turkish judiciary has interpreted the law; both KHRP trial observation missions and an Amnesty International 2006 report on justice in Turkey noted that Turkey's Anti-Terror legislation has been applied inequitably and arbitrarily, and has resulted in

protracted, burdensome and unfair trials for those accused.⁶⁶ Nevertheless, there are also inherent problems with the legislation itself that have permitted violations of fundamental human rights to occur. Among the most pressing of these problems are:

The law restricts freedoms of thought, expression, communication and the press.

- Article 6 broadly and ambiguously defines key terms of the amended law such that legitimate criticism of the state or politicians may be labelled “terrorist propaganda”, and increases punishment from the usual 3 years to 5 years;
- The law reintroduces custodial sentences for members of the press;
- Article 8 provides for “chain liability” by which not only the writer of a disputed text may be prosecuted, but also the publisher and/or person responsible for the publication;
- At the request of the security forces, prosecutors have the power to close publications for up to 1 month;

⁶⁶ For more information, see ‘Turkey: Justice Delayed and Denied: The persistence of protracted and unfair trials for those charged under anti-terrorism legislation’, AI Index: EUR 44/013/2006, Amnesty International September 2006 and, as one example, ‘Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession Trial Observation Report’, KHRP May 2007.

The law threatens freedom of belief and conscience.

- The prohibition of wearing an emblem or carrying the banner that pertains to a terrorist organisation found in Article 6 allows for criminalisation of such behaviour as wearing a headscarf or the red head strap of the Alevi youth. This unnecessarily restrictive regulation constitutes a disproportionate interference with the right to freedom of conscience;
- Under Article 3 “Conscientious Objection”, a right in other Council of Europe countries, is a “terrorist offence”.

The law restricts the freedom of assembly and association and the right to protest.

- Article 6 of the new law targets the right of individuals to hold political meetings and demonstrations as any terrorist offence committed on the premises of political parties, trade unions or student dormitories will receive double the usual punishment;
- The law makes it an offence to “willingly” provide funds “directly or indirectly” for the financing of a terrorist organisation. The wording of this offence is ambiguous and has been extended to include funding of a large number of unconnected crimes and organisations (Article 7);

- The law prohibits “demonstration without prior permission”, thus betraying the constitutional guarantees which protect the right to protest.

The law jeopardises the prohibition of torture and hampers the rule of law.

- Article 9 takes away the right of a detainee to have access to a lawyer within the first 24 hours of detention, placing the individual at high risk of torture;
- Article 10 enforces the culture of impunity in Turkey and violates the principle of equality of arms in providing that, during the investigation of crimes committed by law enforcement officers, the legal fees of three counsel will be paid by the state, whilst a defendant only has the right to one counsel and the law does not specify that they must be paid by the state;
- Conditions of detention and the rights of the defendant are restricted (Article 9);
- The new law removes the limit on the maximum length of sentence that can be given to an individual so that prison sentences can now be indefinite;
- Article 15 of the law authorises security forces to use a gun “without hesitation” against an armed suspect who does not obey the “stop”

command. This broad provision for the use of deadly force affords a wide discretion to armed security personnel and creates the potential for the use of disproportionate force. It is also contrary to Turkey's international legal obligations and OSCE Commitments to respect the right of life.

The law is inadequately drafted and the terms used are not sufficiently clear so as to provide legal certainty.

- The law confuses the notions of “armed gang” and “terrorist organisation”;
- The law classifies a wide range of actions as terrorist offences, including, for example, prostitution, yet fails to include or address the notion of “state terror”.

Turkish criminal law already prohibited these new “terrorist” offences and provided for their investigation, trial and punishment.

- All the crimes defined under the new anti-terror law already exist under the Turkish Penal Code;
- Around sixty crimes defined in the Turkish Penal Code are replicated in the new anti-terror law; yet the latter imposes heavier sentences and longer imprisonment.

The amendments made to the Turkish Anti-Terror law have permitted grave human rights violations to occur, and has interfered with rights Turkey has sworn to uphold and protect as an OSCE participating State.

OSCE Commitments:

We recall to the Turkish state the following commitments that it has made and ask it to renew its undertaking to respect them.

- **Regarding the condemnation and prevention of terrorism:**
 - The participating States “unreservedly condemn, as criminal, all acts, methods and practices of terrorism, wherever and by whomever committed, including those which jeopardize friendly relations among States and their security, and agree that terrorism cannot be justified under any circumstances”. (Vienna Document 1989, “Questions Relating to Security in Europe: Principles”, par. 8)
 - Participating States, “convinced of the need to combine measures at a national level with reinforced international co-operation...express their intention to...reinforce and develop bilateral and multilateral co-operation themselves in order to prevent and combat terrorism as well as to increase efficiency in existing co-operation at the bilateral level or in the framework groups of States including, as appropriate, through the exchange of information”. (Vienna

Document 1989, “Questions Relating to Security in Europe: Principles”, par. 10.2)

- Participating States “will encourage exchange of information concerning terrorist activities. [They also] will seek further effective avenues for co-operation as appropriate [and] will also take the necessary steps at a national level to fulfil [their] international obligations in this field”. (Helsinki Document 1992, “Summit Declaration”, par. 26)
- Participating States “aim to identify economic and environmental issues that undermine security, such as poor governance; corruption; illegal economic activity; high unemployment; widespread poverty and large disparities; demographic factors; and unsustainable use of natural resources”. (Bucharest Document 2001, par. 13)
- OSCE participating States reaffirm that “every State is obligated to refrain from...organizing, instigating, providing active or passive support or assistance to, or otherwise sponsoring terrorist acts in another States”. (Porto Document 2002, “Charter on Preventing and Combating Terrorism”, par. 8)

- **Regarding the need to respect human rights and the rule of law while combating terrorism:**
 - Participating States “will prevent the movement of terrorist individuals or groups through effective border controls and controls on issuance of identity papers and travel document, as well as through measures for ensuring the security of identity papers and travel documents and preventing their counterfeiting, forgery and fraudulent use. [They] will apply such control measures fully respecting their obligations under international refugee and human rights law”. (Bucharest Document 2001, par. 26)
 - Participating States “are convinced of the need to address conditions that may foster and sustain terrorism, in particular by fully respecting democracy and the rule of law, by allowing all citizens to participate fully in political life, by preventing discrimination and encouraging intercultural and inter-religious dialogue in their societies, by engaging civil society in finding common political settlement for conflicts, by promoting human rights and tolerance and by combating poverty”. (Porto Document 2002 Charter on Preventing and Combating Terrorism, par. 20)
 - They also “acknowledge the positive role the media can play in promoting tolerance and understanding among religions, beliefs,

cultures and peoples, as well as for raising awareness of the threat of terrorism". (Porto Document 2002 Charter on Preventing and Combating Terrorism, par. 21)

- In addition, they "commit themselves to combat hate speech and to take the necessary measures to prevent the abuse of the media and information technology for terrorist purposes, ensuring that such measures are consistent with domestic and international law and OSCE commitments". (Porto Document 2002 Charter on Preventing and Combating Terrorism, par. 22)
- OSCE participating States "reiterate that the struggle against terrorism is not a war against religions or peoples. [They] reaffirm [their] commitment to protecting human rights and fundamental freedoms". (Bucharest Document 2001 Ministerial Declaration, par. 3)
- They remain "determined to protect [their] citizens from new challenges to their security while safeguarding the rule of law, individual liberties, and the right to equal justice under the law". (Bucharest Document 2001 Ministerial Declaration, par. 4)

- **Regarding the role of the OSCE in facilitating the combat against terrorism:**
 - With the aim of preventing violent conflict and promoting the peaceful settlement of disputes, the OSCE will “[draw] on all its capacities...[to] continue and intensify work aimed at early warning and appropriate response, conflict prevention, crisis management and post-conflict rehabilitation; will strengthen its ability to settle conflicts; will increase efforts to find lasting solutions to unresolved conflicts, including through promotion of the rule of law and crime prevention in such conflict zones through increased co-operation with the United Nations, the European Union and other international organizations; and will further develop its rapid deployment capability (REACT) in crisis situations”. (Bucharest Document 2001, par. 14)
 - The OSCE Ministerial Council decides “to increase and promote co-operation among participating States in countering new security challenges, including by:
 - At the request of participating States and with their agreement...providing and co-ordinating OSCE police training, including at the subregional level, with a view to:

- Improving operational and tactical policing capacities;
 - Enhancing key policing skills, including respect for human rights and fundamental freedoms, and, as appropriate, dealing with the criminal aspects of illegal migration;
 - Increasing community policing, anti-drug, anti-corruption and anti-terrorist capacities;
 - At the request of participating States and with their agreement: - providing advice or arranging for the provision of expert advice on requirements for effective policing (needs assessments) and how to meet them, and,
 - Encouraging where appropriate the exchange of information among and between participating States regarding lessons learned and best policing practices in countering these new security challenges". (Bucharest Document 2001 Decisions: Decision No. 9 on Police-Related Activities, par. 3)
- Participating States "recall the OSCE's role as a regional arrangement under Chapter VIII of the United Nations Charter, and its obligations in this context to contribute to the global fight against terrorism".

(Porto Document 2002 Charter on Preventing and Combating Terrorism, par. 13)

Assessment 2006-2007

2006-2007 realised the effects the new Anti-Terror legislation as it was implemented for the first time in its amended state. Unfortunately, as KHRP and many others predicted, it has been applied arbitrarily and inconsistently such that the Turkish government has been able to arrest and harass many individuals who, though seemingly unconnected to terrorism, are nevertheless regarded with suspicion by the government for falling outside the Turkish national identity, or holding dissident political views. Several of the most telling examples of these arbitrary arrests have been outlined in the other sections of this report, as the Anti-Terror law has been used to restrict freedom of expression and association, culture and languages rights, minority rights and allow the occurrence of torture during interrogations and in prisons. Throughout 2006-2007 the government of Turkey has continued to receive international criticism for the way in which this Anti-Terror law has been implemented, with many NGOs, IGOs and human rights defenders calling on the government to both amend the law and apply it more equitably. Despite these objections, however, the Turkish government has not only refused to review the law in its Constitutional Court, but has also recently passed a police powers law that

human rights defenders both within and outside the country predict will result in greater human rights violations.

Provisional Law on Police Duties and Authorities

The Law on Police Duties and Authorities was amended in May 2007 to expand powers granted to the police to detain, question or physically restrain individuals being investigated by the government. According to the Turkish Human Rights Foundation (TIHV), the law allows the police to:

- Arbitrarily stop vehicles and ask for ID to “prevent crimes”
- Take fingerprints and photos of people stopped and keep this information
- Search cars, documents and private property and perform full body searches
- Use truncheons, handcuffs, pressurised water, teargas or powder and use force against “physical barricades” such as cars
- Force people to identify others
- Use deadly force against an attack of non-deadly force; i.e. disproportional force in self-defence.

On their face many of these provisions do not seem offensive, yet the law has drawn censure from groups and individuals as diverse as labour unions and AKP MPs who understand that, in practice, these provisions grant the police unprecedented freedoms to use force and collect information on individuals at

their discretion. AK MP Hakki Köylü complained that the law would allow the police to shoot anyone who "smacked someone in the face twice and ran away", and the Trade Union Confederation of Public Workers (KESK) noted that by permitting "questioning in the streets, arrests without establishing identities, taking everyone's fingerprints and preparing files on them, unlimited authorization to search, random pressure put on syndicates and mass organizations, and using violence without warning, [this law] includes many practices that are incongruous with democracy".⁶⁷ Akin Birdal, human rights defender and former President of the Human Rights Association (IHD), implied that the passage of this law is just another example of the Turkish government's wilful ignorance of instances of torture and other abuses on the part of law enforcement officials when he pointed out that one month after its passage, three prisoners died in detention.⁶⁸ KHRP and other NGOs remain concerned that the powers granted to the police by this law will be used disproportionately against the Kurdish people and other national minority groups in Turkey.

Turkey's Menacing of Kurdistan, Iraq and Southeast Turkey

In addition to applying increasing pressures on dissident political participants and organisations within Turkey, the Turkish government has also begun to focus its anti-terror activities outside of its own borders. 2007 in particular saw the Turkish Armed Forces threatening the Kurdish people of

⁶⁷ 'Police Regaining Vast Powers in Turkey', BIA News Centre, 30 May 2007.

⁶⁸ 'Birdal: Parliament Needs to Deal With Torture', BIA News Centre, 28 June 2007.

Kurdistan, Iraq by building a military presence along its border. In the wake of the 2007 Parliamentary elections and in response to international pressure the Turkish government has so far refrained from invading this area, but tensions are constantly building, and Turkey maintains that the presence of insurgents allegedly attacking the country from Kurdistan, Iraq would justify a military invasion. KHRP remains hopeful that the situation can be resolved peacefully, and calls on the OSCE to help mediate such a resolution.

Recommendations to the Government of Turkey:

The government of Turkey has been cautioned, criticised and rebuked countless times for both the passage of its new Anti-Terror law, and the way it has been implemented. KHRP respects Turkey's need to maintain national security, yet reminds its government that protecting the nation need not and indeed should not come at the expense of the fundamental human rights it has promised to uphold as an OSCE participating State and as a signatory to several international treaties. KHRP believes that Turkey can achieve this balance between defending the nation's security and defending the human rights of all people found within its borders. In order to reach this result, however, Turkey must fundamentally change the way in which it views the fight against terrorism and its approach towards preventing acts of terror from occurring. Accordingly, for the sake of its own security as well as that of those experiencing oppression under the current system, KHRP urges the state of Turkey to:

- Overhaul the current Anti-Terror law, amending it such that it is no longer so open to abuse. KHRP recommends that Turkey consult with human rights defenders, NGOs, IGOs or other independent interested parties throughout this process. KHRP's specific recommendations include:

- Reforming the language of the new Anti-Terror law, making it more specific and targeted at overt acts of terrorism as opposed to general types of behaviour or acts that are generally not criminal;
- End "chain liability" for publishers and other responsible parties not actually the author of offensive materials;
- Remove or amend all sections of the law that allow the closure of publications or any type of criminal liability for statements published or broadcast;
- Remove provisions that criminalise wearing or carrying an emblem pertaining to a terrorist organisation;
- Remove provisions criminalising "Conscientious Objection";
- Amend provisions restricting assembly, association, protests and the funding of "terrorist organisations" such that they do not allow for arbitrary and inconsistent application;
- Remove the provision in Article 9 denying a detainee access to a lawyer within the first 24 hours of detention;

- Amend the new police powers law, perhaps consulting with other states, NGOs, IGOs and human rights defenders so that it contains more specific authorisation of detainment, use of force and interrogation only in narrow circumstances relating directly to terroristic threat;

Beyond amending this legislation on its face, the Turkish government must ensure that it is applied consistently, fairly and in light of the country's international legal obligations to uphold and respect the human rights of all people found within its borders. Therefore with a view to actually change the use of these laws on the ground, KHRP urges the government of Turkey to:

- Initiate a training program for all members of the Judiciary and law enforcement, perhaps consulting human rights defenders, NGOs or other state bodies, outlining Turkey's international legal obligation to uphold human rights even as it seeks to prosecute crime and prevent acts of terrorism;
- Work with other states to create a coordinated effort to deal with international terrorism. KHRP encourages Turkey to consider the fight against terrorism not as a solitary actor, but as part of an international community universally committed to preventing acts of terrorism and seeking to secure all the world's citizenry from random acts of violence;

- Dialogue with the OSCE, other IGOS, NGOs and human rights defenders on security issues and consult with them on ways to augment national security without failing to respect OSCE commitments.

Recommendations to the OSCE:

In both the Bucharest and Porto Documents the OSCE has decidedly carved out an active role for itself in the international fight against terrorism and the garnering of greater security for all OSCE participating States. KHRP also envisions an active role for the OSCE in these struggles, and accordingly calls on the OSCE to:

- Maintain dialogue with NGOs, IGOs, human right defenders and all OSCE participating States regarding security issues and developments and the fight against terrorism;
- Encourage Turkey and other OSCE participating States to respect the OSCE commitments upholding fundamental human rights even as they take measures to combat terrorism both domestically and abroad;
- Provide opportunities for participating States to dialogue amongst themselves, building inter-state support networks for helping to combat terrorism both in its domestic and international scopes;

- Provide support for NGOs, human rights defenders and others examining and reporting on security situations in OSCE participating States;
- Assist Turkey and other OSCE participating States in finding solutions to security issues that do not endanger human rights, and encourage them to train prosecutors, judges, military personnel and other members of the security forces on keeping their nations safe without violating these rights;
- Encourage Turkey to dialogue with other nations and to seek a non-violent way to resolve tensions with other nations coming out of its desire to secure the Turkish nation;
- Encourage Turkey to address the root causes of unrest and civil strife within its own nation, focussing on minority rights, the defence of women's rights, freedom of association, freedom of expression, language and culture rights and the use of torture;
- Organise and send a long-term observation mission to the conflict areas of Turkey and Kurdistan, Iraq to report on the situation in general and developments as they unfold.

KHRP believes that if Turkey allows free-flowing political dialogue to flourish and actually attempts to address the situation for all of Turkey's national minorities but particularly the Kurds, it will become a stronger democratic state and more secure internally. KHRP also believes that the OSCE can play a vital

role in the rehabilitation of Turkey's Anti-Terror law and other legislative provisions which, at present, are being used to frustrate, silence, harass and otherwise discourage individuals the ruling regime regards as falling outside its nationalist agenda. Furthermore, KHRP maintains that the OSCE has the unique ability, through its consensus-based structure, to send an observation mission to Turkey that would be effective, non-obtrusive and inoffensive to Turkey's national sovereignty. Accordingly KHRP urges the OSCE to send such a mission, and generally provide greater support for the Turkish government and other nations in this region going forward.