



UPR Submission
Turkey
November 2009

Summary

This submission highlights a number of key areas of concern regarding Turkey's compliance with its international human rights obligations. It focuses on restrictions on freedom of expression; minority rights; the rights of lesbian, gay, bisexual and transgender people; police torture and ill-treatment; and upholding the rule of law and combating impunity.

Of particular significance is the government's announcement in summer 2009 that it is committed to ensuring the human rights of Kurds in Turkey through what it termed a "democratic opening up" giving rise to hope that a long-stalled reform process might be restarted. The realization of a plan to uphold minority rights for Turkey's different ethnic and religious groups would represent a fundamental departure from the variously assimilationist or repressive policies of the past, and offers the possibility of advancing the fundamental rights and freedoms of all groups across ethnic and religious lines.

Numerous provisions of the current constitution – drawn up in 1982 under a military regime – restrict human rights and fundamental freedoms. For this reason, Human Rights Watch considers revision of the constitution to ensure that it does not restrict human rights as a priority for the Turkish government.

Freedom of Expression, Association and Assembly

The criminalization of opinion remains a key obstacle to the protection of human rights in Turkey, although debate is increasingly open and critical. Prosecutions of journalists, writers, publishers, academics, human rights defenders, and officials of Kurdish political parties and associations remain commonplace, and continue in some cases to result in convictions. Judicial decisions lack consistency, with one court convicting and another acquitting for the same offense. Journalists and editors are frequently prosecuted for investigative reporting on matters such as the conduct of the military. Temporary closure of newspapers and long-term restriction of access through judicial and administrative decisions to many websites, including YouTube, continue.

At the time of writing, the pro-Kurdish Democratic Society Party (DTP), which has 20 members in parliament, is faced with a closure case pending before the Constitutional Court for alleged separatist activities. The case has been pending since November 2007. Turkey's legislation governing political parties has come

under international criticism; in March 2009 the Venice Commission of the Council of Europe published its opinion on the matter, finding that articles 68 and 69 of the constitution and provisions of the Law on Political Parties are together incompatible with article 11 of the European Convention on Human Rights (right to freedom of assembly and association).

Prosecutions of DTP parliamentarians (at the time of writing denied parliamentary immunity), DTP mayors, and party officials for such offenses as "making propaganda for the PKK [Kurdistan Workers' Party]" and "praising crimes and criminals" run into the hundreds, with a regular pattern of convictions. At least 64 DTP officials are currently in pre-trial detention pending trial for alleged connections with the PKK.

In May 2009, 34 mainly Izmir-based members of trade unions affiliated with the public sector workers' trade union confederation KESK were detained, with 22 imprisoned pending trial on charges of being members of the PKK. The evidence against them mainly refers to their activities in support of such issues as Kurdish-language education. Four lawyers, who had been involved in documenting prisoners' complaints about prison conditions and ill-treatment, are currently on trial for membership in the PKK.

Minority Rights

In summer 2009, the AKP government committed itself to a "democratic opening" to extend the fundamental rights and freedoms of all citizens, notably referring to Kurds in Turkey. This was an unprecedented departure from previous state policies and must be supported through revision of the constitution and amendments to laws. Ensuring an end to prosecutions of officials of Kurdish political parties and others for non-violent speech and for exercising their right to association (described in the previous section) must be a priority objective for the government if it is to be seen as serious about upholding minority rights.

Turkey has come under international scrutiny and criticism for its restrictive policies toward minorities. In his October 2008 report on Turkey, the Council of Europe Commissioner for Human Rights criticized Turkey's continuing failure to recognize religious and ethnic minority groups other than Greeks, Armenians, and Jews and urged Turkey to adopt numerous measures to uphold minority rights "with a view to fully aligning law and practice with the Council of Europe human rights standards."

The UN Committee on the Elimination of Racial Discrimination in its March 4, 2009 concluding observations on Turkey recommended, among other measures, that the government "enact comprehensive anti-discrimination legislation," and introduce "amendments to the legislation to allow teaching of languages traditionally used in Turkey in the general public education system."

LGBT Rights

Turkey has a longstanding record of violence and abuse targeting people on the basis of their sexual orientation and gender identity, and restrictions on freedom of expression and association of lesbian, gay, bisexual, and transgender (LGBT) people. Human Rights Watch has recorded eleven killings of transgender people since July 2008.

Government authorities have tried to close down several LGBT groups in Turkey using article 56 of the Civil Code, which states that "No association may be founded for purposes against law and morality." Pink and Black Triangle, an LGBT group in the coastal city of Izmir currently faces a closure case under this provision. In April 2009, Turkey's Court of Cassation ruled against the closure of Lambda Istanbul Solidarity Association. However, the court's ruling included the discriminatory condition that the association should not "encourage lesbian, gay, bisexual, transvestite and transsexual behavior with the aim of spreading such sexual orientations."

Torture, Ill-treatment, and Killings by Security Forces

Police ill-treatment is a widespread problem in Turkey, and occurs both in and outside places of official detention, as well as during arrest and demonstrations. In a recent case, Güney Tuna was allegedly beaten by seven police officers in Istanbul in October 2009, leaving him with a broken leg and serious head injury, which failed to be recorded in a routine custody medical report. The policing of demonstrations remains a major concern, and in April 2009 gendarmes were allegedly responsible for shooting dead two demonstrators during an unauthorized demonstration in Suruç, Urfa.

In a positive development, starting July 1, it became obligatory for all police officers in riot gear to wear numbered helmets for purposes of identification.

Turkish courts are notoriously lenient towards members of the security forces who are charged with abuse or misconduct, contributing to impunity and the persistence of torture and the resort to lethal force. Long delays and the lack of thorough and independent investigations by prosecutors contribute to impunity.

Of particular concern is the approach of Turkey's top court to the use of lethal force by security forces. In June 2009, the Court of Cassation upheld the acquittal of four police officers for the November 2004 killing of Ahmet Kaymaz and his 13-year-old son Uğur in the southeastern town of Kızıltepe. The court ignored substantial forensic evidence indicating that the father and son may have been victims of a summary execution. Lawyers for the Kaymaz family have applied to the European Court of Human Rights.

A notable exception to this pattern of impunity were the prompt trial proceedings that opened in January 2009 against 60 prison guards, gendarmes, and police officers in connection with the October 2008 death of Engin Çeber. Seven prison guards remain in pre-trial detention at this writing. Çeber collapsed in Metris Prison and died in the hospital, an autopsy recording that he had suffered a brain hemorrhage after being repeatedly beaten.

International actors have raised concern about the persisting problem of torture and ill-treatment in Turkey, and the impunity with which it occurs. For example, the European Commission in its October 2009 report on Turkey noted that "allegations of torture and ill-treatment, and impunity for perpetrators are still a cause for great concern, and need to become a priority area for remedial action by the Turkish authorities."

Upholding the rule of law and combating impunity

In July 2009, a second "Ergenekon" trial began probing an alleged plot to overthrow the government by senior retired military and gendarmerie personnel, serving officers, figures associated with organized crime, journalists, and academics. This trial runs concurrent with the first "Ergenekon" trial. In all there are now 192 individuals on trial, in the first such attempt in Turkey's modern history to bring coup plotters to justice. The European Commission in its November 2009 regular report on Turkey acknowledged the importance of the Ergenekon trial "as an opportunity for Turkey to strengthen confidence in the proper functioning of its democratic institutions and the rule of law." In early November 2009, the public prosecutor was investigating new evidence of a coup attempt in 2009 with the revelation of documentation allegedly outlining such a plot by elements of the armed forces.

The most significant attempt at bringing to justice state perpetrators of extrajudicial killings and disappearances documented by human rights groups in the 1990s began in Diyarbakır in September 2009, with the trial of a colonel, village guards, and informers for the murder of 20 individuals in the period 1993-95 in Cizre, Şırnak province.

Close to three years after the January 19, 2007 murder of Turkish-Armenian journalist and human rights defender Hrant Dink, there has been no progress in uncovering state involvement in the conspiracy behind his killing. There have been 10 trial hearings in Istanbul against 20 defendants, including the gunman. Eight gendarmes are on trial in Trabzon for basic negligence in failing to act on repeated intelligence reports pointing to plans to murder Dink. Lawyers for the Dink family have called for their trial to be combined with the Istanbul murder trial; they have to date applied four times to the European Court of Human Rights complaining of violations of the right to life, fair trial, and prohibition on discrimination.

Recommendations

Regarding constitutional restrictions of human rights and fundamental freedoms, the Turkish government should be urged to:

- Revise the constitution to ensure no provisions impede the enjoyment of fundamental rights and freedoms and rule of law in Turkey

Regarding freedom of expression, assembly, and association, the Turkish government should be urged to:

- Conduct a review of all articles of the Turkish Penal Code, the Anti-Terror Law, and other laws that are used to restrict the rights to freedom of expression, association, and assembly, and amend or repeal restrictive provisions.

Regarding minority rights and LGBT rights, the Turkish government should be urged to:

- Withdraw its reservation to article 27 of the ICCPR on minority rights. Ratify the Council of Europe Framework Convention for the Protection of National Minorities and other international instruments relating to minority rights, and ensure that they are fully enforced;
- Revise laws containing discriminatory provisions (such as prohibitions on use of languages other than Turkish);
- Enact comprehensive anti-discrimination legislation, including a prohibition on discrimination on grounds of sexual orientation and gender identity;
- Include the prohibition of discrimination on grounds of sexual orientation and gender identity in constitutional changes.

Regarding measures to combat torture, ill-treatment, and excessive use of force, and impunity for these crimes, the Turkish government should be urged to:

- Ratify the Optional Protocol to the UN Convention against Torture (OPCAT), requiring the establishment of an independent national preventive mechanism for monitoring places of detention;
- Ensure adherence to the Paris Principles, providing that a national preventative mechanism (or national human rights institution containing such a mechanism) be created as an independent body, adequately skilled, resourced and empowered, accountable to the public and established with the active participation of civil society groups;
- Establish an effective independent mechanism to carry out prompt, impartial, and thorough investigations into allegations of misconduct by members of the security forces that are capable of leading to prosecution of offenders and holding senior officers responsible for the conduct of junior officers;

- Ensure that trial hearings of law enforcement officials take place without undue delay.

Appendix: Recent Human Rights Watch reports on Turkey

"Closing Ranks against Accountability

Barriers to Tackling Police Violence in Turkey"

<http://www.hrw.org/en/reports/2008/12/05/closing-ranks-against-accountability-0>

December 5, 2008

"We Need a Law for Liberation"

Gender, Sexuality, and Human Rights in a Changing Turkey

<http://www.hrw.org/en/reports/2008/05/21/we-need-law-liberation-0>

May 21, 2008