TÜRKİYE'DE İNSAN HAKLARI:

Nedir insan hakları? Erbil Tuğalp, "Artık demokrasi isteyin" kitabında bu soruya şöyle yanıt veriyor: "Kısaca bütün insanlara, insan olmaları nedeniyle, insan onurunun gereği olarak tanınan zorunlu hakların bütününe insan hakları diyoruz.

İnsan haklarının konusu, ulusal ve uluslararararası planda tanınan ve bir yandan insan kişiliğine saygı ve korunması, öte yandan kamu düzeninin korunması arasında uzlaşma sağlayan hakların incelenmesidir.

Bugün artık pekçok ülkede insan hakları özel bir ilgi uğraşı, özel bir bilim dalı olarak ele alınmaktadır. İnsan hakları bilimi: bütünü her insanın kişiliğinin gelişmesi için vazgeçilmez olan hakları ve özgürlükleri belirleyerek, insan onurundan hareketle insanlar arasındaki ilişkileri inceleme konusu yapan toplumsal bilimlerin özel bir dalıdır.

"İnsan haklarına uzanmak" kitabında Güney Dinç şöyle yazıyor: "İnsan hakları insanın, insan olmak özelliği nedeniyle sahip bulunduğu temel haklar olduğundan, bu haklar genelde kx dokunulmazlık ayrıcalığına sahiptir. Toplumu oluşturan bireyler insan olarak yaşadıkları ve kaldıkları sürece onların insan olmak özelliğinden doğan bu genel haklara kimsenin dokunmaya hakkı yoktur. Hiçbir yönetimin insan haklarını, toplumun üyesi olan bireylerden almaya hakkı yoktur.

İnsanlık toplumunun ortak kazanımı olan ve yine ortak ilgi ve yönetimin konusunu oluşturan insan hakları ve temel özgürlükler yapılagelen genel bir ayrımla, kişisel hak ve özgürlüklerle, ekonomik ve toplumsal hak ve özgürlükler olarak iki kümede toplamak mümkün. Bunlardan kişisel ya da kamusal olanlar, Fransız devriminden bu yana öne sürülen ve klasik olarak adlandırılan hak ve özgürlüklerdir. Bunlar arasında başta gelenleri, yaşama hakkı, kişi özgürlüğü ve güvenliği, kölelik ve kulluk yasağı, işkence yasağı, yasa önünde bir hukuksal kişilik olarak tanınma ve yasalarca eşit korunma hakkı,

özel yaşam, aile, konut ve haberleşmenin gizliliği ve dokunulmazlığı, yer değiştirme ve oturma özgürlüğü, düşünce, din ve vicdan özgürlüğüyle dernek kurma ve toplanma hak ve özgürlüğüdür.

İnsanın salt insan sıfatıyla sahip olduğu bu hak ve özgürlüklerle birlikte, bir toplumsal varlık ya da birey olarak kazandığı hak ve özgürlüklerse ekonomik ve toplumsal hak ve özgürlüklerdir. Bunlar görece daha geç ya da yakın zamanlarda tanınmış ve giderek çeşitli anayasalarda anlatımını bulduğu gibi uluslararası belgelerde de dile getirilmiştir. Bunların başlıcaları, çalışma hakkı, sendika ve grev hakkı vebenzeridir.

İnsan haklarının çiğnenmesi denince, insan hakları öğretisinin öngördüğü bir başka deyişle ulusal ve uluslararası belgelerde önörülene temel hak ve özgürlüklerden herhangi birine yapılan saldırı, insan haklarının çiğnenmesi olarak ele alınmaktadır. Örneğin ülkemizde insan haklarının çiğnenmesi denilince bir başka şey, xgelişmiş batı ülkelerinde daha başka şeyler akla gelmektedir. Biz 20. yılın sonlarında hala falaka x cop ve elektrik işkencesi ile uğraşırken, çağdaş batı toplumlarında sağlıklı çevrede yaşama hakkı, silahsızlanma hakkı, barış hakkı ve benzeri gelişmiş insan hak ve özgürlüklerinin sağlanması için uğraş verilmektedir.

Burada, insan hak ve özgürlüklerine ilişkin bazı uluslararası belgelere ve Türkiye'nin bu belgelere karşı tutumu üzerinde durmak istiyorum.

Hak ve özgürlükleri tüm insanlar için tanıyarak ilan eden ilk uluslararası belge, BM tarafından 10 Aralık 1948'de ilan edilen İnsan Hakları Evrensel Bildirgesidir. Kişisel haklarla toplumsal ve ekonomik hakları birlikte öne sürerek herkese tanıyan evrensel bildirge Türkiye tarafından 1949 yılında benimsenerek ilan edilmiştir.

İnsanlığın 2. Dünya savaşı sırasında dramatik örneklerine tanık olduğu soykırım suçunun önünü almayı amaçlayan ve Evrensel bildirgeyle aynı tarihte kabul edilen "Soykırım suçunun önlenmesi

ve cezalandırılması üzere sözleşmesine 1950 yılında Türkiye de katılmıştır.

Yine İnsanlığa karşı bir suç niteliğinde olan 2. Dünya savaşı, BM'in bu gibi suçların önlenmesi ve cezasız kalmaması yolunda uluslararası önlemler almasını gerektirmiş ve bu gerekçeyle savaş suçlarıyla insanlığa karşı işlenen suçları öteki suçlardan ayıran bir sözleşme benimsenmiştir. 1968'de kabul edilen "Savaş suçlarına ve insanlığa karşı işlenen suçlara zaman aşımının uygulanamazlığı sözleşmesi Türkiye tarafından onaylanmayan bir sözleşmedir.

İnsanlığın emeğiyle olduğu kadar cinselliğiyle de sömürü konusu olmasını önlemeyi amaçlayan BM, fahişeliğe yönelik insan ticaretini yasaklamak üzere 1949 yılında İnsan ticaretinin ve başkalarının fahişeliğinin önlenmesi sözleşmesini kabul etmişse de bu sözleşme Türkiye tarafından onaylanmış değildir.

BM'in ırk ayrımcılığına karşı benimsediği belgelerden 1965 tarihli "Her türlü ayrımcılığın kaldırılması sözleşmesiyle, 1973 tarihli "Kurumlaşmış Irk ayrımcılığının önlenmesi ve cezalandırılması sözleşmesi de Türkiye tarafından onaylanmayan belgeler arasındadır.

Son olarak 1984 yılında BM Genel Kurulunca benimsenen ve işkence gibi insan onur ve saygınlığına karşı en ağır bir suç niteliğindekiuygulamaları önlemeyi amaçlayan, işkence ve başka zalimceve insanlık dışı ya da onur kırıcı davranış ya da cezaya karşı sözleşme Türkiye tarafından ancak 4 yıl sonra imzalanmıştır.

İnsan haklarına ilişkin uluslararası belgeler BM'ye özgür kalmamış kimi bölgesel örgüt ve kuruluşlarca eliyle de benzeri belgeler benimsenmiştir. Bunlar arasında başta geleni Türkiye'nin de üyesi olduğu Avrupa Konseyinin 1950 tarihli insan hakları Avrupa sözleşmesidir. Türkiye sözleşmeyi 1954 yılında onaylamakla birlikte, bireysel başvuru hakkını ancak 28 Ocak 1987'de tanımış, ancak insan hakları divanının zorunlu yargı yetkisini tanımayan tek ülke olarak kalmıştır.

Öte yandan "İşkencenin ve gayri insani ya da küçültücü muamele

veya cezanın önlenmesi hakkındaki Avrupa sözleşmesini de Türkiye geciktirerek imzalamış, ancak meclisinde onaylayan ilk ülke olmuştur.

Ülkemizde insan hakları konusuna dönersek, yine Erbil Tuşalp'in kitabından bir alıntı yapmak istiyorum: Şöyle diyor: "Barış, insan hakları, hukuk devleti ve demokrasi birbirlerine, biri olmazsa olmaz koşulu ile bağlı dört yapraklı yonca gibidirler. Ama her ülkede açmayan, her iklimde yetişmeyen ender bir tür bu. Bizim iklimimizde de bir türlü yetiştirilemiyor. Tohum toprağa düşüyor, sürgün veriyor, filizleniyor ve her seferinde bir pençenin bir postalın altında ezilip gidiyor.

Gerçekten de 12 Eylülle birlikte yaklaşık 8 yıldır olağanüstü bir dönem yaşanmaktadır. Sınırlı olan demokratik ortam bile yok edilmiştir 12 Eylül'den sonra. Bu süre içinde 250 bin dolayında insan gözaltına alınmış, bunların önemli bir bölümüne ilişkin davalar açılmış, savaş hali hükümleri uygulanarak cezalar verilmiştir. Verilen mahkumiyet kararlarının büyük bir bölümü işkence altında alınan ifadelere dayalıdır. Yargılamada sağ ve sol siyasi görüşlüler arasında ayırım yapılmış, aynı nitelikte eylemler için farklı hukuk ölçüleri kullanılmış, çifte standart uygulanmıştır. Sol görüşlüler, TCK'nun 141, 142, 146, 148, 163. maddelerinde belirtilen devletin şahsiyetine karşı işlenen cürümler faslından cezalandırılırken, sağ örgütlenmeler ve sağ eylemlerde aynı fiiller sözkonusu olsa bile, bu suçların devletin şahsiyetine karşı işlenen suçlar olmaktan çıkarılmıştır.

Ülkemizde insan hak ve özgürlüklerinin önüne dikilen en baş engel 1982 Anayasasıdır. Özellikle insan hakları ve özgürlükleri ile ilgili maddeleri incelendiği zaman, otoriter, yasakçı, baskıcı bir nitelik taşıdığı görülmektedir. Önce her maddenin başına haklar ve özgürlükler yazılmış, maddeye "ancak" sözcüğü ile devam edilmiş ve düzenlenen hak ve özgürlükler kısıtlanarak, kullanılamaz hale getirilmiştir. Bu anayasada hukuk devletin amacına aykırı olarak yasaklama bir kural, hak tanıma ise bir istisna olarak düzenlenmiştir.

Ülkemizde insan hakları denince ilk başta aklımıza gelen, savunmasız kişilere yöneltilen işkence ve kötü davranışlar dır.

12 Eylül'den sonra çeşitli kaynaklardan ölüm tarihleriyle birlikte saptayabildiğim kadarıyla işkencede ölenlerin sayısı 198'dir Ki bunun 38'i, Özal hükümetinin iktidara olduğu yıllara rastlamaktadır

12 Eylül'den sonra işkencenin sistematik bir şekilde ve bir siyasi tercih olarak uygulandığını söyleyebiliriz. Bunu Evren'in anayasayı tanıtma gezilerinden Giresun'da yaptığı konuşmadan çıkarmak da mümkün. Şöyle diyordu: "O korkunç günleri atlattık. Fakat savaş bitmemiştir. Bu savaşı başlatılan terörist ve anarşistlerin uyguladıkları taktikler çok korkunçtu. Acımasızca insan öldürmekten katiyen çekinmiyorlardı. Onlara da aynı lisanla cevap vermek gerekiyordu. Savaşmanın da bir kaidesi vardır. Karşıdaki hangi usülü kullanıyorsa, aynı usülle cevap verilmezse o zaman mağlubiyeti kabul etmiş olursun. Bunu 12 Eylül'den önce anlatamadık, 12 Eylül'den sonra o tedbirlerle bugünlere ulaşttık."

Oysa yoldaşlar, anarşist, terörist diye mahkemenin huzuruna, "buyur amca" diyerek çıkarılan 11 yaşındaki çocuktan, Kurtuluş savaşına katılan 84 yaşındaki Abidin Başal, Yozgat'ta Dev-Genç elemanı sayın ile gözaltına alınan insanlar vardır.

İşkenceler açığa çıktıkça başta Evren olmak üzere tüm yetkililerin işkence olaylarını yalanlamaya kalkışmaları, işkencelerin konusunda işkencecilerin korunması hiçbir önlem almamaları, işkencenin nasıl bir devlet politikası haline geldiğinin göstergeleri bence. Evren'in son olarak Kızılcahamam'da Köyümüzde işkence var diye yakınan bir yurttaşa "Sen işkence nedir biliyor musun?" diye tepki göstererek, "adamı odaya kapatırlar ve elektrik verirler" sözleri, işkencenin sistemli olduğunun, devletin en tepesinden kaynaklandığı anlamınagelmektedir.

Bugün 450 milletvekilinin olduğu TBMM'nde 17 milletvekili işkence görmüştür. Oysa 1876"dan beri çıkarılmış bütün anayasalarda

işkence yasağı yer almasına karşılık, bu insanlık dışı uygulama bugünlere kadar süregelmektedir. İki genel sekretere dünya kamuoyunun gözleri önünde işkence yapılırken, Kapıkule yolsuzluğu davasında gözaltına alınanlardan Doğan Ak, gözaltındayken kendisine işkence yapıldığını açıklamış. Öyle ki, polis karakolunda gece bekçiliği yapan bekçi bile tanık olarak çıkarıldığı DGM'de kendisine işkence yapıldığını açıklayınca, DGM başkanı 'Sana da mı işkence yapıldı?"diye sormuştur.

Özal Hükümetinin İşkence ve kötü muameleye karşı uluslararası sözleşmelere imza attığı halde bu alandaki çağdışı uygulamalarını sürdürüyor. Geçtiğimiz günlerde pankart astıkları iddiasıyla gözaltına alınan Dicle üniversitesinde 25 öğrenci işkence görürken, bunlardan 5 Kürt genç kızı da kızlık muayenesinden geçirilmiştir. Diyarbakır valisi bu uygulamayı normal bir uygulama olarak nitelerken, Emniyet müdürlüğünden yapılan açıklama ise ürkütücüdür. Öğrenci kızlar karakolda tecavüze uğradıklarını ileri sürebilirler. Bu iddiayı ortadan kaldırmak için önlem alınıyor. Türkiye Kürdistanında yapılan insanlık dışı uygulamalara daha önce üzerinde durulduğu için durmayacağım.

Muhalefet partilerinin tümü işkencenin bir devlet politikası olduğu ve sistemli bir şekilde uygulandığı görüşünde birleşmekteler. Özellikle SHP sol kanad milletvekilleri işkence konusunun üzerine ağırlıkla gidiyorlar. Ve işkencecilerden hesap sorulması ve işkenceyi suç sayan bir anlayışın ulusal politika haline getirilmesi konusu üzerinde duruyorlar.

→Ek 6/a

İşkenceler konusunu Turgut Kazan'ın yazdıklarıyla bağlamak istiyorum: "Yıllar yılı insan haklarını konuşuyoruz. Hep daha sağlıklı bir demokrasiye geçmek için uğraşıyoruz. Bunlar yararlı da oluyor. Ama işkence tartışmaları tam tersi sonuçlar veriyor. Bir toplum bu kadar yoğun biçinde işkenceyi konuşursa, demokrasiyi kurabilme gansı

Yetkililer sürekli olarak işkence olaylarının üzerine gittiklerini işkencecilerin mahkeme önüne çıkarıldıklarını iddia ettiler. Oysa işkence olaylarının yüzde biri ~~bx~~ hakkında bile dava açılmadı. Çünkü savcının dava açması için delil gerekir. Emniyet binasında, kapalı vegizli yerlerde yapılan bu tür işkencelerin ~~dexi~~ delillendirilmesi olanaksız denecek kadar güçtür. Ve pekçok işkenceci polis hakkında dava bile açılmadığı gibi, pekçoğu da delil yetersizliğinden serbest ~~b~~bırakıldı, ~~cezaxveriken~~ çezalandırılanlarx ise en fazla 4 yıl hapis cezasına çarptırıldılar. Son olarak Mustafa Hayrullaboğlu'nu işkencede öldüren Kadıköy emniyet amiri Ümit Bağbek ve 4 polis memurunun kanıt yetersizliğinden beraat etmesi, bugünkü hükümetin işkencecilerin üzerine gitmediğinin bir kanıtıdır.

azalır. Çünkü zamanla korku ağır basmaya başlar. Ve korkunun egemen olduğu bir yerde demokrasiyi savunacak güçlerin kolu kanadı kırılır. Bu bakımdan işkenceyi konuşup bırakmak olmaz. Böyle bir durum işkencecinin cesaretini artırır. Önce işkencecinin cezalandırılacağını ortaya koymalı ve inandırıcı olmalıyız. Bir kez ceza gerçekten ceza olmalıdır ve mutlaka uygulanmalıdır."

Cezaevleri: İşkenceler yalnızca karakollarda, emniyet müdürlüklerinde değil, cezaevlerinde de çeşitli baskı biçimleriyle sürdü. Adalet Bakanlığı'nın 1984 yılında "Mahkumların kaçışını önlemek amacıyla getirdiği tek tip elbise uygulaması tutukluların yoğun tepkisine yolaçtı. Bir tutuklu bu uygulamaya karşı sürdürdükleri direnişi şöyledeğerlendiriyordu: "Tek tip elbiseye karşı koyuş, siyasi tutukluların en zor cezaevi koşullarına baş eğmeyişlerinin bir sembolü, yalnızca bir elbise giymemek üzere sürdürülen bir inadın değil, tek tip insan yaratmaya, tek tip beyinler üretmeye yönelik bir çabaya karşı duruşun sembolü".

Tek tip elbise uygulamasıyla birlikte cezaevlerinde başlayan direniş özellikle 1987 yılında, ve hep birlikte izlediğimiz kadar şu ana kadar da yoğun bir şekilde sürüyor. Ancak tek tip elbiseye karşı cezaevi dışında sürdürülen protestolarda yüzlerce kişi gözaltına alındı, bunlardan 19'u tutuklanarak DGM'de yargılandı, 74'ü hakkında DGM'de dava açıldı, 31 sanık üçte biri hücrede olmak üzere 122 ay hapis cezasına çarptırıldı. Tek tip elbiseyi protesto etmek için Ankara'da meclisin önünde polisin tartaklaması sonucu İHD kurucusu Didar Şensoy öldü.

Şimdiye kadar cezaevlerinde gerçekleştirilen direnişlerin en başarılısı Diyarbakır askeri cezaevinde gerçekleşti dersek yanılmış sayılmayız. Şubat ayında gerçekleştirilen başarılı direniş sonucunda tutuklu ve hükümlüler haklarının hemen tümünü elde ettiler ve asıl önemlisi bütün cezaevlerindeki tutukluların tepkisine neden olan tek tip elbise uygulamasının kaldırılmasıydı.

Ancak İHD'nden de yapılan açıklamada belirtildiği gibi Diyarbakır cezaevindeki açlık grevinden sonra hükümetin sadece bu cezaevine yönelik tek tip elbise uygulamasını kaldırması, sanki tek tip elbise Türkiye'deki tüm cezaevlerinden kaldırılmış gibi gösterildi. Gerçekte de bugün tek tip uygulaması cezaevlerinde yine çıban başı olmaya devam ediyor. Ve açlık grevlerinin bir nedeni cezaevi yönetimlerinin keyfi tutumlarına karşıysa da, bir diğer nedeni de tek tip elbise uygulamasının hale kaldırılmamasıydı.

Geçtiğimiz aylarda Diyarbakır, Sinop, Çanakkale, Amasya, Konya ve daha birçok cezaevinde açlık grevleri arka arkaya başladı. Tutukluların gerçekleştirdikleri açlık grevleri İHD, TAYAD ve x SHP'li bazı milletvekilleri tarafından geniş destek bulurken, tutuklu ve hükümlü aileleri bu eylemlere k bizzat kendileri de açlık grevi yaparak katıldılar.

Cezaevleri hakkında bilgi: Türkiye'de sıkıyönetim askeri ceza ve tutukevlerinin sayısı 5, 17 Şubat 1988 tarihi itibariyle sivil cezaevlerinin sayısı da 639. Buradaki hükümlülerin 15 bini 19-30 yaş grubu arasındaki gençlerden oluşuyor. Adıyaman, Siirt, Ağrı, Hakkari ve Çorum illerinde cezaevi sayısı lise sayısına eşit.

Altında TC hükümetinin de imzası bulunan BM'in "Cezaevlerindeki tutuklulara ve hükümlülere karşı uygulanması gereken asgari standart kurallardan kimileri şöyle : "Irk, renk, dil, din, politik ya da diğer sosyal statüler bakımından herhangi bir ayrıcalık gözetilmeyecektir. 2-Pencelere doğal ışığı alabilecek şekilde yapılmalı. Banyo ve duş olanağı en az haftada bir olacak şekilde sağlanmalıdır. 3-Tutuklulara kendi elbisesini giyme izni verilmiyorsa, iklim ve sağlık koşullarına uygun elbiseler verilmeli ve bu elbiseler hiçbir şekilde küçültücü olmamalıdır. 4-Her tutukluya günde en az bir saat spor yapma olanağı sağlanmalıdır. Her cezaevinde en az bir sağlık görevlisi bulunmalı. 6-Hiçbir tutukluya yasal hükümler dışında disiplin cezası

verilemez ve hiçbir zaman aynı suç için ikinci kez disiplin cezası uygulanamaz. 7. Bedensel cezalandırma, karanlık bir hücreye k hapsederek cezalandırma ve bütün bu zalimce, insanlık dışı onur kırıcı cezalar yasaklanmalıdır.

İnsan haklarının başlıcalarından biri de düşünce ve örgütlenme özgürlüğüdür. Bu özgürlükler ne yazık ki ülkemizde öteden beri engellenmiştir. Bu engeleme emekten yana düşünce ve örgütlenme özgürlüğünü ortadan kaldırınah 141, 142. maddeler yoluyla yapılmıştır. Türkiye görünüşe ve söylenenlere bakılırsa demokrasiyi vazgeçilmez bir rejim olarak benimsemiştir. Resmi ağızlar böyle konuşmaktadır. 82 Anayasası nın 2. maddesinde demokratik, laik, sosyal bir hukuk devleti olduğumuz yazılı. Avrupa konseyine üye olduğumuz için resmen Batı demokrasisini kabul etmiş sayılıyoruz. AT'ye bu yolda başvurduk. Ne varki, yaşanan gerçekler henüz demokrasiden uzak olduğumuzu kanıtlamaktadır. Halen yüzlerce insanımız düşüncelerini açıkladıkları, yazdıkları için cezaevlerindedir. Türkiye'de KP'nin kurulmasına izin verilmediği gibi, kuruluş başvurusunda bulunan Sosyalist Parti için Yargıtaş başsavcılığı kapatılması için anayasa mahkemesinde dava açmıştır. Onbinlerce politik tutuklunun bulunduğu, yurttaşların özg düşünce ve inançlarını korkusuzca açıklama hakkına sahip olmadığı, 1 Mayısın yasak olduğu, ör örgütlenme özgürlüğünün olmadığı, sendikal hakların serbestçe kullanılmadığı ve daha pekçok konuda insan hak ve özgürlüklerine ters düşen uygulamaların bulunduğu ülkemidde demokrasinin olduğunu söylemek çok güçtür. Sıkıyönetim mahkemelerinde açılan davaların yüzde 80'ine yakın bölümü, 141. 142 ve bunları izleyen maddelere aykırı davranıldığı suçlama suçlamalarıyla açılmıştır.

Basın özgürlüğü: 12 Eylül'den sonrabasın özgürlüğü hiçbir dönemde olmadığı kadar kısıtlanmıştır. Bu dönemde gazeteler kapatıldı, köşe yazarları tutuklandı, gazeteciler k hakkında davalar açıldı. Tonlarca kitap toplatıldı, imha edildi. Bugün durum o günlere göre farklı olmakla birlikte Özal iktidarının basın üzerindeki antidemokratik uygulamaları sürüyor.

Özal, Uluslararası Basın enstitüsünün 37. Genel kurul toplantısında yaptığı konuşmada, "Basını hür olmayan bir demokrasinin düşünelemeyceğini söyledi. Milli Eğitim Bakanı Hasan Celal Güzel de yeni yayın politikalarını açıklarken, yılda 400 bin aydın ve sanatçının kitabının basılıp dağıtılacağını, fikirlerin cendereye alınmasına karşı olduklarını ve herhangi bir düşünceye ayrım yapmadan bütün aydınlarımızın eserlerini basmak istediklerini açıkladı. Ancak Özal hükümetinin sözü ile yaptığı iş arasındabir uygumun olmadığını görüyoruz yapılanlarla.

Aslında Özal hükümetinin kültür politikasının ne olduğunu/Mustafa Tınaz Titiz'in sözlerinden daha iyi görüyoruz. Titiz, ANAPiktidarının genel bakış açısını, mümkün olduğu kadar her türlü kısıtlamayı kaldırmak şeklinde açıklarken bu politikanın kültür alanında da sürdürüleceğini açıklıyor. Ama her konuda olduğu gibi bu konuda da yasak meselesini Türkiye'nin sürekli olarak tehdit altında yaşamış ve bundan sonra da yaşayacak bir ülke olduğu gözönüne alınarak, hiçbir tehdit altında olmayan ülkelerin serbestlik anlayışı ile aramızda fark olacağını görüşünü dile getiriyor.

Özal hükümetinin sözü ile işi arasında bir uyum olmadığını şu veriler de açıkça gösteriyor. Örneğin 1980-83 döneminde sıkıyönetim mahkemelerinin uygulamaları dışında, yalnızca sivil mahkemelerde açılan 632 davada 796 gazeteci yargılanırken, 1983'ten sonra 4 yılda, gazeteciler ve yayın organları hakkında 1426 dava açıldı, bu davalarda 2127 gazeteci yargılandı.

Öte yandan hükümet basın yasasında, medeni kanunda, ceza yasasında yapmayı düşündüğü değişikliklerle, yalan haber yasası gibi girişimlerle basına yeni kısıtlamalar getirmeyi planlamaktadır. Kağıda zam üstüne zam yapılması, kitaptan KDV alınması, evlerden dükkanlardan gelişigüzel kitap toplatılması hükümetin basın özgürlüğünü tanımak istememesinin de bazı göstergeleridir.

Bilim ve Sosyalizm yayınlarının yargı kararıyla aklanmış kitaplarının sıkıyönetim komutanı tarafından Ankara'da sıkıyönetim kaldırılacağı tarihin kararlaştırılmasından 2 gün önce yakılarak imha edildiği belgeleriyle saptanmıştır. 19 yıl önce yayınlanan Yaşadım diyebilmek için ve Partizan kitapları Özal iktidarı tarafından toplatılmıştır.

3 yıl önce yayınlanan Henry Müller'in Oğlak dönencesi kitabı bunca yıl sonra müstehcenlik nedeniyle toplatılmış, imha kararı alınmıştır. 39 yayınevi tarafından yeniden basılan kitap hakkında yeniden toplatılma kararı alınmıştır. Kadının adı yok kitabı 40 baskı yaptıktan, 1,5 yıl sonra yasaklanmıştır.

Ancak toplumsal yaşamın her alanını kapsayan baskı, müdahale ve yasaklar zincirine, kültür ve sanat yaşamında da artan bir tepkinin olduğunu görebiliyoruz.

İdam cezaları: Geçtiğimiz dönemde idam cezaları konusu da gündemden inmeyen bir konuydu. Öncelikle uluslararası sözleşmelerdeki idam cezası konusuna değinmek istiyorum: BM'in İnsan Hakları Evrensel Bildirgesinin 3. maddesiyle herkesin yaşama hakkını tanımakla birlikte ölüm cezasının kaldırılmasına değinmemiştir. Ancak bildirgeyi tamamlayan ve 1976'da yürürlüğe giren, Kişisel ve siyasal haklar uluslararası sözleşmesinin 6. maddesi ile her insanın doğuştan gelen yaşama hakkının olduğunu ve bu hakkın yasayla korunacağını ve kimsenin keyfi olarak yaşamından yoksun bırakılamayacağını hükme bağlamış-

tır. Ne var ki aynı madde ölüm cezasının kesin kaldırılması konusunda bir yaptırım getirmemiş ve bir takım tanımlamalarla, ölüm cezasına yineolanak tanınmıştır.

Avrupa konseyi çerçevesinde hazırlanan ve 1953'te yürürlüğe konan İnsan Haklarını ve temel özgürlükleri koruma sözleşmesi de ölüm cezasına sınırlayıcı hükümler koymuş ancak engelleyici olamamıştır. 1985 yılında yürürlüğe giren ölüm cezasının kaldırılmasına ilişk 6 nolu protokol, uluslararası hukuk alanında ölüm cezasının kaldırılmasını, sözleşmeci taraflar için bir yasal yükümlülük sağlan ilk belgedi Protokolün 1. maddesine göre de ölüm cezası kaldırılmıştır. Hiç kimse bu tür bir cezaya çarptırılarak idam edilemez denmiş ve yaşama hakkını hukuksal güvenceye bağlamıştır.

12 Eylül'den sonra ülkemizde 28 politik tutuklu idam edildi. ANAP iktidara geldikten sonra 6 Kasım parlamentosu sol görüşlü hükümlüler Hıdır Aslan ile İlyas HAs'ın idam cezalarının yerine getirilmesine ilişkin başbakanlık tezkerelerini ANAP'lıların oylarıyla onaylamış ve iki hükümlü asılmıştı. Daha sonra ise sağ eylemci Mehmet Onur Kiman'ın asılmasına ANAP çoğunluğu engel olmuştun. 1984 yılından bu yana hiçbir idam cezası yerine getirilmedi. Ancak şu anda mecliste bekleyen idam dosyalarıyla ilgili olarak, ANAP'lı milletvekilleri Alpaslan Pehlivanlı ile Mustafa Taşar'ın hazırladığı, "Mecliste bekleyen ölüm cezalarının ömür boyu hapis cezasına dönüştürülmesi, bundan sonra gelecek cezaların ise bir yıl beklemeleri halinde ömür boyu hapis cezasına çevrilmesi konusundaki yasa önerisi gündemde. Ayrıca ölüm cezalarının kaldırılması konusunda SHP tarafından hazırlanan bir yasa önerisi de TBMM Adalet Komisyonunda bekliyor.

İdam cezaları konusunda Özal'ın "Bir formül bulup, şimdiye kadar mecliste bekleyen dosyaları afedip, bundan sonra gelecekler arasında seçim yapalım ve birkaç tanesini infaz edelim" sözleri büyük tepkilere yolaçtı.

İdam cezalarının kaldırılması konusunda SHP, DYP veANAP'lı milletvekillerindenbazıları görüş birliği içindeler. Karşı çıkanların birçoğu idam cezasının caydırıcılığı nedeniyle bir müddet daha uygulanmasında yasalar içinde yer almasından yana olduklarını açıklarlarken, bazıları da şartlı kaldırılabileceğini söylüyorlar. Hukukçuların ortak görüşü ise cezadaki amacın suçluyu topluma kazandırmak olduğunu belirterek, idam cezasına karşı çıkıyorlar.

İster ANAP'lı, İster SHP'li, ister DYP'li olsun, parlamenterlerin büyük çoğunluğu idama karşı çıkıyorlar, ancak ceza ~~xx~~ yasasına yeni bir maddenin fiilen ~~xx~~ eklendiği hep gözardı ediliyor. O da idamdan daha da ağır bir cezanın, ~~xx~~ idamını bekleyenlere düşünülmeksizin verildiği: Ertesi gün asılma korkusuyla, yıllarca beklemek.

Güvenlik soruşturması: 29 Kasım seçimleriyle Başlayan dönemde dikkat çeken olumlu bir gelişme söz konusu. BM ve Avrupa Konseyi'nin işkenceye ve kötü muameleye karşı sözleşmelerin imzalanması ve mecliste onaylanmasının yanısıra, 24 yıldır sürdürülen güvenlik soruşturması da 17 Mart gününden itibaren kaldırıldı. İşe girmekten ~~xxx~~ yurtdışına çıkmaya kadar çeşitli nedenlerle güvenlik soruşturmasından geçen ve çoğu kez de mağdur olan 1 milyon 700 bin yurttaşa ek olarak, devletin çeşitli nedenlerle bugüne kadar fişlediği yurttaşların sayısı 4,5 milyon olarak basında yer aldı. Avukat Emin Değer, güvenlik soruşturması ile 12 Eylül dönemi koşullarının ilgisini 12 Mart dönemi ve daha da Truman doktrininin kabulüne kadar inen bir ilişkiyle bağdaştırıyordu. Türkiye'de yurttaşlarla ilgili bu tür kuşkuların NATO'ya girişimizle başladığını belirtiyor ve NATO ile ilişkili görevlerde NATO standartına göre güvenli sayılacak kişilerin çalıştırılmasının uygun görüldüğünü söylüyordu.

Daha 1986 yılında ABC ~~xxxxx~~ dergisinde yer alan bir yazıda ise Güvenlik soruşturmasının Türkiye'de kamu yönetimi literatürüne ~~xx~~ 12 Temmuz 1947 tarihli ABD-TC ikili anlaşması ile girdiğibelirti-

liyordu. Milyonlarca insanı mağdur durumda bırakan böyle bir soruşturma kaldırıldı. Ancak pekçok hukuçu değişen bir şey olmadığını, işlemenin arşiv araştırması adı altında sürdürüldüğünü açıkladı.

Öte yandan Özal'ın 1402 sayılı sıkıyönetim yasası uyarınca işlerine son verilen öğretim üyelerinden 2 bin kadarının görevlerine geri döndüklerini açıklamasına karşın, Prof. Dr. Rona Aybay, sıkıyönetimin kalktığı gün görevlerine dönebilmek için başvuruda bulunmalarına rağmen, açtıkları davalara rağmen üniversitelere dönemediklerini söylüyordu.

1402'liklerden bir öğretim üyesi de bireysel başvuru hakkını kullanarak Avrupa insan hakları komisyonuna başvurdu geçtiğimiz dnemde. 1402'likler/bütüniç hukuk yollarının tıkanması üzerine in büyük bir bölümü bireysel başvuru haklarını kullanmayı düşünüyorlar.

Pasaport yasasında değişiklik: Hükümetin pasaport yasasında yapılacak değişiklikle ilgili ortaya sunduğu gerekçesi şöyledir: Ülkemizde demokrasinin tüm kurum ve kuralları ile işlemesini sağlamak amacıyla, sürdürülen liberalleşme çalışmaları içerisinde temel hak ve hürriyetlerden biri olan seyahat hürriyeti ile ilgili pasaport kanununda iyileştirme, geliştirme ve yineleştirmeler yapılması...

Pasaport yasasında yumuşama sağlamak amacıyla yapılması düşünülen, değişiklikler aslında ANAP iktidarının çağdışı tutumunu, hukukun ve insan haklarının evrensel ilkelerine sırt çevirmesini göstermesi yönünden dikkate değerdir. Dünyanın her ülkesinde suç olarak kabul edilen, rüşvet hırsızlık, dolandırıcılık, beyaz kadın ticareti ile silah ve uyuşturucu ticareti yapanlara kolaylıklar getirilmektedir.

Geçtiğimiz günlerde kabul edilen son şekline ise, "Her ne suretle olursa olsun TC vatandaşlığını kaybedenler cümlesi eklenerek kabul edildi. Vatandaşlıktan atılmış olanların yurda izinli dönmek istemeleri "eğer birsakınca görülmezse ve İçişleri bakanlığı da için

verirse mümkün olabilecek.

Yurda dönüş ve vatandaşlıktan çıkarma: Bu konuda Özal hükümetinin görüşünü defelarca açıkladı. Yurtdışında herhangi bir sebeple vatandaşlıktan çıkarılmışların tekrar Türk vatandaşlığına girmesi mümkündür. Yurda dönmek isteyenlerin dönmelerinde bir mahzur yoktur. Mahkemeleri varsa, biz mahkemelere müdahale etmeyiz, o mahkemelerin bileceği bir iştir. Mahkemelerin neticisinde herhangi bir şekilde tutuklama olur, olmaz o bize ait olan bir hadise değil. Dönüş konusunda Özal hükümetinin görüşü özetle böyle.

12 Eylül'den bu yana vatandaşlıktan çıkarılanların sayısı 13 bini aşmaktadır. Kutlu ve Sargın yoldaşların ülkeye dönüşlerinden sonra yurttaşlıktan atılanlar ve yurda dönüş konusu basında ağırlıkla yer aldı. Özellikle köşe yazarları yazılarında ağırlıkla bu konuya yer verdiler. Dünya kamuoyunda iki genel sekretere yapılan işkenceler ve hazırlanan iddianeme tepkilerle karşılaştı. 2000'e doğru Dergisinin Dursun Akçamla yaptığı söyleşi de de Akçamın belirttiği gibi, isteyerek ülkelerine dönen ve kendi ayakları ile teslim olan insanlara dünyanın gözüönünde işkence etmek, bırakalım demokrasiyi, insan haklarını, ne mertliğe yakışır, ne geleneklerimize sığan ve ne de devlet olmanın onuru ile bağdaşır. Düşman cepheden teslim alınan savaş esirlerine bile böylesine ilkelce saldırmaz. Türkiye'ye dönüş hazırlığı yapanlara en başta İHD'nin sahip çıktığını görüyoruz. İHD Türkiye'ye dönmek isteyen yurtdışındaki siyasi göçmen ve sığınanların sorunları başlığını taşıyap basın toplantısında yapılan konuşmada dönecek olanların Türkiye'ye güvenli bir biçimde dönüşlerinin sağlanması isteniyordu. Aynı toplantıda ayrıca dönmek isteyen insanların durumlarını incelemek üzere bir komite oluşturuluyordu.

Yurda dönmek isteyenlerin ülkeye dönüşlerinin güvenliği için ülkeden ayrılmalarına yol açan nedenlerin ortadan kaldırılması, Türkiye'de demokratikleşme sürecine ciddi katkılar sağlayacaktır.

Dönüşler konusunda alınacak tavır demokratlığın da bir ölçüsü olacaktır.

GENEL AF: Bu sorun Özal hükümetinin ağzından düşürmediği, ancak bir türlü de yaşama geçmeyen bir sorun. Genel konusu dahahükümet programında "Hükümetimiz, yaraların sarılması için üstüne düşeni yapmaya kararlıdır. Bu gayenin tahakkunda affın taşıdığı önemin idraki içindeyiz şeklinde yer alıyordu.

Daha sonra gerek Özal ve gerek bakanları iktidara geldikten sonra bir yıl boyunca sürekli olarak ha bugün ha yarın genel af çıkacak diye, hem tutukluları ve hem de yakınlarını oyaladılar, umutlandırdılar. Ama genel affın ardından çıka çıka, insanları muhbirliğe zorlayan pişmanlık yasası çıktı. Bu yasa iki yıl uygulandıktan sonra geçtiğimiz günlerde yine iki x yıllık bir süre için yeniden gündeme geldi. Ancak bu kez kapsamına 141, 142, 146, 168, 171, 313 maddelerde eklendi.

Pişmanlık yasasının ilkuygulndığı dönemde Özal hükümeti başarılı olamamış, pişmanlık yasasından yararlanmak için sadece 439 kişi başvurmuş ve bunlardan da sadece 25'inin başvuruları kabul edilmiştir. Pişmanlık yasasından yararlanmak için başvuruları kabul edilenler de tahliye olduktan sonra devletin kendilerine verdiği vaadleri yerine getirmediğini açıklamışlardı.

Onbinlerce politik tutuklu ve hükümlünün genel politik af isteminı yoketmek amacıyla çıkarılan pişmanlık yasası rağbet görmediği gibi, genel politik af istemini de yokedememiştir. İHD Derneği tarafından başlatılan "Ölüm cezaları kaldırılsın, genel af kampanyası" geniş destek görmüş 130 bin imzalı dilekçe de TBMM'ne iletilmiştir. Geçtiğimiz günlerde de 15.510 imzalı genel af ve ölüm cezalarının kaldırılması için bir başka dilekçede TBMM Başkanı Yıldırım Akbulut'a verilmiştir.

Genel af toplumun ihtiyacı haline gelmiştir. 2000'e doğru dergisinde Hasan Yalçın'ın da yazdığı gibi, bugün içerde bulunan insanlar

aşağı yukarı onbeşer yıllık ceza yatmışlardır. Sorgudaki işkencesiyle, hapisteki dayağıyla, zulmüyle düşünürseniz, bu insanların çektikleri yıllarla ölçülemez. Bunun için bir genel af zorunludur. Üstelik şu anda cezaevlerinde bulunanların büyük çoğunluğu düşünce suçlularıdır.

Sonuç olarak, 1983 yılından beri Uluslararası Af örgütü tarafından yayınlanmakta olan "İnsan Hakları rehberinde" Türkiye"nin durumu çarpıcı bir biçimde ortaya çıkmaktadır. 40 adet temel hak ve özgürlüğün çeşitli ülkelere göre tasnifinin yapıldığı bu çalışmada Türkiye sonuncu olmaktadır. Düşünce, örgütlenme, düşüncesini yayma gibi en temel hakların yokolduğu tek Avrupa ülkesi Türkiye'dir. İnsan hakları karnesinde ise Türkiye'nin durumu daha da çarpıcıdır. Danimarka 98 puan, Hollanda 97 puan, Yunanistan 92 puan, Türkiye ise 41 puan almıştır. Ülkemizde temel hak ve özgürlükleri yüzde 41 vardır. Ve bu sonuç büyük ölçüde 12 Eylül'ün yaratığı bir sonuçtur.

Bugün gelinen noktada Türkiye toplumunda olağanüstü bir dönemin izlerinin silinebilmesi konusunda atılan olumlu adımların hızlandığını ve bazı demokratik kazanımlar elde edildiğini söyleyebiliriz. Olumlu adımlar arasında işkenceye karşı gerek BM, gerekse Avrupa Konseyi sözleşmesinin imzalanması, infaz yasası, sürgün cezasının kaldırılmasını, Avrupa insan hakları komisyonuna bireysel başvuru hakkının tanınmasını sayabiliriz. Ama öte yandan TCK'nunda yapılması düşünülen değişiklikler, polislerin yetkisini geliştiren yasanın varlığı, Olağanüstü hal yasası, DGM yasası, Pişmanlık yasası, sıkıyönetim mahkemelerinin varlığını hala koruyor olması, tüm bu antidemokratik uygulamalar varlığını korumaktadır.

ASKERİ YARGITAY 2.DAİRESİ BAŞKANLIĞINA

sunulmak üzere

ASKERİ YARGITAY BAŞSAVCILIĞINA,

DİLEKÇE SUNAN : Hıdır ASLAN

VEKİLİ : Av.Fehmi ÇAM
İzmir Barosu Avukatlarından

K O N U : 5.10.1984 günlü yargılamanın yenilenmesi istemini içeren dilekçe"ye ek ve yeni delil sunulmasıdır.

E V R A K NO : 1984/3287

SUNULAN YENİ DELİL : a.15.10.1984 tarihli Av,Fehmi ÇAM imzalı başvuru yazısı

b.15.10.1984 tarihli Av.Faruk ÖZTOKER imzalı cevabi yazı

SUNULAN BELGENİN NİTELİĞİ ÜZERİNE : Önceki dilekçemde açıkladığım ana öz'ü tekrarlamak istiyorum.Müvekkil Hıdır ASLAN hiçbir öldürme olayının faili değildir.Karşı oy yazısında Sayın Hak.Alb.Hamdi ÖNER bu hususu açıkça dile getirmiş bulunmaktadır.

Bu gerçekten hareketle,müvekkilimin cezasının infazına kadar bulabildiğim her belgeyi kanıt vasfında her türlü delili incelemenize sunmak istiyorum.Buradaki amacım adlî bir hatayı önleme çabasıdır.

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Kamuoyunda "GÜLTEPE OLAYLARI" adı bilinen olayda İskender GÜL isimli bir öğretmen öldürülmüştür.Bu olaydan sonra Nöbetçi c.Savcısı"nın otopsi yapılmak üzere Gültepe"ye sokulmadığı iddia edilmiş.Hüküm mahkemesinin kabulü bu doğrultuda olmuştur.Müvekkilim Hıdır ASLAN Gültepe Olaylarının yöneticisi ve yönlendiricisi olduğu hüküm mahkemesince kabul edilmiştir.

Yargılamanın yenilenmesi istemini içeren ilk dilekçede bu kabulün aksini gösterir nitelikte saydığımız belgeleri sunarak bu belge ve yeni deliller ışığında yeniden yargılanma halinde sanığın konumun değişebileceğini ileri sürdük.Henüz inceleme aşamasındadır.

Öte yandan Gültepe olayları sırasında Nöbetçi C.Savcısı olarak görev yapan Faruk ÖZTOKER'e şahsen başvurdum.Olaylarla ilgili olarak bazı bilgileri olacağını bu nedenle tanıklık yapıp yapmıyacağını sordum.Sözlü olarak halen yeni delil olarak sunduğum cevabı verdi.Bunun üzerine konunun yazılı bir istek halinde cevap ve ip vermiyeceğini sordum.İlişik cevabı aldım.Adı geçen c.Savcısı olayla ilgili olarak bildiklerinin esasa etkili olabileceğini ve yargı organı önünde bildireceğini anlatmaktadır.

Ortaya çıkan bu durum karşısında yargılamanın yenilenmesi halinde bu tanık beyanı çok önem kazanmaktadır.İleri sürülen yeni delil yasada yer alan yargılmmanın yenilenmesi sebebi sayılmak gerekir.En azından bu kişinin yasal yargı mercileri önünde dinlenmesi sonucu esasa etkili olup olmıyacağına karar verilmek gerekir.

Bu nedenle yargılamanın yenilenmesi isteminin kabulüne karar verilmesini vekil olarak saygı ile dilerim.16/10/1984

HÜKÜMLÜ HIDIR ASLAN

vekili

Av.Fehmi ÇAM

EKİ: İki adet belge aslı

Faruk Öztoker
Rechtsanwalt
Tel.: Büro 14 78 12
Priv.15 00 83

Kemeralti 1, Beyler Sokak
Beyler Ishani 1. Etage Nr. 45 2/9

Izmir, 15.10.1984

Herrn
Fehmi Cam
Mitglied der Anwaltskammer Izmir

Bezug: Ihr Schreiben vom 15.10.1984 über die Ermordung von Iskender Gül

Es ist den Unterlagen zu entnehmen, daß ich zur Tatzeit als stellvertretender Oberstaatsanwalt von Izmir über den Vorfall informiert wurde und als diensthabender Staatsanwalt eingreifen mußte.

Wie Sie auch einschätzen können, gibt es juristische Bedenken darüber, daß ich Ihnen über meine Kenntnisse im Rahmen meiner öffentlichen Dienstausübung und die Gründe, warum die Ermittlungen erfolglos verlaufen sind, berichte.

Gleichzeitig aber bin ich nach dem, was ich von außen so erfahren habe der Überzeugung, daß meine Kenntnisse darüber, wie sich die betreffende Tat entwickelt und sich abgespielt hat, den Sachverhalt vom Grund her beeinflussen werde.

Bitte entschuldigen Sie mich, daß ich keine schriftliche Erklärung abgeben durfte. Ich bin jedoch bereit, vor der zuständigen Gerichtsinstanz diesbezüglich auszusagen.

Hochachtungsvoll

RA Faruk Öztoker

(Unterschrift)

FARUK ÖZTOKER
AVUKAT

Yazıhane : 14 76 12
Ev : 15 00 83

Kemeraltı 1. Beylar Sokak, Beylar İşhanı
No. 45 Kat 1 No. 2/8

İZMİR, 15 / 10 / 1984

SAYIN
FEHMİ ÇAM
İZMİR BAROSU AVUKATLARINDAN - İZMİR

İLGİ: 15/10/1984 günlü ve İSKENDER GÜL'ün öldürülmesi ile alakalı yazınız.

Olay tarihinde İzmir C. Savcı Y. sıfatıyla, hadisenin taraf fıma ihbar olunduğu ve nöbetçi C.Savcısı olarak bu işe el koy mam gerekdiği mevcut kayıtlara müstenittir.

Takdir olunacağı üzere, o tarihde kamu görevi gereği mut tali olduğum hususları ve bu tahkik olayının akim kalması neden lerini size bildirmemde yasal sakıncalar mevcuttur.

Bununla beraber ,haricen öğrendiğim kadarıyla olayın gelişi mi ve cereyan tarzı bakımından ,bildiğim hususların esas mües sir olacağı inancındayım.

Yetkili bir yargı mercii huzurunda bu konuda ifade vermeye amade bulunduğumu ve cevaben yazılı bir beyanda bulunamadığım için beni bağışlamanızı saygı ile dilerim.

Av.FARUK ÖZTOKER

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An das Präsidium des Militärkasationshofes

zur Weiterleitung an die

Generalstaatsanwaltschaft beim Militärkasationshof

Antragsteller:	Hidir Aslan
Vertreter:	RA Fehmi Cam Mitglied der Anwaltskammer Izmir
Sachverhalt:	Zusatz zum Antrag für die Wiederaufnahme des Verfahrens vom 5.10.1984 und Eingabe von neuen Beweismitteln
Akten-Nr.:	1984/3287
Eingereichte Beweismittel:	a) Das Gesuchs-Schreiben vom 15.10.1984 unterschrieben von RA Fehmi Cam b) Das Antwortschreiben vom 15.10.1984 unterschrieben von RA Faruk Öztoker

Über die Eigenschaft des eingereichten Dokuments:

Ich möchte die Hauptsache (den Kern der Sache), die ich in meinem vorangegangenen Antrag erklärt habe, hier wiederholen. Mein Mandant, Hidir Aslan, ist nicht der Täter irgendeines Tötungsfalles. Diesen Fakt brachte auch Herr Richter Oberst Hamdi Öner in seiner Begründung zur Abgabe seiner Gegenstimme zum Ausdruck.

Ausgehend von dieser Tatsache möchte ich bis zur Vollstreckung der Strafe meines Mandanten jedes erreichbare Dokument mit der Eigenschaft eines Beweismittels und jedes Beweismittel zur Überprüfung einreichen. Mein Ziel dabei ist die Bemühung, einen Justizfehler zu verhindern.

Bei dem Vorfall, der in der Öffentlichkeit als "Gültepe-Vorfall" bekannt ist, wurde ein Lehrer namens Iskender Gül ermordet. Nach diesem Vorfall wurde behauptet, daß der diensthabende Staatsanwalt nicht zur Durchführung der Obduktion nach Gültepe hinein durfte. Die Annahme des Beschlußgerichts erfolgte dementsprechend. Bei dem Beschlußgericht wurde angenommen, daß mein Mandant, Hidir Aslan, Anführer und Anstifter des Gültepe-Vorfalls ist.

In dem ersten Antrag für die Wiederholung der Rechtsprechung reichten wir Dokumente ein, die unseres Erachtens auf das Gegenteil dieser Annahme deuteten und stellten wir fest, daß sich im Falle der Wiederholung der Rechtsprechung im Lichte dieses Dokuments und neuer Beweise die Situation des Angeklagten verändern würde. Die Überprüfung dauert an.

Andererseits habe ich mich persönlich an Herrn Faruk Öztoker gewandt, der zum Zeitpunkt des Gültepe-Vorfalls als diensthabender Staatsanwalt tätig war. Ich habe ihn gefragt, ob er nicht als Zeuge aussagen würde, da er Kenntnisse über den Vorfall haben mußte. Er gab mündlich die Antwort, die ich hier als neuen Beweis angebe. Daraufhin habe ich ihn gefragt, ob er dies auf Anfrage in schriftlicher Form beantworten könnte. Ich erhielt die beiliegende Antwort. Der betreffende Staatsanwalt bringt zur Sprache, daß seine Kenntnisse über den Vorfall den Sachverhalt von Grund auf beeinflussen könnten.

In der eingetretenen Situation erhält diese Zeugenaussage eine große Bedeutung, falls es dazu kommt, daß das Verfahren wieder aufgenommen wird. Die aufgestellten neuen Beweismittel müssen, wie es im Gesetz beschrieben, als Begründung für die Wiederholung der Rechtsprechung anerkannt werden. Zumindest muß nach der Anhörung dieser Person vor gesetzlichen, gerichtlichen Instanzen entschieden werden, ob seine Aussage den Kern der Sache verändern kann.

Aus diesem Grunde bitte ich als Vertreter, die Annahme unseres Gesuchs auf Wiederholung der Rechtsprechung

16.10.1984
Verurteilter Hidir Aslan
Vertreter RA Fehmi Cam

Anlage: 2 Originaldokumente

Der politische Gefangene Hidir Aslan wurde am 26.10.1984 durch Hinrichtung beschlossen, obwohl er das vorgeworfene Vergehen nicht begangen hat. Sein Anwalt hatte es erreicht daß der zuständige Staatsanwalt seinerzeit für den betreffenden Vorfall bereit erklärt hatte, vor Gericht auszusagen. Der Staatsanwalt kündigte eine die Sachlage gänzlich verändernde Aussage an. Doch die Militärgerichte fällten unberücksichtigt dieser Tatsache endgültig das Todesurteil bzw. den Beschluß über den vorsätzlichen Mord.

Die Rede von General Kenan Evren am in Manisa, in der er die bekannten Persönlichkeiten des Landes, die sich in Inanspruchname ihres Petitionsrechts nach der Verfassung von 1982 an den Staatspräsidenten und den Präsidenten der Nationalversammlung gewandt haben, als "Vaterlandverräter" bezeichnet und Maßnahmen gegen sie fordert.

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Evren: Wir haben schon viele Intellektuelle gesehen

Evren sagte in seiner Rede in Manisa folgendes:

Wir haben schwierige Tage erlebt, haben aber diese Zeit überwunden. Dies konnten wir nur Dank euch (dem Volk) schaffen. Ihr habt uns beim Kampf gegen die Anarchie unterstützt und immer unsere Gesetze befolgt. Ihr habt nicht der vom Ausland betriebenen negativen Propaganda geglaubt, habt die neue Verfassung mit großer Mehrheit angenommen und zuletzt habt Ihr unter Verwendung Eurer nationalen Souveränität die Abgeordneten für die große Nationalversammlung gewählt.
Die Spiele, die vor dem 12. September 1980 gespielt wurden, werden im In - und Ausland wieder gespielt. Es gibt zwei Arten von Feinden: den Inneren und den Äußeren. Der innere Feind ist gefährlicher. Wir kennen dies aus dem Unabhängigkeitskampf. Wir haben innere Feinde, die mit unseren äußeren zusammenarbeiten. Es gibt Leute, die sich leider Türken nennen, aber mit Armeniern zusammenarbeiten und sich an den Demonstrationen in Europa beteiligen. Sie schämen sich nicht, aber wir schämen uns für sie.
Manchmal kommen schräge Stimmen aus dem In - und Ausland. Sie wollen, daß der Staat, die Kooperativen und die Gewerkschaften, die Stiftungen, die Berufsverbände, wie vor dem 12. September 1980 werden. Die wahren Absichten dieser Leute kennen wir. In Wirklichkeit wollen sie nur Politik machen.
Daß die Situation der Menschenrechte in unserem Land im Ausland diskutiert wird, kränkt uns sehr. Wir wissen, wer solche Geschichten immer wieder aufwärmt. In der Türkei wird nicht gegen die Menschenrechte verstoßen. Sie sagen, Folter wäre ein Verbrechen gegen die Menschen. Als ob wir behaupten würden, daß es kein Verbrechen ist. Wer foltert, wird verurteilt. Aber diese Leute machen Propaganda mit solchen Behauptungen und beschämen die Türkei im Ausland. Was die wahren Absichten dieser Leute sind, wissen wir ganz genau. Denn wir haben viele Belege.
Und dann sagen sie noch, daß der Terror vor dem 12. September nicht ein Resultat des demokratischen Regimes sei. Als ob wir

das behaupten würden. Wenn wir das meinen würden, würden wir nicht auf die Demokratie zuarbeiten. Aber die großen Freiheiten der alten Verfassung sind Schuld am Terror.
Diese Leute sind auch gegen die Todesstrafe. Da zeigen sie ihr wahres Gesicht. Sie wollen, daß die Todesstrafe aufgehoben wird und sie weiter ihre Aktionen durchführen können. Aber so leicht wird bei uns die Todesstrafe sowieso nicht verhängt. Und es gibt die Todesstrafe nicht nur bei uns, sondern auch noch in vielen anderen Ländern. Selbst in dem demokratischsten Land der Welt, der USA.
Die Leute verlangen auch eine Amnestie. Aber nur für ihre Genossen. Dieses Spiel kennen wir. Aber die Amnestierten haben schon früher nach einer Woche neue Taten begangen. Wer fragt dann die dadurch zu Schaden Gekommenen, ob sie diesen Leuten verzeihen wollen?
Diese Leute wollen auch wieder die individuellen Freiheiten der 1961er Verfassung. Alle Gedanken sollen frei sein. Es sollen also alle Arten von faschistischen, marxistischen, leninistischen, maoistischen Schriften in den Läden verkauft werden. Aber wir lassen uns nicht ausrauben.
Es wird auch nach Pressefreiheit gerufen. Aber jetzt gibt es das Kriegsrecht. Wenn dies aufgehoben wird, wird auch die Pressefreiheit besser als je zuvor. Es wir auch die Unabhängigkeit der TRT (Türkische Radio-TV Anstalt) verlangt. Aber wir haben noch in guter Erinnerung, wie vor dem 12. September 1980 im TRT kommunistische Propaganda gemacht wurde. Genauso wird die Selbstverwaltung der Universitäten verlangt. Aber ihr wißt ja, daß in den 1960ern die Anarchie in den Universitäten Wurzeln schlug. Das war der Zustand der selbst verwalteten Universitäten. Kurzgefaßt wird von diesen Leuten die Verfassung von 1961 verlangt.
Ich werde mich bis zuletzt dagegen wehren, daß die neue Verfassung, deren Pate ich bin, verändert wird. Eine Verfassung, die mit 92,5% der Stimmen gewählt wurde, lasse ich nicht verändern. Erst wenn in einer neuen Abstimmung die Veränderungen akzeptiert würden, würde ich zustimmen.
Die Leute, die sich selbst Intellektuelle nennen, nehmen an, daß nur das, was sie selber denken richtig sei. Was ihr denkt, oder was wir denken ist ihnen nicht wichtig. Wir haben viele Intellektuelle gesehen, die Landesverrat begangen haben. Es gab Dichter, die ins Ausland geflohen sind und dort

dort gestorben sind. Waren das keine Intellektuellen? Aber was soll ich mit solchen Intellektuellen? Um in diesem Land zu regieren reicht es nicht, intellektuell zu sein. Auch Vahdettin* war intellektuell. Aber er hat das Land den Feinden überlassen. Was soll ich mit einem solchen Intellektuellen? Aber dann kam ein Demirci Efe**, der kein Intellektueller war, aber jahrelang mit dem Feind gekämpft hat. Der war nicht intellektuell, aber dafür ein Patriot. Als Atatürk den Unabhängigkeitskampf begann, gab es Intellektuelle in Istanbul, die diesen Kampf für Wahnsinn hielten. Was soll ich mit solchen Intellektuellen?
Wie Atatürk schon sagte, sind wir eine klassenlos verschmolzene Gesellschaft. Wenn wir uns in Klassen aufteilen wie Intellektuelle und Nichtintellektuelle, ist dies unser Untergang.

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*Der letzte Sultan, der mit Okkuponten kollaborierte
**Einer der Helden des Unabhängigkeitskrieges, der damals in der Region gegen griechische Okkupotionsarmee kämpfte; dort hielt Evren eine Rede

In seiner Rede am 15. September 1984 auf einem Seminar, das vom Intellektuellenzentrum unter dem Motto "Gründe für den 12. September" veranstaltet wurde, sagte der Regierungschef Özal folgendes:

"Man sagt Intellektuelle, ob sie Intellektuelle sind oder nicht, wollen wir hier nicht diskutieren. Wenn eine Gruppe ihr Gesuch bis zum Staatspräsidenten bringen könnte, dann gibt es Demokratie.

Es muß als eine demokratische Handlung angesehen werden, wenn man untersucht, ob in dem Gesuch gegen das Gesetz verstoßen wurde.

Daß die Türkei stärker wird, paßt vielen in der Welt nicht. Der Feind wartet hinter uns. Wir dürfen das Sprichwort nie vergessen: "Das Wasser schläft, aber der Feind nicht."

Regierungschef Turgut Özal sagte weiterhin:

"Die Leute, die die Türkei aufteilen wollen, haben einige Interessen: z.B.Bosporus, unsere Nachbarländer, unsere Bodenschätze.

Diese Länder wollen nicht, daß die Türkei stärker wird. Leider versuchen unsere Feinde das nicht dadurch, indem sie uns den Krieg erklären, sondern wie in der ganzen Welt praktitieren sie hinterhältige Pläne. Dadurch entstehen Trennungen. Trennungen innerhalb des Staatsapparates. Ihr Ziel ist den Staat zu schwächen. Sie fangen bei der Polizei an. Erst versuchen sie, die Polizei als untauglich darzustellen und behaupten, daß sie foltert. Zum Schluß sagen sie, daß die Polizei faschistisch ist."

WORTLAUT DER DEKLARATION

Die Beobachtungen und Forderungen der Unterzeichner bezüglich der demokratischen Ordnung in der Türkei

Die Demokratie lebt durch ihre Institutionen und Prinzipien. Wenn in einem Land die Institutionen, Begriffe und Prinzipien, die den Grundstein der Demokratie bilden, zerstört werden, so wird die Beseitigung der so entstandenen Schäden um so schwerer.
Die Entfremdung der Demokratie von den ihr eigenen Werten und Institutionen, die Aushöhlung ihres Inhaltes unter Beibehaltung der Form ist genauso gefährlich wie ihre Beseitigung. Aus diesen Gründen verteidigen wir die Bewahrung der Institutionen, Begriffe und Prinzipien,die den auf historische Erfahrung gegründeten Staatsaufbau aufrecht erhalten, sowie ihre Stärkung in einem demokratischen Milieu.
Unser Volk ist aller Menschenrechte, die in zeitgenössischen Gesellschaften gelten, würdig und muß uneingeschränkt in ihren Besitz gelangen.
Wir empfinden es als ehrverletzend, daß unser Land in die Lage eines solchen Landes gebracht wurde, dessen Menschenrechtsgarantien im Ausland umstritten sind.
Das Recht auf Leben sowie ein menschenwürdiges Leben ist das Hauptziel des organisierten und gesellschaftlichen Daseins, das in unseer Zeit mit keiner Begründung beseitigt werden darf; es ist ein natürliches und heiliges Recht. Daß dieses Recht einen Inhalt bekommt, ist daran gebunden, daß die Meinung frei geäußert und entwickelt werden kann und daß man sich auf ihrer Grundlage organisieren kann. Wir halten die Tatsache, daß die Individuen unserer Gesellschaft neue und unterschiedliche Gedanken hervorbringen, nicht - wie es darzustellen versucht wird - für die Ursache der Krisen, sondern für die Voraussetzung der Vitalität der Gesellschaft.

Die Gerechtigkeit, die letzte Zuflucht der Menschen, ist gleichzeitig die Hauptstütze eines menschenwürdigen Lebens. Die in einem zeitgenössischen Rechtsstaat gültigen Wege, die Gerechtigkeit zu verwirklichen, machen es notwendig, daß die Rechtssuche in keiner Weise behindert wird und daß bei der Rechtsfindung keine besonderen Rechtswege und außerordentlichen Methoden verwendet werden. Wir sind der Auffassung, daß es mit dem zeitgenössischen Demokratieverständnis nicht vereinbar ist, wenn außerordentliche Administrationsformen in Zeiten, die als normal bezeichnet werden, fortdauern.

Die Einschränkung der Rechte der Bürger ohne gerichtlichen Beschluß, daß Konstruieren von Straftatbeständen durch nicht diskutierbare einseitige administrative Vorgehensweisen, die Wegnahme der politischen Rechte und das Vorbringen allgemein gehaltener Beschuldigungen führen zum Verfall der gesellschaftlichen Zustände. Wenn der Eintritt in Vereine, Genossenschaften, Stiftungen, Berufskammern, Gewerkschaften und politische Parteien sowie Meinungen, die zur Zeit, als sie geäußert wurden, nicht strafbar waren, nachträglich entsprechend der herrschenden Auffassung zu einer Straftat erklärt werden, so kann dies mit dem Begriff der Rechtsstaatlichkeit nicht vereinbart werden.
Für die zahllosen Terroraktionen, die die Türkei durchlebt hat, kann nicht das demokratische System selbst verantwortlich gemacht werden. Jede organisierte Gesellschaft hat die unvermeidliche Aufagbe, Gewaltaktionen zu bekämpfen. Aber es ist ein grundlegendes Charakteristikum der Staatlichkeit, bei der Bekämpfung des Terrors an die Rechtsnormen gebunden zu sein. Das Vorhandensein von Terror kann niemals die Anwendung gleicher Methoden durch den Staat rechtfertigen.
Die Folter, deren Vorhandensein auch durch gerichtliche Urteile bewiesen wurde, ist ein Verbrechen an der Menschheit. Wir haben die Befürchtung, daß die Folter in die Gewohnheit einer urteilslosen primitiven Vorabbestrafung überführt worden ist. Ferner halten wir die Gefängnisbedingungen, die die Zielsetzung der Freiheitsbeschränkung überschreitet, für Mißhandlung und Folter.

Es müssen alle notwendigen Maßnahmen ergriffen werden, um die Folter völlig auszumerzen. Die Verteidigung muß gleichzeitig mit der Ermittlung und Anschuldigung beginnen. Werden bei Untersuchungen und Ermittlungen irgendwelcher Art die Normen des Rechtsstaates verlassen, werden in den prozessualen Methoden die universellen Garantien für nichtig erachtet, die durch das Prinzip unterstrichen werden, daß ein Angeklagter in jedem Fall bis zu seiner Verurteilung als unschuldig anzusehen ist, so wird - besonders in politischen Prozessen - die Willkür zu einem Grundelement des Prozeßverfahrens.
Wir glauben an die Notwendigkeit, angesichts der Tatsache, daß bei der Entstehung der Terroraktionen alle Teile der Gesellschaft eine Mitverantwortung tragen, die Vollstreckung der rechtskräftigen Todesurteile zu stoppen und die Todesstrafe aufzuheben, um den Gedanken, daß Töten eine Lösung sei, aus der Welt zu schaffen.
Ausgehend von der universellen Tatsache, daß verspätete Gerechtigkeit Ungerechtigkeit ist, sind wir der Auffassung, daß alle laufenden Prozesse schnellstens zuende geführt werden müssen.

Es sind die gesellschaftlichen und politischen Bedingungen, die die Straftaten hervorrufen. Die Verantwortung, die die derzeitige labile Phase in der Türkei der Gesellschaft aufbürdet, darf nicht vergessen werden. Aus diesen Gründen und um zum sozialen Frieden beizutragen, halten wir eine umfassende Amnestie für unumgänglich.

Diejenige Politik, die ein Weg ist, im öffentlichen Leben das Gute vom Schlechten, das Richtige vom Falschen zu unterscheiden, besteht in der Beteiligung der gesamten Gesellschaft an der Leitung der Gesellschaft.

Die Unzulänglichkeiten der Tagespolitik, die in jedem Land auftreten und unvermeidlich sind, können nicht die Ursache dafür sein, das der Dienst an der Gesellschaft durch politische Betätigung, die jedem offenstehen sollte, behindert wird und bestimmten Schichten, einer Person oder einer bestimmten Personengruppe als Monopol überlassen wird. Politik kann nicht ausschließlich auf Verwaltungsbeschlüsse reduziert werden.

Der Volkswille hat nur in solchen Gesellschaftsordnungen einen Sinn, in denen sich alle Teile der Gesellschaft frei organisieren können. In Ländern, in denen niemand wegen seiner politischen Überzeugung und philosophischen Anschauungen beschuldigt wird und wo kein Bürger wegen seiner religiösen Überzeugung kritisiert wird, ist der Volkswille die höchste Gewalt. Die Legitimität dieser höchsten Gewalt ist abhängig von der Haltung, die sie zu den Grundrechten und Grundfreiheiten einnimmt.

Bedingungen, die die freie Bestimmung des Mehrheitswillens verhindern, im Widerspruch zur Demokratie. Ebenso ist die Beseitigung der Grundrechte unter dem Vorwand des Mehrheitswillens unvereinbar mit der Demokratie.

Im geschichtlichen Entwicklungsprozess haben die demokratischen Verfassungen das Ziel, die Rechte und Freiheiten der Bürger zu garantieren. Bestimmungen, die die Stellung des Einzelnen dem Staat gegenüber schwächen, bedeuten - gleichgültig, unter welchem Namen sie eingeführt werden - eine Entfernung von der Demokratie. In dieser Lage wird die Verfassung, die die Quelle des demokratischen Lebens sein sollte, zu einem Hindernis für die Demokratie.

Die Gewerkschaften, Berufsverbände und Vereine und vor allem die politischen Parteien sind unverzichtbare Stützen des demokratischen Lebens. Die Berufsorganisationen müssen im gleichen Maße, wie sie die Pflicht haben, sich für die Solidarität und die ökonomischen Interessen einzusetzen, zusammen mit den politischen Parteien die demokratischen Freiheiten der Personen und Gruppen schützen und müssen ein Mittel für die Teilnahme an der Leitung der gesellschaftlichen Prozesse sein. Deshalb glauben wir,

daß es notwendig ist, dem Recht auf Organisierung und Partizipation in den Bestimmungen der Verfassung die breitesten Garantien zukommen zu lassen.
In dem Leben einer jeden Gesellschaft ist das Vorhandensein der Elemente Freiheit, Vielfältigkeit und Erneuerung für die Zukunft und die Entwicklungsfähigkeit der Gesellschaft notwendig. Unter diesem Gesichtspunkt muß jede Art der geistigen Produktion geschützt werden, müssen neue Vorschläge der Öffentlichkeit frei unterbreitet werden können.

Eine freie Presse ist eines der Grundelemente, die die demokratische Ordnung vervollkommnen. Um dies zu verwirklichen, ist es notwendig, daß die Gesellschaft unabhängig, unkontrolliert und vielseitig über sich selbst informiert wird, daß unterschiedliche Gedanken frei verbreitet werden können und daß jede Art von Kritik in der Presse einen Platz findet. Vielseitige Meinungsbildung und die demokratische Kontrolle der Leitung der Gesellschaft ist nur mit einer solchen Presse zu verwirklichen. Aus eben diesen Gründen und unter Voraussetzung ihrer Neutralität glauben wir, daß die Autonomie auch der türkischen Rundfunk- und Fernsehanstalten verwirklicht werden muß.
Das Hauptziel der Bildung ist es, frei denkende, kenntnisreiche, fähige und schöpferische Menschen zu schaffen. Demgegenüber ist es mit der Entwicklung unserer Zeit und der pluralistischen Demokratie nicht vereinbar, den eindimensionalen Menschen heranzuziehen. Die zeitgenössische Demokratie zielt darauf ab, Menschen zu entwickeln, die die Welt mit kritischen Augen betrachten können.

Wenn die Universitäten als der am besten ausgebildete Teil der Gesellschaft ihrer Autonomie beraubt werden und wenn behauptet wird, daß sie sich selbst zu leiten nicht würdig seien, so läuft dies darauf hinaus, zu leugnen, daß in unserem Land die Demokratie funktionsfähig sein könne. Die Unterstellung aller Hochschulen unter die Befehlsgewalt einer Kommission, die mit übermäßigen Befugnissen ausgestattet ist und durch Ernennungen zustande gekommen ist, erregt in der gleichen Weise, wie sie bereits jetzt sowohl die gute Ausbildung der Jugendlichen als auch die Wissenschaft behindert, auch für die Zukunft des Landes große Besorgnisse. Aus diesem Grunde halten wir es für notwendig, die Ordnung des Hochschulamtes (YÖK) unverzüglich in Richtung auf eine Autonomie zu ändern, die auf dem Wahlprinzip beruht.

Wir möchten betonen, daß es eine Voraussetzung von Zivilisation ist, die juristischen und tatsächlichen Beschränkungen der Entstehung der geistigen und künstlerischen Erzeugnisse aufzuheben und die Denker und Künstler gemeinsam mit allen Bürgern mit den allgemeinen Garantien auszustatten. Eine gesunde gesellschaftliche Entwicklung setzt voraus,

daß Freiheit bei der Schaffung und Verbreitung von Kunstwerken jeder Art gewährleistet ist,

daß die Zensur, die das Kulturschaffen in äußerstem Maße behindert, völlig aufgehoben wird,

daß die strafrechtliche Verantwortlichkeit ausschließlich durch die normalen juristischen Stellen festgestellt wird.

Dies alles vorausgesetzt, glauben wir, die wir uns unserer Verantwortung gegenüber der Gesellschaft bewußt sind, mit voller Offenheit daran, daß die zeitgenössische Demokratie, obwohl sie in den verschiedenen Ländern entsprechend den besonderen Bedingungen Unterschiede aufweist, dennoch einen unveränderlichen Wesensgehalt hat, daß auch unsere Nation sich die Institutionen und Prinzipien, die dies Wesen ausmachen, zu eigen gemacht hat, daß es notwendig ist, alle gesetzlichen Bestimmungen und Praktiken, die dem widersprechen, mit demokratischen Methoden zu beseitigen und daß auf diese Weise ein gesunder und sicherer Ausweg aus der Krise, die wir durchleben, gefunden werden wird.

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Parliamentary Human Rights Group

NOT YET A DEMOCRACY:

REPORT ON MISSION TO TURKEY BY LORD GIFFORD by LORD GIFFORD Q.C.

June 4th to 10th 1988

NOT YET A DEMOCRACY

REPORT ON A MISSION TO TURKEY BY LORD GIFFORD QC

1. I visited Ankara for a week from June 4th to 10th 1988, on behalf of the UK Parliamentary Human Rights group, with two objectives:-

   (i) to observe and report on the opening of the trial of Mr Haydar Kutlu and Dr Nihat Sargin;

   (ii) to make an up-to-date report on the extent to which basic human rights are now being respected in Turkey.

2. Through the good offices of the British Embassy, meetings were arranged for me with Mr Oltan Sungurlu, Minister of Justice, and with leading representatives of the three political parties in the Turkish parliament - the Motherland Party, the Social Democratic Populist Party, and the True Path Party. I had meetings with the Human Rights Association and the Turkish Bar Association, and with a number of individual journalists, academics and lawyers. My colleague at the Bar Linda Webster visited Ankara from 16th-20th June 1988. She attended the second day's hearing of the Kutlu/Sargin trial and at my request held a number of further meetings, particularly with a recent victim of torture. I have also had access to thorough reports recently compiled by Amnesty International and by Helsinki Watch.

3. I would like to express my appreciation to the British Ambassador in Ankara, Mr Timothy Daunt and his colleagues for their practical assistance and for their balanced and informative briefing.

Background History

4. There can be no doubt that Turkey today occupies a position of immense importance, through its geography, politics and the culture, in the affairs of Europe and the Middle East. It has a population of over 50 million over a territory larger than any western European country of 300,000 square miles. It borders on Bulgaria and Greece in the west and on the Soviet Union, Iran, Iraq and Syria in the east. While being an Islamic country (although under the Constitution the state is strictly secular), Turkey is linked to western Europe through membership to NATO and the Council of Europe. It is a young country, with its resources largely underdeveloped.

5. The history of Turkey in recent years is completely overshadowed by the military coup of September 1980. It is not for me to analyse the justifications put forward for the necessity of that military intervention. What is certain is that following the coup, Turkey experienced a grim period of repression. Political liberties, academic freedom, free trade unionism, press freedom, were all virtually extinguished for a time under the control of the military regime. Extreme forms of torture of detainees, and sadistic prison conditions over this period have been fully reported by Amnesty International and other organisations.

6. In November 1983 3 parties were allowed to contest a general election, which was won by the newly formed Motherland Party led by Prime Minister Ozal. Seven parties, including some whose leaders had previously been banned, took part in the November 1987 general election, again won by Mr Ozal. Turkey has therefore had nearly 5 years of civilian rule, and the government claims to have ended many of the abuses of human rights which occurred during the military period.

7. Over the last 2 years the Ozal government has taken a number of steps which indicate a desire for closer integration with western Europe. In January 1987, Turkey accepted, albeit with a number of reservations, the right of individual petition for Turkish citizens to the European Commission on Human Rights. In April 1987 Turkey applied to become a member of the European Community. In February 1988 the Turkish parliament ratified the European Convention for the Prevention of Torture, making Turkey the first country to adhere formally to that Convention.

8. It is therefore a matter of legitimate concern and topical interest to Europeans, to ascertain how far Turkey, after nearly 5 years of being governed by civilian rule, has in reality accepted western human rights standards. The keen European interest was reflected by the many legal and parliamentary observors from France, West Germany, Holland, Beligum, Switzerland, Sweden, Denmark, and Greece, who were also present at the opening of the Kutlu/Sargin trial.

9. The United Kingdom has been in the vanguard among European countries in developing close relations with Turkey. Mrs Thatcher visited Turkey in April 1988, and President Evren is due to make a state visit to

Britain on 12th July 1988 - the first such visit to any European country since the 1980 coup. It is thus of particular relevance to British Members of Parliament to have an accurate and thorough assessment of the human rights situation in Turkey.

The General Overview

10. The objective visitor to Turkey, listening to evidence from different sources, must try and strike a fair balance between excessive complacency and excessive pessimism on human rights questions. While there have clearly been improvements in the human rights climate since 1983, the position before 1983 was so bad that even the improved climate may be very unsatisfactory.

11. For example, the Turkish press is active in its political reporting. Many newspapers felt free to report in detail on the criticisms which were made by the various foreign observors about the Kutlu/Sargin trial. However, draconian press laws remain in force and are often invoked to censor or prosecute journalists and editors. In this as in other fields, one recognises the advances made and at the same time deplores the restrictions and abuses which remain.

12. To arrive at a fair assessment I have, as a professional lawyer, analysed three fundamental issues:-

First, in what ways do the laws of Turkey in themselves conflict with basic human rights standards?

The picture here is very negative. The Constitution and laws of Turkey contain an armoury of weapons, directed against political beliefs and political associations, outlawing and criminalising political activities which would be perfectly legal in every other Council of Europe country.

Secondly, where the laws themselves conflict with basic human rights, how are they in practice applied?

In answering this question the Kutlu/Sargin prosecution has a particular importance. As my analysis will show, the two men have been prosecuted because they have organised and wish to continue to organise, a communist party. No act of violence is alleged against them. This prosecution, and other instances, show that anti-democratic laws not only remain in force in Turkey, but are intended to be used.

Thirdly, where the laws protect basic rights, are they effectively enforced?

Turkey's record on torture is of particular relevance in answering this question. While there is clearly a desire among government leaders to see torture ended, I have no doubt that it continues, and that the legal safeguards to prevent it are seriously inadequate.

The 1982 Constitution

13. The 1982 Constitution is Turkey's third, and most repressive, Constitution. It was submitted to a referendum on 7th November 1982, in conditions which gave no opportunity for any free or critical debate.

14. While a number of articles appear to guarantee fundamental rights and freedoms in terms similar to those contained within the European Convention, there are a number of overriding limitations. First, by Aritcle 14:-

> "None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State with its territory and nation, of endangering the existence of the Turkish state and republic, of destroying fundamental rights and freedoms, of placing the government of the state under the control of an individual or a group of people, or establishing the hegemony of one social class over others, or creating discrimination on basis of language, race, religion or sex, or of establishing by any other means a system of government based on these concepts and ideas. The sanctions to be applied to those who violate these prohibitions, and those that incite and provoke others to the same end shall be determined by law."

It is this article which legitimises the specific anti-communist legislation considered below, and which means that any challenge to that legislation on constitutional grounds would be bound to fail.

15. Article 15, and Articles 119-122, provide for the suspension of the exercise of fundamental rights and freedoms in times of war, mobilisation, martial law or states of emergency. The position today is that while martial law has now been ended in all of Turkey's provinces, a state of emergency still exists in 9 provinces, and trials by military courts begun during the period of martial law still continue.

16. Article 19 is designed to protect the right to liberty and security of the person. It provides that a person arrested or detained shall be brought before a Judge within 48 hours and within 15 days in the case of offences committed collectively. I shall revert to the importance of this 15 day detention in the context of the discussion on torture.

17. Article 26 which purports to safeguard freedom of expression and dissemination of thought, provides that "no language prohibited by law shall be used in the expression and dissemination of thought". Any documents published in contravention of that provision are to be seized. The provision has been invoked to ban the Kurdish language.

18. Article 33 provides that everyone has the right to form associations without prior permission. But in the same Article it is required that associations shall not "pursue political aims, engage in political activities, receive support from or give support to political parties, or take joint action with labour unions, with public professional organisations or with foundations." Article 52 imposes identical restrictions on labour unions and article 135 prevents public professional organisations from engaging in political activities or taking joint action with political parties, labour unions or associations. In those circumstances the whole range of organisations concerned with the public life of Turkey have to walk a constant tightrope, in fear that their declarations or activities may be considered "political".

19. Article 54 imposes restrictions on the right to strike which are in conflict with ILO conventions. It provides that the right to strike "shall not be exercised in a manner contrary to the principle of goodwill to the detriment of society, and in a manner damaging national wealth", and that "politically motivated strikes .. are prohibited".

20. Article 66, on the right of citizenship, provides that "no Turk shall be deprived of citizenship unless he commits an act incompatible with loyalty to the motherland". According to the newspaper Cumhuriyet of April 6th 1987 13,788 Turks living abroad had been stripped of their citizenship under this provision since the 1980 coup.

21. Article 68 states that citizens have a right to form political parties and declares that "political parties are indispensable elements in the

democratic political system". However, "political parties whose aim is to support and set up the domination of a class or group, or any kind of dictatorship, cannot be formed." I note below how the authority of this Article is being used in an attempt by the authorities to dissolve the recently formed Socialist Party.

22. It is evident that a number of these Articles both in themselves and in their likely application, conflict with the basic rights and freedoms embodied in the European Convention. The Constitution is a long and detailed document, containing much more detail than is normal for a nation's constitution. The thinking behind it was described to me by Teoman Evren, President of the Turkish Bar Association:-

> "People feared that the troubles before 1980 were due to the freedoms contained in the 1960 Constitution. So there was a regression. They were under the illusion that every trouble can be prevented by enacting laws. And this found a basis in public opinion. It is such a wrong idea, that you can eliminate crisis by restricting freedom".

23. The Constitution may be amended by a two thirds majority of the total number of members of the Assembly. I note below that there are elements in the leadership of the Motherland Party who would support the amendment of oppressive provisions in the Constitution. So would the two minority parties in the Assembly. A consensus of the political parties could therefore produce the necessary changes.

The Turkish Penal Code

24. Articles 141 and 142 of the Turkish Penal Code, which are the basis for the principle charges laid against Kutlu and Sargin, are even more explicit than the Constitution in their banning of communist ideas. They derive from the Italian Penal Code promulgated under Mussolini. Article 141(1) provides:-

> "Whoever attempts to establish or establishes, or arranges or conducts and administers the activities of, associations, in any way and under any name, or furnishes guidance in these respects, for the purpose of establishing domination of one social class over another social class or exterminating a certain social class or

overthrowing any of the established basic economic or social orders of the country, shall be punished by heavy imprisonment for 8-15 years. Whoever conducts and administers some or all of such associations (i.e. more than one) shall be punished by death."

Article 141 also penalises anybody who joins any such association, and Article 142 makes it a crime to "make propaganda" for the like purposes, or to "speak favourably" of such acts.

25. Kutlu and Sargin have also been charged with offences under Articles 140, 158, and 159, all of which contain crimes which directly kurb freedom of speech. Article 140 provides:-

> "A citizen who publishes in a foreign country untrue, malicious or exaggerated rumours or news about the internal situation of the State, so as ~~serves~~ to injure its reputation or credit in foreign countries, or to who conducts activities harmful to national interests, shall be punished by heavy imprisonment for not less than 5 years."

Article 158 penalises the use of "aggresive language against the President of Turkey in his absence", and "making indecent or disrespectful publications about the office or the person of the President of Turkey." Article 159 provides punishment of 1 to 6 years imprisonment to anyone who "overtly insults or villifies the Turkish nation, the Republic, the Grand National Assembly, or the moral personality of the Government, or the military or security forces of the State, or the moral personality of judicial authorities".

How Can Such Laws Be Justified?

26. I asked those whom I met for reasons why Turkey found it necessary to ban peaceful political parties, without any evidence of violent acts or intentions. Mr Turker Alkan, International Secretary of the Social Democrat Populist Party, was clear in his party's desire to see such provisions as Articles 141/2 repealed. Mr Gokberk Ergenekon, General Secretary of the True Path Party, said

> "We ask the British to wish for us the same things as you wish for yourselves. We do not want a democracy which is "bon pour l'Orient"."

I met with 3 MP's from the Motherland Party. Gunes Taner, Vice President of the Party, said that in his personal opinion Articles 141/2 should be repealed, though he supported the prosecution of Kutlu and Sargin who, he said, had come in to challenge the existing law. One of his colleagues agreed with the idea of repeal, one disagreed.

27. The justification for laws against communist parties and organisations was principally made to me by Mr Sungurlu. He gave 3 reasons:-

(i) Turkey's geographical position close to the Soviet Union, and the history at the end of the Second World War of the Soviet Union making claims against Turkey. He was not against the idea of communism, but against the threat of Soviet occupation.

(ii) That if the law was relaxed, Islamic fundamentalists as well as communists would be able to organise freely.

(iii) The state of development of the Turkish people. Mr Sungurlu's words on this topic, which I noted at the time, were:-

> "we look to enlarge the exercise of freedoms; but how far? Some systems exploit the weak. Democratic freedoms are good for a wealthy and educated people. ... Our purpose is to make people more educated and conscious to implement real democracy."

28. The Minister of Justice recognised the contradiction between those arguments and the principle that a society cannot be free if it relinquishes basic rights for the sake of security. He said that the question of changing the laws was on the Turkish agenda. "We can make it by constitutional amendment when we get the courage to do it".

29. Dealing with the 3 arguments raised by the Minister of Justice, I would observe:-

(i) To outlaw communist parties for reasons of territorial security, if it was ever justified, is now unarguable. Turkey has been establishing an effective detente Soviet neighbour for a number of years.

(ii) It is wrong to make an equivalence between legalising a communist party and legalising fundamentalist parties. If the latter advocate violations of basic rights, for example through the advocacy of

strict Islamic punishments, they can be dealt with for that reason. In any event, according to a number of informants, a party contested the last election which everyone knew to have an Islamic fundamentalist position. In the view of Mr Alkan, Turkish democracy was mature enough to reject all forms of extremism.

(iii) The argument that full democratic freedom is only for educated and wealthy people must be rejected in principle by any democrat. The history of democracy throughout the world shows that poor and dispossessed people are fully capable of recognising where their interests lie, and - if they are allowed to - of voting for parties who they believe capable of furthering those interests.

The Kutlu/Sargin Trial

30. Mr Haydar Kutlu is the General Secretary of the Communist Party of Turkey ("CPT"), which has been banned in Turkey for many decades. Dr Nihat Sargin is the General Secretary of the Workers Party ("WPT"), a party which functioned legally inside Turkey for a number of years, and had MP's in the Parliament, but was then driven into exile. In October 1987 the leaders of the two parties announced that they had decided to merge and form a new party under the name of the United Communist Party of Turky ("UCPT").

31. At the end of October 1987 the two General Secretary's announced that they were intending to return to Turkey in order to form the new UCPT as a legal party inside Turkey. On 16th November 1987 they arrived in Ankara, and were arrested as soon as they set foot on Turkish soil. The two men were then detained for 19 days, 4 days more than the legal maximum. They have both alleged that they were tortured during this period, which I deal with in detail on the section on torture below.

32. On March 11th 1988 the prosecutor of the Ankara State Security Court, Mr Nusret Demiral, promulgated an indictment against the two men and against 14 others, a document of 231 pages containing details of the charges and of the evidence in support of them. The main clauses of the Penal Code which were invoked were Articles 140, 141, 142, 158, and 159, of which the material parts have been quoted above.

33. The indictment is a remarkable document. It expressly states that no allegation of violence or violent intent is made. Rather, the indictment

claims that the tactics of the CPT and WPT "in general consist of propaganda activities, mass campaigns, and activities to form a united front and realise unity of action which exclude armed action." In relation to the CPT the indictment continues:-

> "It has been understood with material evidence that CPT has started and continued the campaigns for the abolition of Articles 141 and 142 of the Turkish Penal Code, freedom to the CPT, no to the neutron bomb, lifting of the martial law, no to the Constitution, in opposition to the draft prepared before the 1982 Constitution referendum, and at the time, that the CPT has fulfilled an organising role on the issue which is called in public opinion the intellectual petition, which was prepared under the heading "observations on demand with regard to democratic order in Turkey", with 1,256 signatures, given to the President and the Speaker of the National Assembly. ...
>
> It is quoted as known and observed that the CPT continues its intense propaganda work against present administration by means of protest campaigns, rallies and demonstration; that the CPT organises both in the country and abroad on issues such as declaration of general political amnesty, ending of prosecutions, abolition of the death penalty, restoration of the rights of those who are stripped of Turkish nationality and recognition of their right to return to the country, lifting of the Articles 141 and 142 of the Turkish Penal Code and the law on state security courts, state of emergency and the like, ending of state control on trade unions and associations, and recognition of the right to strike for all working people in Turkey."

34. It is apparent from the indictment that a certain brand of thought is being put on trial:-

> "The thought which has always been excluded from amnesty since 1919, and which in every Constitution has in no way been accepted for the State of the Republic of Turkey is the thought which recognises the rights of one class only and does not accept personal property; which aims at total abolition of property both in production and in consumption, making the goods and the wealth common, eliminating the power of capital in order to win and

safeguard the power, in securing and working for the proletarian revolution in pursuit of the attainment of these; in other words the Marxist Leninist thought, and the Communist thought which explains this thought, has been penalised in the laws of the Republic of Turkey ...

In this type of offence the offender ought to penalised whether any result is produced or not. For activities have been started to be carried out in order to abolish the basic structure and social order of the State. It is no use to wait for the results any longer. For waiting for the result means that it will be too late."

35. It is apparent from these passages, and from the indictment as a whole, that the "crimes" alleged against Kutlu and Sargin would not be considered crimes in any western European country. The fundamental conclusion to be made about this prosecution, overriding all the detailed criticisms which can be made of the proceedings, is that Mr Kutlu and Dr Sargin should not be on trial at all in a civilised system of law.

36. The prosecutor, while not expressly demanding the death penalty in the indictment, made it clear in an interview with Mr John Bowden, a legal colleague also observing the trial, that it was open to the court to impose the death penalty. He pointed out that since in each case the defendants were already administering one illegal party (the CPT or the WPT), and were attempting to organise another illegal party (the UCPT), their case was covered by the paragraph in Article 141(1) which provides for the death penalty for those administering a prurality of illegal associations. (From my own reading of the Penal Code this is a startling argument. Since the intention of the Communist leaders was to merge their former parties into one new party, they could never at any time be involved in the leadership of more than one party. However it remains to be seen whether the Ankara State Security Court will take this view.)

37. Among the other defendants accused in the same indictment are two former members of the legal team defending Mr Kutlu and Dr Sargin, Mr Atilla Coskun and Mr Rasim Oz. Mr Coskun is accused of membership of the Communist Party and Mr Oz of expressing sympathy with the defendants' views. I am concerned that the motive for including these lawyers in the indictment was that they, and particularly Mr Coskun, were vigourously involved in the defence of their clients.

38. The court before which the trial is being held is the Ankara State Security Court, one of the State Security Courts set up under Article 143 of the 1982 Constitution "to deal with offences against the indivisible integrity of the estate with its territory and nation, the free democratic order, or against the public whose characteristics are defined in the Constitution, and offences directly involving the internal and external security of the State." Of the three judges of the court, one must by law be a military judge. Similarly, of the three prosecutors involved in the case one must by law be a military prosecutor. The judges and prosecutors are appointed for a term of 4 years, which may be renewed for a further term; whereas the normal civil judges and public prosecutors may not be dismissed or retired before the prescribed age of 65. The appointing body is a supreme council of judges and public prosecutors whose members are appointed by the President of the Republic. In my opinion such a court, dealing entirely with political cases, whose services can be dispensed with after 4 years if their decisions are not pleasing to the Government, cannot be called a properly independent court of justice.

39. By prior arrangement with the prosecutor, I was able to observe the first days hearing. Over 400 lawyers had come forward to put themselves on the record as lawyers for the accused; a striking demonstration of concern by lawyers of different political positions. After about 150 of them had crowded into the court, the available space was overflowing. An application was made for the court to move into a larger court room, which was refused.

40. My own concern was less for the lawyers, since clearly only a limited number would be effectively taking part in the defence, than for the ordinary members of the Turkish public. By the afternoon of the first day, there were many vacant seats in the area reserved for the public, which contained over 100 places. Hundreds of people were waiting outside the court, but none of them were allowed in; and a Turkish citizen who had come with a French legal observer as interpreter was refused admittance. If this trial is to continue it is clearly of great interest to the Turkish people, and proper access should be allowed for members of the public.

41. The press were admitted and were allowed facilities to film and take photographs inside the court room, so that in this respect the exhibitors

were more generous than in a British court, where all photography is forbidden. Security outside the court was considerable, with large numbers of armed police. Inside the court four soldiers stood in the dock, and a number of plain clothes officers were at a table in the background.

42. After various formalities and preliminary motions, the hearing proper began with the reading of the indictment. By the end of the first day, June 8th, the prosecutor had reached only to page 99. The court then adjourned the hearing to June 17th, giving no reason for the long adjournment. When the hearing resumed on June 17th, the reading of the indictment continued from page 99 to page 155. Again a number of foreign observers were present. The President then adjourned the hearing to 4th July, again without giving any reason.

43. In my view these postponements constitute a serious and unjustified delay in the process of justice. I can see no motive other than to make it more diffcult for foreign observers to follow the proceedings. If the pattern so far adopted is to continue, the trial could stretch over years. While the other defendants have been released on bail, the prosecutor has emphatically stated that there will be no bail for Mr Kutlu or Dr Sargin, and they therefore remain in prison.

<u>Violations on Human Rights in the Kutlu/Sargin trial</u>

44. The extracts which I have quoted from the law and the indictment should make it clear that this prosecution was aimed at the thinking and association of the defendants, not against any actual or intended acts of violence. The prosecution and the prevention of the two Communist leaders of even attempting to form a Communist party within Turkey, is wholly unjustified. It constitutes a violation of Article 9 of the European Convention (Right to Freedom of Thought); Article 10 (Right to Freedom of Expression); and Article 11 (Right to Freedom of Association of Others). I would therefore appeal to the Turkish authorities to drop the prosecution against Mr Kutlu, Dr Sargin and the other defendants; to set them at liberty; and to review urgently, with a view to repeal, the provisions of the Constitution and Penal Code on which their prosecution was based.

45. As for the pre-trial proceedings, apart from the allegations of torture, I consider the detention of 19 days to be a breach of Article 5 paragraph 3 of the Convention, by which everyone detained on suspicion of a charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power.

46. Article 5 also provides that a detained person shall be entitled to trial within a reasonable time or to release pending trial. If this trial is to continue, and is to last over months or even years, I would urge that the defendants should be all released on bail.

47. Article 6 of the Convention provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. In relation to this Article, I have serious concerns about (a) the independence of the tribunal; (b) the access to the public; (c) the reasonableness of the time over which the trial will last.

Other Political Trials

48. Two court actions are in progress against the Socialist Party, again based only upon its objectives and not on any alleged acts. The Chief Public Prosecutor of the Republic has filed a suit before the Constitutional Court seeking the banning of the Socialist Party on the ground that it violates the Turkish Constitution. It is alleged in the indictment:-

> "When the Party programme as a whole and its paragraphs that we have quoted are examined, it will be clearly understood that the class struggle and consciousness of the working class are seen as pure requisites and aims."

At the same time, 6 Party executives face criminal charges before the Istanbul State Security Court.

49. As well as political parties, a number of associations have been banned, or their organisers prosecuted, on political grounds. The Helsinki Watch report cites that in 1987 a group of doctors called Physicians for the Prevention of Nuclear War was banned and 49 founders of the group were prosecuted; the banning in the same year of the Association for the Purification of the Turkish Language; and the latest of a number of trials of members of the Turkish Peace Association.

50. In this field of free association, there have also been positive developments. In an important referendum held in September 1987, the Turkish electorate voted to rescind Transitional Article 4 of the Constitution which had banned former politicians from taking part in politics. The ban had affected about 100 people, including former Prime Ministers Suleyman Demirel and Bulent Ecevit. Among the organisations which have been allowed to function, the Human Rights Association, established in 1986, has done significant work in drawing attention to prison conditions, deaths due to torture, and a petition against the death penalty.

51. However, for as long as political parties or associations which are thought to have a Marxist orientation are prevented from functioning and expressing their views, and their leaders are subjected to prosecution and imprisonment, Turkey cannot be called a free democracy. The facts show that Turkey not only maintains anti democratic laws, but that they are regularly enforced. The future course of the Kutlu/Sargin trial, and of the Socialist Party litigation, can in particular be seen as a test of whether or not the Turkish authorities intend to allow real democratic freedom to their citizens.

Torture Still Continues

52. The positive developments to report are that in January 1988 Turkey signed both the European and United Nations Conventions for the Prevention of Torture. The European Convention was ratified by the Turkish Parliament in February, and UN Convention in April. The European Convention has not yet been ratified by a sufficient number of states for it to be brought into effect (Britain in particular has signed but not yet ratified). When it does take effect there will be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which may visit any place where persons are deprived of their liberty by a public authority. States who have ratified the Conventions undertake a binding obligation to permit such visits.

53. Despite these expressions of the Government's resolve on the question of torture, lawyers and human rights activists are convinced that there has been no cessation of torture as a routine method of dealing with

detainees. A leading lawyer told me that the same tortures as before - beatings, electric shock, hanging, cold water jets - still continued. Another commented that "torture has been policy for 40-50 years, mostly against the left. This is the mechanism of justice." The Human Rights Association told me that numerically torture had decreased because the number of arrests had decreased, but that torture still continued as a standard method of investigation.

54. Dr Sargin who is aged 61, testified in a petition to the Public Prosecutor that after his arrest he was held blindfolded, sitting on a stool for 170 hours without being allowed to sleep. He was injected with a drug into his leg. According to the criteria in the judgment of the European Court of Human Rights in the case brought by Ireland against the UK, this would be at least inhuman and degrading treatment. What followed after about 10 days was undoubtedly in the category of torture:-

> "After having been stripped completely naked: first, I was subjected to water torture by being hosed on my neck, ears, testicles and other sensitive parts of the body. Then they squeezed my testicles. After that my hands were tied onto my back with a rope which was fixed to a reel on the ceiling. This way hanging was applied to me. Mainly because they felt that I was about to become stiff - I could no longer feel anything and therefore did not show any reaction - I only wanted to sleep - torture stopped here."

55. Mr Kutlu, aged 44, suffered the same treatment as Dr Sargin, including the hanging torture: and in addition on one occasion was subjected to electric shock. In his petition he testified:-

> "Several days later I was taken to the torture chamber again. I was put into a hanging position again. This time my sexual organs and my hands were connected to electricity. Before applying electricity all my body was made wet. Electricity was given while I was in a hanging position and wet. They were making intervals, asking questions, asking names, and listing names themselves. As a result of being given electricity the top of my right hand got burned. It became red and swollen. Following this they rubbed special medicine for two days and got rid of the marks."

56. My colleague Linda Webster was able to interview a still more recent victim of torture, a man arrested in March 1988 on suspicion of being a member of a Kurdish separatist organisation. He spoke of a systematic torture system involving three types of torture:-

(i) Twisting of the scrotum, known as the "initiation ceremony".

(ii) Spraying with water: "a hose with a very cold and forceful jet of water was directed to my feet. It seemed to me they had a scheduled time for spraying each part of my body. They said we intend to give you abscesses in your kidney, liver and scrotum. All these parts of the body were sprayed in turn. Finally they arrived at my head. They continued spraying on my head for about 10 minutes and said during this this will slowly kill your brain cells they alternated in spraying from head to penis and testes."

(iii) Hanging and electrocution: "you are hung in an extroverted position, as in a crucifixion, with your wrists behind your back. After a short moment I lost all the feeling in my hand. Then a "Saraha phone", but without a receiver and just the wires, is used for electrocution. They put one wire on my little toe and another on my penis. In order not to burn the body the whole wire is wrapped in cloth. From time to time a liquid is poured onto the place where the wires are. It is a type of serum, I think. Then periodic shocks are given. When this happens you experience convulsions and you shout out, you become breathless. When you have convulsions your wrists strain against the bands and this causes severe pain in the wrist. The pain is unbearable. You want to faint but this is impossible as from time to time cold water is poured on you."

57. I have no reason to doubt these testimonies. The question is, assuming that the Turkish authorities are genuine in their wish to see torture ended, what steps ought to be taken to end such barbaric practices? My discussions centred on two major criticisms of existing procedures.

58. First, it is evident that a torturer, with 15 days at his disposal during which the prisoner is incommunicado, can adminster severe tortures of the kind described above, without fear that there will be any visible proof when the victim is finally seen by outsiders. I asked the Minister of Justice directly whether the permitted period of detention was going

to be reduced, or whether access to a lawyer during the detention period would be permitted. He replied:-

> "Access to a lawyer had been on our agenda for a long time. But it is a matter of practicality. If we could establish that, all the slanders will be evaporated."

If these words were sincere, one would look for an early change in detention procedures, so that the police were required to allow access for a suspect to his or her lawyer at any time during the detention period. The length of the maximum period of detention must also be considerably reduced.

59. Secondly, it was stressed to me by lawyers, and particularly by Mr Teoman Evren, President of the Turkish Bar Association, that the Turkish courts have failed consistently to exercise powers which they possess to conduct investigations into allegations of torture. At present, the courts invariably refer complaints about torture to the police for them to investigate. There is no requirement, as there is in Britain, for the court itself to investigate such allegations before allowing in evidence, confessions which are said to have been produced by torture or other ill treatments. Mr Evren expressed the hope, which I share, that adherence to the international conventions on torture will require a change in the proceedings of the Turkish courts.

Press Freedom

60. The press in Turkey operates under constant threat of official interference and criminal prosecution. In the circumstances the courage of editors and journalists in trying to maintain a free discussion of controversial ideas is remarkable.

61. One could cite numerous recent examples of such interference. On 17th June 1988 all the copies of the daily paper Milliyet were seized following a court order, after an interview had been published with a Kurdish separatist leader. In Setpember 1987 the magazine Towards 2000 printed the text of a press conference given by Kemal Atuturk in January 1923 in which he talked of granting some form of autonomy to the Kurdish people. The editor was prosecuted and convicted on the ground that the material was published with an "illegal motive". The

same paper in early 1988 published the proceedings of debates in the West Germany Bundestag on Turkey but again the magazine was seized, and the editor faces prosecution. In all, the editor of Towards 2000 is at present facing 18 court cases. The 3 forbidden subjects appear to be discussion of the Kurdish question; criticism of the army; and criticism of the President.

Other Reported Abuses

62. This report does not cover all areas of human rights abuses. I was not in a position to travel to eastern Turkey to study the situation regarding the Kurdish minority. I was made aware that there were hunger strikes going on while I was visiting at a number of prisons, but was not able directly to examine the prisoners' grievances. Finally, in the areas of trade union rights and of academic freedom, I have indicated that the laws themselves impose substantial inhibition upon freedom of association. In relation to all these questions the reports of Amnesty and Helsinki Watch indicate grave cause for concern.

63. Finally, with regard the death penalty, there have been no executions since October 1984; but around 200 people have been sentenced to death. A petition organised by the Human Rights Association containing 150,000 signatures was presented to Parliament, which has the task of reviewing the sentences. The Minister of Justice held out no hope that the death penalty would be suspended or abolished. He said that unless terrorist activity in southern Turkey stopped, it would be very difficulty to obtain any progress.

Conclusion: The Role of Britain

64. In summary, my investigation shows that first, there remain in the Constitution and laws of Turkey provisions which fundamentally conflict with the rights and freedoms which are guaranteed in a free and democratic society. Secondly, that these laws have been consistently, particularly against political parties and organisations of the left, even though there is no evidence of any violent act or purpose from these organisations. People can even be prosecuted because their motives or thoughts are deemed to be illegal. Thirdly, that the laws and international obligations which are supposed to protect Turkish citizens

in detention from being tortured are not effective, and have inadequate safeguards for their enforcement. While there is undoubtedly more public debate and political acitvity than in the bleak days of the early 1980's, such debate or activity is seriously inhibited and interferred with by the law's prohibitions. In consequence Turkey falls far below the basic standards on which, under international law, one judges a free democracy.

65. Accordingly, the voices of British people should be raised loudly in support of a rapid and fundamental transformation of laws and practices affecting the human rights of the Turkish people. Many democractic people with whom I spoke were dismayed that during the 1980's Britain had been heard only to be supporting, with little if any qualification, the record of first the military and then the civilian Government.

66. The time is opportune for the question of human rights to be raised. From my talks I believe that the desire of Turks both in the Government and the Opposition parties to be part of the European Community, is genuine. Such people recognise that greater association with Europe must entail the establishing of full democratic rights in Turkey. But there are other forces which are opposed to this, and I fear that such forces have relied on repressive methods for so long that the necessary changes will need a sustained committment from people of goodwill both inside and outside Turkey.

67. For Britain, a major opportunity occurs in the very near future in the forthcoming state visit of President Everen. I would urge Members of Parliament to take full advantage of the publicity arising from this visit, to protest about the drastic restrictions and infringements of fundamental liberties which remain the norm in Turkey; to urge the actions and reforms advocated in this report; to press in particular for the dropping of charges against Mr Kutlu, Dr Sargin, and other people accused because of their political beliefs. Such actions in Britain and elsewhere, together with a real determination in the cause of human rights from those who hold power in Turkey, could lead to Turkey becoming a free, democratic and most influential country, to the benefit of all European peoples.

LORD GIFFORD QC
4th July 1988

2.ci KOMİSYON RAPORU

International Conference for Democracy and Human Rights in Turkey, Assemblée Nationale, Paris, November 27-29th, 1987.

REPORT : Freedom of expression and organization with regard to political parties, unions, associations, the press, the problems of turkish refugees and the suppression of their turkish citizenship.

Author : Hans Göran Franck, Member of Parliament, The Social Democratic Party of Sweden. He has visited Turkey twice during the last two years, latest week 46/1987.

Introduction

The opposition in Turkey is seriously handicapped in the election campaign which is entering the last phase. The ruling party, ANAP, has superior financial resources and is dominating radio and TV. The appeal to the country for the parliamentary elections was made with very short notice. The opposition parties have not got enough time to organize their election campaings.

The economic issues are most central in the political debate. The real income has declined severly for many workers. The inflation is estimatied to 45 - 50 % for 1987. The unemployment rate is exceeding 15 % according to official documents.

The trade union movement is not allowed to participate in the election campaign and tradeunionists who get elected to Parliament are forbidden to continue their trade union work. The trade union movement in spite of this urges their members not to vote for the ruling party.

Another issue is the Turkish application to become a full member of the EC. It is however obvious that the Turkish constitution, the criminal code and the laws against trade union activities are not in accordance with the Rome-treaty.

Democracy and human rights are important issues in the election campaign. The improvements made are clearly unsufficient. The criticism regards firstly the common use of torture and death penalty. New death-sentences are frequently passed. More than 150 death-sentences are at present under examination by the Parliament.

According to the Turkish Committee for human rights there are today 18.000 political prisoners, of which 12.000 are not yet sentenced. They are often prosecuted for participating in illegal organisations, demonstrations and strikes.

Background

On September 12th, 1980, a military junta, led by general Kenan Evren seized power in Turkey by a coup d'etat. Martial law was declared in all provinces of Turkey. Parliament was dissolved and the political parties were abolished. Under a special decree all strikes and lockouts were forbidden. All union activities were suspended on both employees and employers side. All kinds of trade union activity ceased. The Martial Law Authorities appointed special officers for the control of the press and massmedia.

The so-called National Security Council assumed practically all power. A proclamation suspended the Turkish constitution. A decree stated that all laws and ordinances enacted by the National security Council should replace the constitution. Formally, they were to be considered as amendments to the constitution.

During the three years that the National Security Council ruled Turkey together with a Consultative Assembly, whose members were appointed by the Council, can we witness a massive oppression on the political parties, unions, associations, journalists, writers, intellectuals and persons holding a different opinion. Members of the above mentioned associations were arrested and interrogated under systematical torture in thousands. The military courts that were set up throughout the country initiated mass-trials in hundreds, where people were accused for their legal activities before the coup d'etat. The major part of these trials - the accused were imprisoned during the trials without any judgment - continued for several years.

The new constitution and the laws

While oppression, imprisonment, torture and military mass-trials were taking place, the National Security Council were preparing a new constitution and new laws with the purpose of creating an auctoritarian and strictly controlled society. A new, undemocratic constitution, approved by the National Security Council, was forced through by a referendum held November 7th 1982 under martial law and extensive political oppression. Hundreds of people were arrested for

exhorting the public to vote against the proposed constitution.

The civil rights and liberties which are proclaimed in the constitution are severely limited. It would appear that the aim is rather to protect the state against its own citizens than to protect the individuals against the arbitrary exercise of power.

According to the constitution no organized political activity may be carried on outside the permitted political parties. Organizations may not act in conjunction with the political parties, have political goals or carry on political activities.

The constitution reflects the policy of hostility to trade unions which has been pursued since the military coup. The right to strike is subjected to major limitations. The right to collective bargaining has been interfered with. Trade union freedom of action is further eroded by granting the authorities the right to inspect their finances and administration.

The law on political parties, trade unions and press

On the 24th April, 1983 the National Security Council enacted a law on political parties. This law introduced widespread restrictions of the political parties and their activities.

On the 7th May, 1983 the National Security Council enacted a law on trade unions and collective bargaining, which further limited the trade union rights and liberties.

The constitution, the law on political parties and the law on the trade union organizations contain regulations that forbid political parties to have direct or indirect connections with trade union organizations, professional associations or voluntary associations. A breach of this regulation can result in a party being banned. The political parties are prohibited to form womens' or youth organizations. Trade union organizations, professional associations and voluntary associations may not carry on any form of political activity or become involved in any way with political issues. They may neither support or help finance political parties.

The new press law, enacted by the National Security Council 10th of November 1983, by making

the publisher (owner) of a paper directly responsible for all material printed - even clandestinely - on his press, and by introducing major increases in the length of prison sentences liable to be given to journalists and editors for press offences, has created a further atmosphere of insecurity and fear among journalists. Such an atmosphere leads, inevitably to a certian self-censorship. Freedom of speech and freedom of the press have improved considerabaly but may be limited in many different circumstances.

The Parliamentary Elections of the 6th November 1983.

A parliamentary election was held in Turkey on 6th November 1983. Prior to the election there was widespread interference in the electoral procedures by the National Security Council. The Council exercised its powers under the transitional regulations in the law on political parties to refuse to register 937 out of 2 163 candidates. Only three of the fifteen parties granted permission to take part in the elections.

The Motherland Party, under the leadership of Turgüt Özal, won 45 % of the votes and formed a government.

The parliamentary elections staged by the National Security Council on 6th of November did not result in any return to a parliamentary

democracy in Turkey. On the other hand the election resulted in a formal - but not an actual - end to the military rule which had been in effect since The Generals' coup in September 1980. General Evren, the leader of the Security Council, remained President after the elections, with widespread powers.

Turkey after the parliamentary elections of the 6th November 1983

Four years has gone since Turkey returned to a parliamentary democracy, but we can still note that the Özal-government has not yet taken the necessary measures to reestablish full political democracy and the respect for human rights and liberties that membership at the Council of Europe obligates.

Several other political parties, than those that participated in the elections in November 1983, have been founded and have participated in the local elections on 25th, March 1984. These parties participate also in the coming parliamentary elections on 29th November 1987. The political ban on the central committee members of the abolished parties and the ex-members of the parliament, has been lifted by a referendum which was held on 6th of September 1987. We can also

note as a positive and constructive development that the debate in the parliament and in massmedia have become more open and lively and that the policy of the government is being criticized more openly.

But the Communist Party, the Workers Party and other leftist parties are still banned and can not take part in the political life in Turkey.

The Özal-government and the turkish parliament have avoided to bring up the most central issues into discussion and accomplish a change of the anti-democratic constitution, abolish the restrictive law on trade unions and reconsider the regulations which have led to the dismissal of thousands of state officials and university teachers due to political reasons.

A Turkish judicial expert, who was interwievedon condition of anonymity by the Turkish Daily News on the 6th November 1987, said the followings concerning the Turkish application for full membership in the European Community:

"Ankara should realise that the EC is a club of European democracies and Ankara can become a full member of it only after it eradicates the 'obstacles' in its developing democratic order. Tell me, how can a Turkish ambassador in a

European capital explain in a logical manner the restrictions prevailing in Turkey? How can we explain realistically the labour law existing in Turkey, or the restrictions on associations, unions and such. Furthermore how can we explain the existence of certain articles in the Turkish Penal Code which restrict the freedom of thought? With such a constitution and laws we can only become an outpost of the EC,the guardian at the door of the EC. Nothing else. They will never allow us to enter the club of democracies with these obstacles. We must start urgently to get rid of these obstacles in our democracy if we really want to become a member of EC."

I assume that this sincere confession on the Turkish Constitution and the Penal Code does not need any further interpretation.

The Martial Law has been lifted throughout the country but the State of Emergency is still in power in 9 provinces in Turkey. Furthermore the military courts and the State Security Courts, that were established in eight major cities in Turkey after the elections of 1983, continue to function in accordance with the Article 23 of the Martial Law Act. According to the Amnesty International report on "Unfair trial of political prisoners in Turkey" published October,

1986 there were 813 cases at the military courts on 1 of March 1986.

According to the above mentioned report the lawyers defending political prisoners are impeded in many ways, in particular by insufficient access to their clients and the denial of private conversations. Lawyers also frequently complain of having insufficient time to consult the file and to prepare a defence before the beginning of a trial.

The European Convention on Human Rights provides that a person detained on suspicion of having committed an offence shall be brought promptly before a judge and shall be entitled to trial within reasonable time or to realise pending trial.

The European Court of Human Rights has pointed out that the time period to be considered for a trial begins on the first day of detention and ends on the day of the judgment which terminates trial by the court of first instance.

Contrary to these provisions, political detainees in Turkey have been subjected to excessivly long periods of pre-trial detention. Another aspect is that the political trials continue during several years.

One example is the trial of leaders of DISK, Which began before the Istanbul Military Court on 24th December 1981. The defendants in the DISK-trial were subjected to almost four years of detention without a judgment. The DISK-trial was ended by the court of first instance on 23th December 1986.

Some articles of the Turkish Penal Code have frequently been used to imprison those involved in non-violent political or religious activities, the most important of them being:

Article 141: Leadership and membership of an organization for the purpose of establishing the rule of one social class over others.

Article 142: Propaganda for the same purpose ("communist propaganda")

Article 163: Leadership and membership of a society for the purpose of adapting the State to religious principles and beliefs/or propaganda for this purpose.

The above mentioned Articles are used under the present legislation specifically to punish non-violent opposition in Turkey. Many courts' decisions and rulings by superior courts reveal that the usage of these articles violates the right to freedom of expression, association and religion and that their application is therefore in contravention of Article 9, 10 and 11 of the European Convention of Human Rights to which Turkey is a State Party.

According to the latest Amnesty reports and the reports of the newly founded Turkish Committee for Human Rights the imprisonment of prisoners of conscience, systematic torture and ill-treatment of political prisoners are still continuing.

An example to new detentions is Mehmet Cibran, who was a refugee in Sweden and went back to Turkey in October 1986. Cibran was detained on 8 October 1986 in Cizre and was held 43 days in police custody. Cibran was then tried for membership in the Kurdish Workers Party and sentenced to 15 years imprisonment on 17 June 1987.

Another case is the theatre director Yilmaz Onay, who was detained in December 1986. Onay testified that he had been tortured for three days at the Ankara Police Headquarters. The torture subjected to Onay is confirmed by a medical document.

According to the Turkish Committee for Human Rights there are today 52 000 prisoners in Turkish prisons. Among them are 18 000 political prisoners and 6 000 of these have already been sentenced whereas 12 000 are detained and under trial. The Turkish parliament have not proclaimed an amnesty for the political prisoners in spite of certain promises and commitments.

Between October 1980 and October 1984 fifty people were executed in Turkey; 27 of them had been convicted for politically related offences and 23 for common crimes. The last execution was carried out on 25 October 1984. In 1986, 134 death sentences were passed by various courts in Turkey, of which well over a hundred were passed by military courts. No execution have taken place since October 1984, but the number of people under sentence of death who has exhausted all legal remedies are 153. These death sentences only need confirmation by parliament and the president and can be executed at any time.

There are approximately 20 000 turkish refugees in Europe; 13 116 have been deprived their Turkish citizenship due to political reasons. Adnan Kabveci, one of the cheaf advisors of the Prime Minister, Turgüt Özal, has stated the followings to the interviewer of The Swedish Television: "We are calling the ones whose Turkish citizenship was taken away from them to return to Turkey. Why? We want the wounds to be healed. We say that healing would be for the benefit of our country. We are going to solve all the problems in every subject without judgment and we will shorten the formalities and the time involved in becoming Turkish citizen again."

In spite of these promises the Turkish government have not yet taken the legal measures to guarentee the repatriation of the refugees.

Conclusion

Formally the most essencial improvment that has been achieved in the democratization process in Turkey during the last years is the abrogation of Martial Laws throughout the country. The essence of this decision is however reduced by the fact that the State of Emergency is still in power in 8 provinces in Tyrkey. The difference between the application of Martial Law and State of Emergency has not been that significant so far. What is

ever more grave is that the Military Courts are still in function all over the country to such an extant that has no correspondence in any other member country of the Council of Europe.

It is also a serious matter that the so called National Security Courts are composed of three judges, of which one is a military. That the military judge has a judicial education and that he participates at the court in civilian clothes does not change the fact that the armed forces have a widespread influence and control over main parts of the judicial system.

The judicial system is in a state of crises. The prolonged and drawn-out trials are clearly violating the European Convention. This fact cannot be explained only by refering to a viscous bureaucratic tradition. The inability to undertake effective measures within the judicial system must be criticized strongly. This situation awakes a strong impression that influencial circles within the Government and the Armed Forces consider that these absurdly drawn-out lawsuits have a repressive effect, which from the point of view of the Government, is positiv.

I draw similar conclusions regarding the widespread usage of torture which is practised

above all in connection with the prefatory police interrogation after arrests. The decrease in number of torture cases is not due to the existance of effective measures taken in order to prevent and take legal action against torture, but to the decrease in the number of arrests since the civil government took over from the military rule.

The regime has not even made such an elementary change in the legal procedure as recognizing the right for the lawyer of a suspected person to visit his client immediately after the arrest of the suspected and also plead for the client at the prefatory police interogation, where torture is used frequently.

It is certanly a progress that no further death sentences have been executed since 1984, but it is extremely inhuman to let those who are condemned to death to sit in a death-cell for years without taking a final decision. Turkey ought to abolish the death penalty immediately. All the death sentences ought to be abolished while waiting this decision. It would be a minimum demand that no death sentence should be executed immediately or shortly after the delivery of the judgement.

Seven years have passed since the accomplishment of the military take-over. It is high time that the Turkish regime takes radical measures in order to heal the wounds after the military dictatorship. An essential step in this process is to grant an immidiate general amnesty for the political prisoners who have been sentenced and abolish the cases, for those who are still not sentenced.

A radical change concerning the basic rights and freedoms can not be achieved unless the Turkish State democratize its entire legislation; principally the constitution, the election laws and the union laws which are hostile to union rights and freedoms. It is also of particular significance that the articles 141 and 142 in the Penal Code are abrogated. It is these articles in the Penal Code which constitute a decisive obstacle for the freedom of speech and associations.

The new arrests of the two leading communists in Turkey are alarming. It is another sign that the democracy in Turkey is most inadequate. It is a concern for every democrat to claim that a ban on communist parties in the member states of Council of Europe is not acceptable. There is no other country within Council of Europe that prohibits communist parties and Turkey ought not to

maintain the ban of it. It is essentcial that the two arrested communist leaders are released immeditely.

Turkey has now given the opportunity for individuel complaints to the European Convention for human rights, but it is unfortunate that Turkey has made several reservations for adopting the Convention. These reservations take away a major part of the effects of Turkeys adoption of the additional protocol. The fact that individuel complaints can only be made first after that all the domestic judicial means are tried, reduces the effects of Turkey's adoption of the additional protocol to a minimum considering the extremely long judicial procedure. In spite of that, it is of major principle significance that Turkey henceforth adopts the additional protocol without reservation. But this ought to be combined with a radical reform of the rules of procedure in the courts.

The Union Laws which is hostile to Trade Union rights and freedoms and is clearly violating not just the Convention for human rights but also the Convention of ILO, has to be reformed without any further delay so that it stands in complete agreement with these conventions. A massive international opinion ought to be mobilized in order to force the Turkish Government to abrogate the Union Laws.

As long as this legislation is maintained, Turkey can not now become a member of The Common Market as the Turkish legislation is clearly in contradiction with the Rome-treaty. Turkey can also not be regarded as an adequate member of the Council of Europe from the ethnical point of view. The existance of a member state, that violates the regulations and the Convention to such an extent as in the case of Turkey, is undermining the reputation of and respect for the Council of Europe.

It is therefore necessary not just to keep the dialoge with the Turkish authorities but also and above all to put a more considerable pressure on Turkey than before.

The opposition parties, the Trade Union Movement and the other democratic organisations must receive a powerfull and effective international support.

It is urgent that all the Turkish refugees get full guarantees for their repatriation and that all the Turkish citizens unconditionally regain their citizenship.

The newly founded Committee for Human Rights in Turkey, with some ten local organisations, need

to be encouraged and receive an effective support from democtratic associations in other countries.

87/11/26 HGF/bm

RAPPORT PRESENTE PAR

Maître HANS WERNER ODENDAHL

Commission 4
Tortures

Rechtsanwalt Hanswerner Odendahl, Köln

Torture in Turkey after the Military coup of 1980
- Introductory statement -

In my opinion the demand for an amnesty of all political prisoners in Turkey can be based on the following main arguments:

1) Political prisoners in Turkey have been facing systematic torture.
2) Political prisoners in Turkey have been facing trials in Military courts, which are not independent, but political instruments of the regime and do not respect the basic rights of defence in court.
3) The trials are based on a political penal law, which tends to regard oppositional political thought as a crime.

In this commission, we propose to disscuss the first two elements, whereas the political penal law will be discussed in commission No. 1.

Talking about torture in Turkey, we mainly think of three types of repressive state activities:

1) Our attention is mostly attracted by systematic torture in police custody, especially in torture centres of the cities.
2) In the prisons, we observe widespread flogging and other forms of cruel and humiliating treatment, especially of political prisoners.
3) Systematic or occasional flogging is part of the regular military operations in Kurdish villages in the East of Turkey.

I want to talk first and most of all about torture in police custody, especially in torture centres:

We know, that more than 95 % of the political prisoners arrested after the military coup of 1980 have been severely tortured.
Tremendous and lasting harm has been caused by this torture to the bodies and souls of many of them.

We can only vaguely estimate the number of persons that have suffered from such treatment. It may range somewhere between 50.000 and 240.000.

Thus, torture may be regarded as one of the main instruments of the policy of eliminating various forms of opposition.

Seven years after the military coup and taking into account the great number of reports and resolutions concerning this matter in various international institutions and organisations, I do not see it necessary for us here to repeat the evidence of these facts.

Let me, however give you a summary in a few sentences to show you the validity of the sources, which evidence the widespread and systematic torture in police custody in Turkey.

To begin with, we have the reports of the prisoners themselves. It will be difficult to find a political prisoner in Turkey who can say he was treated correctly. Now even one of those, who were released early, because they made use of the "repenters-law", says, that he was brought to "repent" by torture. At the same time, we sometimes find confirmation or indirect justification of torture on part of some representatives of the regime. Retired general Turgut Sunalp who played a role in both, the military regimes of 1971 and 1980, admitted systematic torture during the time of the 1971 military regime and at the same time made fun of the possible or alledged rape of a communist woman during torture.

The assumption, that torture in Turkey is widespread and systematic, and that it is a policy to eliminate certain forms of opposition is based on the following key conclusions:

1) There are torture centres of different sizes in the districts of all police stations. They show, that torture is not an individual excess of individual police interogators who are just a bit too eager to get results. Who prevents General Evereen or another member of the State Security council from telling his drivers some night to drive him to one of these centers and look what is going on there. I presume, that he knows anyway and does not have to go there and look for it.

   A British general stationed in Cyprus in the fifties, once said that in case a military or police leadership actually wants to prevent torture, there is no problem to do so effectively: They just have to go to the police stations unexpectedly.

2) The second conclusion is based on the objective form of detention. It took years until the regime was ready to reduce the habeas corpus from 90 to 45 days. Now it is still 15 days for all political offences and is prolonged to 30 days under martial or emergency law (Law No. 2845, Art. 16).

It should also be noted that the habeas corpus times were sometimes exceeded in practice.

Most important is the detention in the form of incommunicado detention. Detention is kept completely secret, as far as "whether" and "where" are concerned.

No visitors are allowed, neither lawyers, nor doctors nor relatives. This makes it possible in most cases to conceal most of the harms caused to the bodies of the detainees from persons outside the police services. Only after the distruction of the torturing system, the police structure which got its power under the rules of martial and emergency law, will we learn the complete system of torture in Turkey. In Greece, it took several years after the end of the military regime, until some of the torturers were ready to tell the public the whole story of systematic torture committed by military police after the coup.

Until that time, we have to rely mostly on the reports of the victims.

German administrative courts, especially higher courts have been hesitating very much to give political asylum to refugees from Turkey. But at least they have accepted that torture of political prisoners is widespread and systematic in Turkey. This was mainly due to the long period of habeas corpus and incommunicado detention.

3) The third conclusion is drawn from the fact, that there is no consequent persecution of proved torturers in Turkey. Claims of political prisoners that they have been tortured are normally ignored by courts or persecutors. Only in a few exceptional cases, where there is medical proof and some public attention, or where torture results incidentally in death, we can observe trials against torturers.

Often in these cases, the testimonies of prisoners and lawyers are not regarded as sufficient evidence, even though the results of torture could still be seen on the body of the victim. This leads to frequent acquittings of torturers. If sentences are pronounced, they tend to be mild, or they are reported not to have been executed.

Torturers are not removed from service, but are rewarded by higher payment (double to four times more that before).

4) The fourth conclusion is drawn from the fact, that there is no complete ban upon the use of information extracted under torture as means of evidence in the military courts.

The military supreme court is reported to have stated in various cases, that accounts obtained under torture can not be the only basis of judgement and sentence.

This of course is confined to the cases where it is possible to prove torture.

Secondly, it is allowed to use accounts extorted under torture if they are confirmed by other evidence.

Thirdly, the military courts are reported to find very easily other evidence, that confirms these accounts.

Fourthly, it is allowed to use evidence which is found as a result of accounts which were extorted under torture.

This altogether results in the fact, that torture is the solid basis of jurisdiction at the military courts in Turkey.

In these short terms, I tried to illustrate the importance of torture during the years since the military coup.

In my opinion, the discussion today can be concentrated on the question, whether there has been any signs of changes in the system of torture in the last two years and which conclusions this Congress can draw in the form of demands.

According to my information, there are no signs of any important change in the system of torture in Turkey today.

There are reports on cases of torture during the last months. Due to the long periods of arrest and to the great number of prisoners that do not have close contact with the outside, our information on the last months can of course not be as complete as it had been the years before. I hope that we have some friends here, who can give us further information about the latest events.

There is no report on the closing of the torture centres. There is no change in incommunicado detention.

There are reports, that the constitutional court has limited the authority

(possibly) of the police to bring prisoners back to torture centres after formal arrest(which means during their detention in (military) prison). At the same time there is an increasing number of reports on cruelties in Kurdish villages in the east.

The Jandarma is a separate branch of the armed forces. It could be called the special force for civil war, because its task is to exercise police functions in a military form.

The Jandarma is performing frequent operations in Kurdish villages in search of left-wing or separatist oppositionals.

The normal practice is to search special houses whose inhabitants are suspected to support some form of opposition and to ask for the persons - normally the young men - who somehow hide from the police - some of them staying armed or unarmed in the mountains, some of them staying as refugees abroad. These families are normally beaten up, sometimes taken away to police stations to be beaten there. Women are examined medically to learn whether they have had sexual intercourse - and this practice is openly defended by responsible state authorities. Women are forced to get divorce from their husbands when they say that they do not know where their husbands are.

Which demands could this congress raise against these practices? Professor Stuby will later talk about the demands which could be raised in connection with the participation of Turkey in several international treaties.

In detail, I propose the following demands:

1) End to incommunicado detention, for the right of all people arrested to contact a lawyer immediately and to contact a doctor and relatives within a few days, for regular medical control of detainees within short periods by independend doctors.

2) Free access of press delegations and members of Parliament to all alledged torture centres.

3) Punishment of torturers and their dismissal from police service.

4) Complete ban of all evidence, result of torture.

5) Withdrawal of all Jandarma units from Kurdish villages.

Rechtsanwalt Hanswerner Odendahl, Köln

The trials of military and State Security Courts in Turkey

In my opinion, the trials before military courts in Turkey represent one of the main characteristics of the military dictatorship there. There are military trials in Latin American military dictatorships as well, but it seems to me that secret killing and detention over extremely long periods of time without trial are the more predominant forms of liquidating the opposition over there.

In Turkey, the military court trials have to justify the long detention of prisoners, which at the same time gave occasion to the tortures officially not admitted.

Since the introduction of martial law at the end of 1978, about 50.000 people were convicted by military courts in Turkey - nearly all of them civilians, and they were convicted after the military coup of 1980 which extended martial law all over the country.

Thereby these trials have played an important role in pursueing the aim of liquidating various forms of opposition and at the same time justifying it.

The structure of the military courts and its procedure is based on the regulations of law No. 353, important regulations on its procedure are to be found in the martial law code No. 1402, and especially these regulations have been severely worsened after the coup.

The military courts found their place in the new constitution of 1982 in Article No. 145.

According to a decree of the State Security Council the military courts go on sitting their trials although martial law has been abolished. When martial law was abolished in one district, the military prosecutor sometimes sent a new file to an area, where there was still martial law.

Now all the new political cases have to be sent to the new State Security Courts. These courts had been abolished by the Constituional court in the seventies. Now they were reintroduced by the constitution of 1982 (Art. 143).

Structure and procedure of these courts are based on the law No. 2845, which has taken over important elements concerning the rights of the accused form the Laws No. 353 and 1402. Although all types of judges could be members of the State Security Courts, the authorities try to bring in military judges as often as possible. Since they are not available in sufficient number, the built-up of the new court is quite slow and many detainees had to wait a very long time for their trial. This means that in the form of the State Security Courts, an important part of martial law has been preserved for times of Emergency law and so-called "normal" times.

1. The Independence of Military Courts and State Security Courts

1.1 in legal and organisational terms

1.1.1 The Turkish military judges are formally not submitted to orders or instructions concerning their judicial decisions. However, there is no doubt that the judicial independence may also be endangered by other aspects,

1.1.2 The judges of the military jurisdiction are usually soldiers. If judges coming from the non-military jurisdiction are called in, they get the same status. The president of the military court is a soldier without any legal training. Not only is he an equally entitled judge, he also decides on discipline in the courtroom, i.e., on the requests for leave to speak and the forced removal of defendants and defence counsels. At this point, I would already like to underline that the defendants have the status of military subordinates in relation to the court.

As soldiers, the judges are part of the military apparatus. Objectively, this total military apparatus is guilty of high treason according to articles 146 and 147 of the Turkish Criminal Code. In the course of this high treason, a referendum was organised, during which a law was simultaneously put to the vote, which provided that this high treason and all other crimes committed by the military leaders were not subject to prosecution. Due to complicity, the individual soldier is tied to the military and the military leaders. They concretely guarantee him impunity for his having participated in the high treason.

In particular, the judge as a soldier is part of the military hierarchy. He is participant of the one of the most important Turkish enterprises via OYAK, the pension scheme of officers. Originally, OYAK (Ordu Yardimlama Kurumu) was founded as an "army service organisation" in 1961 to attribute social welfare benefits to regular soldiers. For this reason, a certain

percentage of the soldiers' salary was withhold and transferred to OYAK. The regular soldiers themselves were entitled to credits and loans from OYAK. In the meantime, the OYAK Holding employs approximately 18000 people. It has become one of the biggest industrial combines in Turkey, works in different industries, such as car industry, petrochemistry and cement industry and is inter-connected with foreign trusts (at this point, I would like to stress that article 141 of the Turkish Criminal Code explicitly protects the social status quo.).

Any disagreement of superiors with the behavior of the judges may lead to enormous difficulties. The work at a military court is only a detailing of the soldier from his regular unit, which can always be reversed without any problems. The soldier who has worked his way up from his regular unit in the barren East to the military court in Istambul remains always menaced by a quick transfer back to his regular unit. This is especially problem-free in the case of a transfer to the "front", i.e. to the occupational troops on Cyprus.

Corresponding to these methods there has been a considerable pressure during the past years. Therefore, a lot of judges and prosecutors have retired from Government services, among them very well-known ones. As these continued to work as counsels, a law was enacted that forbid former judges and prosecutors to work as counsels at military courts for three years.

One example of this kind of intervention described above is the case of the Istanbul military judges Nuh Cetinkaya and Naci Gürkan. On 20.12.1986, they were removed from their positions after they had sentenced a torturer. Besides, this sentence was annulled later by the supreme military court.

Another example is the case of judge Niyazi Yilmaz in the so-called Fatsa trial in Amasya. On 15.5.1985, he tried to resist to the pressure of the legal advisor of the local martial law commander, Çetin Akkaya, and had a quarrel with him. He was removed from his position later.

Only the small body of the supreme military court consists of judges that cannot be removed from their positions.

1.1.3

The selection of military judges is completely in the competence of the Executive which means, the President of the Rupublic, the Minister of Defence an the Chief of Staff.

Let me quote on this a report of amnesty international dated 3 October 1986:

The independence of military courts in Turkey was originally provided for in Act No. 357 on the Status of Military Judges. However, in 1972 this position was eroded by several amendments to this law, the effect of which was that military judges became more clearly part of the military hierarchy. Judges who failed to be promoted for three years by the martial law commander could be dismissed. Judges who reached decisions "proscribed by law" could also be dismissed.

At the time, these amendments were strongly criticized by the country's senior military judge, the then President of the Military Court of Cassation, General Rafet Tüzün. He wrote in a newspaper article that under the new law judges of military courts would become part of the military hierarchy and subject to the orders of the commander responsible for the establishment of the courts. He expressed the view that this was contrary to the Charter of the United Nations, the Universal Declaration of Human Rights, the European Convention on Human Rights and the Geneva Conventions (Milliyet, 12 February 1972).

Since 19 September 1980, the competence to appoint and dismiss military judges has rested with the Minister of Defence, acting in consultation with the Chief of the General Staff. The Minister of Defence may also dissolve a militry court whenever he deems fit and have the cases pending before that court transferred to another court.

In practice, individual judges of military courts have indeed been transferred or dismissed during trials, especially in the course of political trials. Amnesty International has received allegations that such removals occurred when judges were considered too ler ent or when they otherwise acted against the wishes of the military authorities. Such interference with the independence of the judiciary appears to have occurred especially during the first months after the military coup of 12 September 1980.

1.1.4 Guarantee of the Legally Competent Judge

There is no functional distribution schedule for the competence of the different court divisions. A functional distribution schedule stipulates, which division is competent in which case. The accusation or the first letter of the family name of the oldest defendant could be objective criteria of assignment. The legally competent judge might be stipulated in this way. In Turkey, an accusation is established by the lower military prosecutors, which is then submitted to the senior military prosecutor of the martial law district. This prosecutor decides, which court in the district will proceed with a charge. This again means that a "legally competent judge" does not exist in Turkish military jurisdiction.

1.1.5 In trials with more than 200 defendants, the court will have two more judges in addition to the common three judges (article 2, paragraph 2 of the Military Court Law). These two are appointed by the military command under martial law, too. This means that these are genuine special tribunals for concrete individual procedure. In other legal systems, it could be assumed that an increase in the number of judges would make jurisdiction more reliable. However, as there is no function distribution schedule in Turkey, this results in additional means of influence of the military command under martial law and thereby the Government..

1.1.6 Therefore, objections against the opening of the procedure are not possible (article 15, paragraph 2, article 18, para. 1 of the Military Court Law).

1.1.7 In my opinion, the following is one of the most important aspects: Even if it is certain which members of the court will start the procedure, it is in no way clear, which members will render judgement. During long procedures, the defendant can wonder who will face him today. (The transfer of judges to another post can take place during the procedure). According to article 131 of the Military Court Law not even the report of the proceedings of the former sessions must be read when a new judge is appointed. (This is a special regulation for the state of war as it is practised by military courts in almost all political procedures).
The possibility to exchange judges opens up all means of influence to superior military institutions, especially during long procedures. A judge who comments e.g. on the duration of the detention, or on the state of the procedure in the form of intermediate decisions will run the risk of facing his transfer or replacement, respectively. Concerning trials which last for years, there is another important aspect. It is absolutely possible that the superior military and government administration change their mind with regard to the desired result of the trial. If the superior administration is of the opinion that the present composition of a court is not doing justice to these purposes, they can intervene again by transferring judges.

For example the central DEV YOL trial in Ankara has been going on now for more than five years. The chairman of the court Ekrem Çelenk left this position in summer 1984 and has hence become president of the State Security Court in Ankara.

1.1.8 Additionally. we must take into account that according to Article 49, para. 2 of the Military Court Law (under Martial Law), there is no challenge because of prejudice in the proper sense. Therefore, it is possible that a judge who has repetetively and explicitly or tacitly shown that the result of the trial is already certain, participates in the

judgement. A judge who has continuously restricted the rights of the accused in an illegal manner, cannot be challenged either. Even a judge who has been in direct political controversy with an individual accused, cannot be challenged.

As a consequence, there are many reports about cursing and insults of judges against the accused or of attempts of brain-washing during the session of the courts. I myself saw this in a film about the session of the"Fatsa"trial in Amasya.

It is reported that in the central DISK trial in Istanbul, the chairman shouted at the accused once, that they were facing the Turkish State and that they would be smashed by the court.

In the State Security Court according to Art. 26 of law No. 2845 the judges can be challenged on account of partiality. But strange as it may seem, the challenged judge takes part himself in the decision on the application to challenge him. One can launch appeal against this only together with the final judgement of the current instance.

As far as the partiality or impartiality of the military courts is concerned, some German administrative courts have argued, that the percentage of acquittals is a sign of impartiality. Among other arguments that might be put against this, it is to be said that the persons acquitted are punished as well. Most of them were in detention and under torture for years, the rest had to come to trial regularly for the occurring long periods of the trial, damages for unlawful detention or other compensation for example for the payment of the lawyer is not granted.

3.1.9 As a result of the legal and organisational consideration, we can keep in mind that the superior military administration has sufficient opportunity - even without any explicit right of command - to push through their opinion in a trial. The bourgeois constitutional philosophy which is also the origin of the trichotomy of governmental powers, is of the opinion that there are no vacua of power in the sphere of the state. If there are any opportunities of influence, they will be exploited. This aspect alone suffices to think that the work of the Turkish military judges is basically determined by the executive powers.

1.2 in sociological and politological terms

A survey of the independence of justice must also make use of sociological methods. If one wants to include empirical aspects, the remaining sphere of "social phenomena" must be discussed besides the legal aspects.
At this point, I can only do so briefly.
Due to the legal basis mentioned before, sociological arguments will certainly be more important than with regard to German justice, for example.
Additionnally, the social situation is c ertainly different from the one in the Federal Republic of Germany. In my opinion, this situation can only be characterised by the German word "Gleichschaltung" ("forcing into line"), a term which has consciously been borrowed from the vocabulary describing GERMAN FASCHISM.
In order to justify their high treason, the military needed an ideological justification. First, this consisted in the alleged necessity to fight separatism and terroris m which allegedly evolved from the left. This, however, was obviously not sufficient. Their fight had to be further veiled by ideology. This was and is done by citing "Kemalism". The military and the individual soldier are a party in this ideological battle. If a whole society is drawn into this struggle, the individual soldier cannot stay apart. This the less, if he has one of the most important taks in this struggle. Doubtlessly, this task mainly consists in liquidating the political opposition as a prerequisite of Kemalistic renewal.
The political penal law of Turkey undoubtedly fits very well into these political purposes. The details insofar are discussed in the first commission.

To sum up, we can say that neither in legal and organisational terms nor in sociological or politological terms, there has been sufficient reason to speak of an independent juridiction when talking of the Turkish military justice.

2 The commitment of the courts to the Procedural Law

The Association of the Turkish Chambers of Lawyers has stated a number of items in two letters addressed to the President, General Evren in 1981 and 1982, where they hints at the regular violation of valid law before and outside of the trials of indictment at Military Courts. There has not been any change of this practice due to these complaints. On the contrary, leading officer have complained during a discussion with the head of the Association of the Chambers of Lawyers about the fact that the second letter contained the same complaints, which were not worth any answer in the first letter. (The last letter was published in German by the newspaper Frankfurter Rundschau on August, 2nd, 1982.)

Besides permanent violation of the procedural regulations, one has to take into account that existing procedural regulations already allow a large field of action without any means of control. This starts with the fact that a lot of contravention in the whole field of substantive criminal law allow jurisdiction by the Military Courts. Then, Military Prosecutors have the task to pick the cases which interest military justice and the other cases are handed over to non-military prosecutors.

I have already repetetively hinted at the fact that the special regulations concerning the procedure under state of war. allow large fields of action to the courts. As a matter of fact, it is the court which has the right to decide whether the special regulations are applicable. And this is not reviewed.

3 The influence of the accused on the course of the procedure

3.1 The degree of torture

Troture is doubtlessly the most severe interference with the legal entity of the accused - especially torture inflicted by the police during interrogations. In almost all trials against left-wing persons charged in Turkey, the accused are tortured. The degree of torture has been different according to the importance of the accused.

(see the discussion about torture)

3.2 Utilization of the statements extracted under torture

The question of the utilization of statements extracted under torture is only legally relevant, if there is a proof that the statement was given under torture. Therefore, this legal question is only exceptionally relevant. The assertion of the accused that he has been tortured is in no way sufficient as a proof. Often, the corresponding pleading is not even taken into the record. Especially the trial court does not see any reason at all to start further investigations or other measures due to these allegations. This is explicitly left to the prosecutor who goes into action only exceptionally.

We have been submitted the files of a case where exceptionally the results of torture were certified by a medical doctor. In this case, the Military Court did not continue to investigate despite a motion to take evidence, but thought the statements extraxted under torture to be credible.

If it is possible to prove torture, this torture will only be discussed in relation to the statements at the police station. If the statement is confirmed in front of the judge, the court does generally not suppose that the statement was only confirmed because of fear of further torture. This was the course of procedure in a case we observed (According to the additional Article 7 to the Martial Law, the prisoners could be picked up again by the police for further interrogation at any time. Therefore, the menace of further torture was still existent.

According to latest reports, this article was abolished by the constitutional court.)

In the few cases where the connection between torture and statement was proved, people maintain that the the Supreme Military Court had delivered a judgement according to which statements extracted under torture could not be utilized. However, this allegation is doubtful.

First, we can unanimously assume that there is not any statutory prohibition of utilization.

The material submitted to us hints at the fact that in individual cases, the courts infact exercise restraint in valuating statements extracted under torture. However, this restraint is restricted by the fact that they do not base their judgement on the statements extracted under torture alone, but found it on the observation that different statements extracted under torture are identical. According to our investigations, these judgements, which are subject to automatic appeal, have become final and conclusive.

Cases where hints at further evidence w found under torture represent a further problem. However, even the utilization of this evidence is common practice.

3.3 Rights during the pre-trial process

The period of incommunicado, during which the accused has no rights at all, is usually followed by military detention. There, the accused is usually allowed to see his counsel for 4 minutes twice a week. The trial against the peace committee was an exception in this respect, because the visits could last 20 minutes. Usually, the interlocutors are separated from each other by a double metal grid. On both sides, there are soldiers. They possibly interfere with the conversation; especially conversations on the conditions of detention are prohibited. In the district of the military command of Diyarbakir, each cell receives only one copy of the charge. This copy, however, remains with the guards. The accused do not have any writing material at their disposition. Complete inspection of files is propably exceptional.

The defence counsel is not allowed to hand over documents to his client.

3.4 Status during the trial process

During their detention as well as during the trial process, the accused have the status of military personnel of the lowest rank. The have to follow the orders of the guards and the court. During the trial process, they have to appear like militaries, their hair is short like that of recruits.

During the sessions, there is an obvious presence of soldiers with a ritual change of guards while the session is going on.

5.5 Number of persons charged

The number of the accused is often very high so that it is impossible to imagine how the court will make the defence of the individual accused become effective. The special issue no. 2 of
the German bulletin "Alternative Türkeihilfe" on the mass trials in Turkey presents press articles in which 40 trials with more than 100 accused each are mentioned. They are subdivided as follows:

100 - 200 accused: 23 trials
200 - 300 accused: 7 trials
300 - 400 accused: 3 trials
400 - 500 accused: 2 trials
500 - 600 accused: 1 trials
600 - 700 accused: 1 trials
more than 700 up to 900 accused: 3 trials.

Since that time, some of these trials have ended. Some new mass trials began. During some of the big mass trials even further accused people are added to these trials. Now, there are two or three trials with more than 1,000 people accused. In the central DISK-trial of Istanbul there are 1,477 persons accused now.

These mass trials are mostly directed against the adherents of one political organisation. Whatsoever individual "guilt" there may be in the charge, the mass trial may make it seem unimportant in relation to the organisation and its dangerousness.

3.6 Defence

There is no mandatory defence. Theoretically, it is possible that even an accused threatened by capital punishment remains without defence. Defence is a financial problem. In many cases, defence is only secured, if the lawyer defends a large number of accused. Even in case of acquittal, reimbursement of expenses is not common.

Defence means also a risk for the counsel. Only in Istambul, a larger number of lawyers is ready to defends people at Military Court. In smaller cities, there are hardly any lawyers ready to defend there. In Ancara, there are 50 of them. In the dirstrict of Diyarbakir, the few lwyers ready to do so were progressively accused by the prosecutors, too, and later, they found themselves next to their clients as accused.

We were reported by lawyers that there is a special danger in the removal from the courtroom, which obstructs them very much /Article 143 of the Military Court Law). Those having been removed for the secong time, are excluded from the trial. This is valid for the lawyers as well as for the accused.

The number of counsels may also be restricted in the state of war. There aren't any further regulations to this. Thus, a court may for example admit only one counsel for each accused at its own discretion. A corresponding decision taken during the DISK-trial in Istambul lead to loud disputes between the director of the Chamber of Lawyers, the counsel Mr. Apaydin and the court. A bit later, Apaydin was arrested as an accused in the peace committee trial.

Besides, there is also the possibility of temporary limitation of the defence pleadings of the accused and his counsel. The sociologist Ismail Besikci as a Turk had become active against the denial of the existence of the Kurds. He was sentenced to several years in prison for each remark. During his last trial which was due to a letter written in prison and addressed to the head of the Swiss association of authors, he had prepared a 250-page manuscript. The handed it over to the court. His counsel and he himself were each allowed to speak for 10 minutes. After a deliberation of 15 minutes, following immediately after this, he was sentenced to long imprisonment

The same limitations are valid for the State Security Courts as well (Art. 23 of law No. 2845).

3.7 Right of attendance of the accused

Besides the removal from the courtroom on account of alleged disturbance, the court has also got the possibility to continue to plead in mass trials (with more than 200 accused) irrespective of the attendance of the accused. The reason of non-attendance is irrelevent. The court may for example continue to plead if the accused is at a police station for interrogation or torture or if he is at hospital as a consequence of torture (Art. 18 Martial Law).

The proceedings in absence of the accused show that he has no influence at all on the result of the trial.

The same limitations are valid for the procedure of the State Security Court (Art. 20 of law No. 2845). It seems to me that this court can act even more freely in the absence of the accused, because even in small trials (less than 200 accused) the proceedings can go on in the absence of the accused after they have made their initial statements (Art. 22 of law No. 2845).

3.8 Right of speech, oral motions

In many trials, there is no right of bringing in an oral motion in the course of the procedure. The accused are informed of the right to bring in written motions. Those who persist on their right of oral motions, will be considered as disturbers and removed from the courtroom.

If Kurdish peasants are accused the question of language arises (for persons accused who are not at all able to speak the Turkish language), the courts unwillingly sometimes accept somebody to interpret their initial statement. But nobody thinks of telling those people what they are accused of in their native language. (This is one of the aspects to be considered in connection with Art. 6 of the European Declaration on human rights).

5.9 Law of evidence

There isn't any formal Law of Evidence like the § 244 II of the German Penal Law in the Turkish Military court procedure (Article 147 II of the Military Court Law). Taking evidence is left to the discretion of the court, as far as there is no evidence present. This is similar to the German summary proceedings concerning administrative penalties. That means, that on appeal, there is only the general plea to provide clarifying evidence. As far as I know, even under German Faschism, such a regulation existed for cases of the first instance (Local Courts) (sentences up to three years) only.

3.10 The public

In West Turkey the number of method of admitting the public to the courtroom is dubious. The trials are held inside the barracks in the presence of a large number of militaries. During mass trials, considerably less spectators than accused get a seat. This means that the relatives of the accused have to queue up already at night to be admitted in the morning, and this, for example, with a number of 570 accused and 200 spectators admitted. The relatives cannot replace the critical public anyway because may easily be put under pressure via the destiny of their accused relatives. Besides, the spectators have the same duty as the accused to behave like militaries when sitting in the courtroom.

In the district of Diyarbakir, the public is almost completely excluded from the trials. Only close relatives with a corresponding permit are allowed to attend the trial processes. Delegation of trial observers are admitted only exceptionally.

3.11 Equal fighting chances for appeal

There is a special aspect concerning the contestabilility of appellate decisions made by the senates of the supreme courts. Only the prosecutors has a right of appeal in the form of an objection according to Article 322 of the Code of Criminal Procedure. The proceedings of interference before the Enlarged Senate may lead to the reversal of the appellate decision and the confirmation of the judgement of first instance.

4 Conclusion

To sum up, we can say that there are far-reaching means of influence on the organs of the Turkish military justice. In the sphere of the mandatory procedural and substantive rules as well as in the sphere of the rights of the accused, there

is - in terms of a state under the rule of law - nothing which could put a stop to this influence. This is why it seems impossible to speak of independent courts at all when referring to the Turkish Military Courts; it would be more correct to call them special political commission of the Military Government.

The trials at the Military Courts have nothing to do with the standards of a state under the rule of law. It is continuously characterised by the desire to settle the score with the opposition.

In my opinion, this character of the military and state security courts is one of the main reasons for the call for an amnesty of all political prisoners in Turkey.

Besides this, we should call for the abolition of all special criminal jurisdiction in Turkey for civilians.

RAPPORT PRESENTE PAR

Professeur Docteur GERHARD STUBY

d'Université de Bremen

Commission 4
Conditions dans les prisons

Gerhard Stuby

Völkerrechtliches Folterverbot, Verpflichtung der Türkei zur Verhinderung der Folter und die Gewährleistungspflicht von Drittstaaten

Vorbemerkung

Gegenüber dem Zustand von 1980 mögen sich die Verhältnisse in der Türkei gebessert haben. Dennoch wird dort in Polizeistationen und Gefängnissen nach wie vor gefoltert oder Gefangene nicht dem völkerrechtlichen Mindeststandard entsprechend behandelt. Der Fakt selbst, sowohl für die Vergangenheit als auch für die Gegenwart, wird von keiner Seite ernsthaft bestritten. Uneinigkeit herrscht über den Umfang und die Bewertung der Folterpraktiken und unmenschlichen Behandlung: Handelt es sich um nichtsignifikante Ausnahmefälle (so die türkische Regierung) oder umgekehrt um Hinweise auf Systemgegebenheiten (so die Kritiker).

Die türkischen Autoritäten gestehen zahlreiche Fälle für die Vergangenheit ein, weisen aber darauf hin, daß diese strafrechtlich verfolgt wurden und werden. Es handle sich also lediglich um Ausnahmefälle der Praxis. Normativ sei die Folter in der Türkei ausgeschlossen. Ihren ersten Bericht Anfang Februar 1986, der der Menschenrechtskommission des Europarates vorgelegt wurde, betitelte die türkische Regierung mit der Überschrift "Es gibt keine Folter in der Türkei" (so der Gegenbericht zur Situation der Menschenrechte in der Türkei Stand 15. Februar 1986 der Türkei-Informationsstelle Hamburg). Von Ausnahmefällen könne nicht auf die übliche Praxis geschlossen werden. In der Gegenwart, in der der Demokratisierungsprozeß Fortschritte mache, könne man überhaupt keine Fälle von Folter mehr verzeichnen.

Demgegenüber werden in der türkischen Presse - und zwar aller Schattierungen - und vor allem in der oppositionellen Öffentlichkeit (hier ist insbesondere der im Februar 1986 gegründete Unterstützerverein für die Angehörigen der Inhaftierten und Verurteilten - TAYAD - und im Juli 1986 gegründete Menschenrechtsverein - IHD - zu nennen), aber auch im westeuropäischen Ausland - und zwar sowohl offiziell als auch von zahlreichen Menschenrechtsorganisationen, insbesondere von Amnesty International - letzter Bericht September 1987 -, weiterhin zahlreiche Folterfälle und inhumane Zustände in den Gefängnissen gemeldet. Diese Fälle bewiesen, daß die Folter nach wie vor ein weit verbreitetes und systematisches Phänomen sei, das von den türkischen Autoritäten betrieben oder zumindest geduldet würde.

Die Unterschiede in der Feststellung der Sachverhalte, aber auch was ihre Bewertung hinsichtlich der Verantwortlichkeit der türkischen Behörden anlangt, beruhen auf einer unterschiedlich angewandten Begrifflichkeit von Folter und dessen, was an Mindeststandard für die Zustände in den Gefängnissen gilt. So bezeichnet der Leiter des parlamentarischen Untersuchungsausschusses, der Parlamentsabgeordnete der ANAP von Istanbul, Bülent Akarcali, Praktiken, die man im normalen Sprachgebrauch als Folter einstufen würde als "einige Härten, die man unter normalen Bedingungen nicht vorfinden würde." (vgl. Gegenbericht zur Situation der Menschenrechte in der Türkei: Stand 15. Februar 1980 der Türkei-Informationsstelle Hamburg, S. 6).

Auch die Frage, inwieweit die Türkei völkerrechtlich verpflichtet ist, für Sicherungen zu sorgen, die Folter ausschließen, scheint nicht zweifelsfrei. Sie muß aber geklärt werden, damit überhaupt eine Berechtigung oder sogar Verpflichtung von Drittstaaten diskutiert werden kann, die Gewährleistung der Sicherungen von der Türkei einzufordern.

Im Folgenden sei versucht, den normativen Inhalt des völkerrechtlichen Folterverbotes bzw. der Verpflichtung, bestimmte Mindeststandards der Behandlung von Gefangenen, und hieran anschließend den Verpflichtungsumfang für die Türkei zu umreißen.

Als zweiter Schritt soll untersucht werden, ob die Türkei auf der Grundlage des neuesten Tatsachenmaterials ihre völkerrechtlichen Verpflichtungen verletzt hat. Dies soll dann drittens in Überlegungen münden, welche Sicherungsmöglichkeiten auf internationaler Ebene bestehen und wie sie gegenüber der Türkei in völkerrechtskonformer Weise durchgesetzt werden können.

I. Bemerkungen zum Umfang des völkerrechtlichen Folterverbotes.

1. Zur historischen Genese des gegenwärtigen Standes des Folterverbotes.

Die Sklaverei wurde infolge der internationalen Implikationen des Sklavenhandels schon seit dem Wiener Kongreß 1815 durch völkerrechtliche Verträge bekämpft.[1] Der Kampf gegen die Folter wurde erst nach den Erfahrungen der massenhaften und systematischen Menschenrechtsverletzungen des Faschismus zu einem Anliegen der internationalen Gemeinschaft. Gemeinsam mit dem Recht auf Leben und dem Verbot der Sklaverei steht das Verbot der Folter sowie anderer grausamer, unmenschlicher oder erniedrigender Behandlung oder Strafe an der Spitze all jener Kataloge, mit denen die bürgerlichen Rechte bzw. die sog. erste Generation von Menschenrechten universell oder regional kodifiziert worden sind.[2]

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[1] Vgl. hierzu die Hinweise bei M. Nowak, Die UNO-Konvention gegen die Folter vom 10. Dezember 1984, in: EuGRZ 1985, S. 109 ff., insbesondere Anm. 12.

[2] Zu den Menschenrechten der verschiedenen Generationen vgl. K. Vasak, Pour une 3ème Generation des Droits de l'Homme, Festschrift J. Pictet (1984), S. 827.

In zeitlicher Reihenfolge lassen sich folgende Bestimmungen anführen:

Art. 5 der allgemeinen Erklärung der Menschenrechte vom 10.12.1948 (AEMR), Art. 3 aller vier Genfer Rot-Kreuz-Konventionen vom 12.8.1949, Art. 3 der europäischen Menschenrechtskonvention vom 4.11.1950 (EMRK), Art. 31 - 34 der UN-Mindestgrundsätze für die Behandlung von Gefangenen vom 30.8.1945, Art. 5b der UN-Rassendiskriminierungskonvention vom 7.3.1966, Art. 7 und 10 des internationalen Paktes über bürgerliche und politische Rechte vom 16.12.1966 (IPBPR), Art. 5 der inter-amerikanischen Menschenrechtskonvention vom 22.11.1969 (IAMRK), Art. 5 der afrikanischen Charta der Rechte der Menschen und Völker vom 27.7.1981, Art. VII der universellen islamischen Menschenrechtserklärung vom 19.9.1981.[3] Neben das vertragliche Verbot der Folter traten in der Vergangenheit eine Anzahl von einstimmig angenommenen Resolutionen der Generalversammlung der Vereinten Nationen[4]. Die wichtigste dieser Resolution, die Resolution 3452 (XXX) vom 9. Dezember 1976, enthält eine Erklärung über den Schutz vor Folter und anderer grausamer unmenschlicher oder erniedrigender Behandlung.

Die intensive vertragsrechtliche Verankerung des Folterverbotes, seine wiederholte Bekräftigung in Resolutionen und Erklärungen der Vereinten Nationen, die Tatsache, daß kein mit einem Foltervorwurf konfrontierter Staat sich auf das Recht beruft, foltern zu dürfen, und das in den meisten Rechtsordnungen verfassungs- und einfach-rechtlich normierte Folterverbot lassen erkennen, daß eine allgemeine Rechtsüberzeugung existiert, nach der die Folter verboten ist. Die Aufnahme des Folterverbotes in die völkerrechtlichen Abkommen zum Schutz der Menschen-

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[3] Abgedruckt bei F. Ermacora, Menschenrechte in der sich wandelnden Welt, Bd. II, Wien 1983, 409 (413).

[4] Vgl. bei M. Ch. Bassiouni, An Appraisal of Torture in International Law and Practice: The need for an international convention for the provention and suppression of torture, in: Revue internationale de droit pénal 48 (1977) Nr. 3 und 4, S. 17 ff. (74 - 76 und 215 ff.).

rechte ist Ausdruck dieser allgemeinen Rechtsüberzeugung. Das Folterverbot ist heute als Bestandteil des allgemeinen Völkerrechtes anzusehen, und zwar als jus cogens-Satz.

Das Folterverbot ist in den meisten der genannten Konventionen uneingeschränkt und zum Teil auch notstandsfest normiert (vgl. Art. 15 Abs. 2 EMRK, Art. 4 Abs. 2 IPBPR). Diese Konventionen sind bereits von einem Großteil der Staaten ratifiziert. Zu ihrer Durchsetzung ist auf internationaler Ebene ein mehr oder weniger justizförmiges Verfahren eingerichtet worden. Hinzuweisen ist auf die Staaten- und Individualbeschwerde vor dem UN-Ausschuß für Menschenrechte (IPBPR in Verbindung mit dem Fakultativprotokoll), der europäischen und inter-amerikanischen Menschenrechtskommission sowie dem europäischen und inter-amerikanischen Gerichtshof für Menschenrechte. Auch die geplante afrikanische Menschenrechtskommission sowie das Verfahren über "grobe und zuverlässig belegte systematische Verletzungen der Menschenrechte" vor der UNO-Menschenrechtskommission und ihrer Unterkommissionen gem. der ECOSOC-Resolution 1503 (XLVIII) vom 27.5.1970 soll erwähnt werden. Der europäische Menschengerichtshof hat fußend auf Art. 3 EMRK Schutzvorkehrungen entwickelt, auf die unten hinsichtlich der Türkei näher eingegangen werden soll.[5] Dennoch wurde seit den frühen 70er Jahren die Annahme einer Spezialkonvention gegen die Folter auf universeller Ebene gefordert. Der Grund hierfür war die nach wie vor bestehende weit verbreitete Folterpraxis in zahlreichen Staaten.[6] Der chilenische Militärputsch und die in seinem Gefolge besonders grass um sich greifende Folterpraxis in Chile war dann der letzte Anstoß für die Arbeiten der Menschenrechtskommission bzw. einer ihrer Arbeitsgruppen zur Erstellung einer Folterkonvention, die dann am 10. Dezember 1984, dem Tag der Menschen-

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[5] Vgl. zu den verschiedenen Fällen P. van Dijk/P. Leuprecht (Hrsg.), Digest of Strasbourg case-law to European Convention on Human Rights, VOL.1 Köln/Berlin/Bonn/München 1984, 89 ff.

[6] Noch 1975 spricht der Amnesty International-Bericht über-gängige Folterpraxis in 60 Staaten.

rechte, von der Generalversammlung der Vereinten Nationen verabschiedet werden konnte.

2. Die wesentlichen Regelungen der Konvention, ihr Unterschied, insbesondere zu Art. 3 EMRK und der auf ihn fußenden Rechtsprechungspraxis.

Im Folgenden soll ein kurzer Überblick über die wesentlichen Regelungen der Konvention gegeben werden, um sie hinsichtlich ihrer positiven wie negativen Tendenzen mit anderen Regelungen, insbesondere solchen, die die Türkei unmittelbar betreffen, vergleichen zu können.[7]

a) Definition

Den Regelungen der Konvention vorangestellt ist eine Definition des Folterbegriffes in Art. 1[1]. Danach ist Folter im Sinne der Konvention jede Handlung,

durch die einer Person vorsätzlich schwere körperliche oder geistig-seelische Schmerzen oder Leiden zugefügt werden, um von ihr oder einem Dritten eine Aussage oder ein Geständnis zu erzwingen, sie für ein tatsächlich oder mutmaßlich von ihr oder einem Dritten begangene Tat zu bestrafen, sie oder einen Dritten einzuschüchtern oder zu nötigen oder eine andere auf Diskriminierung gleich welcher Art beruhende Absicht zu verfolgen, sofern solche Schmerzen oder Leiden von einem Angehörigen des öffentlichen Dienstes oder einer anderen in amtlicher Eigenschaft handelnden Person, auf deren Veranlassung, mit deren Zustimmung oder mit deren stillschweigendem Einverständnis vorgenommen werden. Nicht darunter fallen Schmerzen oder Leiden, die

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[7] Nach dem neuesten Bericht von Amesty International vom September 1987 ist die UNO Konvention am 26. Juni 1987 in Kraft getreten. Vgl. auch den Bericht in: VN 4/1987, S. 141: Danach ist die erforderliche 20. Ratifikation am 27. Mai durch Dänemark erfolgt. Bislang haben ratifiziert: Ägypten, Afghanistan, Argentinien, Belice, Bjelo Rußland, Bulgarien, Dänemark, Frankreich, Kamerun, Mexiko, Norwegen, Philippinen, Schweden, Schweiz, Senegal, Sowjetunion, Uganda, Ukraine, Ungarn, Uruguay und jetzt zum Schluß Dänemark. Gleichzeitig traten auch die Bestimmungen der Art. 21 und 22 hinsichtlich des Staaten- und des Individualbeschwerdeverfahrens in Kraft; unterworfen haben sich die folgenden sechs Vertragsstaaten: Argentinien, Dänemark, Frankreich, Norwegen, Schweden und die Schweiz.

sich lediglich aus gesetzlich zulässigen Zwangsmaßnahmen ergeben, diesen anhaften oder als deren Nebenwirkung auftreten."

Die "anderen grausamen, unmenschlichen oder erniedrigenden Behandlungen oder Strafen", die für die Zustände in den Gefängnissen bedeutsam sind, werden in der Konvention nicht begrifflich präzisiert.[a] Im Art. 1, der den Zweck und Anwendungsbereich der Konvention regelt, werden sie im Gegensatz zu Art. 1 II der Erklärung gegen Folter bewußt nicht genannt. Die Konvention enthält vorrangig Regelungen gegen die Folter. Lediglich in Art. 16 werden die Vertragsstaaten verpflichtet, in ihrem innerstaatlichen Hoheitsbereich Vorkehrungen gegen die unterhalb der Folterschwelle liegenden inhumanen Maßnahmen zu treffen, wie Aufklärung, Ausbildung von Exekutivbeamten, Untersuchungen oder Rechtsschutz (Art. 10 - 13 in Verbindung mit 16 Abs. 1). Die übrigen Regelungen der Konvention befassen sich ausschließlich mit dem Folterbegriff im Sinne von Art. 1 I.

b) Regelungskomplexe

Die Konvention enthält im wesentlichen drei Regelungskomplexe: Die Staaten werden erstens dazu verpflichtet, im innerstaatlichen Bereich Schutzvorkehrungen gegen die Folter einzuführen (Art. 2, 4, 5, 10, 11, 12 und 16) und im zwischenstaatlichen Verkehr auf einen effektiven Schutz vor Folter zu achten (Art. 3, 6 - 9). Der Schwerpunkt liegt hierbei in der Sicherstellung der Strafverfolgung des mutmaßlichen Folterers (Art. 4 - 9). Zu diesem Zweck führt die Konvention das Weltrechtsprinzip hinsichtlich der Folterhandlungen ein (Art. 4 - 8), d.h. die Staaten haben Folter auf normativer Ebene strafrechtlich zu sanktionieren (Art. 4 f.) und mutmaßliche Folterer strafrechtlich zur Verantwortung zu ziehen (Art. 6 f.). Befindet sich auf seinem Hoheitsgebiet eine Person, die in einem anderen Staat Folterungen im Sinne von Art. 1 Abs. 1 verübt hat, so hat der Vertragsstaat diese entweder zum Zwecke der Strafverfolgung auszu-

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[a] Zur Abgrenzung dieser Maßnahmen vom Folterbegriff vgl. Europäischer Gerichtshof Menschenrechte, EuGRZ 1979, 149 Nordirland-Fall.

liefern (Art. 6) oder selbst ein Strafverfahren durchzuführen (Art. 7 I) ("Aut dedere aut judicare"). Folterer sollen keinen sicheren Zufluchtort mehr haben. Detaillierte, den zwischenstaatlichen Auslieferungsverkehr betreffende Regelungen in Art. 6 - 8 sichern diesen Zweck. Im innerstaatlichen Bereich sind die Vertragsstaaten des weiteren verpflichtet, wirksame gesetzgeberische, administrative, gerichtliche oder sonstige Maßnahmen gegen Folterungen zu treffen (Art. 2 I), bei der Ausbildung von Vollzugsbeamten und vergleichbaren öffentlichen Bediensteten das Folterverbot zu behandeln und dieses in die entsprechenden Dienstvorschriften aufzunehmen (Art. 10) sowie die für Verhöre geltenden Vorschriften und Methoden und die den Gewahrsamsvollzug regelnden Bestimmungen einer regelmäßigen Überprüfung zu unterziehen (Art. 10) und unverzüglich unparteiische Untersuchungen durchzuführen, wenn hinreichender Grund zu der Annahme besteht, daß Folterungen begangen wurden (Art. 12). Schließlich dehnt Art. 16 diese Verpflichtung auch auf die unterhalb des Folterbegriffes liegenden inhumanen Maßnahmen aus.

c) Opferschutz

Der zweite Regelungskomplex enthält Bestimmungen zum Schutz der Folteropfer: Art. 13 gewährleistet, daß jeder, der angibt, gefoltert worden zu sein, ein Recht auf Durchführung einer unparteiischen Prüfung seines Falles durch die Behörden hat. Dies gilt auch im Falle der anderen inhumanen Maßnahmen (vgl. Art. 16 I 2). Folteropfern ist Entschädigung und eine möglichst vollständige Rehabilitation zu gewähren (Art. 14). Durch Folter erpreßte Aussagen dürfen in keinem Verfahren als Beweis verwendet werden (Art. 15). Das Beweisverwertungsverbot (Art. 15) und der Rehabilitationsanspruch (Art. 14) sind im Art. 16 I 2, der die Reglungen hinsichtlich der Folter "mutatis mutandis auch für andere Formen der grausamen unmenschlichen oder erniedrigenden Behandlung oder Strafe" gelten läßt, nicht aufgezählt. Durch die Verwendung des Wortes "mutatis mutandis"(insbesondere) in Art. 16 I 2 wird jedoch der lediglich beispielhafte Charakter der aufgezählten Verweisungen deutlich. Damit ist klargestellt, daß das Beweisverwertungsverbot und der

Rehabilitationsanspruch auch in Fällen der anderen inhumanen Maßnahmen Anwendung findet. Schließlich untersagt Art. 3 I die Ausweisung, Abschiebung oder Auslieferung einer Person in einen anderen Staat, wenn schwerwiegende Gründe die Annahme rechtfertigen, daß sie dort Gefahr liefe, gefoltert zu werden. Dieses Verbot bezieht sich nicht auf die anderen inhumanen Maßnahmen.

d) Kontrollverfahren

Der dritte Regelungsbereich der Konvention betrifft das Kontrollverfahren (Art. 17 - 24). In den sieben Jahren währenden Beratungen war dies der am kontroversesten diskutierte Fragenkomplex. Art. 17 I sieht die Errichtung eines aus zehn Sachverständigen bestehenden Ausschusses gegen Folter vor. Diesem obliegt die Prüfung der Staatenberichte (Art. 19), die Untersuchung von Folterungen (Art. 20) sowie die Prüfung von Individual- und Staatenbeschwerden in den jeweils dafür vorgesehenen Verfahren (Art. 21 und 22). Das Kontrollverfahren der Konvention lehnt sich damit an die im Völkervertragsrecht üblichen Rechtschutzmechanismen an, greift jedoch zusätzlich mit Art. 20 auf Elemente des Kontrollverfahrens des Wirtschafts- und Sozialrates (ECOSOC) zurück.

Das Verfahren der Staatenbeschwerde (Art. 21) und das Individualbeschwerdeverfahren (Art. 22) sind fakultativ (vgl. Art. 21 I; 22 I). Die Vertragsstaaten müssen bei der Ratifikation demnach eine ausdrückliche Erklärung dahingehend abgeben, daß sie die Zuständigkeit des Ausschusses insoweit anerkennen; insbesondere müssen sie dessen Prüfungskompetenz ausdrücklich auf Staatenbeschwerden hinsichtlich ihres eigenen Hoheitsbereiches (Art. 21 I 2) bzw. im Hinblick auf Beschwerden ihrer Hoheitsgewalt unterstehender Personen (Art. 22 I 2) ausdehnen. Im Rahmen des Staatenbeschwerdeverfahrens kann auch eine ad hoc-Schlichtungskommission tätig werden und Bemühungen zur gütlichen Einigung unternehmen (Art. 21 Ie). Es wird eingewandt, das Kontrollverfahren der Konvention könnte in Konflikt geraten mit dem Kontrollsystem des Paktes über bürgerliche und politische Rechte des Übereinkommens gegen Rassendiskriminierung und der

Europäischen Menschenrechtskonvention.[9] Derartige Konkurrenzprobleme können im Individualbeschwerdeverfahren grundsätzlich nicht auftreten, da nach Art. 22 Va der Ausschuß sich erst dann mit der Beschwerde befassen darf, wenn er sich Gewißheit verschafft hat, daß diese Sache nicht bereits von einer anderen internationalen Untersuchungs- oder Schlichtungsinstanz geprüft wurde oder geprüft wird. Da eine vorherige Prüfung der Beschwerde durch ein anderes völkerrechtliches Organ und somit die Zuständigkeit des Ausschusses für dieselbe Sache ausschließt, können insoweit auch keine unterschiedlichen Entscheidungen vorkommen.

Das Untersuchungsrecht des Ausschusses nach Art. 20 ist nicht abhängig von einer Staaten- oder Individualbeschwerde. Vielmehr kann der Ausschuß von Amts wegen Untersuchungen einleiten, wenn er durch Nichtstaatliche Organisationen (NGO's) z. B. wie Internationale Vereinigung Demokratischer Juristen (IVDJ) Internationale Juristen-Kommission oder Amnesty International verläßliche Informationen erhält. Das Recht zur Veröffentlichung der Untersuchungsergebnisse ist nicht von der Zustimmung des betreffenden Staates abhängig. Vielmehr ist diese lediglich vorher darüber zu informieren (Art. 20 V 3).

Der Fortschritt der Folterkonvention in der völkerrechtlichen Rechtsentwicklung, sowohl was die normative Seite des Inhalts des Folterverbotes als auch das Kontrollverfahren anlangt, wird in der Kritik sehr verhalten beurteilt. Was die Anerkennung des Weltrechtsprinzips anlangt, wird behauptet, daß dieses für die Vertragsstaaten der Europäischen Menschenrechtskonvention schon länger geltendes Recht sei. Hier seien zudem eindeutig auch die anderen inhumanen Maßnahmen einbezogen.

Gerügt wird, daß die Folterdefinition in Art. 1 I sehr eng gefaßt sei, so daß Übergriffe Dritter, welche der Staat tatenlos hinnimmt und dadurch zugleich den Betroffenen den erforderli-

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[9] Vgl. Maier, Vereinte Nation 1985, S. 2 f.

chen Schutz versagt, nur mit Mühe subsummiert werden könnten. Besonders bedenklich sei Art. 1 I 2, der nach innerstaatlichem Recht "gesetzlich zulässige Zwangsmaßnahmen" aus dem Anwendungsbereich der Folterdefinition ausschließe. Beim Kontrollverfahren wird gerügt, daß dieses kein Schutz für den besonders prekären ersten Zeitraum nach der Verhaftung biete. Es müsse sichergestellt sein, daß Personen wie Ärzten, Anwälten und Familienangehörigen Zugang zu den Häftlingen gewährt wird und die Gefangenen an öffentlich bekannten Orten festzuhalten und ihre Namen und der Haftort in einem Zentralregister einzutragen sind, wie es zum Teil der Entwurf eines Fakultivprotokolls vorsieht, das von Costa-Rica mit Unterstützung von Panama, Barbados und Nicaragua eingebracht wurde. Die Behandlung dieses Entwurfes ist aber bislang innerhalb der UNO zurückgestellt worden.

Es fragt sich bei dieser Kritik, ob nicht evtl. doch das anhand des Art. 3 der europäischen Menschenrechtskonvention durch die Rechtsprechung entwickelte Schutzsystem effektiver ist. Dies soll im folgenden am Gang der Staatenbeschwerde gegen die Türkei geprüft werden.

II. Das Staatenbeschwerdeverfahren gemäß der ERMK gegen die Türkei, insbesondere der Zustand nach der gütlichen Einigung im Dezember 1985.

1. Das bisherige Verfahren gegen die Türkei

Die Türkei ist bislang von den genannten völkerrechtlichen Vereinbarungen nur der europäischen Menschenrechtskonvention und dem ersten Zusatzprotokoll am 18.5.1954 beigetreten. Insofern sind in unserem Zusammenhang sowohl die materiellen Regelungen (hier Art. 3 EMRK) als auch die Schutzbestimmungen besonders wichtig. Allerdings ist darauf hinzuweisen, daß das völkerrechtliche Folterverbot als jus cogens-Satz für die Türkei auch verbindlich wäre, wenn sie die Europäische Menschenrechtskonvention nicht ratifiziert hätte. Anders gilt allerdings für ein wie auch immer geartetes Schutzsystem, das nur durch Vereinba-

rung und innerstaatliche Transformation (z. B. Ratifikation) verbindlich wird.

Neben der Individualbeschwerde (gem. Art. 25 EMRK)[10] kennt die EMRK die Staatenbeschwerde gem. Art. 24. Durch Vermittlung des Generalsekretärs des Europarates kann jeder Vertragsstaat die Kommission ersuchen, sich mit einer von ihm behaupteten Verletzung der Bestimmungen der EMRK durch einen anderen Vertragsstaat zu befassen. Gestützt auf diese Regelung hatten die Konventionsstaaten Frankreich, Niederlande, Schweden, Dänemark und Norwegen am 1. Juli 1982 ein derartiges Verfahren gegen die Türkei in Gang gesetzt. Beschwerdegegenstand war die Verletzung von Konventionspflichten der Türkei im Zeitraum vom 12. September 1980 bis zum 1. Juli 1982. Die Beschwerdeführer hatten Verstöße gegen das Folterverbot (Art. 3 EMRK), die Freiheitsgarantien des Art. 5, die Prozeßgarantien des Art. 6 sowie Verstöße gegen die Art. 9 - 11 EMRK vorgetragen. Außerdem rügten sie, daß die Türkei ihren Verpflichtungen aus Art. 15, der die Außerkraftsetzung bestimmter Normen der EMRK im Ausnahmezustand vorsieht, allerdings nicht das Folterverbot des Art. 3, nicht nachgekommen sei.

Wegen der Hoffnung auf eine gewisse Liberalisierung in der Türkei nach Wiedereinrichtung einer Zivilregierung, aber auch wegen zunehmenden wirtschaftlichen Engagements von Staaten Westeuropas in der Türkei nach der grundlegenden Liberalisierung der türkischen Wirtschaftspolitik durch Ministerpräsident Özal - dies betrifft insbesondere die Bundesrepublik Deutschland - endete das Verfahren nach Art. 24 EMRK mit einer gütlichen Einigung gem. Art. 28b EMRK am 7. Dezember 1985. Zudem gab es ei-

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[10] Art. 25 sieht allerdings vor, daß eine Individualbeschwerde nur möglich ist, wenn der betreffende Staat eine Erklärung abgegeben hat, wonach er die Zuständigkeit der Kommission auf diesem Gebiete anerkennt. Die Türkei hat gegenüber dem Generalsekretär des Europarates am 29.1.1987 erklärt, daß sie das Individualbeschwerderecht gemäß Art. 25 EMRK anerkenne. Allerdings hat sie die Anerkennung unter den Vorbehalt des Vorranges der Türkischen Verfassung gestellt. Dies ist unzulässig. Theoretisch bestehen zwei Möglichkeiten: Es liegt völkerrechtlich keine Erklärung gemäß Art. 25 EMRK vor oder der Vorbehalt ist "nichtig".

nige prozessuale Hindernisse, die ein Erfolg der Staatenbeschwerde fraglich machten. Das hätte insbesondere gegolten, wenn das Verfahren bis zum Europäischen Gerichtshof für Menschenrechte getrieben worden wäre. Denn dessen Rechtsprechung hat sich die Türkei entsprechend Art. 46 EMRK noch nicht unterworfen. Außerdem waren Vorgänge nach dem Juli 1982, die besonders interessierten, nicht einbezogen. Hier zeigt sich schon die Schwäche des Europäischen Schutzsystems, das zumindest dem in der UNO-Kommission vorgesehenen nicht überlegen sein dürfte, wie oft behauptet wird. Es kommt auch beim Verfahren nach EMRK auf die Mitwirkung des betroffenen Staates an. Im Rahmen dieser Vereinbarung - und dies interessiert hier ganz besonders - wurden Maßnahmen und das weitere Vorgehen vereinbart, die auf das künftige Ausbleiben von Verletzungen des Folterverbots hinwirken sollten.

Gem. Absatz A.1 der Vereinbarung soll dem türkischen Staatskontrollrat die Aufgabe übertragen werden, alle staatlichen Behörden im Hinblick auf die Einhaltung des Art. 3 EMRK zu überprüfen. Hierzu gehören vor allem die Militär- und zivilen Gefängnisse und die Polizeistationen. Abgesehen, daß hier nur das Versprechen für eine innerstaatliche Kontrolle vorliegt, ist es nicht ganz unbestritten, ob die im Hinblick auf sämtliche Gewährleistungen der EMRK, aber insbesondere hinsichtlich des Folterverbotes, besonders fragwürdigen Militärhaftanstalten von der Kontrollbefugnis des Staatskontrollrates mit umfaßt sind.[11] Außerdem wurde der Türkei eine Berichtserstattungspflicht auferlegt. "Die Regierung der Türkei wird auf der Grundlage des Art. 57 EMRK am 1. Februar 1986, 1. Juli 1986 und 1. Oktober 1986 der Menschenrechtskommission über den Generalsekretär des Europarates über die Maßnahmen berichten, die das interne Recht und die interne Praxis der Türkei die wirksame Anwendung des Art. 3 der Konvention (einschließlich der Haftbe-

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[11] Vgl. hierzu Christian Rumpf, Die gütliche Einigung im Staatenbeschwerdeverfahren gegen die Türkei. Zugleich Anmerkung zum Bericht der europäischen Kommission für Menschenrechte vom 7. Dezember 1985, in: EuGRZ 1986, S. 177 ff. (180 f.).

dingungen und -verfahren) sicherstellen. Jeder Bericht dient lediglich der Information der Menschenrechtskommission und soll nicht zu anderen Zwecken verwendet werden." (A 2)

Die Berichte sind inzwischen erstattet worden, aber so wie es vorgesehen war, nur der Menschenrechtskommission zugänglich gemacht worden. Informationen in die öffentlichkeit drangen nur aus zweiter Hand. In der gütlichen Einigung ist vorgesehen, daß auf der Grundlage des Berichtes jeweils ein Dialog zwischen der Menschenrechtskommission und der Vertreter der Türkei stattzufinden hat. Auch dieser Dialog hat stattgefunden, ohne daß allzuviel in die öffentlichkeit gedrungen ist. Inzwischen ist auch der am 1. Februar 1987 vorgesehene "kurze Schlußbericht über die Anwendung dieser Vereinbarung von den Teilnehmern des Dialoges erstellt und im Sekretariat der Kommission den Vertretern der an der Konvention beteiligten vertragsschließenden Parteien zur Verfügung gestellt" (A 5) worden. Auch dieser Bericht ist nicht veröffentlicht worden, so daß man auf Mutmaßungen angewiesen ist. Die Fälle möglicher Folterpraktiken (Anzahl, Ort, Umstände etc.) sind ebenso wenig bekannt, wie die von der türkischen Regierung behaupteten Abhilfen. Vor allem weiß man nichts darüber, in welcher Form und mit welchem Erfolg die Menschenrechtskommission "effiziente Menschenrechtsverwirklichung" betrieben hat, welches ja das Ziel der gütlichen Einigung und der vereinbarten Geheimhaltung war. Insofern ist man auf "private und eigene" Recherchen angewiesen, um sich von der Situation in der Türkei ein Bild zu machen.

2. Zur gegenwärtigen Situation in der Türkei hinsichtlich noch bestehender Folterpraktiken und unmenschlicher Haftbedingungen

Das Überprüfungsverfahren durch die Menschenrechtskommission hat also unter Ausschluß der öffentlichkeit stattgefunden. Das mag man bedauern. So war es aber in der gütlichen Vereinbarung zwischen der Türkei und den beschwerdeführenden Staaten bzw. der Kommission vereinbart. Die Geheimhaltung verfolgte den gleichen Zweck, dem auch der Verzicht auf die weitere Durchfüh-

rung des Staatebeschwerdeverfahrens zugunsten der gütlichen Vereinbarung vom Dezember 1985 dienen sollte, wie die beschwerdeführenden Staaten verlauten ließen. Es sollte der Türkei keine Verfahrensniederlage beigebracht werden. Hauptziel sei es vielmehr gewesen, auf die Türkei in effizienter Weise im Hinblick auf die Herstellung konventionsgerechter Zustände hinzuwirken.

Wenn faktisch in den Zeiträumen nach der gütlichen Vereinbarung vom Dezember 1985 konventionsgerechte Zustände, insbesondere bezüglich des Folterproblems und der Schlechtbehandlung von Gefangenen eingetreten wären, könnte dieser Arkan-Mechanismus kaum gerügt werden. Zwar hätte man ebenso nach stichhaltigen Gründen dafür gesucht, weshalb die öffentlichkeit sowohl die Nachweise für noch bestehende Folterpraktiken und Schlechtbehandlung von Gefangenen vorenthalten werden. Noch stärker hätte dies das Vorenthalten der Nachweise über einen eventuellen Abbau dieser Praktiken betroffen. Eine an der effektiven Beseitigung interessierte Regierung in der Türkei hätte einen öffentlichkeitsdruck als hilfreich betrachten müssen, zumal wenn sie auf relativ unabhängige Gruppierungen verweist, die für die behaupteten Folterpraktiken und Schlechterbehandlungen verantwortlich seien. Dies hatte die türkische Regierung immer wieder hilfsweise eingewandt. Aber all diese Fragen wären angesichts des faktischen Erfolges zurückzustellen gewesen. Sie tauchen mit Vehemenz wieder auf, wenn sich an der Folterrealität und der Realität der Schlechtbehandlung von Gefangenen in Gefängnissen und Polizeistationen nichts Wesentliches geändert haben sollte.

Es ist nicht Aufgabe dieses Referates, die konkrete Situation in der Türkei hinsichtlich Folterpraxis und Schlechtbehandlung von Gefangenen im einzelnen zu untersuchen. Es gibt aber genügend Hinweise in der türkischen und internationalen öffentlichkeit, die auf ein Fortbestehen der Folterpraxis in der Türkei schließen lassen, um es einmal vorsichtig auszudrücken. So hat das Hamburger Informationsbüro Türkei sog. Gegenberichte, inzwischen drei, herausgebracht, die das widerlegen wollen, was

über die drei Berichte der türkischen Regierung an die Menschenrechtskommission in die Öffentlichkeit gesickert ist. Diese Berichte sammeln die in der türkischen Presse veröffentlichten Hinweise auf schwere Menschenrechtsverletzungen, insbesondere Folter und Schlechtbehandlung von Gefangenen. Seit der Gründung des Menschenrechtsvereins in der Türkei Ende 1986 werden auch dessen Recherchen aufgenommen, an deren Zuverlässigkeit kaum Zweifel bestehen. Das trifft insbesondere für den 60-seitigen Bericht der IHD über den Zustand der türkischen Gefängnisse zu.

Wichtiges Material liefert auch der letzte Amnesty-International-Bericht von 1987. So wird z. B. von einem nach wie vor bestehenden Folterzentrum im Polizeihauptquartier von Ankara berichtet. Das wäre ein wichtiger Hinweis auf nicht nur zufällig auftretende Folterpraktiken, wie sie die türkische Regierung bisweilen einräumt, sondern auf systematisch betriebene Folter, die immer wieder bestritten wird. Erwähnenswert sind in diesem Zusammenhang Berichte über mobile Foltereinsätze von als Zivilpersonen getarnte Polizisten.

Noch ein anderer wichtiger Hinweis. Die Asylrechtsprechung der Bundesrepublik Deutschland, die man nach ihrer vom Bundesverwaltungsgericht geprägten Grundtendenz als türkeifreundlich, und zwar im Sinne des gegenwärtigen Regimes, bezeichnen kann, will Folterpraktiken und Schlechtbehandlung in Gefängnissen für den Zeitraum nach Dezember 1985 nicht ausschließen.

Wie gesagt, es ist nicht Aufgabe, im Rahmen dieses Referates eine sorgfältige Beweisaufnahme vorzunehmen. Das ist von anderen Referenten und evtl. durch Vorstellung und Vernehmung von Zeugen zu leisten.

Soviel läßt sich jedenfalls bei einer verhältnismäßig oberflächlichen Würdigung des vorliegenden Materials sagen. Ein hinlänglich begründeter Verdacht, daß nach wie vor konventionswidrige Zustände, aber auch Zustände, die dem Völkerrechtsgewohnheitssatz des Folterverbotes und der unmenschlichen Behand-

lung von Gefangenen widersprechen, nach wie vor bestehen, kann nicht ausgeschlossen werden. Berücksichtigt man diese Ergebnisse, so müssen die zurückgestellten Fragen wieder aufgenommen werden. Es bestehen daher massive Zweifel an der Effektivität des in der gütlichen Vereinbarung getroffenen geheimen Überprüfungsverfahrens durch die Europäische Menschenrechtskommission. Zum Schluß sollen daher einige Überlegungen angestellt werden, wie evtl. ein besserer Schutz erreicht werden kann.

III. Überlegungen zu einer Verbesserung des Schutzverfahrens.

1. Die türkische Regierung ist sehr daran interessiert, daß die Beziehungen der Türkei zur Europäischen Gemeinschaft im Sinne des Assoziierungsabkommens wieder völlig hergestellt werden, ja daß darüber hinaus sie die Möglichkeit erhält, volles Mitglied der Europäischen Gemeinschaft zu werden. Erklärungen wie die des Europäischen Parlamentes vom Dezember 1986, in denen von zuverlässigen Quellen gesprochen wird, aus denen zu entnehmen sei, es bestehe weiterhin eine verbreitete Folterpraxis in Gefängnissen und insbesondere in Polizeirevieren, sind für die türkische Regierung mehr als störend. Sie behauptet demgegenüber immer wieder, die Lage hätte sich in den letzten zwei Jahren so verbessert, daß man auf keinen Fall mehr von verbreiteter und systematischer Folterpraxis und Schlechtbehandlung von Gefangenen in Gefängnissen und Polizeirevieren sprechen könne. Man sollte daher die türkische Regierung beim Wort nehmen und von ihr die "freiwillige" Übernahme von Maßnahmen fordern, die eine Effektivierung des Schutzsystems beabsichtigen, ohne den berechtigten Souveränitätsanspruch der Türkei in Frage zu stellen.

2. Folgende Möglichkeiten könnten avisiert werden:

a) Die türkische Regierung sollte möglichst schnell die schon erwähnte Erklärung nach Art. 25 der EMRK und zwar ohne Vorbehalte abgeben bzw. ihren Verfassungsvorbehalt, den sie mit der Erklärung vom Januar 1987 gemacht hat, zurücknehmen. Diese Erklärung hätte nicht nur Bedeutung für das Individualbeschwerde-

verfahren, sondern würde auch weitere Staaten beschwerdeverfahren erleichtern und diejenigen Hindernisse ausräumen, die zum Teil zur wenig wirksamen gütlichen Vereinbarung vom Dezember 1985 geführt haben.

b) Die türkische Regierung sollte sich damit einverstanden erklären, daß ihre Berichte an die Menschenrechtskommission im Rahmen der gütlichen Vereinbarung vom Dezember 1985 ebenso veröffentlicht werden wie der Schlußbericht der Menschenrechtskommission vom Februar 1987.

c) Wie oben ausgeführt, enthält die UNO-Konvention zum Verbot der Folter präzise Bestimmungen über ein Schutzsystem zur Verwirklichung des Folterverbotes. Man mag die Unzulänglichkeit dieses Systems kritisieren. Es ist aber das bislang einzige in einem multilateralen Vertrag Vereinbarte und bislang liegen keine Hinweise vor, das es weniger effektiv sein könnte, als das gerichtlich entwickelte Schutzsystem der Europäischen Menschenrechtskonvention. Das gilt sowohl für das Individualbeschwerdeverfahren, als auch für die Staatenbeschwerden. Gerade die Erfahrungen mit der Türkei im Rahmen der gütlichen Vereinbarung sollten mäßigend auf eine allzu scharfe Kritik an den Reglungen der UNO-Konvention wirken. Diese Kritik geht zum Teil an der Realität des z. Zt. in den internationalen Beziehungen Möglichen vorbei.

Da die UNO-Konvention inzwischen rechtsverbindlich geworden ist, wäre eine Ratifizierung dieser Konvention und ihres Fakultativprotokolls durch die Türkei ein großer Fortschritt. Das dort vorgesehene Untersuchungsverfahren dürfte wirksamer sein, als das in der gütlichen Vereinbarung vom Dezember 1985 vorgesehene.

d) Es wurde schon darauf hingewiesen, daß einige Staaten einen Entwurf vorgelegt haben, der ein wirksameres Schutzsystem hinsichtlich des Folterverbotes vorsieht. Die Beratung dieses Entwurfes im Rahmen der UNO wurde jedoch zurückgestellt, bis die UNO-Konvention zum Folterverbot verwirklicht worden sei. Da

dies inzwischen erfolgt ist, dürften die Beratungen bald wieder aufgenommen werden.

Im September 1983 hat die parlamentarische Versammlung des Europarates den Entwurf einer Europäischen Konvention über den Schutz inhaftierter Personen vor Folter und grausamer, unmenschlicher oder entwürdigender Behandlung oder Strafe verabschiedet, der sich weitgehend an dem Entwurf orientiert, der zur Beratung im UNO-System vorgesehen ist. Die Versammlung hat diesen Entwurf dem Ministerkomitee der EG übergeben und ihm empfohlen, den Entwurf anzunehmen. Die Beratungen hierüber sind noch nicht abgeschlossen. Der Kern des Entwurfes besteht darin, daß ein System nicht angekündigter Besuche an Inhaftierungsorten zum Schutz der Häftlinge gegen Folter oder grausame, unmenschliche oder entwürdigende Behandlung oder Strafe eingerichtet würde. Das ist in der Tat eine effektive Maßnahme zur Zurückdrängung von Folterpraktiken, und zwar in den entscheidenden Zeiträumen unmittelbar nach der Verhaftung. Wo jederzeit mit einer Überprüfung gerechnet werden muß, kann sich Folterpraxis als System nicht halten.

All diese Vorschläge liegen bis jetzt lediglich im Entwurfsstadium vor. Es wird wohl noch längere Zeit bis zum Stadium der Verbindlichkeitsverfahren, wie sie immerhin die zugegebenermaßen weniger effektiven Reglungen der UNO-Konvention erreicht haben, dauern. Es spricht jedoch nichts dagegen, daß die türkische Regierung ihrerseits gegenüber der Menschenrechtskommission erklärt, ein derartiges Schutzsystem für sich zu akzeptieren. Eine derartige Akzeptanz wäre dies die wirksamste Art, um alle Vorwürfe aus der Welt zu schaffen, die nach den Vorstellungen der türkischen Regierung unberechtigt und unbewiesen gegen die Türkei erhoben werden. Warum sollten die EG-Staaten eine Bereitschaft der Türkei, Schutzmechanismen zu akzeptieren, nicht als Vorbedingung für Reaktivierung des Assoziierungsmechanismus oder weitergehender Aufnahmeschritte fordern?

3. Zugegeben, es spricht in der gegenwärtigen Realität der internationalen Beziehungen, insbesondere der Beziehungen der EG-Staaten zur Türkei, wenig dafür, daß diese Vorschläge verwirklicht werden können. Zwei Gründe für diese Skepsis sollen genannt werden:

Zum einen haben sehr viele Staaten der EG die internationalen Vereinbarungen über das Folterverbot und das Verbot unmenschlicher Gefangenenbehandlung, deren Ratifizierung und Einhaltung von der Türkei zu fordern wäre, selbst nicht gezeichnet oder ratifiziert. Das gilt z. B. für die BRD hinsichtlich der UNO-Konvention zum Folterverbot. Es gibt auch einige Staaten der EG, die gegenüber einer Erklärung im Sinne des Art. 25 EMRK die gleiche Zurückhaltung üben wie die Türkei. Wie soll man sich da des Vorwurfes erwehren können, man sehe den Splitter im Auge des Gegners, übersehe aber den Balken im eigenen Auge.

Ein zweiter Grund für die Skepsis kann angeführt werden. Es ist eine Interessen- oder sogar Komplizenschaft zwischen einigen EG-Staaten und der Türkei festzustellen. Diese EG-Staaten möchten die Effektivität der Handels- und Kapitalbeziehungen, die sich nach der Liberalisierung der Wirtschaftsbeziehungen im Sinne des strengen Monitarismus entwickelt haben, nicht durch allzu starken Druck mit Demokratieforderungen gefährden. Private Profitmaximierung hat ihren Preis, u. a. in der Arbeitslosigkeit und in Verarmungstendenzen für weite Kreise der Bevölkerung. Wenn man diese Phänomene an die Peripherie Westeuropas verbannen kann, umso besser. Dann nimmt man auch diktatorische Praktiken, selbst wenn sie Folter und unmenschliche Behandlung von Gefangenen beinhalten, in Kauf.

Die genannten Gründe deuten gleichzeitig die harte Grenze für die Realisierung völkerrechtlicher Normen an. Hier endet auch die Kompetenz des Völkerrechtlers. Immerhin kann er feststellen, daß nicht das juristische Instrumentarium fehlt, um Menschenrechte in die gesellschaftliche Wirklichkeit umzusetzen. Woran es mangelt, ist politischer Umsetzungswillen.

RAPPORT PRESENTE PAR

Professeur ERIK SIESBY

Commission 1

Structure juridique actuelle de la Turquie

The Framework for Democracy and Human Rights in Turkish Law

By Erik Siesby

The Turkish Constitution of 1982.

A constitution alone cannot create a pluralistic democratic society. A constitution is a framework within which a democracy may or may not develop depending upon many other factors such as the cultural tradition, the political situation and the behaviours of the economic and military power centers in that society. A constitution may, however, be more or less suitable as a framework for a democratic development. The following brief study of the Turkish constitution is an attempt to evaluate its qualities from that point of view.

A country where the majority imposes its will upon the minorities without regard to other values and wishes than its own is far from the democratic ideal of the Western civilization. A true democracy requires a degree of mutual respect among parties of opposing views just as it requires respect for the rights of minorities and individuals.

The constitution of 1982 is the legal structure within which a democratic development has taken place during the last five years. Free elections have been held and even though the formation of political parties has been restricted the electors have actually had a choice of parties with different political programs.

The Turkish parliament has, however, realized that certain provisions in the constitution were serious obstacles to the continued democratic development.

Four amendments to the constitution of 1982 which were passed by the Turkish parliament on May 17th this year reflect a new and somewhat more liberal spirit and give hope for the future.

An amendment abolishes the provisional article 4 which excluded former political leaders and several other politicians from participating in political life. This amendment received the necessary approval by the referendum of September 6th in spite of the fact that the government in radio and television urged people to vote against that amendment.

Another amendment facilitates future amendments by changing the amendment procedure so that a three fifths instead of two thirds majority in parliament is sufficient if the amendment is approved by the president and by referendum. Also this amendment received the necessary approval by the referendum of September 6th.

Furthermore the electoral age was changed from 21 to 19 and the number of members of parliament was increased from 400 to 450.

For the sake of a healthy democratic development in Turkey as well as for the sake of human rights it is to be hoped that the present constitution will be amended in several respects.

It must be remembered that the constitution represents the views of the generals who usurped governmental power at a troubled period in Turkey's political life on September 12th, 1980. Several provisions of the constitution seemingly reflect typical military prejudices towards intellectuals and towards popular movements. Thus art. 69 prevents from joining political parties not only judges and prosecutors but also members of the teaching staff of institutions of higher education, members of the council of higher education, employees of public institutions and agencies having the status of civil servants other public servants not regarded as workers on account of the duties they perform, students (sic) and members of the armed forces.

According to art. 76 the same groups shall not stand for election or be eligible as members of the Assembly (parliament) unless they resign from office.

Even more serious are the provisions in the constitution which according to the present government prevent an amnesty for those who are convicted for activities mentioned in art. 14. As will be shown below, after the 12th September, 1980, a large number of intellectuals have been convicted for such activities even though their activities were not punishable according to the interpretation of the penal code prevailing at the time when these activities took place.

Many thousand persons who were employed in the Turkish public sector were under martial law (law no. 1402) after order from the martial commander dismissed from their positions, among them no less than c. 1000 university teachers. The dismissals were discretionary, no reasons were given, and the proper procedure was not followed. These persons have been banned from being employed in the public sector even after the ending of martial law. They have thus been punished without a judicial sentence, without appeal, and without authority in any law except martial law.

The military prejudice against popular movements is reflected in art. 33 which contains narrow limitations of the rights to form associations. Thus for instance an association shall not "pursue political aims, or engage in in political activities". When in 1986 the Turkish Medical Association spoke out against the participation of physicians in the execution of death sentences the state prosecutor initiated court proceedings claiming that the association violated the law by making a political statement! Fortunately the Medical Association has been acquitted recently. If interpreted literally article 33 may be used to prohibit associations the purposes of which were protection of the environment or women's liberation or prevention of cruelty to children. Associations such as those clearly

pursue political aims and have important democratic functions in the Western democracies.

Ethnic Minorities.

The constitution contains a number of provisions which may be interpreted as dealing with the status of ethnic minorities. Thus art. 10 provides that everyone is equal before the law irrespective of language, race, colour, sex, political opinion, philosophical belief, religion, sect or other status. Art. 14 also expressly prohibits the use of rights and freedoms embodied in the constitution with a view to creating discrimination on grounds of language.

Nevertheless art. 26 provides that "no language prohibited by law shall be used to express or disseminate ideas". In order to avoid any misunderstanding art. 28 provides: "Nothing shall be published in a language prohibited by law". (See also art. 42 on language instruction).

The prohibition is found in law no. 2932 of October 19th, 1983, Official Gazette, October 22nd 1983) on the publication in languages other than Turkish. According to art. 2 of that law: "it is prohibited to express and disseminate and publish thoughts expressed in languages other than those which are the first official languages of states recognised by the Turkish state". Exceptions may be made under international treaties to which Turkey is a party and for educational and scientific purposes.

A reader unacquainted with the treatment of Kurds in Turkey and ethnic Turks in Bulgaria will be shocked. Why on earth should a language be prohibited by law? The answer is that as both the Turkish and the Bulgarian official policies have the goal to create a homogenous national population and forced assimilation are in both countries considered to be an effective method to reach the goal. These policies are incompatible with the basic ideology of Western democracies and violate the Helsinki Accords which expressly provides that "States on whose territory national minorities exist

will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere". A person who is not allowed to speak, read, and write the language he learned as a child, his mothertongue, and who is forced exclusively to use a foreign language, may be severely handicapped and cannot be said to have "the full opportunity for the enjoyment of human rights".

The European Convention on Human Rights provides in art. 14 that the rights and freedoms set forth in the convention shall be enjoyed without discrimination on ground of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Art. 14 is meant to protect these minorities by prohibiting discrimination. It follows that these minorities have a right to exist. The Turkish statute which prohibits the Kurdish language is therefore a violation of the European Convention, art. 14.

The prohibition of the Kurdish language furthermore violates art. 39 the Lausanne Treaty of July 24, 1923. Art. 39, which is part of the treaty's section on the protection of minorities, provides: "Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems.

All the inhabitants of Turkey, without distinction of religion shall be equal before the law.

Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries.

No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse,

in commerce, religion, in the press, or in publications of any kind or at public meetings.

Not withstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts". (The reporter's underlinings).

The Turkish legislators apparently have interpreted the provisions of the Lausanne Treaty protecting minorities as referring solely to non- Moslem minorities. That interpretation is not compatible with the wording of the last two paragraphs of art. 39 nor with art. 38 (1):"The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion".

The prohibition against the Kurdish language which is actually practised in Turkey is a violation of treaties to which Turkey is a party and, therefore, also incompatible with the abovementioned Turkish 'law on the publication in languages other than Turkish' as this law expressly makes reservation for such treaties!

Human Rights

A comparison between the provisions in the constitution concerning human rights and the corresponding provisions in the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms will show that the human rights provisions in the Turkish constitution are considerably more restrictive than permissible according to the two international instruments concerning human rights to which Turkey is a party.

Some of the constitution's human rights provisions are specifically restricted in a way which is incompatible with Turkey's international obligations. Thus article 23 concerning freedom of movement and residence provides that a citizen's freedom to leave the country may be restricted "on account of the national economic situation, civic

obligations or criminal investigation or prosecution". Actually more than 300.000 citizens have been refused permission to leave the country.

Art. 23 and the passport law are not compatible with the Universal Declaration of Human Rights art. 13 (2): "Everyone has the right to leave any country including his own, and to return to his country". Not only have Turkish refugees been refused to return to their country. There are cases where young children living abroad have been refused to be reunited with their parents in Turkey. This is clearly a violation of the principle of family reunification in the Helsinki Accords.

Even more important than the specific restrictions on single human rights provision are the general restrictions on human rights according to the constitution's articles 13 - 15.

These three articles permit under certain circumstances restrictions of any human right. That is clearly inconsistent with article 15 of the European Human Rights Convention, which in time of war and public emergency permits measures to be taken which derogate from the Convention, but states expressly that no derogation is permissible from art. 2 (the right of life), art. 36 (prohibition against torture and inhuman or degrading treatment or punishment), and art. 4 (prohibition against servitude and compulsory labour).

Art. 13 of the constitution allows human rights to be restricted by law "in order to safeguard the indivisible integrity of the state with its territory and people, national sovereignty, the Republic, national security, public policy, public order, the public interest, public decency and public health".

Depending upon the interpretation chosen this article may or may not be used to restrict human rights to a greater extent than permissible by the European Human Rights Convention. Art. 13 paragraph two states that general and specific restrictions of human rights "shall not be

inconsistent with the requirements of democracy". It is to be hoped that the Turkish authorities will accept that the obligations which Turkey has undertaken by signing the Universal Declaration of Human Rights and the European Convention on Human Rights are tantamount to "the requirements of democracy". It may, however, be more realistic to fear that Turkish courts will interpret the human rights provisions of the constitution restrictively in conformity with the intentions of its authors.

Art. 14 is perhaps the most alarming restriction of human rights in the constitution. It provides that none of the rights and freedoms in the constitution "shall be exercised with a view to .....ensuring the rule of one social class over the others .....". The underlined words recall the wording of art. 14 in the Turkish penal code, an article which since the coup of September 12th, 1980, has been used extensively by the military courts to punish leaders and members of non- violent political parties, journalists and authors. If the underlined words of art. 14 in the constitution would be interpreted in the way in which the military courts have interpreted art. 141 of the penal code, it would mean a very serious limitation of the political freedom in the country. Furthermore such an interpretation would be an obstacle to the much needed rehabilitation of the many thousand victims of unjust convictions by the military courts, because art. 87 of the constitution provides that no amnesty and pardon shall be given " in respect of persons convicted of offences under Article 14 of the Constitution ...". (The president's power to pardon is according to art. 104 limited to pardons on grounds of chronic illness, invalidity or old age).

Art. 15 allows human rights to be suspended in time of war or mobilisation, under martial law or during state of emergency ....."provided that this is not inconsistent with obligations under international law". This proviso ought to encourage the Turkish judiciary to interpret the article in conformity with the European Convention on Human Rights,

especially as Turkey has accepted that individual citizens may complain over violations of human rights to the European Commission of Human Rights.

Again, it is more likely that the Turkish courts will continue to interpret the human rights provisions of the constitution in the very limited sense in which it was meant by its authors.

It is important to note that according to the constitution's art. 176 "the preamble, which states the basic views and principles underlying the Constitution, shall form an integral part of the Constitution". This preamble contains the words "that no protection shall be offered to thoughts or opinions contrary to Turkish national interests ....". These words confirm the accusations which Western democracies have directed against the administration of justice in Turkey since the coup of September 12th, 1980. The judicial system has been used, not only against political activities using or advocating violence or other in itself illegal means, but against political thoughts, opinions and expressions. Such thoughts and opinions will not, of course, disappear, but will go underground and may in time become much more dangerous to the stability of the country than if the struggle among the various ideologies could take place in the open.

President Evren has been quoted for the following brisk military remark:

> "The purpose of this constitution is not to protect the individuals against the state. The constitution protects the state against the individuals".

The present reporter cannot imagine any more precise characterization of the constitution.

The Penal Code

The Turkish penal code contains a number of provisions which can be used and have been used to stiffle criticism of

the Turkish social system and to oppress political movements.

Articles 159 and 140 endanger the freedom of expression by making certain vaguely defined criticisms of Turkey and its institutions a criminal offence.

According to art. 159 (1) "Whoever overtly insults or vilifies the Turkish nation, the Republic, the Grand National Assembly or the moral personality of the Government or the military or security forces of the State or the moral personality of judicial authorities, or overtly engages in aggressive acts which arouse suspicion about the legitimacy of the Grand National Assembly, shall be punished by imprisonment for one to six years".

If acts of insult or vilification are committed in a foreign country by a Turk, the punishment shall according to art. 159 (4) be increased by not less than one third.

According to art. 140 "A citizen who publishes in a foreign country, untrue, malicious or exaggerated rumours or news about the international situation of the State, so as to injure its reputation or credit in foreign countries or who conducts activities harmful to national interests, shall be punished by heavy imprisonment for not less than five years".

It is deplorable and very revealing that those in power in Turkey should find it necessary to protect their reputation by incriminating critics. The result will inevitably be that opposition and criticism go underground.

According to art. 141 a person shall be punished by heavy imprisonment for eight to fifteen years, if he "attempts to establish or establishes, or arranges or conducts and administers the activities of, societies in any way and under any name, or furnishes guidance in these respects, with the purpose of establishing domination of a social class over other social classes or exterminating a certain social class or overthrowing any of the established basic economic or social orders of the country".

Heavy imprisonment for five to ten years is according to art. 142 the punishment for propaganda for the same political aims.

These provisions date from the Turkish Penal Code of the 1930ies which was inspired by the Italian Penal Code. In 1950 article 141 was amended and given a broader field of application. In the 1950ies this provision was used extensively to suppress left wing political activities.

During the liberal period which followed the Turkish Constitution of 1961 and ended on September 12th, 1980, these activities were considered punishable only if the activities involved violence or recommendation of violence or other in itself illegal means.

After the military coup, September 1980, these articles have been subject to an expansive interpretation. As a result of the retroactive application of this new interpretation, members of several associations which had been established during the liberal period and whose activities ceased at the time of the coup have been convicted according to art. 141 and 142 even though these non-violent associations and activities did not constitute a criminal offence at the time when the associations were established and the activities took place. Well-known examples are the cases against the Turkish Peace Association, the Confederation of Progressive trade Unions DISK, the Teachers Association TOB-DER and the political parties TIKP, TIP and TSIP. Also numerous journalists and authors have received harsh prison sentences for writings which would not have been punishable in any West European democracy.

The fact that the interpretation of art. 141 and 142 changed after the military coup is illustrated by the following account of an incident which occurred during the TIKP trial before the Military Tribunal in Ankara. Some of the defendants had been tried in 1977 for having violated art. 141 by their writings in the periodical "Aydinlik" (the periodical which later on became the mouth piece of TIKP).

They were acquitted. When in the trial against members and leaders of TIKP the prosecutor used the same material the counsel for the defence objected that to use that material against the defendants would violate the principle "ne bis in idem". According to the counsel, advocate Ali Kalan, the prosecutor admitted: "They were acquitted - but that decision is not in conformity with the present understanding of art. 141".

The retroactive application of the new and more rigorous interpretation of such provisions in the penal code is a gross violation of art. 11 (2) of the International Declaration of Human Rights, and art. 7 of the European Convention on Human Rights and Freedoms as well as art. 38 of the Turkish constitution. It has meant that a large number of Turkish intellectuals, authors, journalists, artists, publishers, doctors, lawyers, trade unionists and politicians, a considerable proportion of the intellectual elite of the country have had to spend several years in prison. Even though many of these have now been released in accordance with the recent legislation according to which sentences may be reduced under certain conditions, they will for several years be deprived of civil and political rights. They cannot be elected to the Turkish parliament. Many, will be deprived the right to practise as lawyers or doctors and will be excluded from all official positions within the civil service. Only in exceptional cases will these persons be able to obtain a passport.

The activities for which these persons have been convicted or indicted are not acts of violence or any other ordinary crime as understood in Western European countries, but expressions of political opinions or religious beliefs or the forming of organizations working for such opinions or religious beliefs or the forming of organizations working for such opinions or beliefs. The incrimination of these activities violates art. 19 of the International Declaration of Human Rights and art. 10 of the European Convention on Human Rights and Freedom. Therefore, in order to normalize

the democratic life in the country it will be necessary at least to pardon these persons, many of whom will insist upon being acquitted and compensated for the injustices they have suffered.

Remarks concerning the criminal procedure

The Turkish law of criminal procedure is modelled on the German 'Strafprozessordnung' but functions in practice quite differently. According to art. 19 of the constitution persons arrested or detained shall be brought before a court within 48 hours or in the case of collective offences within 15 days. the period may be extended during a state of emergency, under martial law or in time of war.

As both the Ankara area and the Istanbul area are in a state of emergency and as political offences are normally considered 'collective offences' it is normal in such cases that the detainees may be kept for 30 days before they are brought before a court. During this period neither relatives nor defence lawyers are allowed to visit the detainees and usually the relatives will not be informed about the arrest.

The period when the detainee is in the power of the police is the time when he is most in need of legal assistance. Even though Turkish lawyers claim that art. 136 of the law of criminal procedure give those who are charged with a criminal offence the right of legal assistance the police have consistently refused lawyers to be present during police interrogation. Not until the prosecutor has issued a formal indictment will the accused have access to legal assistance.

According to several well documented reports widespread and a systematic application of torture takes place in police stations especially during police interrogation. It is, therefore, of the utmost importance that detainees should have access to legal assistance while detained by the police and especially during police interrogation. To refuse the detainee legal assistance under

these circumstances is a violation of the European Convention art. 6.

The use of torture is in fact supported by the Turkish courts. Superior Turkish courts have ruled that confessions and testimonies produced by torture are admissible evidence if supported by other evidence.

Officially the Turkish authorities claim that torture takes place only occasionally and that torturers are being prosecuted and convicted.

The Turkish government has not, however, applied the most effective measure against torture, namely to give everybody who is detained by the police access to legal assistance of his own choosing especially during police interrogation and to declare confessions and testimonies obtained by torture inadmissible in Turkish courts. The government has thereby made itself morally responsible for the continued application of torture which is a gross violation of the European Convention art. 3 and the Universal Declaration of Human Rights art. 5.

Deprivation of Nationality

On the 13th February, 1981, the national security council consisting of five generals issued decree no. 2383 according to which the Turkish nationality can be withdrawn from persons who from abroad threatened the security of the Turkish Republic or who by leaving Turkey evaded punishment for such crimes.

An amendment of 21st March, 1981, of the Turkish nationality law provided that the crimes against the security of the Turkish Republic were articles 54-62 and 125-163 of the penal code and certain articles of the military penal code.

As will be seen from this report these articles include articles which by the military courts have been interpreted as incriminating political activities

expressions and opinions which in no way involved violence or other in itself illegal means.

Many Turkish refugees have been deprived of their Turkish nationality because they have refused to return to the country to face prosecution. Those who had reasons to fear unjust convictions in violation of the human rights convention or who could expect torture and degrading punishment had valid reasons for refusing to return. To deprive these persons of their Turkish nationality is a violation of art. 15 (2) of the Universal Declaration of Human Rights.

Freedom of Expression

The Turkish press has been very outspoken recently. Reading a newspaper like Cumhuriet and weekly magazines such as 'Nokta', 'Yeni Gündem' and 'Ikibin'e Dõgru' (Towards Two Thousand) give the impression of a considerable freedom of expression. This is not, however, because of a liberal legislation. On the contrary the press laws and various articles in the penal code enable the authorities to control the press by punishing journalists and editors as well as by preventing the publications. The considerable freedom of the press that can be observed is due to the very great courage shown by writers and editors. The penal code is a constant threat. A few examples will illustrate the conditions under which the journalists are working.

'Towards Two Thousand' No. 3 contained a story about two luxury flats purchased by the daughters of President Evren at the ridiculously low price of 2 mill. Tl. The estimated value at the time was 4-600 mill. Tl. The flats were registered in the names of the daughters. The president's name was not mentioned.

The responsible editor of the magazine, Fatma Yazici was convicted for insulting the president and received a prison sentence of 1 year and 4 months according to art. 158 (2) and (3) of the penal code:

"Whoever uses aggressive language against the President of Turkey in his absence, shall be imprisoned for one to three years.
Where the aggression is done by allusion or hint, without mentioning the name of the President of Turkey, if there is presumptive evidence beyond reasonable doubt that the aggression was directed toward the person of the President of Turkey, the aggression shall be considered as expressly made against the President".

No. 8 of the same magazine contained quotations from Kemal Atatürk's handwritten comments to a new Turkish history book, which was later on published in 1930. These quotations showed Atatürk's agnostic views. Even though the correctness of the quotations were not questioned the responsible editor was prosecuted for "weakening the religious sentiment of the people" which the prosecutor claimed to be punishable according to art. 142 (3) of the penal code.

In an editorial comment to the quotations Dogu Perincek wrote about Kemal Atatürk as both an idol and a burden to the rulers of Turkey. Also Perincek was prosecuted according to art. 142 (3) for 'diminishing Kemal Atatürk's value in the eyes of the people'. Furthermore the prosecutor claimed that art. 1 (1) and art. 2 (1) in law no. 5816, 'The law defending Atatürk' had been violated.

No 35. of the Magazine quoted without any comment a protocol from 1923 wherein Kemal Atatürk's secretary reported Atatürk's speech in which he pronounced his plans to give the Kurds in the South-Eastern region autonomy.

This issue was confiscated from the printing house and the editor was prosecuted.

The press law as amended in 1983 gives the prosecutor authority to prevent the circulation of printed material. The magazine 'Towards Two Thousand' had the honour to be the first publication to be confiscated directly from the printing house.

Security clearance

Another example of the 'mind control' carried out by the Turkish authorities is the demand for security clearance.

Security clearance by the National Intelligence Organization, MIT, or the police is a condition for employment in the public sector (judges, civil servants, teachers, cleaning personnel etc.). The government recommends to private companies to demand their employees to be controlled in this way. Many banks and industries will, therefore, only employ persons after security clearance. More than thousand persons have been refused security clearance as "ideological suspects".

Amnesty

The five countries, France, Norway, Denmark, Sweden and the Netherlands which in 1982 had lodged applications against Turkey before the European Commission of Human Rights reached a settlement in December 1985 according to which the Turkish Government declared:

"As to the issue of Amnesty.

The question of amnesty is of concern to the Turkish Grand National Assembly and to the Government of Turkey. Work on amnesty has been started by the Turkish Government with a view to facilitate, within the framework of the Turkish Constitution, the granting of amnesty pardons or similar measures of leniency. Deliberations are expected to take place in Parliament in the forthcoming months on the basis of initiatives under Article 88 of the Turkish Constitution. The Turkish Government will inform the Commission of developments on this matter".

Until now the Turkish Government has not taken any steps towards amnesty or pardon of those convicted for non-violent political activities, claiming that the Constitution of 1982 does not permit the pardoning of

activities mentioned in art. 14 of the Constitution. It seems that the five applicant countries have been misled by the above statement by the Turkish Government.

The application of provisions in the Constitution of 1982 which excepts persons from the possibility of obtaining pardon for activities which took place before September 12th, 1980, is another example of retroactive applications of a criminal law provision to the detriment of these persons.

The injustices caused by the retroactive application of the rigorous interpretation of the Penal Code by the courts after the military coup in 1980 may to some extent be remedied by repealing the articles in question or by amending these articles so as to conform with the interpretation prevailing until the coup in 1980. Furthermore the victims of these injustices should be compensated for their material and moral sufferings.

The number of persons convicted in violation of the International Declaration of Human Rights and the European Convention on Human Rights and Freedoms amounts to several thousands.

A comprehensive amnesty is called for.

Draft

RESOLUTION

The Conference 'For Democracy and Human Rights in Turkey' called by the international organisation 'Friends of Turkey' held in Assemblée Nationale in Paris November 27-29th, 1987, has adopted the following resolution:

The Conference appeals to all sectors of the Turkish people and the Turkish state to work for reconciliation.

As major and necessary steps towards this goal we regard the following measures:

I. The full respect for human rights as stated in the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as in the Universal Declaration of Human Rights.

II. Redress of the injustices which have taken place since the military coup on September 12th, 1980, and have alienated a large portion of the Turkish population.

In particular we emphasize the following points:

1. Several articles in the Turkish penal code are incompatible with the principles of freedom of thought, conscience and religion, the right to freedom of expression and the rights to freedom of peaceful assembly and to freedom of association as stated in the European Convention articles 9, 10 and 11, and the Universal Declaration of Human Rights articles 18, 19 and 20. This applies in particular to articles 140, 141, 142, 143, 158, 159 and 163 of the Turkish penal code. These articles should be amended or repealed.

2. A great number of active and creative personalities have received prison sentences by the military courts according to the above mentioned articles of the penal code for their activities although these activities were not punishable according to the interpretation of said articles prevailing at the time when they took place. These violations of article 7 of the European Convention and article 11 (2) of the Universal Declaration must be redressed by rehabilitating the victims and by restoring them in their full rights as citizens.

3. The military courts have since the September coup 1980 sentenced many people especially many young persons to long time imprisonments for political crimes. Many of those crimes have been petty offences such as the writings of graffiti with political slogans. In other cases violations of fundamental principles of criminal procedure have been violated. The suspects and accused persons have in many cases been denied access to legal assistance. Convictions have been based upon confessions and testimonies produced by torture. Prosecuted persons have been refused the right to examine witnesses. In order to re-establish confidence in the judicial system among the victims of these violations a general amnesty for all those convicted for political crimes is called for.

4. According to martial law (No. 1402 of May 13th, 1971, with later amendments) a very great number of persons who were employed in the Turkish public sector were ordered by the martial law commanders to be dismissed discretionarily without the proper procedure being followed and normally without any reason for dismissal to be given. Even after the ending of martial law these persons are excluded from being employed in the public sector. This consequence of the dismissal is tantamount to a punishment without a judicial sentence, without appeal, and without authority in any law except martial law. The extension of the dismissal and its consequences after the end of martial law is unjustified. These dismissals should be redressed and the victims be compensated.

5. The limitations of the freedom of Turkish citizens to leave and return to their country violate art. 13 (2) of the Universal Declaration of

Human Rights. The passport law and art. 23 of the Turkish constitution must be amended.

6. The many Turks who have been deprived of their Turkish citizenship because they for political reasons or to avoid persecution have left Turkey should be allowed to regain their citizenship.

7. Even though the Turkish press has in fact in the last few years enjoyed a considerable degree of freedom the Turkish legislation enable the authorities to limit the freedom of expression to a degree incompatible with art. 10 of the European Convention and art. 19 of the Universal Declaration of Human Rights. These laws function as constant threats to the critical press and should be amended.

8. Prohibition of languages of minorities should be abolished.

Horst Isola
Mitglied der Bremischen Bürgerschaft
Bundesvorsitzender der ASJ

19.06.1988

B e r i c h t

über die Türkeireise vom 7.6. bis 12.6.1988

aus Anlaß des Prozesses gegen

Haydar Kutlu und Dr. Nikat Sargin

in Ankara.

II. Internationale Prozeßbeobachtung

Aus Anlaß des ersten Verhandlungstages gegen Kutlu und Sargin waren über 70 ausländische Beobachter, darunter 21 Juristen aus der Bundesrepublik, Frankreich, Großbritanien, Kanada, Holland, Belgien, Schweiz, Schweden, Dänemark, Griechenland und der DDR, angereist.

Aus der Bundesrepublik waren vertreten die Arbeitsgemeinschaft sozialdemokratischer Juristinnen und Juristen (ASJ), der Republikanische Anwaltsverein (RAV) sowie die Vereinigung demokratischer Juristinnen und Juristen (VDJ).Anwesend waren ferner eine Beobachtergruppe des britischen Oberhauses, die dänische Vereinigung für Rechtspoltik, die belgische Vereinigung der demokratischen Juristen, die internationale Vereinigung für Menschenrechte der Schweiz (FIDH) und die französische Richtervereinigung.

Unter den Prozeßbeobachtern des Auslands fand sich auch der griechische Komponist Mikis Theodorakis.

III. Das Kutlu-Sargin-Verfahren

1. Die Vorgeschichte

Am 16. November 1987 kehrten der Generalsekretär der kommunistischen Partei der Türkei (TKP) und der Vereinigten Kommunistischen PARTEI der Türkei (TBKP) nach vorheriger öffentlicher Ankündigung mit einer Maschine der Lufthansa nach Ankara in die Türkei zurück. Sie wurden von etwa 30 Personen aus 8 europäischen Ländern begleitet, darunter mehreren Parlamentariern. Die beiden Poltiker hatten zuvor ihre Absicht bekundet, in der Türkei die legale Gründung der Vereinigten Kommunistischen Partei der Türkei vorzubereiten.

Falls Kutlu und Sargin tatsächlich der Auffassung gewesen sein sollten, daß die Gründung einer kommunistischen Partei in der Türkei unter dem gegenwärtigen Regime möglich sei, sind sie zumindest einer tragischen Fehleinschätzung erlegen. Zwar hatten führende türkische Politiker im vergangenen Jahr wiederholt betont, daß sich die Türkei auf dem Weg zur Demokratie befinde und in die Europäische Gemeinschaft eintreten wolle. In keinem europäischen Land - so ihre Argumentation - sei eine kommunistische Partei verboten; dies müsse auch für die Türkei gelten.

Dennoch ist nicht anzunehmen, daß Kutlu und Sargin tatsächlich davon überzeugt waren, ungehindert eine kommunistische Partei gründen zu können. Seit den zwanziger Jahren werden in der Türkei Kommunisten, zunächst aufgrund von Sondergesetzen, seit dem 23.6.1936 insbesondere durch Anwendung der §§ 141 und 142 des türkischen Strafgesetzbuches, brutal verfolgt. Die zahlreichen Prozesse und Unterdrückungsmaßnahmen gegen Kommunisten und andere linke Oppositionelle bis in die jüngste Zeit belegen dies. Türkische Gesprächspartner bestätigten daher auch, daß die Rückkehr von Kutlu und Sargin in erster Linie dem

ähnliches wie ein Seil, hoben mich hoch bis an die Decke. Ich weiß nicht, wie lange ich in diesem Zustand dort hängen blieb. Ich konnte nur schreien. ...
Von diesen Folterungen war ich an meinem Herzen erkrankt. Ich verlangte nach einem Arzt. Daraufhin kamen ein Mann und eine Frau im Beisein einer Krankenschwester und machten bei mir eine EKG-Aufnahme. ...
Innerhalb der Zeit, die ich auf dem Polizeipräsidium verbracht habe, durfte ich eigentlich nur zweimal für ein paar Stunden schlafen. Ich schlief ein paarmal auf dem Stuhl ein, man stieß mich oder schrie mich an und weckte mich somit. ...
Ich glaube, es war der 12. oder 13. Tag, da haben sie eingesehen, daß ich nicht mehr auf ihre Fragen antworte, brachten mich in einen anderen Raum. Diese Folterkammer war anders als die erste, ich glaubte das jedenfalls, denn meine Augen waren verbunden. Sie hoben mich wieder an die Decke, gaben Strom an meine Genitalien und Hände, bespritzten mich mit Wasser und gaben mir Strom."

Der verantwortliche Leiter der politischen Abteilung des Polizeipräsidiums in Ankara, Dr. Hasan Eryilmaz wurde zu den Beschuldigungen gehört. Er bestritt den Foltervorwurf als frei erfunden. Er sei der Meinung, daß die Beschuldigten mit dieser Behauptung nur eine Öffentlichkeit für sich schaffen wollten. Dies sei Teil der Strategie und Ziel der Partei, die sie gründen wollen. Hier ein Auszug aus dem Vernehmungsprotokoll vom 17.12.1987, ein Dokument der Selbstbelastung:

"Die Behauptung, daß die Augen dieser Personen dauernd verbunden waren, nur beim Essen und wenn sie zur Toilette gingen, die Binde abgenommen und danach wieder die Augen verbunden wurden, ist auch gelogen. Wie ich oben auch erklärt habe, bei den Verhören wurden die Personen wie Gäste behandelt. ...
Die Verhöre haben lange gedauert, deshalb kann es sein, daß sie müde wurden. Daß sie während des Verhörs durch Licht angestrahlt wurden, stimmt nicht. Es könnte sein, daß die für die Video-Aufnahmen notwendigen Scheinwerfer gestört haben. ...
Während des Aufhängens hätte die Erdanziehungskraft ihre Knochen brechen müssen. Wir haben diese Personen vom Arzt untersuchen lassen. Wenn es der Fall gewesen wäre, hätten die Ärzte das feststellen müssen.
Daß sie mit kaltem Wasser gefoltert worden sind, ist nicht wahr, weil wir in Ankara im Polizeipräsidium Wasserknappheit haben. Es gab keine Elektroschocks, weil ich die ganze Zeit anwesend war!"

Kutlu und Sargin befanden sich insgesamt 19 Tage im Polizeigewahrsam. Nach türkischem Recht muß ein Beschuldigter spätestens nach 48 Stunden dem Richter vorgeführt werden; bei gemeinschaftlich begangenen Taten kann die Frist mit Genehmigung des Generalstaatsanwalts beim Staatssicherheitsgerichts auf 15 Tage verlängert werden. Die beiden Generalsekretäre wurden jedoch erst am 20. Tag dem Haftrichter vorgeführt.Erst dann durften sie Kontakt mit ihren Anwälten aufnehmen.

anderen wird vorgeworfen, "eine Straftat verherrlicht" zu haben, weil er den beiden Generalsekretären im Dezember 1987 zugerufen hatte: "Alle Achtung für Ihren Einsatz für Demokratie!".

Richter und Staatsanwälte hatten auf einem erhöhten Podium an einem gemeinsamen Tisch Platz genommmen, optisch kaum von einander getrennt. Etwa 2 Meter unter ihnen saßen die Verteidiger. Einer der 3 Richter sowie einer der beiden Ankläger trugen sichtbar Offiziersuniformen unter ihren Richterroben. Die Machtverhältnisse im Gerichtssaal konnten nicht eindrucksvoller demonstriert werden: Die Staatsmacht verhandelte "von oben herab". Die Verteidiger mußten ihren Kopf weit in den Nacken legen, wenn sie mit dem Gerichtsvorsitzenden sprechen wollten. Bei ihren Ausführungen konnten sie ein Mikrophon, das in der Mitte des Saals unmittelbar vor dem erhöhten Richtertisch angebracht war, benutzen. Ein Tisch stand ihnen dort nicht zur Verfügung, so daß sie ihre Unterlagen während des Vortrages in der Hand halten mußten.

3. Die Anklage

Nach der Mittagspause begann der Militärstaatsanwalt mit der Verlesung der 231 Seiten umfassenden Anklageschrift. Zu dieser Zeit hielten sich nur noch wenige Zuhörer im Gerichtssaal auf. Die Anwälte hatten aus Protest gegen den faktischen Ausschluß der öffentlichkeit den Gerichtssaal nach der Pause nicht wieder betreten. Anwesend waren nur noch einige Journalisten und ausländische Parlamentarier. Während des Verlesens der Anklageschrift waren wiederholt Solidaritätsbekundungen der draußen vor dem Gerichtssaal versammelten Menge zu hören. Daraufhin ordnete der Gerichtsvorsitzende die Schließung der Fenster an.

Der Anklagevorwurf stützt sich im wesentlichen auf §§ 140, 141 und 142 des Strafgesetzbuches (siehe Anhang). Den Angeklagten wird zur Last gelegt, als Generalsekretäre der illegalen Kommunistischen Partei der Türkei und der illegalen Vereinigten kommunistischen Partei der Türkei die Errichtung einer marxistisch-leninistischen Staats- und Regierungsform in der Türkei anzustreben und hierfür sowie für die Schwächung der nationalen Gefühle Propaganda zu betreiben.

Die in der Anklageschrift aufgeführten Strafbestimmungen, insbesondere die §§ 141 und 142, stammen aus der Zeit Mussolinis und wurden später mehrfach verschärft. Diese Vorschriften werden nicht nur gegen Kommunisten angewandt, sondern gegen alle demokratischen Personen und Organisationen wie z.B. den Gewerkschaftsverband DISK und den Friedensverein der Türkei. Während die §§ 146,168,169,171 und 172 des türkischen Strafgesetzbuchs die Änderung der Staatsform durch Gewalt mit Strafe bedrohen, gilt der Tatbestand der §§ 141 und 142 bereits schon dann als erfüllt, wenn eine kommunistische Gesinnung festgestellt wird. Die Anklage stützt sich dabei auf die Präambel der türkischen Verfassung, wonach "keine Meinung und Ansicht gegenüber den türkischen nationalen Interessen, dem

Die Verlesung der Anklageschrift am Verhandlungstag wurde nicht beendet. Das Gericht vertagte sich auf den 17.6.1988. Eine Begründung hierfür wurde nicht angegeben. Es war jedoch offensichtlich, daß das Gericht den Prozeß erst dann fortsetzen wollte, nachdem wir ausländischen Beobachter wieder abgereist sind.

4. Deklaration von 21 ausländischen Juristen

Am Abend des 8.Juni versammmelten sich 21 Juristen aus 10 europäischen Ländern und Kanada und berieten das weitere Vorgehen. Es wurde beschlossen, eine gemeinsame Erklärung herauszugeben. Ein Redaktionskomitee wurde mit der Ausarbeitung beauftragt.

Die Deklaration lautete (leicht gekürzt):

Wir Juristen aus Frankreich, Großbritanien, Kanada, der Bundesrepublik Deutschland, der DDR, Holland, Belgien, Schweiz, Schweden, Dänemark und Griechenland, die an dem Prozeß gegen Kutlu und Sargin und anderen vor dem Staatsicherheitsgericht in Ankara 8.Juni 1988 teilgenommen haben, erklären

1. unsere tiefe Betroffenheit über
   a) die Verzögerung, mit der der Fall vor Gericht gebracht worden ist,
   b) den Ausschuß der öffentlichkeit, insbesondere am Nachmittag, als Plätze verfügbar waren,
   c) die Weigerung, den zugelassenen Verteidigern angemessene Arbeitsmöglichkeiten zur Verfügung zu stellen,
   d) die Besetzung des aus 3 Richtern bestehenden Gerichts mit einem Militärrichter,
   e) die Besetzung der Staatsanwaltschaft mit einem Militärstaatsanwalt,
   f) die Vertagung des Verfahrens auf den 17.Juni 1988, bevor die Anklage vollständig verlesen worden ist, um dadurch die Prozeßbeobachtung von Juristen aus anderen Ländern zu erschweren;

2. unsere tiefe Betroffenheit darüber, daß die Angeklagten während des Untersuchungsverfahrens offensichtlich gefoltert worden sind und daß Beweismittel, die durch Folter gewonnen worden sind, benutzt werden;

3. unsere tiefe Betroffenheit darüber, daß Artikel 141 die Todesstrafe vorsieht;

4. unsere tiefe Betroffenheit darüber, daß 2 Verteidiger, Attilla Coskun und Asim öz, ebenfalls angeklagt worden sind mit derselben Anklage und daß sie dadurch behindert wurden, ihrer Pflicht als Verteidiger nachzukommen;

5. unsere tiefe Betroffenheit darüber, daß die Rechte der Verteidiger eingeschränkt worden sind;

Die Zahl der seit 1980 gefolterten Menschen wird von Amnesty International und dem türkischen Menschenrechtsverein mit über 250 000 angegeben. 175 sind nach Folterungen gestorben.

Die Türkei ist das einzige europäische Land, das die Todesstrafe kennt. Die Zahl der seit 1980 verhängten Todesurteile konnte ich nicht genau feststellen. Sie soll sich jedoch auf über 500 belaufen. Fest steht, daß unter dem Militärregime und im ersten Jahr der Regierung Özal 29 wegen politischer Straftaten Verurteilte hingerichtet worden sind. Nach Angaben des stellvertretenden Fraktionsvorsitzenden der SHP liegen dem Parlament zur Zeit 192 Todesurteile zur Ratifizierung vor. Ein parlamentarischer Vorstoß, alle Todesurteile, die nach einem Jahr nicht vollzogen sind, automatisch in eine 30jährige Gefängnisstrafe umzuwandeln, hat Ministerpräsident Özal mit der Bemerkung abgelehnt:"Wir müssen einige Todesurteile vollstrecken, damit die Strafe ihre Abschreckungskraft bewahrt."
Eine Flut weiterer Todesurteile ist demnächst zu erwarten, weil mehrere politische Massenprozesse, die seit Jahren anhängig sind, vor dem Abschluß stehen, wie z.B. der DEV-YOL-Prozeß. In diesem Verfahren, das seit 6 Jahren läuft, waren zunächst 574 Personen angeklagt, später wurde die Anklage auf insgesamt 723 erweitert. Zur Zeit befinden sich noch 64 Angeklagte in Haft; für 75 hat die Staatsanwaltschaft die Todesstrafe gefordert.

Einer der in diesem Prozeß tätigen Verteidiger berichtete mir, daß alle 723 Angeklagte während der Zeit ihrer Inhaftierung, die für die meisten 1985 endete, gefoltert worden sind. Gefoltert wurde vor allem im Polizeigewahrsam, in der Regel über einen Zeitraum von 90 Tagen! Foltermittel waren Elektroschocks, Bastonade, Vergewaltigungen, Aufhängen an Eisenhaken (Palästinahaken), tagelanges Verweigern von Essen und Trinken sowie Prügeln mit dem Schlagstock. Die Folterungen wurden auch im Gefängnis fortgesetzt, wenn auch nicht so intensiv wie im Polizeigewahrsam: die Gefangenen wurden gezwungen, die Nationalhymne und Soldatenlieder zu singen, und das Essensgebet zu sprechen; häufig wurden sie durch starken Lärm, der mit Hilfe von Lautsprechern in die Hafträume übertragen wurde, am Schlafen gehindert; hinzu kamen tägliche Stockprügel. Unter dem Vorwand, daß weitere Vernehmungen durchgeführt werden müßten, wurden die Gefangenen mehrmals in den Polizeigewahrsam zurückverlegt und dort wiederum bis zu 90 Tagen schwer gefoltert. Die Folterungen der DEV-YOL-Angeklagten haben sich im Mamak-Gefängnis (bei Ankara) zugetragen.

V. Verletzung der Europäischen Antifolterkonvention

Die Anwendung der Folter, insbesondere während des Polizeigewahrsams, ist nach wie vor ein gängiges Mittel zur Erzwingung von Aussagen, insbesondere von Geständnissen, denen in der türkischen Strafverfahrenspraxis eine wichtige Funktion zur Überführung des Täters zukommt. Zwar verbietet Art. 17 Abs. 2 der türkischen Verfassung die Folter, und außerdem hat die Türkei am 11.1.1988 die europäische Antifolterkonvention

bei diesen Sondergerichten erheblich eingeschränkt. Ein Rechtsanwalt oder ein Angeklagter können bereits aus nichtigem Anlaß aus der Sitzung ausgeschlossen werden. Ein Rechtsanwalt kann wegen seiner Verteidigungsarbeit verhaftet und angeklagt sowie ihm die Ausübung seines Berufes verboten werden. Angeklagte wurden von der weiteren Verhandlung wegen "zu lauter Stimme" und wegen "Grinsens" ausgeschlossen. Den Angeklagten, die häufig nach längerem Gefängnisaufenthalt unter Läusen leiden, ist das Kratzen im Gerichtssaal strengstens untersagt; bei Zuwiderhandeln müssen sie mit dem Ausschluß rechnen. Während der Untersuchungsphase hat der Rechtsanwalt kein Recht auf Akteneinsicht; ferner wird er daran gehindert, seinen Mandanten zu sprechen. Er hat lediglich das Recht, eine begrenzte Anzahl Fragen schriftlich einzureichen.

VII. Die Verfassung und die Grundrechte

Die türkische Verfassung wurde am 7.10.1982 in einer Volksabstimmung von 91,4 % der türkischen Wähler gebilligt. Allderdings war es auf Strafe hin verboten, für ihre Ablehnung einzutreten.

Die türkische Verfassung hat im wesentlichen den Zweck, die Bürger an der Wahrnehmung von Grund- und Freiheitsrechten zu hindern, statt ihnen diese Rechte zu garantieren. So ist Artikel 14 den §§ 141 und 142 des türkischen Strafgesetzbuches nachgebildet. Dem Parlament ist es sogar gemäß Art. 87 ausdrücklich verboten, eine Amnestie für diejenigen, die aufgrund dieser Vorschriften verurteilt worden sind, zu beschließen.

Selbst der türkische Verfassungspräsident Mahmut Cuhruk nutzte kürzlich die Feierstunde zum 26jährigen Bestehen des Gerichts zur deutlichen Kritik an der Verfassung. Führende Mitglieder des bürgerlich-liberalen Türkischen Juristenvereins, darunter amtierende Richter, berichteten mir von Fällen des Rechtsmißbrauchs und der Willkür durch die Behörden. Gerichtsentscheidungen (z. B. des Verwaltungsgerichtes) werden oftmals mißachtet. Die türkische Rechtsordnung bliebe weit hinter den Anforderungen an eine rechtsstaatliche Gerichtsverfassung zurück.

Vor allem das Recht der Bildung von Gewerkschaften sowie das Streikrecht sind erheblich eingeschränkt. Der linke Gewerkschaftsbund DISK wurde von den militärischen Machthabern verboten und seine Funktionäre verhaftet und teilweise schwer gefoltert. Den Gewerkschaften ist es verboten, sich politisch zu betätigen oder gar Kontakte mit politischen Parteien oder anderen politischen Bewegungen aufzunehmen. Sie dürfen weder Schulungs - und Fortbildungsseminare für ihre Mitglieder durchführen noch ihre Mitglieder über ihre sozialen Rechte aufzuklären. Beamte und Studenten dürfen Gewerkschaften nicht beitreten. Streikverbot herrscht in den wichtigsten Wirtschaftszweigen (Energiebereich, chemische Industrie, Transport u.a.) und streikende Arbeiter haben kein Recht auf Weiterbeschäftigung.

Fest steht,daß die Militärs und Ministerpräsident Özal bislang jeglichen Vorstoß zur Demokratisierung des Landes zurückgewiesen haben. Das Attentat auf Özal am 19.Juni 1988 könnte womöglich sogar eine verstärkte Verfolgung der politischen Opposition zur Folge haben.

Solange die Verhältnisse in der Türkei nicht den Mindestanforderungen eines demokratischen Rechtsstaates entsprechen, sind aus meiner Sicht die Voraussetzungen für eine Aufnahme in die europäische Gemeinschaft nicht gegeben. Es besteht die Gefahr, das mit der Aufnahme der Türkei in die EG die dortigen antidemokratischen Strukturen stabilisiert werden ürden.
Statt dessen hoffen viele türkische Demokraten, daß der internationale Druck auf die Machthaber des Landes weiter erhöht wird. Ein wichtiges Mittel sehen sie in den internationalen Besuchergruppen, die sich vor Ort über die Situation unterrichten und die Mißstände öffentlich machen.
Internationale Solidarität ist dringend notwendig, um den vom türkischen Volk herbeigesehnten Demokratisierungsprozeß in Gang zu bringen.

Die Arbeitsgemeinschaft sozialdemokratischer Juristen wird sich im Rahmen ihrer Möglichkeiten hieran beteiligen. Dieser Bericht geht dem SPD-Parteivorstand, der sozialistischen Fraktion im Europäischen Parlament, der SPD-Bundestagsfraktion, den SPD-Landtagsfraktionen, den SPD-Innen- und Justizministern sowie den ASJ-Bezirken zu.

A N H A N G

WORTLAUT DER GENANNTEN ABSÄTZE DER §§ 140, 141 UND 142:

§ 140:
"Derjenige Bürger, der im Ausland über die Zustände im Lande unbegründete, übertriebene oder bestimmten Absichten dienende Nachrichten publiziert, die geeignet sind das Ansehen und die Autorität des Staates im Ausland zu untergraben oder sich in einer die nationalen Interessen schädigenden Art und Weise betätigt, wird mit schwerer Gefängnisstrafe nicht unter 5 Jahren bestraft."

§ 141 Abs. 1:
"Wer Organisationen, die darauf gerichtet sind, die Diktatur einer sozialen Klasse über die anderen sozialen Klassen zu errichten, oder eine soziale Klasse zu beseitigen, oder irgendeine der im Lande bestehenden wirtschaftlichen oder sozialen Grundordnungen umzustürzen, in welcher Form und unter welcher Bezeichnung auch immer zu gründen schreitet, oder gründet, oder ihre Aktivitäten führt und leitet, oder Anleitung zu diesen Taten gibt, wird mit schwerer Gefängnisstrafe von 8 bis 15 Jahren bestraft. Wer mehrere oder alle solcher Organisationen führt und leitet, wird zum Tode verurteilt."

§ 142 Abs. 1:
"Wer mit der Zielsetzung, die Diktatur einer sozialen Klasse über die anderen sozialen Klassen herzustellen, oder eine soziale Klasse zu beseitigen, oder irgendeine der im Lande bestehenden wirtschaftlichen oder sozialen Grundordnungen umzustürzen, oder die politischen und rechtlichen Ordnungen des States vollständig zu vernichten, in welcher Forum auch immer Propaganda betreibt, wird mit schwerer Gefängnisstrafe von 5 bis 10 Jahren bestraft."

§ 142 Abs. 3:
"Wer sich zum Ziel setzt, die verfassungsmäßigen öffentlichen Rechte aufgrund von rassistischen Erwägungen teilweise oder vollständig aufzuheben, oder zwecks Zerstörung oder Schwächung der nationalen Gefühle Propaganda betreibt, wird mit Gefängnisstrafe von 1 bis 3 Jahren bestraft."

§ 142 Abs. 6:
"Werden die oben beschriebenen Taten durch Publikationsmittel begangen, so wird die Strafe um die Hälfte erhöht."

Die Pressefreiheit ist ebenfalls erheblich eingeschränkt. Zahlreiche Prozesse gegen Journalisten belegen dies. So wurden 1984 bis 1987 1276 Strafverfahren gegen 1543 Personen aus dem Medienbereich eingeleitet. Kürzlich wurde eine Redakteurin wegen Abdrucks einer Rede, die Bundesbildungsminister Möllemann im Deutschen Bundestag gehalten hat, angeklagt.

VIII. Fazit

Der stellvertretende Fraktionsvorsitzende der SHP im türkischen Parlament, Hicmet Cetin, gab mir folgende Einschätzung zur Situation in der Türkei:

> Nach wie vor existiere in der Türkei keine "wahre" Demokratie. Die türkische Verfassung stehe einer Entwicklung zur Demokratie entgegen. Immer noch seien schwerwiegende Mängel, insbesondere im Menschenrechtsbereich, zu verzeichnen. Zwar habe die Türkei in diesem Jahr die Antifolterkonvention unterzeichnet und ratifiziert und im Januar 1987 gemäß Artikel 25 der europäischen Menschenrechtskonvention die Rechtsprechung der europäischen Konvention für die Menschenrechte (Indvidualbeschwerde) anerkannt. Allerdings sei diese Anerkennung praktisch wirkungslos, weil sie mit Auflagen versehen worden ist; außerdem habe die Türkei die Rechtsprechung des europäischen Gerichtshofs für Menschenrechte nicht anerkannt.

Der sozialdemokratische Politiker betonte, daß bislang konkrete Maßnahmen zur Verhinderung von Menschenrechtsverletzungen im Lande ausgeblieben sind. Die Folter existiere nach wie vor im vollem Umfange! Die Situationen in Gefängnissen bezeichnete er als "dramatisch"; die unmenschliche Behandlung der Gefangenen halte an.

Auf meine Frage, ob er die Türkei reif für einen Eintritt in die Europäische Gemeinschaft halte, antwortete Cetin, daß zuvor die Menschenrechte gewährleistet und die Parteienfreiheit hergestellt werden müßte.

Die Auffassung meiner türkischen Gesprächspartner über die weitere Entwicklung in der Türkei war indes nicht einheitlich. Einige meinten, daß der Kutlu/Sargin Prozeß die demokratische Opposition vereint und gestärkt habe und den Druck auf das Regime erhöhen würde, einen Demokratisierungsprozeß einzuleiten.

Andere sehen die Situation weitaus skeptischer. Sie befürchten sogar, daß die Repression wieder zunimmt, wenn die Opposition wieder verstärkt in Erscheinung treten sollte. Es wird auch nicht generell die Einschätzung geteilt, daß der Kutlu-Sargin-Prozeß die demokratische Linke insgesamt geeint hätte. Im übrigen befürchten nicht wenige, daß der Einfluß der religiösen Fundamentalisten in der Türkei zunehme und nur das Militär in der Lage sei, ihm Einhalt zu bieten.

unterschrieben und am 25.2.1988 - im Gegensatz zur Bundesrepublik Deutschland - sogar ratifiziert. Gleichwohl wird in der Türkei "systematisch gefoltert", wie nicht nur Amnesty International festgestellt hat, sondern selbst die Reagan-Administration in einem im Februar 1988 veröffentlichten Bericht.

Obwohl die UN-Antifolter-Konvention die Verwertung von Aussagen, die unter Folter erzwungen worden sind, ausdrücklich verbietet, richten sich die türkischen Gerichte nicht danach. Die Justiz vertritt die Auffassung, daß auch "Folter-Aussagen" der freien Beweiswürdigung unterliegen. Im übrigen werden "gewöhnliche Prügel" nicht als Folter angesehen. Eine Gerichtsentscheidung besagt, daß Folter erst dann vorliege, wenn der Gefolterte deswegen mindestens 10 bis 15 Tage arbeitsunfähig geworden sei.

Seit einem Jahr - so der Rechtsanwalt aus dem DEV-YOL-Prozeß - werde allerdings nicht mehr in dem Maße gefoltert wie in den Jahren zuvor. Dies sei allerdings nicht auf einen Kurswechsel der Behörden zurückzuführen, sondern vielmehr darauf, daß die politischen Aktivitäten der Opposition erheblich nachgelassen hätten. Die jahrelange brutale Verfolgung einschließlich der Folterungen politisch Andersdenkender habe Wirkung gezeigt: viele seien verstummt und wollten nichts mehr sehen und hören.

"Die Ideologie der Folter hat sich jedoch nicht geändert!" so ein Verteidiger. Dies bestätigte mir auch der Vertreter von Amnesty International.

In mehreren Fällen haben Betroffene versucht, die Strafverfolgung von Folterern durch Strafanzeigen zu erreichen. Die Verfahren wurden in der Regel eingestellt oder die Angeklagten frei gesprochen. In einem Fall wurde ein Beamter der politischen Polizei überführt, einen Gefangenen unter Folter getötet zu haben. Einige Tage vor der Urteilsverkündung entließ das Gericht ihn aus der Haft, so daß er sich einen Reisepaß beschaffen und die Türkei verlassen konnte. Danach erging das Urteil (14 Jahre Gefängnis).

VI. Rechtswesen im Ausnahmezustand

Die Machtübernahme der Militärs 1980 hatte gleichzeitig zur Verhängung des totalen Ausnahmezustandes geführt. Zwar bestand der Ausnahmezustand schon seit dem 26.12.1978 in 11 Städten, nach dem 12.9.1980 wurde er auf die gesamte Türkei ausgeweitet.

Die wichtigste Änderung im Rechtswesen war die Einführung von Militärgerichten, die bis zum 30.4.1984 bestanden. Seit dem 1.5.1984 sind für politische Straftaten Staatssicherheitsgerichte zuständig.

Die Staatsicherheitsgerichte sind mit 2 zivilen Juristen und einem Offizier mit juristischer Ausbildung besetzt. Damit haben die militärischen Machthaber ihren Einfluß auf die Rechtsprechung sichergestellt. Die Rechte der Verteidigung sind

6. unsere tiefe Betroffenheit darüber, daß der Staat ein Verfahren gegen Gedanken- und Glaubensfreiheit führt;

7. unsere tiefe Betroffenheit darüber, daß der gesamte Prozeß im Widerspruch steht zu den Anforderungen überall in Europa an ein rechtstaatlich geordnetes Verfahren;

8. unsere tiefe Betroffenheit darüber, daß das gesamte Verfahren im Widerspruch steht zu Europäischen Menschenrechtskonvention.

Wir fordern daher
1. die Freilassung von Kutlu und Sargin und allen anderen poltischen Gefangenen, die aufgrund der Artikel 141 und 142 des türkischen Strafgesetzbuches angeklagt sind,

2. die Beendigung dieses Prozesses und aller anderen Prozesse vor Staatssicherheitsgerichten und Militärgerichten und die Abschaffung dieser Gerichte,

3. die Aufhebung und vollständige Abschaffung der Artikel 141 und 142 des türkischen Strafgesetzbuches;

4. die Beendigung der Folter und die Beachtung der Antifolterkonvention, die von der Türkei unterzeichnet worden ist;

5. die Untersuchung der Behauptungen über Folter und die Bestrafung all derjenigen, die sich der Folter schuldig gemacht haben.

Diese Erklärung haben wir am 9.6. auf einer Pressekonferenz der Öffentlichkeit bekannt gemacht.
Gleichzeitig haben wir dagegen protestiert, daß am Tag zuvor 7 Türken aus der vor dem Gerichtsgebäude versammelten Menge heraus verhaftet worden waren; angeblich hatten sie gerufen:"Es lebe die Demokratie!". Trotz intensiver Bemühungen ist es mir in den Tagen meines Aufenthaltes nicht gelungen, der Verbleib der Verhafteten und ihr weiteres Schicksal zu klären.

IV. Über 1000 Todesurteile noch zu erwarten

Der Prozeß Kutlu/Sargin ist nur die Spitze eines Eisberges der poltischen Verfolgung und Menschenrechtsverletzungen in der Türkei.
Nach übereinstimmenden Aussagen informierter Kreise wie Amnesty International befinden sich immer noch tausende politische Gefangene in Haft. Das Justizministerium hat im Februar 1988 die Zahl der politischen Gefangenen mit 4370, darunter 644 Rechtsradikale, angegeben. Am 6.4.1988 verlautbarte das Justizministerium, daß 5309 Personen gegenwärtig vor Militärgerichten angeklagt sind. Davon befinden sich 1392 in Haft, denen die Todesstrafe droht. Regierungsamtlich wurde im übrigen zugegeben, daß seit dem 12. September insgesamt 1244 Menschen in den Gefängnissen zu Tode gekommen seien.

Grundsatz der Unteilbarkeit vom türkischen Dasein, Staat und Staatsgebiet, den geschichtlichen und geistigen Werten des Türkentums und dem Nationalismus den Prinzipien und Reformen sowie dem Ziviliationismus Atatürks geschützt (wird)..."

Gemäß § 141 Absatz 1 Strafgesetzbuch droht beiden Angeklagten die Todesstrafe, weil sie mehrere illegale Organisationen führen. Im Falle der Verurteilung zu Freiheitsstrafen können diese nach türkischen Recht zu mehreren hundert Jahren addiert werden. Nach Abschluß des Verfahrens wird eine Gesamtstrafe von 36 Jahren gebildet.

Die Anklage ist von einem primitiven Antikommunismus gekennzeichnet. Über einzelne Formulierungen könnte man lachen, wenn man nicht wüßte, daß sie für die Angeklagten womöglich eine tödliche Konsequenz haben werden. Auszug:

> "Der erste kommunistische Gedanke ist in einer Sekte zu beobachten, die von einer Person namens Bedrettin von Simav gegründet wurde. Bedrettin von Simav hat einen Türken und einen Juden gefunden und zusammen mit diesen seine Sekte in der Gegend um die Bucht Izmir...verbreitet... Die Angehörigen dieser Sekte sagten... "ich wohne in Deinem Haus wie in meinem Eigentum ... und Du wohnst in meinem Haus, trägst meine Kleider, nützt meine Waffen und meine Wagen, nur Frauen sind ausgenommen." Das waren ihre Ansichten. Später hat Sultan Celebi Mehmet diese festnehmen und hinrichten lassen. Für uns ist der Fall des Bedrettin von Simav ein gutes Beispiel aus der Geschichte, das zeigt, daß Kommunismus und Reaktion sehr wohl vereinbart sind....
>
> Der Grundsatz des Kommunismus lautet: Tod dem, der nicht mit uns ist. Es gibt keinen mittleren Weg.....
> Jeder begabte, aufgeschlossene und unternehmerische Mensch ist in ihren Augen ein Faschist und muß sterben....
> Hoffentlich kommt ein vernünftiger Präsident, der ein Wunder bewirkt und die Welt von dieser kommunistischen Gefahr befreit!"

Der Vorwurf der Gewaltätigkeit wird nicht erhoben. So heißt es auf Seite 62 der Anklageschrift:"In Abhängigkeit von Zeit und den Umständen hat die kommunistische Partei verschiedende Taktiken zur Verwirklichung ihrer Strategie angewandt. Im allgemeinen umfassen diese Taktiken Propagandaaktionen, die bewaffnete Aktionen nicht einschließen, Massenkampagnen sowie Tätigkeiten zur Bildung einer Front oder einer Aktionseinheit."
Zur Last gelegt wird den Angeklagten auch die Beleidigung hoher türkischer Politiker. Zitat aus der Anklageschrift:

> "Die Angeklagten haben stets entsprechend der Beschreibung im § 140 sowie in den §§ 158 und 159 des türkischen STGB den Staat der türkischen Republik, den Geehrten Staatspräsidenten der türkischen Republik und in der Person des Geehrten Mininsterpräsidenten die Regierung der türkischen Republik diffamierende Reden gehalten und veröffentlicht."

Seit dem 5.12.1987 befinden sich beide in Untersuchungshaft, obwohl weder Flucht- noch Verdunkelungsgefahr besteht.

2. Der 1. Verhandlungstag (8.Juni 1988)

Der 1. Verhandlungstag war auf den 8.6.1988 festgesetzt. Die Verhandlung sollte am Vormittag beginnen.
Das Staatssicherheitsgericht befindet sich in dem ehemaligen Parteihauptquartier der sozialdemokratischen Volkspartei. In diesem Gebäude sind noch andere Gerichte (z.B. das Verwaltungsgericht) untergebracht.

Bei unserem Eintreffen kurz nach 08.00 Uhr morgens waren etwa 30 Personen vor dem Gebäude versammelt. Polizeibeamte versperrten den Eingang.

Nach etwa einer Stunde war die wartende Menge, die Einlaß begehrte, auf etwa 500 Personen angewachsen. Zahlreiche Pressevertreter aus dem In- und Ausland, das türkische Fernsehen sowie ausländische Parlamentarier waren darunter. Etwa zur selben Zeit begannen die Polizeikräfte, die inzwischen erheblich verstärkt worden waren, die Wartenden vom Eingang des Gebäudes wegzudrängen.

Mit dem Leiter der Polizeiabteilung kam es sodann zu heftigen Auseinandersetzungen über die Frage, wer in den Gerichtssaal eingelassen wird. Auch 400 Rechtsanwälte, die zur Verteidigung von Kutlu und Sargin zugelassen waren, begehrten Einlaß. Der Gerichtssaal bot jedoch nur etwa 150 Zuhörern Platz. Eingelassen wurden sodann etwa 70 Rechtsanwälte sowie ausländische Parlamentarier, soweit sie sich als solche ausweisen konnten. Auf diese Weise gelang ich gemeinsam mit meinem türkischen Dolmetscher in den Gerichtssaal. Journalisten und andere Prozeßbeobachter blieben ausgesperrt.

Der Verteidiger des Angeklagten Kutlu und dieser selbst stellten zu Beginn der Hauptverhandlung den Antrag, in einen größeren Sitzungsraum zu wechseln. Der Vorsitzende des Gerichts lehnte den Antrag nach kurzer Beratung mit dem Hinweis ab, daß die Öffentlichkeit durch die Anwesenheit zweier Türken und der ausländischen Parlamentarier hinreichend hergestellt worden sei. Bei den beiden Türken handelte es sich um Polizeibeamte in Zivil.

Nach etwa einer Stunde wurden sodann von den insgesamt 50 - 60 wartenden Journalisten 15 in den Gerichtssaal eingelassen, nachdem die Pressevertreter aus Protest ihre Kameras auf die Straße gelegt hatten. Andere Personen erhielten auch weiterhin keinen Zutritt, so z.B. auch nicht der Vertreter der deutschen Botschaft, obwohl noch 50 Plätze im Gerichtssaal frei waren.

Die Hauptverhandlung begann mit der Feststellung der Personalien der anwesenden Anwälte und der Angeklagten. Angeklagt sind insgesamt 16 Kommunisten, die sich, außer Kutlu und Sargin, auf freiem Fuß befinden. Unter den Angeklagten befinden sich auch 2 Rechtsanwälte. Einer wird der Mitgliedschaft der kommunistischen Partei beschuldigt, dem

Zweck gedient habe, die internationale Aufmerksamkeit auf die politischen Verhältnisse in der Türkei zu lenken, um auf diese Weise den Demokratisierungsprozeß, der entgegen offizieller Verlautbarungen stagniere, voranzutreiben.

Man kann daher unterstellen, daß die beiden Politiker durchaus mit erheblichen Schwierigkeiten bei der Durchsetzung ihres Ziels der Gründung einer kommunistischen Partei gerechnet haben. Sie haben wahrscheinlich auch die Einleitung eines Verfahrens einkalkuliert. Vermutlich war dies sogar Bestandteil ihrer politischen Strategie.

Nicht gerechnet hatte man jedoch damit, daß die türkischen Behörden die beiden KP-Führer sofort auf dem Flugplatz in Anwesenheit der internationalen Öffentlichkeit festnehmen würden. Vor allem ging niemand davon aus, daß es die Behörden wagen würden, die beiden zu foltern.

Diesen Vorwurf hat der herzkranke Angeklagte Kutlu in einem ausführlich begründeten Antrag vom 9.12.1987 an die republikanische Staatsanwaltschaft Ankara erhoben. Er sei - so Kutlu - während der Vernehmung auf dem Polizeipräsidium gefoltert worden. In einem umfassenden Vernehmungsprotokoll schildert er die Einzelheiten :

> "...ich mußte mich in diesem Zimmer über 10 Tage lang auf einem Stuhl aufhalten. Ich konnte nur auf die Toilette gehen. ... Während des Essens wurde mir die Augenbinde abgenommen. Während dieser Phasen waren die Personen, die die Befragung und später die Folterungen durchführten, nicht zu sehen. ... Es war ungefähr eine Woche später. Hier nahmen sie mir meine Augenbinde wieder ab und ließen mich gegenüber einer sehr stark leuchtenden Lampe Platz nehmen. Sie selbst hielten sich im Hintergrund auf. Hier hat man mich stundenlang verhört. Zeitweise konnte ich meinen Kopf vor lauter Müdigkeit und Schlaflosigkeit nicht mehr aufrecht halten. Mein Kopf fiel immer wieder nach vorne. ... Er, (der Vernehmende) sagte zu mir:"Du redest nicht. Ich habe mir Deine Aussagen angeschaut, die beinhalten doch nichts. Du mußt auf unsere Fragen antworten, ansonsten kannst Du hier nicht weg. Auch wenn Du in die Justizvollzugsanstalt kommst, holen wir Dich, daß solltest Du wissen, es gibt keine Rettung für Dich. Wir werden Dich nicht zum Helden machen. Du wirst nicht als Held hier rausgehen. In der Türkei kann man aus geopolitischen Gründen keine kommunistische Partei gründen. ...
> Ich glaube es war der 10. Tag. ...Sie haben mich auskleiden lassen, bis ich ganz nackt da stand. Nur meine Augen waren verbunden. Sie haben mich auf einen hockerähnlichen Gegenstand sitzen lassen. Plötzlich haben sie angefangen, meinen Kopf, Ohren und die Hoden mit kaltem Wasser zu bespritzen. Meine Hände waren auf dem Rücken zusamengebunden. Als ich wieder atmen konnte, habe ich angefangen zu schreien, ich stand auf, ich fror, konnte mich nicht mehr auf den Beinen halten, fiel hin. Sie hoben mich auf. Meine Hände haben sie wieder mit einem nassen Lappen hochgebunden. An diese Stelle banden sie noch etwas

I. Vorbemerkung:

Vom 7.6. bis zum 12.6.88 habe ich mich im Auftrage des Bundesvorstandes der Arbeitsgemeinschaft sozialdemokratischer Juristinnen und Juristen (ASJ) in Abstimmung mit dem Parteivorstand in Ankara aufgehalten, um an der ersten öffentlichen Verhandlung gegen die Kommunistenführer Kutlu und Sargin vor dem Staatssicherheitsgericht als Beobachter teilzunehmen. Darüber hinaus habe ich Gelegenheit genommen, mich über die Menschenrechtssituation allgemein in der Türkei zu informieren sowie einen Eindruck zu gewinnen, inwieweit das dortige Strafrechtssystem den Mindestanforderungen eines rechtsstaatlich geordneten Verfahrens entspricht.

Die in diesem Bericht enthaltenen Feststellungen beruhen auf eigenen Beobachtungen und Informationen, die ich von zahlreichen Gesprächspartnern erhalten habe, unter anderem von

- Rechtsanwälten, die als Verteidiger im Kutlu/Sargin - Prozeß tätig sind,

- anderen türkischen Rechtsanwälten, u.a. von einem Verteidiger aus dem DEV-YOL-Prozeß,

- Vorstandsmitgliedern des türkischen Juristenvereins,

- von dem Vorsitzenden der Türkischen Menschenrechtsvereinigung, Necati Helvaci,

- dem stellvertretenden Generalsekretär der sozialdemokratischen Volkspartei (SHP) Erkam Kangal,

- dem stellvertretenden Fraktionsvorsitzenden der SHP, Hikmet Cetin,

- dem für die Türkei zuständigen Vertreter von Amnesty International, Helmut Oberdiek und

- einem Vertreter der deutschen Botschaft.

Ferner konnte ich Gespräche führen mit mehreren Betroffenen, die sich in Haft befunden haben und teilweise schwer gefoltert worden waren.

Meine von der deutschen Botschaft an das Justizministerium übermittelte Bitte um ein Gespräch mit einem Vertreter der Staatsanwaltschaft wurde mit dem Hinweis abgelehnt, daß die türkische Justiz unabhängig sei. Auch meine Bitte um ein Gespräch mit einem Vertreter des Justizministeriums wurde abgelehnt mit der Begründung, man habe keine Zeit.

Anzumerken ist noch, daß die türkische Geheimpolizei immer wieder versuchte, unsere Gespräche mit türkischen Informanten zu beobachten. Wiederholt konnte ich feststellen, daß uns auf den Fahrten zu Treffpunkten zivile Fahrzeuge folgten.