TÜSTAV ARŞİVİ
TÜRKİYE SOSYAL TARİH ARAŞTIRMA VAKFI

UNITED NATIONS
ECONOMIC AND SOCIAL COUNCIL

COMMISSION ON HUMAN RIGHTS
Forty-fourth session

Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES.

A statement submitted by HUMAN RIGHTS ADVOCATES
(P.O. Box 5675, Berkeley, California 94705)
A non-governmental organization in consultative status (Category II)

[19 February 1988]

TURKEY: CONTINUING VIOLATIONS OF HUMAN RIGHTS

Thank you Mr. Chairman,

Human Rights Advocates wishes to address once again the issue of continuing violations of human rights in Turkey where, despite some progress in the toleration of certain rights, systematic violations continue to merit strong condemnation by the international community.

Torture continues to take place in Turkey on a routine basis and on a massive scale. Prison conditions, often akin to torture, are in need of radical change. According to the Turkish Human Rights Association, not one prison in Turkey meets the UN Standard Minimum Rules For The Treatment Of Prisoners. The International Committee of the Red Cross is still denied visitation rights to detention centers. Thousands remain in detention centers awaiting trial or the outcome of trials already conducted. As I speak here today, thousands of prisoners are on hunger strikes in Turkish prisons, and at least one of them has already died.

On the positive side, direct military rule has been ended and martial law lifted. However, before stepping aside, the military rulers drafted a stringent new Constitution, enacted a press law that is even more repressive than the previous military press restrictions, and extended martial law by declaring that the 631 laws enacted during military rule could not be changed or even criticized.

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To make matters worse, in July 1987, immediately after martial law was lifted in all provinces, a Special Governor with extra powers was appointed to the eastern provinces, including the five provinces where martial law had just been ended. The Special Governor's extra powers include command of the regional security forces and full authority to evacuate villages for security purposes. With many aspects of martial law continuing under civilian rule, the present state in Turkey has been dubbed as "civilian martial law."

The basic problem with regard to human rights in Turkey stems from the repressive 1982 Constitution and a series of equally repressive laws that remain in force. Articles 13 and 15 of the Constitution permit the restriction of all fundamental rights and freedoms. Preamble Paragraph 8 removes all legal protection from the freedom of expression. Article 17 permits the indiscriminate use of deadly force by authorities against suspected dissidents.

Article 130 gives authorities effective control over state radio and television, and all aspects of academic life. Article 28 grants authorities the power to ban and confiscate publications deemed prejudicial, and to seize printing presses.

Article 87 precludes any amnesty for political prisoners charged with "crimes against the state" which are broadly defined in Article 14. Many political prisoners are convicted for non-violent activities under this provision of the Constitution. Under Article 87, even Parliament is precluded from enacting legislation pardoning political prisoners charged with violations of Article 14.

The Constitution severely limits political life. Article 67 prohibits students from joining political parties or establishing national student associations. Under Article 76, anyone dismissed from public service for political reasons may not be elected to parliament. Article 83 prohibits officers of labor unions and professional organizations from serving in parliament.

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The Turkish Penal Code - a collection of legal sanctions borrowed from Fascist Italy in the 1930s and dubbed the "Mussolini Laws" - further restrict fundamental freedoms in Turkey. Under Article 140 of the Penal Code a person can be jailed for damaging Turkey's reputation abroad. Articles 141 and 142 of the Penal Code have generally been used to lock up left-wing journalists, publishers, editors, writers, translators and academics who disseminate material considered by authorities to be "communist propaganda." Thousands of Turkish citizens abroad have lost their nationality after being charged in absentia under one of the "Mussolini Laws." More than 300,000 Turkish citizens have been prohibited from traveling abroad on the grounds that their "presence in a foreign country is undesirable."

The collective bargaining process in Turkey has been replaced by a government appointed Supreme Arbitration Board. Even though some union activity is currently possible, the right to unionize is nevertheless severely curtailed under Articles 51 through 54 of the Constitution. The Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe, the International Labor Organization, and the AFL-CIO, have sharply criticized Turkey for its restrictions on trade union rights.

For many years, it has been the policy of Turkish governments to seek assimilation of its non-Turkish ethnic citizens into the mainstream of Turkish society and culture. As a result of this policy and a genocide, the once considerable Armenian population of Turkey has declined steadily over the years. The Greek and Armenian communities continue to complain about government policies and procedures regulating and restricting the operation of community affairs and the deliberate destruction of their cultural heritage.

Articles 26 and 28 of the Constitution bar publication of books, newspapers, and any other material in the Kurdish language. Even publications in Turkish dealing with Kurdish history, culture, or ethnic identity are banned. Use of the Kurdish language is not permitted for any official purpose, including court proceedings, nor is it allowed when receiving visitors in prison. Kurdish defendants who cannot speak Turkish are forbidden to communicate with their lawyers in their own language. Needless to state, not even one single school exists in Turkey where the Kurdish language is taught to the eight million Kurds who live there, nor is there a single Kurdish language newspaper or public broadcasting station.

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Mr. Chairman, Human Rights Advocates is convinced that without greater international scrutiny, the human rights situation in Turkey is not likely to improve substantially. The international community, including this Commission, can and should use its considerable influence to motivate Turkey to take more than symbolic steps to curb human rights abuses.

Taking into consideration the number and reliability of the allegations of a consistent pattern of gross violations of human rights and fundamental freedoms in Turkey, H.R.A. calls upon this Commission to take formal note of the seriousness of the violations, to make public its findings under the 1503 procedure, and to appoint a Special Rapporteur on Turkey to investigate the human rights situation and make recommendation as to how the situation might be improved.

Finally, Mr. Chairman, Human Rights Advocates would like to announce its submission to this Commission of a comprehensive and up to date report we have prepared on the continuing human rights violations in Turkey. Copies of that report are available to all participants of this meeting and can be obtained from representatives of our organization in this room.

Thank you Mr. Chairman.

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- TURKEY -

CONTINUING VIOLATIONS OF HUMAN RIGHTS

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Report Submitted To

UNITED NATIONS
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Updated
1 February 1988

By

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* A non-governmental organization in consultative status with the United Nations Economic and Social Council (Category II)

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TURKEY - CONTINUING VIOLATIONS OF HUMAN RIGHTS

By: Hrair Balian[1]

Updated: 1 February 1988

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I. INTRODUCTION

This document examines the human rights record in Turkey, from the 1980 coup to the present, through reports published by governmental and inter-governmental agencies concerned with human rights, non-governmental organizations (NGO's), and newspaper accounts. Except where necessary to illustrate a particularly gross violation, this writing does not contain detailed accounts of specific examples of human rights violations. That task has been well accomplished by the reports cited herein which, to a great extent, serve as the documentary basis for this writing.

As a result of the strategic position occupied by Turkey, i.e. its common border with the Soviet Union and its alliance with NATO (North Atlantic Treaty Organization), successive regimes have enjoyed a privileged status *vis a vis* Western Europe and the United States. This privileged status has enabled the Turkish government to shield itself from Western criticism regarding the gross violations of human rights which affect the entire spectrum of Turkish citizenry, including the non-Turkish national groups and religious minorities.

NGO's concerned with internationally recognized human rights, including Amnesty International and Helsinki Watch, were concerned about the gross violations taking place in Turkey even before the 1980 military coup. However, since the coup and to a great extent continuing to date, with the serious escalation of violations to massive proportions, Turkey has attracted a great deal more attention from NGO's as well as inter-governmental organizations and some governments.

With this updated report, Human Rights Advocates (HRA) joins Amnesty International, Helsinki Watch and others in exposing and condemning the violations of internationally

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[1]/ Hrair Balian, Attorney At Law, member of the California Bar; Member of the Board of Directors, Human Rights Advocates, Inc.

recognized human rights in Turkey. HRA calls upon the United Nations Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities formally to take note of the seriousness of the violations, to make public its findings under the 1503 procedure, and to appoint a Special Rapporteur on Turkey. HRA transmitted earlier versions of this report to the United Nations Commission on Human Rights[2] and the Sub-Commission on Prevention of Discrimination and Protection of Minorities[3].

The present report, in the first place, discusses efforts made by the European Community, Western governments, and Helsinki Watch to investigate the gross violations of human rights in Turkey since the 1980 coup, and secondly examines the violations through documents published by various sources, including the Turkish press.

II. VIOLATIONS IN TURKEY VIEWED BY THE EUROPEAN COMMUNITY, THE UNITED STATES AND NGO'S

A. The European Commission of Human Rights

On 7 December 1985, the European Commission of Human Rights[4] published its long awaited report on human rights conditions in Turkey.[5] That report had been prompted by the complaints filed against Turkey in 1982 by France, Norway, Denmark, Sweden and the Netherlands.

The complaints alleged that Turkey, by imposing martial law, had violated six articles of the European Convention on Human Rights[6]: Article 3 - with regard to the widespread

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2/ Reference in E/CN.4/1987/SR.45, para. 83, at 19 - Agenda item twelve - Question of the violation of human rights and fundamental freedoms in any part of the world.

3/ Reference in E/CN.4/Sub.2/1987/SR.12, para. 64, at 12 - Agenda Item 6 - Question of violations of human rights and fundamental freedoms.

4/ Hereinafter referred to as the European Commission.

5/ European Commission of Human Rights: Report on the Application of Denmark, France, Netherlands, Norway and Sweden Against Turkey and the Conclusion of a Friendly Settlement, Report of the Commission, Adopted on 7 December 1985, Reprinted in 25 I.L.M. 2, at 308-318 (1986). Hereinafter referred to as the Report of the European Commission.

6/ The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, entered into force on 3 September 1953, as amended according to the Provisions of Protocol No. 3 which entered into force on 21 September 1970, and of Protocol No. 5 which entered into force on 20 December

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and systematic torture and cruel, inhumane or degrading treatment or punishment of detainees; Articles 5 and 6 - with regard to the right to liberty and security of the person, and the right to fair trial; Articles 9, 10 and 11 - with regard to the right to freedom of thought, conscience and religion, the right to freedom of expression, and the right to freedom of peaceful assembly and association, including the right to form and to join trade unions.[7]

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The complaints referred only to the period between the declaration of martial law in September 1980 and the time the complaints were filed, 1 July 1982. Under its right of reply to the allegations, Turkey claimed: (1) that the measures taken under martial law were necessary because of the war between the extreme right and left and the "public emergency threatening the life of the nation;" (2) that the aim of such measures was the "establishment in Turkey of a true democracy and the re-establishment of human rights ... in accordance with the time-table announced by the Head of State;" (3) that there was no "administrative practice" of torture and ill-treatment of prisoners; (4) that, in fact, "martial law authorities had given numerous written directives to prevent maltreatment [and] [i]n a number of cases persons responsible for such treatment had been punished."[8]

In January 1985, the European Commission sent a mission of five members to Turkey. The "[d]elegation had discussions with the Minister of Justice, Members of the Grand National Assembly and Government officials, and with the President and Members of the Military Court of Cessation and the Military Prosecutor General at that Court. It also interviewed members of the legal profession, academics, trade unionists and journalists. The Delegation visited Military Detention Centers in Diyarbekir (Diyarbekir Prison), Istanbul (Metris and Sagmalcilar Prisons) and Ankara (Mamak Prison) where, after briefings by the military prison commanders, it was able to talk in private with prisoners and see the places it wished to see."[9] The European Commission provides no detail as to the number or identity of prisoners seen and places visited.

After lengthy negotiations between the complaining parties and the Government of Turkey, with the European Commission playing the role of intermediary, in compliance

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1971. Reprinted in COUNCIL OF EUROPE, HUMAN RIGHTS IN INTERNATIONAL LAW, Strasbourg (1979). Hereinafter referred to as the European Convention.

7/ Report of the European Commission, para. 7, at 310.

8/ Report of the European Commission, para. 8-11, at 310-311.

9/ Report of the European Commission, para. 28, at 313.

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with Articles 28(b) and 30 of the European Convention, a "friendly settlement" was reached in December 1985.[10]

Had the parties not reached the "friendly settlement," the European Commission then would have issued its report stating its opinion on whether or not the provisions of the European Convention had been breached, and then referred the controversy to the Committee of Ministers, the executive organ of the Council of Europe, and to the States concerned.[11] The Council of Europe, after ascertaining whether violations of the European Convention had taken place, could then have imposed binding conditions upon the state violating the European Convention and published a detailed report on its findings, a result Turkey wished to evade.[12]

Without expressly finding that Turkey had in fact violated the six articles described above, the terms of the "friendly settlement" required that Turkey report to the European Commission periodically (July and September 1986, and February 1987) on progress made in human rights.[13] However, the progress reports and responding comments of the complaining governments will remain strictly confidential,[14] thus neutralizing the most potent weapon against violators of human rights - public exposure. Despite "serious shadows," the confidential reports to the European Commission have so far been favorably received.[15] The "serious shadows" include mass trials, torture, trials of civilians in military courts, restrictions on trade unions, and more. With the 1982 complaints and subsequent inquiries into abuses of human rights in Turkey, Western Europe has been credited with being a substantial force in bringing about improvements in Turkey. However, "many believe that the 'friendly settlement' was premature, based more on promises by the Turkish government than on specific actions."[16]

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10/ Report of the European Commission, para. 3-4, at 309.
11/ European Convention, Article 31.
12/ European Convention, Article 32.
13/ Report of the European Commission, para. 39, at 314.
14/ Report of the European Commission, para. 39(A)(4), at 314.
15/ *Cumhuriyet*, Editorial, 13 Mar. 1986; as translated and reported in A HELSINKI WATCH REPORT, VIOLATIONS OF THE HELSINKI ACCORDS: TURKEY, A REPORT PREPARED FOR THE HELSINKI REVIEW CONFERENCE, at 87-89 (November 1986). Hereinafter referred to as the Helsinki Violations.
16/ A REPORT FROM HELSINKI WATCH, STATE OF FLUX: HUMAN RIGHTS IN TURKEY, December 1987 Update, at 163 (pre-publication edition). Hereinafter referred to as State of Flux.

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Although, at first, Amnesty International declined to comment on the "friendly settlement,"[17] it later reported that it had not found that the Turkish authorities made any substantial changes as a result of the "friendly settlement:" "Amnesty International continues to receive allegations that both political prisoners and detainees suspected of having committed criminal offenses are tortured or subjected to cruel, inhuman or degrading treatment or punishment, while in police custody and in military and civilian prisons. Although the Turkish authorities have stated repeatedly that all complaints of torture are investigated and that those responsible for torture will be prosecuted, Amnesty International has not observed any fundamental changes in the attitude or the practice of the police or prison officials in Turkey relating to the torture of detainees and prisoners during the past 12 months."[18]

As part of the "friendly settlement" Turkey agreed to permit individual grievances to be filed against it with the European Commission. However, despite the Turkish government's attempt to portray this step as evidence of Turkey's willingness to move towards democracy, in substance it is another token gesture. Thus, Turkey has made it clear that, though it will allow its citizens to resort to the European Commission, it will not accept the jurisdiction of the European Court of Human Rights. Furthermore, the right to apply to the European Commission, which came into effect on 28 January 1987, is not to have retroactive effect. Consequently, those whose rights were violated prior to 28 January 1987, including the tens of thousands who were detained in cruel conditions and tortured, will not be granted access to the European Commission. In addition, according to an official declaration by the Turkish government, "The notion of 'a democratic society' in ... the Convention must be understood in conformity with the principles laid down in the Turkish Constitution and in particular its Preamble and its Article 13" (the Constitution is discussed *infra*).[19] Finally, before an application to the European Commission may be entertained, a petitioner is required to exhaust all domestic legal procedures. Although this is a standard requirement of most international petitioning procedures, in Turkey's case as discussed below, domestic procedures can be extremely

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17/ Amnesty International Press Release, AI Index NWS 01/06/86 (21 Feb. 1986).

18/ Amnesty International report, "Turkey: Torture and Ill-Treatment of Detainees and Prisoners," AI Index EUR 44/28/86, at 15 (Nov. 1986).

19/ Declaration by the government of Turkey pursuant to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms, dated 29 January 1987, as reprinted in State of Flux, appendix 1, at 172.

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protracted and rarely result in any relief. These and other restrictions have led observers to doubt that Turkey's acceptance of the individual petition procedure will enhance protection of human rights in the country.[20] In fact, four signatory countries of the European Convention - Sweden, Norway, Luxembourg and Greece - have challenged Turkey's conditional acceptance of the individual right of appeal to the European Commission.

On 19 January 1987, the European Commission closed the complaint file. This action was based upon the release by Turkey of more than 31,000 prisoners under the Reduction in Sentences Law[21], improved prison conditions, and the Turkish government's alleged "determination to investigate allegations of torture and prosecute those responsible". Observers have criticized the European Commission's "unfortunate" action "while torture and other human rights abuses continue in Turkey."[22]

Subsequent to the European Commission's closing the complaint file, in April 1987, Turkey applied for full membership in the European Community. Many objections, economic as well as political, to Turkey's full membership have been voiced by current members of the community.[23] In addition, Turkey's human rights record "would be among the features taken into account in evaluating the application."[24] The culmination of these political objections was a resolution by the European Parliament in June 1987 summarizing Europe's concerns: "The refusal by the present Turkish government to acknowledge the genocide against the Armenian people committed by the Young Turk government, its reluctance to apply the principles of international law to its differences of opinion with Greece, the maintenance of Turkish occupation forces in Cyprus and the denial of the existence of the Kurdish Question, together with the lack of true parliament or democracy and the failure to respect individual and collective freedoms, in particular freedom of religion, in that country are insurmountable obstacles to consideration of the possibility of Turkey's accession to the Community."[25]

20/ The Economist, "Well Done, Pity About the Strings," February 7, 1987, at 49.
21/ More about this *infra*, "Amnesty For Political Prisoners."
22/ State of Flux, at 164.
23/ The Middle East, "What's Jamming the Door to Europe?" London, September 1987.
24/ *Cumhuriet*, 9 April 1987.
25/ European Parliament Resolution of 18 June 1987, clause 4, Doc. A2-33/87.

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B. The Council of Europe's Visit to Turkey

Prior to the European Commission's visit in 1985, a delegation of twenty four members representing the Political and Legal Affairs Committees of the Council of Europe visited Turkey for three days in April 1984.

The Council of Europe mission visited Diyarbekir Prison for two and a half hours and met with eight prisoners. "The meetings were conducted in the presence of the commanding officer, the judge advocate, two prison officials, a Foreign Ministry representative and an armed forces representative. The Foreign Ministry representative acted as interpreter."[26] The mission also visited Mamak Prison where the prisoners they met "appeared to be in good health but were noticeably intimidated ... [and] they did not mention any special complaints."[27] The fact that the Turkish government allowed such an inquiry into the prison conditions in Turkey was "noted with satisfaction" by the delegation.[28]

The delegation, while observing that the situation was admittedly unsatisfactory, nevertheless concluded that the situation in Turkey had improved in recent months. That conclusion led to the Council's decision to admit Turkey to membership - a decision not to be confused with Turkey's pending application to full membership in the European Community discussed *supra*.

C. The United States

As Turkey's chief fiscal and political sponsor, the United States is deeply implicated in events in that country. Turkey is the third largest recipient of U.S. aid (over $700 million in military aid in 1986[29]) and a major NATO ally. The U.S. government, which maintains a defense pact with Turkey, supported the 1980 military takeover and the martial law regime that followed.

Although, since 1984, the U.S. Department of State, in response to concern from members of Congress and from human rights NGO's, has taken a somewhat stronger position with

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26/ A REPORT FROM HELSINKI WATCH, STRAWS IN THE WIND: PROSPECTS FOR HUMAN RIGHTS AND DEMOCRACY IN TURKEY, at 21 (July 1984). Hereinafter referred to as the 1984 Helsinki Report.

27/ 1984 Helsinki Report, at 22.

28/ 1984 Helsinki Report, at 21.

29/ COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1986, REPORT SUBMITTED TO THE COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES AND THE COMMITTEE ON FOREIGN RELATIONS U.S. SENATE BY THE DEPARTMENT OF STATE, 100th Cong., 1st Sess., at 1053 (February 1987). Hereinafter referred to as the 1987 Country Report.

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regard to human rights abuses in Turkey, nevertheless, the Department of State continues to ascribe such abuses to "poorly educated police officials" instead of to the martial law regime and its successors, and in general, continues to hail the "positive direction" of human rights trends in Turkey, always minimizing reports of abuses as "claims" or "allegations" and understating the extent and severity of the practice of torture.[30] However, in its latest report to Congress, the U.S. Department of State, after noting the "positive trend in the observance of human rights" in Turkey, conceded that "significant shortcomings are still evident."[31] The Turkish Foreign Minister has strongly expressed to the United States its dissatisfaction with the latter report.[32]

U.S. Ambassador to Turkey, Robert Strausz-Hupe, "takes credit for what he and Elliott Abrams (the former Assistant Secretary of State for Human Rights) have accomplished in Turkey through quiet diplomacy: 'Perhaps some of the best work we have done here will remain forever unsung.' ... The U.S. Ambassador also said that if the Ozal government were to fall, Turkey would very likely go back to the anarchy that preceded 1980."[33] The Ambassador's latter comment reflects the overriding U.S. interest in maintaining the Ozal government even at the cost of closing its eyes to the human rights abuses. In fact, "[n]ot only the victims of human rights abuses, but also leaders of the opposition parties and ordinary citizens hold the United States responsible for human rights violations in Turkey."[34]

"Turkey places great importance on its relations with the West. Financial aid is a large part of it, of course, but there is also the wish to be fully integrated into the Western alliance .... [I]t is humiliating for Turkish leaders to have their country singled out as the only egregious human rights offender in NATO. Their efforts to correct that impression - - by suppression of the facts, by denial of the accusations, by attempts to reform the system, and by negotiations with accusing countries - - stem from

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30/ COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1985, REPORT SUBMITTED TO THE COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES AND THE COMMITTEE ON FOREIGN RELATIONS U.S. SENATE BY THE DEPARTMENT OF STATE, 99th Cong., 2d Sess., at 1106 (February 1985). Hereinafter referred to as the 1985 Country Report.

31/ 1987 Country Report, at 1038.

32/ *Cumhuriyet*, 9 April 1987; as translated and reprinted in State of Flux, at 161.

33/ 1986 Helsinki Report, at 112.

34/ 1986 Helsinki Report, at 111.

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their desire to be accepted fully in the Alliance."[35] "It is this sensitivity that makes Turkish leaders susceptible to constructive criticism from their Western allies aimed at promoting human rights improvements in Turkey."[36] Yet, the European states as well as the United States have failed to take advantage of this position of influence.

D. The Helsinki Reports

In a Report on human rights conditions in Turkey published in 1984 by Helsinki Watch, an organization founded in 1979 to promote domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords, the author states: "since the 1983 elections in Turkey, there have been conflicting reports about developments there that may have bearing on Turkey's long-awaited 'transition to democracy.' Some of these developments, as yet no more than 'straws in the wind,' have caused glimmers of hope in some quarters ... At the same time, however, there are distressing reports about the use of torture during interrogation, about abysmal prison conditions resulting in hunger strikes, and about restrictions of political rights such as freedom of the press, speech and association."[37]

In the introduction to the 1986 Report, Jeri Laber, the Executive Director of Helsinki Watch, stresses the seriousness of the continuing violations: "[I]f the parliament has become a stage where human rights issues are discussed, the performers so far appear merely to be playacting. The real human-rights drama, virtually unchanged, is being enacted far from the public eye. Thousands of political prisoners ... are hidden away in military prisons, many of them still awaiting the outcome of trials that have dragged on for years.... Many of them were badly tortured when they were arrested, and they continue to be treated harshly in prison."[38] The Turkish government acknowledges close to eighteen thousand political prisoners.[39] "The fate of this youthful ... prison population ... is overshadowed only by the problem of torture. Despite all protests to the contrary, it has not yet been brought under control. Torture was practiced in Turkey before the 1980 coup when tens of thousands of people were arrested."[40]

35/ A HELSINKI WATCH REPORT, FREEDOM AND FEAR - HUMAN RIGHTS IN TURKEY, at 110 (March 1986). Hereinafter referred to as the 1986 Helsinki Report.
36/ 1986 Helsinki Report, at 111.
37/ 1984 Helsinki Report, at 5.
38/ 1986 Helsinki Report, at 5.
39/ 1986 Helsinki Report, at 7.
40/ 1986 Helsinki Report, at 7.

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Laber concludes: "[M]ore than five years since the 1980 military takeover, Turkey seems at the threshold of a new phase of its political history. It is not the democracy that some suggest it has become .... It will not be a democracy until there are legal safeguards for the civil liberties that are beginning to be exercised there. And yet I found good reason to be hopeful. The sensitivity of the authorities to international criticism and their recognition of the need for improvements seem to be indisputable. So is the vitality of many of the political leaders and potential leaders in Turkey today. Turkish society is in the midst of dynamic changes, and the forces favoring freedom, democracy, and human rights are growing stronger."[41]

A more recent Helsinki report published in November 1986, 18 months after the above discussed report, is less optimistic about human rights conditions and characterizes Turkey as one of the "most repressive of the Helsinki signatory countries" where human rights "violations are of a particularly severe nature."[42] This report, based on more recent evidence, states, "reports of torture, inhumane prison conditions and arbitrary restrictions on various freedoms continue. Much remains to be done to improve the human rights situation in Turkey."[43] The report details examples of authors and publishers who were "allowed" to publish controversial books or articles on issues including human rights conditions in Turkey and are now facing prosecution and stiff sentences for the same publications.[44]

Another report on Turkey, published in March 1987 by the International Helsinki Federation For Human Rights, concludes that "the most urgent steps to be taken in order to establish a decently functioning democracy are effective measures against torture and a general amnesty for those convicted for non-violent political activities."[45]

Finally, the most recent Helsinki Watch report on Turkey published in December 1987, while recognizing that the situation is "dramatically different from 1983, especially with regard to the parliament and the press," expresses its disappointment that "expectations for continued human rights progress in Turkey have not yet been

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41/ 1986 Helsinki Report, at 13.
42/ Helsinki Violations, at i.
43/ Helsinki Violations, at 1-2.
44/ *Cumhuriyet*, 23 Dec. 1985; See also *Cumhuriyet*, 8 Feb. 1986; Nokta, 16 Mar. 1986; *Yeni-Gundem*, 16-22 June 1986; as translated and reported in Helsinki Violations, at 23-25.
45/ A REPORT FROM THE INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS: TURKEY, TORTURE AND POLITICAL PRISONERS, at 2 (March 1987). Hereinafter referred to as the International Helsinki Report.

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fulfilled."[46] The report concludes by expressing its concern with the "gross abuses of human rights in Turkey, especially with regard to the use of torture" and deplores "the continuation of repressive legislation in Turkey that provides no legal safeguards, even for those rights that Turkish citizens are now exercising."[47]

The Helsinki Watch reports constitute an invaluable source of information on human rights abuses in Turkey. However, some of the cautiously optimistic conclusions found therein should be carefully examined. This report is an attempt to that effect. In addition, this report explores the human rights record in Turkey through other reports published by human rights NGO's - including the Helsinki Watch Reports discussed above - as well as governmental and inter-governmental agencies. Finally, this report investigates the record of human rights abuses against non-Turkish national groups and religious minorities in Turkey.

III. A NEW DEFINITION OF DEMOCRACY

A. Martial Law

In July 1987, martial law was ended in the last five of Turkey's 67 provinces, including those in the predominantly Kurdish inhabited areas - Diyarbekir, Hakkari, Mardin, Siit, and Van. However, a special governor with extra powers has been appointed to the eight eastern provinces, including the five provinces where martial law had just been ended. The new governor's extra powers include "command of the regional security forces and full authority to evacuate villages or rural settlements temporarily or permanently for security purposes. The state of emergency has been described as 'civilian martial law."[48] In addition, eight other provinces remain under state of emergency.[49] Under either the special governor's rule or emergency status, fundamental freedoms may be suspended or sharply curtailed.[50] It must also be born in mind that repressive laws enacted during martial law remain in effect (see *infra*).

B. Elections

In November 1983, under close military control, the first Parliamentary elections after the establishment of martial law took place in Turkey.[51] All pre-martial law political parties and politicians were prohibited from

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46/ State of Flux, at 4.
47/ State of Flux, at 171.
48/ State of Flux, at 132.
49/ 1987 Country Report, at 1038.
50/ Helsinki Violations, at 3.
51/ State of Flux, at 3.

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participating in the elections. Despite General Evren's full support of the National Democracy Party, the latter finished last with 71 seats in the Parliament, and the Motherland Party (Prime Minister Ozal's party), the only alternative in the absence of any real opposition, won with 211 seats.[52] In March 1984, three additional parties were permitted to participate in municipal elections giving the Motherland Party an overwhelming victory.

This seemingly democratic process, which gave the West (including the U.S.) reason to commend Turkey[53], was hardly more than "window dressing," just enough to silence the most ardent critics of U.S. aid to Turkey in Congress, and to satisfy the five European states that had submitted complaints to the European Commission.

In 1982, prior to the two elections, the military rulers of Turkey had enacted a new Constitution that severely curtailed the ability of the Parliament to be elected to improve human rights conditions, and placed limitations on democratic rights in general. "Before it stepped slightly aside to admit a civilian government, the ruling military regime drew up a stringent new Constitution, enacted a press law that is even tougher than the previous military press restrictions, extended martial law and guaranteed the continued employment of military officers who want to remain in the civilian government. The military government also declared that the 631 laws it had enacted since the military takeover on September 12, 1980, could not be changed or criticized .... Bound by these limits, the Ozal government is seen by many observers here as no more than a token step in the direction of democratic civilian rule, with little chance of exercising more than a moral influence on Evren and the determined officers who joined him in the military coup of 1980."[54] As a former Prime Minister Bulent Ecevit stated, the measures taken in Turkey amount to "window dressing" and the government is "completely uninterested in human values and social justice."[55]

To make matters worse, in March 1986, the National Assembly passed a new Elections Law imposing more restrictions especially on newly formed parties. The new restrictions include the requirement of an increased number of provincial branches before a party may enter candidates in the general elections and reduced free television air time (more time may be purchased). Furthermore, the new Elections Law makes voting almost compulsory by imposing a fine of 10,000 Turkish Liras upon those who choose not to

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52/ 1984 Helsinki Report, at 5.
53/ 1985 Country Report, at 1106.
54/ The Washington Post, 28 January 1984.
55/ The N.Y. Times, 11 August 1985.

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exercise their right to vote. The new Elections Law has been challenged by the Social Democratic Party of Turkey for violating nine articles of the Turkish Constitution as well as its Preamble.[56]

In a positive development, on 6 September 1987, a popular referendum repealed provisional Article 4 of the Constitution prohibiting former politicians from participating in Turkish political life and from forming parties until 1992. Increasing pressure from Western Europe was the motivating force behind the referendum.[57] "The referendum was a murky business... many voters, especially the illiterate peasants of Anatolia, had no idea what the referendum was really about... only in the final week were leaders of the yes campaign [to abolish article 4] allowed to present their case on television, and Mr. Demirel himself was not permitted to speak."[58]

On 29 November 1987, the first election since the 1980 coup took place without military supervision. Prior to the election and immediately after the referendum of 6 September 1987, the Ozal government had reduced the period between the dissolution of parliament and new elections from 90 days to 45, which, according to the opposition leaders, "does not give them enough time to organize a proper campaign."[59] After the election, opponents and observers were troubled by electoral mathematics that gave two thirds of the seats in parliament to Ozal's party that won a little over one third of the votes, the result of voting rules the Ozal government "rushed through before the election."[60]

C. The New Constitution

"The basic problem with regard to human rights in Turkey remains unchanged. It stems from the repressive 1982 Constitution and a series of equally repressive laws that remain in force, exerting a chilling effect on the society. Many of the freedoms that have been tolerated in Turkey since 1983 may very well be a gesture by the government to international opinion, rather than the reflection of a genuine desire for democracy and human rights. And because these freedoms have no legal guarantees, they can be easily reversed if there is a change of policy."[61]

56/ Helsinki Violations, at 5-6.
57/ The New York Times, "Turks In Accord On A Referendum," 16 May 1987.
58/ The Economist, "Turkey, Yes to What?" 12 September 1987.
59/ The Economist, "Ozal on a roll," 10 October 1987.
60/ Economist, "The Past is at Least the Past," 5 December 1987.
61/ State of Flux, at 6.

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The 1982 Constitution restricts the Turkish Parliament's ability to enact legislation to improve human rights conditions. A case in point is the limitation placed on the Parliament by Articles 14 and 87 of the Constitution. Article 87 prohibits Parliament from enacting legislation pardoning political prisoners charged with violations of Article 14. Article 14 proscribes activities broadly defined which violate "the indivisible integrity of the State with its territory and nation" and which endanger "the existence of the Turkish State and Republic."[62] Many political prisoners are charged with violating this provision of the Constitution, and without Parliament having the right to amend the Constitution, an amnesty for those political prisoners would be impossible.

The Constitution prohibits criticism of any decisions or measures whatsoever taken by the Council of National Security.[63] The Preamble of the Constitution states that "no protection shall be afforded to thoughts or opinions contrary to Turkish national interest, the principle of the existence of Turkey as an indivisible entity with its state and territory, Turkish historical and moral values, or the nationalism, principles, reform and modernism of Attaturk."[64] Furthermore, "fundamental rights and freedoms may be restricted by law ... with the aim of safeguarding the indivisible integrity of the state with its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest, public morals and public health."[65]

"The 'right to life' is all but removed by the 1982 Constitution. Article 17 states that 'occurrence of death as a result of a use of a weapons [is] permitted by law as necessary measure in cases of apprehension, or the execution of warrants of arrest, the prevention of escape of lawfully arrested or convicted persons, the quelling of a riot or insurrection....' This is none other than a carte blanche for summary executions of suspected dissidents."[66]

The Constitution gives to the President effective control over state radio and television, the appointment of university rectors and all aspects of university life from promotion of academics to acceptable forms of dress in

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62/ The Constitution of the Republic of Turkey, Official Gazette, 9 November 1982, No. 17863.

63/ Declaration by Turkish Intellectuals (signed by 1256 individuals), The N.Y. Times, 16 May 1984; See also 1984 Helsinki Report, at 32, n. 1. Hereinafter referred to as the Declaration.

64/ Constitution, Preamble para. 8.

65/ Constitution, Article 13.

66/ Declaration, as reprinted in the 1984 Helsinki Report, at 32, n. 2.

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lectures and university curricula (Article 130).[67] Article 28 of the Constitution gives authorities the power to ban and confiscate publications deemed prejudicial. Under the same provision, printing presses can also be confiscated.[68] Article 15 of the Constitution permits the suspension of fundamental freedoms under martial law or state of emergency status.[69]

A prominent Turkish attorney has observed that "the usual Constitution defends the rights of citizens against the state; [The Turkish Constitution] describes the power of the state against the individuals." A professor refers to the "Constitution as an 'anti-Constitution,' and believes that no Constitution would be preferable: People would then be able to exert some rights, based on international examples."[70]

IV. TORTURE

A. Torture As State Policy

Even though, according to Amnesty International, the use of torture in Turkey was systematic and widespread even before the military coup of 1980, immediately after the coup, the incidence of torture increased dramatically.[71] "In subsequent years the number of torture allegations and reported deaths under torture gradually decreased, but only relatively. Continuing reports of torture during recent months point to the fact that the pattern has shown no significant change to the present day."[72] On the contrary, "torture continues to be widespread and systematic in Turkey. Most allegations relate to the ill-treatment of detainee in police custody during their initial interrogation when they are usually denied access to relatives or a lawyer."[73] Jeri Laber, Executive Directory

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67/ Declaration, as reprinted in the 1984 Helsinki Report, at 35, n. 7 and 8.

68/ Declaration, as reprinted in the 1984 Helsinki Report, at 35, n. 9.

69/ Helsinki Violations, at 3.

70/ State of Flux, at 13.

71/ AMNESTY INTERNATIONAL PUBLICATION, TURKEY, TESTIMONY ON TORTURE, at 2 (1985). Hereinafter referred to as AI Torture; See also AMNESTY INTERNATIONAL PUBLICATIONS, TORTURE IN THE EIGHTIES, AN AMNESTY INTERNATIONAL REPORT, at 217 (1984), (emphasis added). Hereinafter referred to as Torture In 80's.

72/ Amnesty International Newsletter, "File on Torture - Turkey," at 3, September 1987, Vol XVII Number 9. Hereinafter referred to as File on Torture.

73/ Amnesty International, Urgent Action telegram, 4 December 1987.

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of Helsinki Watch, characterizes as myth and fiction the government's claim that torture has ended in Turkey.[74]

Since the coup, people detained for political acts usually have been tortured,[75] in some cases to death[76]. Victims are not only political detainees but also include common suspected criminals.[77] Observers are shocked by the pervasiveness and randomness of torture in Turkey - "an atrocity against the human body, soul and dignity."[78] "Under torture, which is used routinely during interrogation to gather information about terrorist movements, individuals often are forced to confess to any crime and to name as many other individuals as possible. In this way, thousands of people - - particularly young people - - have been gathered into police stations and military jails. Many were convicted on the basis of 'confessions' obtained through torture or upon the testimony of other torture victims."[79]

Torture has become a "habit for punishing without trial, in advance and in a primitive way."[80] Methods used in the Diyarbekir Military Prison, where most prisoners are Kurds, are particularly "bestial."[81] Torture is also used to silence those exposing the practice of torture. The editor of a newspaper in Sebinkarahisar, in addition to other mistreatment, was forced to eat his newspaper because he dared to publish a story about the torture of eight townspeople and demanded an explanation from officials.[82]

Huseyin Yildirim, a Kurdish lawyer, who was one of the few to emerge alive from Diyarbekir Military Prison after 40 days of relentless torture, describes his torture as follows:

> I myself was thrust repeatedly, naked, into flames ... I was suspended by one or two legs from the ceiling; they even attached a cord to my penis and pulled the cord by means of a pulley attached to the ceiling. I frequently lost consciousness during such torture.... I was often dragged across a large room knee-deep in

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74/ New York Times, "Turkish Hypocrisy on Ending Torture," July 13, 1987.
75/ 1984 Helsinki Report, at 14.
76/ AI Torture, at 2.
77/ AI Torture, at 3.
78/ Index on Censorship, "A Turkish Tug-of-War," London, June 1987. Hereinafter referred to as Index on Censorship.
79/ 1984 Helsinki Report, at 14-15.
80/ Declaration, as reprinted in the 1984 Helsinki Report, at 33.
81/ 1984 Helsinki Report, at 44.
82/ *Cumhuriyet*, 7 Dec. 1986; as translated and reported in Helsinki Violations, at 63.

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sewage and beaten at the same time with sticks. Sometimes I would be surrounded by 50 officers with sticks who beat me. On the sticks were written 'God does not exist. The prophet is on holiday.' The wounds on my back were so deep that my fingers entered into them.... I am however only a lawyer, and no senior member of the executive committee of an illegal Kurdish organization. You can therefore imagine what the torture is like for these.... I am convinced that the Junta has decided to exterminate the prisoners at Diyarbekir, in particular the higher cadres of the PKK and other Kurdish organizations. These are put into death cells.... The worst torture is carried out in these 'death cells'. These prisoners have become barely living skeletons; open wounds fester as a result of the open sewage which is often made to flood their cells.[83]

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"The stories we heard about Diyarbekir were sickening: a man forced to eat a live rat (it appears in the court records); ... prisoners put in septic tanks as punishment, forced to eat excrement and drink urine."[84] Although since 1984, as a result of hunger strikes and international pressure, the situation in Diyarbekir has somewhat improved, prisoners continue to be ill treated. Often entire families are brought in and tortured together in order to intimidate them or extract information. A petition on behalf of prisoners in Diyarbekir, presented to the military court in that city, alleged that 32 prisoners had been killed under torture; Unofficial sources place the figure at 67. According to the Turkish Human Rights Associations (see *infra*, "Freedom of Association"), since 1980, the total number of deaths in detention stands at 170 of which 97 from torture, 14 from lack of treatment after torture, 24 from suicide, 10 from hunger strikes, 4 from clashes with security forces, and 20 from unspecified reasons.[85] Other sources place the number of political detainees who have either died during interrogation or disappeared since their arrest at 253.[86]

"Torture is a state policy .... The officials state that they have the right to use force, and force does not count as torture."[87] A retired General and a close friend of General Evren, Turgut Sunalp, summed up the Turkish government's attitude about torture. In a meeting with a Helsinki Watch delegation he stated that "there has been, still is and will be torture in Turkey because there is torture everywhere in the world ... You have an

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83/ 1984 Helsinki Report, at 45.
84/ State of Flux, at 120.
85/ State of Flux, at 74.
86/ INFO-TURK, November 1987.
87/ 1986 Helsinki Report, at 88.

understanding of what constitutes torture ... three hours of sleep and then questioning - - this is not torture, this is technique. You have to use technique to get results."[88] He was later quoted by a Turkish newspaper as having stated "and then there is this story of a girl, a severe Communist; she has alleged that she was raped with the use of a nightstick. Excuse me for saying this, but we have young men: twenty-one-year-old studs. If a girl was to be tortured in this way, why would they use a nightstick?"![89] Another example of sexual abuse involves a police officer from Ankara whose "specialty" is reported to be torturing victims by squeezing their testicles.[90]

The practice of torture continues to date and according to the President of the Union of Turkish Bar Association, Teoman Evren, "torture will always continue as long as the police are expected to get answers at any price."[91] Not only does the practice of torture continue, it may actually be on the rise again. According to one deputy, "torture and maltreatment by the police are increasing on a daily basis ... in general all over Turkey."[92]

Nonetheless, most government officials, including Prime Minister Ozal, deny that torture is practiced in Turkey or reduce the practice to isolated instances of police misbehavior. However, "it is beyond reasonable doubt that torture practices continue and that the instances of torture cannot be reduced to isolated instances of police brutality."[93] When confronted by questions about specific instances of torture, the Prime Minister is quoted to have stated "don't ask such questions. ... If you ask such questions, you can't come face to face with me anymore."[94] However, "reports about incidents of torture have exploded in the Turkish press. Recently, a significant official admission that torture is indeed practiced in Turkey came from the newly appointed Justice Minister who, in his first statement after assuming office, stated "torture certainly

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88/ 1986 Helsinki Report, at 51.

89/ *Hurgun*, 28 Oct. 1986; as translated and reported in 1986 Helsinki Report, at 51.

90/ *Cumhuriyet*, 31 Jan. 1986; as translated and reported in Helsinki Violations, at 63.

91/ *Hurriyet*, 9 Apr. 1986; as translated and reported in Helsinki Violations, at 62.

92/ *Cumhuriyet*, 9 Apr. 1986; as translated and reported in Helsinki Violations, at 67.

93/ International Helsinki Report, at 6. Ironically, Turkey has recently announced its intention to sign the U.N. Convention Against Torture. San Francisco Chronicle, "Turkey Will Sign Pact Against Torture," 22 January 1988.

94/ *Cumhuriyet*, 7 Dec. 1985; as translated and reported in 1986 Helsinki Report, at 53.

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exists in Turkey."[95] "The issue has become a national scandal.... The government has responded with confusion, trying to deny, minimize or discredit the reports. As the stories multiply, however, their efforts become more futile."[96] One Turkish doctor was quoted to have stated "for every case that makes to the newspapers, there are fifty that don't."[97]

The 1986 Helsinki Report, the subsequent Helsinki Violations (November 1986) and State of Flux (December 1987), as well as Amnesty International's Turkey, Testimony on Torture adequately describe hundreds of specific torture cases. "People have been tortured in police stations and prisons of every type throughout Turkey, there are also buildings especially equipped for torture."[98] In most cases torture is inflicted by the police in detention centers, but "Amnesty International has received detailed allegations of torture inflicted in military prisons and establishments, including gendarmerie stations. Routine severe beating of political prisoners has also been reported during 1986 and the beginning of 1987 to have taken place in special 'E-Type' prisons ... where political prisoners have to serve their sentences once they have become legally binding."[99]

The methods of torture used include electric shocks, *falaka* (the beating of the soles of feet), burning with cigarettes, hanging from the ceiling by hands or feet for long periods of time, punching and kicking, beatings, and assaults with truncheons, sticks and iron rods on all parts of the body including the sexual organs, and more.[100] Family members are also tortured, including children - in one incident which is reported to have taken place in August 1986, the 5 year old child of a suspect was administered electric shock![101]

A disturbing report has also reached human rights organizations in the West according to which, under medical supervision, including a "military psychologist," experimental drugs have been used on prison inmates.[102] In addition, there are accounts of medical doctors injecting victims with stimulants so that they would not faint under torture, or who treat victims' wounds so that marks of

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95/ 1987 Country Report, at 1040.
96/ 1986 Helsinki Report, at 54.
97/ 1986 Helsinki Report, at 55.
98/ File on Torture, at 4.
99/ Amnesty International, "Continuing Violation of Human Rights in Turkey," at 4, 15 June 1987, AI Index: EUR 44/33/87.
100/ AI Report, at 3; International Helsinki Report, at 11 - 14, contains illustrations of torture methods used.
101/ State of Flux, at 80.
102/ 1986 Helsinki Report, at 104.

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torture would not be apparent.[103] According to one report, at least thirty physicians are suspected of having assisted in torture.[104]

The acts of torture in Turkey do not, on the whole, take place in remote locations. Many of them occur "in police detention centers in the heart of Istanbul and Ankara.... [Helsinki Watch delegation members] were able to determine the exact location of major torture centers in both cities: in Istanbul, it's the First Section of Police Headquarters in Gayrettepe; in Ankara, it's in the basement of the Ankara 'Security Palace.' Because these places are well known to the public, they must be known to the authorities who are in a position to bring them under control - - to prevent torture before it occurs, instead of waiting to punish torture after the fact."[105]

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B. Punishment of Torturers

"The Turkish authorities have repeatedly stated that all complaints of torture are investigated and those responsible for the torture will be prosecuted. However Amnesty International has not observed any fundamental changes in the attitude or practice of the police in Turkey regarding torture."[106] "In fact, Amnesty International is informed of many cases where torture allegations have not led to any investigations at all or where charges have been dropped at an early stage.... In some cases alleged torturers have been given awards and promoted by the authorities while investigations and trials against them were continuing."[107]

Though an effort has been made to prosecute and punish those responsible for torture, the overwhelming conclusion of observers is that relatively few have been convicted in relation to the number of charges brought, and that the number of charges that have been filed bears little relationship to the actual number of torture victims in Turkey.[108]

Charges of torture are usually initiated by the victims themselves and therein may be one of the problems why more charges are not filed. For obvious reasons of personal security and fear, torture victims are often reluctant to

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103/ Helsinki Violations, at 11.
104/ Helsinki Violations, at 76.
105/ 1986 Helsinki Report, at 60.
106/ Amnesty International, Index: EUR 44/53/87, 3 September 1987.
107/ Amnesty International, "Continuing Violations of Human Rights in Turkey," at 3, 15 June 1987, AI Index: EUR 44/33/87.
108/ 1986 Helsinki Report, at 68.

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file such charges. In many instances, the charges must be filed with the very same officials who were responsible for the torture in the first place. Finally, the evidentiary problems present in bringing these charges are in most cases insurmountable because there are no witnesses to the act, at least who are willing to testify, and the victims are almost always blindfolded during the torture sessions, thus rendering them unable to identify the culprits.[109] Such cases are dismissed by the authorities because the victims cannot name their torturers.[110]

Charges against torturers also are discouraged by the large number of "suicides" in police stations. Observers believe that these "suicides" are explained by the fact that the police are now fearful of prosecution for torture and simply eliminate the victims by summary executions. These executions are carried out by throwing the victims from police detention center windows and then claiming the victims either committed "suicide" or fell from the window in an attempt to escape. In 1985, during a period of three months, five people met their deaths in such "suicides" or "escapes," four from the same window of the Ankara "Security Palace."[111]

In the very few cases where the torturer is finally brought to justice, convicted and sentenced, the sentences are usually very light, often not carried out, or the convicted torturer is paroled. The Turkish Criminal Code categorizes murder by torture as an unintentional manslaughter.[112]

In all charges involving torture, it is the individual torturer who is tried and never the policy.[113] However, if the regime really wants the evil eliminated, it should point its finger at the high ranking government officials and their policy that allows torture to continue. Furthermore, even though Article 16 of the 1982 Turkish Constitution prohibits torture, much more needs to be done to eliminate the practice. "Amnesty International has urged the martial law authorities to issue clear public instructions to all members of the security forces prohibiting the use of torture in all circumstances, and to allow prisoners access to families and lawyers throughout the detention period."[114] Finally, torture cannot be eradicated until and unless the long periods of permissible detentions for political offenses ("collective" crimes) are eliminated - under emergency measures, the initial 15 day detention period can

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109/ 1986 Helsinki Report, at 69-70.
110/ Helsinki Violations, at 65.
111/ 1986 Helsinki Report, at 72-73.
112/ 1987 Country Report, at 1040.
113/ 1986 Helsinki Report, at 70.
114/ Torture In 80's, at 219.

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be extended to up to 30 days, and then to longer periods with the release and immediate re-arrest of the detainee.[115] Turkish authorities are far from demonstrating the necessary will.

V. PRISON CONDITIONS AND RIGHTS OF DETAINEES

A. Prison Conditions

Official government statistics dating back to 1981, estimate the number of people taken into detention since 1980 at 122,660, a figure much doubted by non-governmental sources. Another source published in 1984, cites a far larger figure of people detained - 178,568. A trilogy on the state of human rights in Turkey sheds more light on this question.[116] "Between 1980 and 1984 some 180,000 Turks mainly between the ages of 15 and 25 were arrested; 65,000 were detained, 42,000 sentenced, 326 were sentenced to death, and 27 were hanged for a variety of political and ideological or terrorist offenses."[117] Yet another estimate from the president of the Turkish Human Rights Association places the figure of those detained since 1980 at 240,000.[118] How many of those detained still remain in prison has been impossible to determine with any certainty. Government figures vary from one source to another - according to the Prime Minister, the figure of detainees in September 1985 stood at 7,000 to 8,000; According to the chairman of a parliamentary committee charged with investigating prison conditions, the figure is about 18,000.[119] To this date, however, Turkey refuses to admit that any of the detainees are political prisoners, an assertion repeated by Ambassador Sukru Elekdag and United States Assistant Secretary of State for Human Rights and Humanitarian Affairs, Richard Schifter.[120] The most recent Country Report from the U.S. Department of State contradicts its own Assistant Secretary's earlier assertions by reporting that "in Turkey there were 10,000 prisoners convicted of 'thought crimes' [i.e., political prisoners]."[121] The same source also reports that by October 1986, more than 1100 prisoners were under sentence of death.[122] Amnesty International estimates

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115/ Helsinki Violations, at 71.
116/ Erbil Tusalp, A HUMAN RIGHTS FILE: ONE THOUSAND HUMAN BEINGS, Istanbul, November 1985; COURT RECORDS OF THE POST-COUP ERA: ONE THOUSAND WITNESSES, Istanbul, May 1986; STORY OF OUT REPUBLIC: ONE THOUSAND DOCUMENTS, Istanbul, February 1987.
117/ Index on Censorship, June 1987.
118/ State of Flux, at 73.
119/ 1986 Helsinki Report, at 80.
120/ The Wall Street Journal, 17 April 1986 and 23 April 1986, respectively.
121/ 1987 Country Report, at 1043.
122/ 1987 Country Report, at 1042.

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that, at present, there are 10,000 political prisoners in Turkey.[123]

Whatever may be the number of political prisoners, the fact remains that many detainees were tortured after arrest and were held for four to five years under the most cruel and degrading prison conditions awaiting the outcome of their trials, only to find out that they were not "terrorists" after all and were released. "Using security as a pretext, searches are conducted at all hours of the day and night, detainees are strip-searched, beaten up, and their belongings, papers, pencils and food are destroyed.... Nothing is accepted from their families, including food and underwear.... The detainees are not allowed to take baths for months and they are denied sometimes hot, sometimes cold water for doing their laundry.... Most of the detainees have no shoes.... Six inmates live in cells made originally for three people. The windows have been reconstructed so that air circulation in the cells is extremely poor.... The goal is to let rot in prison those whom they could not 'persuade' to confess, to keep them under extreme pressure so that they slowly die off."[124]

Since July 1987, over 2,000 political prisoners in military and civilian detention centers have staged hunger strikes to protest against their ill treatment. In solidarity, families of prisoners have also staged hunger strikes.[125] At first, even when hunger strikes lasting more than 60 days were claiming lives of political prisoners,[126] the Minister of Justice attempted to reduce the hunger strikes to a propaganda ploy to influence public opinion, but later was forced to admit that "some of the complaints of prisoners are justified."[127]

The evidence shows overwhelmingly that prisons in Turkey are not fit for human living. According to the Turkish Human Rights Association, not one prison in Turkey meets the Standard Minimum Rules For The Treatment Of Prisoners And Related Recommendation.[128] Another issue to note is the Turkish authorities' refusal to grant the International Committee of the Red Cross (ICRC) visitation rights to detention centers and prisons.

B. Right to Defense

"There is no such thing as a right to defense in Turkey now. According to the state of emergency law, the maximum

123/ State of Flux, at 94.
124/ 1986 Helsinki Report, at 88-89.
125/ INFO-TURK, July-August 1987.
126/ State of Flux, at 104.
127/ Turkish Daily News, 5-6 September 1987.
128/ ESA/SDHA/1, 1977. State of Flux, at 103.

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period of detention is 30 days - 15 days that can be doubled with the approval of the governor. But what happens is that a detainee will be taken somewhere - no one knows where, no one knows what happened, no one can intervene. The person who's being held can't see a lawyer, and the lawyer can't go there to intervene, even though today torture in all forms and techniques is still going on. After thirty days without an attorney, the right to defense is dead. A trial after thirty days of incommunicado detention is a comedy, and the final verdict is based on what the defendant said during those thirty days - the 'confession' is the main evidence brought against a defendant."[129]

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C. Right to Counsel

Although Turkish law guarantees the right of prisoners to have private visits with their attorneys, in reality they are not allowed any privacy during attorney visits, and in some cases prisoners are not allowed to see their attorneys at all.[130] In some prisons, detainees have no restriction on the number of visits they could receive from their lawyers, but the visits are limited to one or two minutes and prisoners are warned not to discuss prison conditions.[131] In addition, even though during visits, prisoners and their visitors are separated by two thicknesses of glass partitions, they are watched at all times by guards, and physical contact between visitor and prisoner is impossible, nevertheless, after each visit, prisoners are subjected to humiliating body searches including searches of body cavities. The result has been that, in order to avoid the humiliating searches, many prisoners have altogether forfeited their right to receive visitors, including their lawyers and family members.[132]

Based upon an independent inquiry, Amnesty International concludes that lawyers defending political prisoners have been harassed and impeded in many ways, in particular by insufficient access to their clients and the denial of private conversations.[133]

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129/ State of Flux, at 19.
130/ 1986 Helsinki Report, at 91.
131/ State of Flux, at 109.
132/ 1986 Helsinki Report, at 90-91.
133/ Amnesty International, Unfair Trials of Political Prisoners In Turkey, AI Index EUR 44/22/86, at 3 (3 Oct. 1986). Hereinafter referred to as Unfair Trials.

D. Right to Hearing

The trips from prison to court and back follow a pattern of intimidation with the aim of discouraging detainees from exposing prison conditions in the country's courts and seeking protection. During these trips, prisoners "are forced to stand for hours, handcuffed in the yard, and then are put into a van without windows, where they remain handcuffed, fifteen people in a space for eight or nine. 'If it's winter you freeze, if it's summer you burn. You wait all day for ten minutes in court."[134] "Detainees are strip-searched going to and from the court.... Before they are taken to their wards, they are given buttocks falaka, sometimes until they faint."[135] It is not unusual for prisoners to spend nine hours in such conditions without food or water or access to a toilet.[136] The expected result of such "horrible" and "most miserable" treatment is that many detainees decline their right to appear in court.[137]

E. Right to Correspondence

Political detainees' right to correspondence is severely restricted. In a petition to Helsinki Watch, political prisoners in Istanbul area complained that "[f]or almost two years there have been bans on visits from families and lawyers, and on outdoor exercises. Receiving and sending letters is highly restricted.... Many are banned from visits and severely beaten for giving information on prison conditions."[138]

F. Right to Medical Treatment

Prisoners are subjected to maltreatment during trips to medical facilities with the predictable result that many prisoners decline medical treatment.[139] Medical care in prisons is just about non-existent. Only under the most exigent circumstance, such as imminent death as a result of an illness, is a prisoner brought to a hospital for medical care. Even then, medical personnel often are willing to cooperate with the military authorities by attempting to "persuade" the patient to "confess" rather then to care for him.[140]

134/ 1986 Helsinki Report, at 93.
135/ *Cumhuriyet*, 8 Feb. 1986; as translated and reported in 1986 Helsinki Report, at 90.
136/ 1986 Helsinki Report, at 93.
137/ 1986 Helsinki Report, at 94.
138/ *Cumhuriyet*, 8 Feb. 1986; as translated and reported in 1986 Helsinki Report, at 90.
139/ 1986 Helsinki Report, at 94.
140/ 1986 Helsinki Report, at 91-92.

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VI. AMNESTY FOR POLITICAL PRISONERS

Since 1983, in the Parliament and in the press, there has been talk of amnesty for political prisoners. However, the 1982 Constitution (Articles 87 and 14 discussed *supra*) precludes any amnesty for political prisoners, including those who have neither used nor advocated violence. Only common criminals could be pardoned. Left wing activists who are sentenced for crimes against the state (a crime which cannot be pardoned according to the above referenced articles of the Constitution) would be precluded from any amnesty provision. On the other hand, right wing activists who are sentenced for only ordinary crimes, such as assault, theft, or vandalism would be eligible for amnesty.[141]

In early summer of 1985, a new "repentance law," referred to by the Prime Minister as a "kind of amnesty," was passed. Under this law, prisoners' sentences are reduced "if they give useful information about terrorist organizations to which they belonged or inform on former colleagues." Upon release, "repenters" are promised a new identity, including changed facial features through plastic surgery.[142] According to Prime Minister Ozal, some 300 people have come forward and taken advantage of the "repentance" law. According to parliamentary and other sources, many innocent people are being named and arrested because of "confessions" under the "repentance" law, thus creating a poisonous atmosphere.[143]

In March 1986, a Parole Law was passed which provides for a 50 percent reduction of all sentences, including the reduction of life sentences to 20 years, and the change of death sentences not ratified by the National Assembly to 30 years sentences. Sentences of those who had attempted to escape would be reduced by only 25 percent. 14,000 prisoners were released during the first week of the Parole Law; However, most of them appear to be common criminals. Initially, those released under the Parole Law were immediately sent into internal exile.[144] However, in April 1987, Parliament abolished the law on internal exile.[145] Nonetheless, the Parole Law cannot be considered an amnesty since people released under its provisions can again be charged and prosecuted for the same "crimes."[146]

As part of the "friendly settlement" reached between Turkey and the five complaining European countries to the European Commission of Human Rights (discussed *supra*), the

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141/ 1986 Helsinki Report, at 100-103.
142/ 1986 Helsinki Report, at 99.
143/ 1986 Helsinki Report, at 99-100.
144/ Helsinki Violations, at 53-54.
145/ State of Flux, at 11.
146/ Helsinki Violations, at 54.

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Turkish government was obligated to report back to the European Commission about measures taken to institute a general amnesty for political prisoners. However, "[u]ntil 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 mislead by the above statement by the Turkish Government."[147]

VII. MARTIAL LAW AND THE MILITARY COURTS

Even though martial law has been lifted in all provinces, repressive legislation passed during martial law is still in effect. In addition, many aspects of martial law continue under the state of emergency laws. "Military courts ... have not been abolished. They continue to consider cases which were pending before them when martial law was lifted, in accordance with Article 23 of the Martial Law Act."[148] Based upon a mission to Turkey in 1986, Amnesty International reached the following conclusions:

- Military courts are not independent from the executive authorities, either in law or in practice.

- Military courts trying political prisoners have repeatedly failed to investigate allegations by defendants that statements had been extracted under torture.

- More than 48,000 political prisoners tried by military courts since the first declaration of martial law in December 1978 have therefore been sentenced to imprisonment or the death penalty after an unfair trial.

- Military courts in provinces previously under martial law continue to function and at least 800 cases remain pending before them.[149]

VIII. FREEDOM OF EXPRESSION, ASSOCIATION AND MOVEMENT

A. Freedom of Expression

1. Freedom of Speech

It has been said that one of the most promising changes in Turkey in recent years has been the courageous attempt by some Parliament members and the press to hold a public

147/ International Helsinki Report, at 25.
148/ Unfair Trials, at 3.
149/ Unfair Trials, at 13.

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debate about the practice of torture and to keep the issue alive. In addition, ordinary people are more willing to discuss sensitive issues, even with Western human rights representatives.[150] However, the fact remains that there are no legal safeguards for these activities and many have lost their freedom for exercising their rights.[151] This fact was even acknowledged by the U.S. Department of State - "Writers are still being prosecuted for writing allegedly pro-Communist propaganda or violating secularist principles."[152] In addition, there are still forbidden topics: the treatment of Kurds, criticism of the President or the military.[153]

A recent case involves Ali Nesin, a Turkish citizen and a member of the faculty at the University of California at Berkeley, who was arrested in June 1986, while serving for four months in the Turkish military. Nesin and a fellow serviceman, Sevan Bedros Nisanyan, were charged with insulting their superiors in their absence and inciting to disobedience of military regulations. Both have denied the charges. It is believed that Nesin is the victim of a frame-up aimed at putting pressure on his father who is a writer and a critic of the present Turkish regime.[154]

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2. Freedom of the Press

The press exercises the greatest amount of freedom of expression. Not only stories about police brutality and torture abound in the press, but also calls for more democracy and accounts of parliamentary speeches criticizing the government are commonplace. However, "there is a restrictive press law that can be applied at any time. There are provisions in the Constitution against 'anyone who writes or prints any news articles which threaten the internal or external security of the State or ... which tend to incite offense, riot or insurrection ...' There is Article 140 of the Penal Code under which a person can be sent to prison for saying things that are damaging to Turkey's reputation abroad."[155] These provisions have had a chilling effect on many journalists who have not felt free enough to publish all of their investigative findings.[156] One journalist commented that "what we say, what we think and what we write are three different things."[157] These legal restrictions on the press continue to date.[158]

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150/ 1986 Helsinki Report, at 19.
151/ See *supra*, discussion under "The New Constitution."
152/ 1987 Country Report, at 1044.
153/ State of Flux, at 24.
154/ Helsinki Violations, at 59-60.
155/ 1986 Helsinki Report, at 22.
156/ 1986 Helsinki Report, at 23.
157/ 1986 Helsinki Report, at 24.
158/ State of Flux, at 26.

Helsinki Watch confirms that, even though the press in Turkey has been "experiencing an extraordinary surge in its freedom to cover political debate and accounts of torture, press freedom has also been curtailed by legal charges that have been brought against certain journalists."[159] According to one Turkish source, in Istanbul alone, there had been 313 suits brought against journalists for "propagating communism," insulting the Prime Minister, publishing "obscene" material, and otherwise violating the Press Law. Another report cites the case of 27 journalists who were sentenced to a total of three thousand years in prison for similar offenses.[160] Yet, another recent example of the liberty enjoyed by Turkish journalists, is the case of an editor of a provincial newspaper in Kars who was fined and sentenced to seven months in prison for describing the wealth of the governor of the province.[161]

Nonetheless, despite legal restrictions and proceedings, Turkish journalists have been publishing articles on subjects such as the "Kurdish problem" without having to resort to the use of subterfuge in describing the issue. However, this practice has not been without risk, publications have been banned or confiscated and journalists prosecuted.[162]

To make matters worse, a proposed "false news" law will certainly have a further chilling effect on the freedom of the press in Turkey. Among the provisions of the proposed law are stiff penalties of up to 100 million Liras and even imprisonment for publishing "false news."[163] The Turkish press has almost unanimously criticized the proposed law. The general publishing manager of a weekly magazine *Nokta* has stated that "journalism in Turkey is carried out under severe conditions. Self-censorship is present. Thus when you bring in the 'false news' law along with the pernicious publications law, a critical situation emerges. The government should not be allowed to use such laws as instruments to pressurize the press."[164] *Gunaydin* has also castigated the proposed law: "In the future, all disgusting and ugly practices, including cases of fraud, will remain a secret in this country. Writing about all this will be quite a challenge because [of the proposed 'false news' law].... If the pertinent officials decide that a report is 'untrue,' then the reporter will have to pay a fine of 100

159/ Helsinki Violations, at 1.
160/ Helsinki Violations, at 11-12.
161/ *Hurriyet*, 11 Apr. 1986; as translated and reported in Helsinki Violations, at 14.
162/ State of Flux, at 27-30.
163/ Turkish Daily News, International Edition, p. 5, January 21-27, 1988.
164/ Turkish Daily News, International Edition, p. 2, January 21-27, 1988.

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million Turkish lira. Good God! Look at the democracy (!) they have brought to our beautiful country."[165]

3. Freedom to Publish

Even though there is no prior censorship in Turkey, publishers and writers are prosecuted and sentenced for their work. "Long before and also since the military coup of September 1980, Article 142 of the Turkish Penal Code has generally been used to imprison left-wing journalists, publishers, editors, writers, translators and academics who disseminated material considered by the authorities to be 'communist propaganda.' They are usually sentenced for each publication separately resulting in long sentences, the longest being 1,170 years for the editor of a political journal. These are usually reduced on appeal to 36 years, the equivalent of life imprisonment."

Although ultimately acquitted, one writer was tried for something he wrote 23 years ago. Publications are banned on a systematic bases. During a period of three and a half years ending in February 1982, criminal proceedings were brought against the writers, publishers and translators of 240 publications.[167] Banned publications are sent to paper mills to be pulped. Among publications banned are Penguin's Map of the World and Map of Europe, National Geographic Atlas of the World, The Turkish translation of the Encyclopedia Britannica, and Nouveau Petit Larousse Illustre. "All of them have been declared 'means of separatist propaganda' by Turkish authorities for containing articles or maps related the history of the Armenians or the Kurds."[168] Other publications banned for being anti-Turkish include classics by Moliere, Voltaire and Camus.[169]

One author, Dr. Yalcin Kucuk, has been tried and sentenced four times for the very same book, For a New Republic, each time for a different reason! The Turkish translation of the Bible has been banned, as are works by James Joyce and all films by Yilmaz Gunay. Another author, Erbil Tusalp, and his publisher were recently indicted for writing a book in 1985 on the history of human rights and torture in Turkey.[170]

A reference to Kurds in any publication is particularly dangerous in Turkey. On 25 May 1987, after having spent six

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165/ *Gunaydin*, p. 3, 8 January 1988.
166/ Amnesty International, Urgent Action bulletin, AI Index EUR 44/38/86 (28 Nov. 1986).
167/ *Cumhuriyet*, February 1987; as translated and reprinted in State of Flux, at 34.
168/ State of Flux, at 34.
169/ *Milliyet*, 21 November 1987.
170/ Helsinki Violations, at 23-25.

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years in jail, sociologist Ismail Besikci was finally released.[171] Besikci had been jailed for his writings on the Kurds that were published in 1969. Besikci was imprisoned in 1970, released in 1974, imprisoned for a second time soon after, released again in 1981, finally re-arrested in June 1981 for "having made propaganda against the reputation and interests of the Turkish state." His publications remain banned. In March 1982, he was sentenced to ten years in prison and five years in internal exile. As a punishment for having appealed, his sentence was extended by three years and four months.[172] Besikci's publisher, Recep Marasli, also has been serving time since 1982 in Diyarbekir prison.[173] Marasli was sentenced to 27 years' imprisonment on charges of separatist and Communist propaganda and belonging to an illegal Kurdish organization.[174] As a result of additional charges brought against Marasli, including two years for a defense statement made during a previous trial, "his prison sentences now stack up to 36 years to be served consecutively."[175]

Another example of censorship and prosecution for the sole crime of exercising the right to publish is the case of Hilda Hulya Potuoghlu, publisher of the Turkish edition of the Encyclopedia Britanica. Potuoghlu was accused of "separatism and weakening Turkish national feelings" for having included in the Encyclopedia a reference to the 11th century Armenian Kingdom in Cilicia (southern Anatolia). The chief prosecutor in this case is reported to have claimed contrary to overwhelming historical data that there never was an Armenian kingdom in Cilicia. All copies of the Encyclopedia containing the reference were seized and Potuoghlu faced four years of imprisonment and hard labor. The trial was scheduled to begin on 13 January 1987, but instead charges were dropped in May 1987. Another case involving historical references to the Armenians has been pending against the publisher of the York Encyclopedia since 1983.[176]

Finally, "any Turkish citizen writing for a foreign publication on the state of human rights in Turkey walks a tightrope. The dangers are two fold. First, anything less than laudatory is denounced as 'treason' .... Secondly, and more significantly, Article 140 of the Turkish Penal Code - one among a collection of legal sanctions borrowed from Italy in the 1930s and dubbed the 'Mussolini Laws' -

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171/ INFO-TURK, "Dr. Ismail Besikci Released," at 6, No. 128 (June 1987), Brussels, Belgium.
172/ Helsinki Violations, at 58-59.
173/ Helsinki Violations, at 60.
174/ 1987 Country Report, at 1044.
175/ Amnesty International Action, "Turkey: Publisher Sentenced to 36 Years," at 2, Fall 1987.
176/ *Asbarez English Edition*, 24 January 1987, at 17.

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prohibits 'publishing or giving in a foreign country news or information about the internal affairs of the State, information that would compromise its prestige or influence abroad."[177]

4. Academic Freedom

Since the military takeover of 1980, at least 900 and possibly 1,300 academics have been dismissed or forced to "voluntarily" retire from universities. In some instances, entire graduate programs have been eliminated. The Political Science department of Ankara University was forced to close its graduate program in International Affairs because the professors teaching the course were fired. Secondary school teachers have not been spared. The lifting of martial law does not seem to have affected these firings, according to the President of the University in Izmir, "martial law measures are valid during normal times as well."[178] Faculty members thus dismissed under Martial Law 1402 are banned from any public sector employment. Some of those dismissed have petitioned for reinstatement and some have even won their cases, but none has yet been reinstated.[179]

Since 1981, Turkish universities have been under the direct control of the President of the Republic and a Higher Education Council appointed by him. The president of the Council has the power to hire and fire professors, make appointments, establish discipline, establish a centralized curriculum, keep students and staff under surveillance and assess the beliefs and personal habits of all faculty members and their families.[180] The Constitution prohibits students from joining political parties[181] or establishing national student associations[182]. Since January 1986, schools and universities are required to keep records on home life and social activities of students of all ages.[183] Under such draconian controls, freedom of thought and assembly for both students and teachers simply does not exist.

5. Intellectual Freedom

Intellectuals in Turkey face numerous difficulties, including loss of employment, loss of freedom, and loss of the right to travel by confiscation of their passports. In

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177/ Index On Censorship, "A Turkish Tug-Of-War," June 1987.
178/ *Cumhuriyet*, 11 Nov. 1985; as translated and reported in 1986 Helsinki Report, at 27-28.
179/ 1987 Country Report, at 1045.
180/ 1986 Helsinki Report, at 29.
181/ Constitution Article 67.
182/ State of Flux, at 38.
183/ Helsinki Violations, at 28.

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addition, the "new police law," passed by the Grand Assembly in June 1985, which exerts a chilling effect on intellectual production, gives police great powers enabling them to intimidate "those who act in an indecent manner incompatible with public morals," to close down plays and films judged to be "harmful to the indivisible integrity of the state ... or the Constitutional order," and to arrest people who "continue to disturb the peace and tranquility of the public."[184]

In March 1986, yet another restrictive law was passed to control intellectual and artistic freedom. The Law to Protect Minors (No. 1117) provides for a board of eleven government appointees with powers to review all printed matter for material that is harmful to those under the age of eighteen. This law has been used to bring charges against one newspaper (Cumhuriyet) for criticizing the law! By February 1987, 57 legal proceedings had been brought against 5 daily and 12 weekly or monthly publications under the Law to Protect Minors.[185] The film "Gandhi" has fallen prey to the proscription of this law, and other films have been censored for "praising terror." Publishers who do not comply with the provisions of this law are subject to heavy fines.[186]

6. Political Freedom

The imprisonment of prisoners of conscience, those held solely for their political or religious beliefs and opinions, continued throughout 1986 and the first months of 1987.[187] Nonetheless, some observers would like to attribute more to the fact that a lively debate has been taking place in the Turkish Grand National Assembly about such issues as free speech, amnesty for political prisoners, torture, and prison conditions. However, the debate is largely due to the fact that parliamentarians are blessed by immunity. Although the public at large may be encouraged by such debates, the fact remains that the press still prefers to quote the debates in Parliament rather than discuss the same issues directly. Furthermore, even Parliament members are not immune from threats and warnings if they touch on subjects too sensitive for the government.[188]

Former parliamentarians have not been immune from prosecution for "offenses" committed during their tenure as

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184/ 1986 Helsinki Report, at 33.

185/ *Cumhuriyet*, February 1987; as translated and reprinted in State of Flux, at 30.

186/ Helsinki Violations, at 15-17.

187/ Amnesty International, "Continuing Violations of Human Rights in Turkey," at 5, 15 June 1987, AI Index: EUR 44/33/87.

188/ 1986 Helsinki Report, at 37.

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members of Parliament. Not withstanding inquiries from international organizations such as the Inter-Parliamentary Union (IPU), the trials of 27 former Turkish parliamentarians are continuing to date. In a resolution adopted by its recent conference, IPU notes that these trials are "based not on an individual concept of criminal responsibility but on a collective concept of such responsibility, which is contrary to generally accepted principles of law, and that they were also based on the 'a posteriori' illegal nature of acts and opinions which had not given rise to legal proceedings against the former parliamentarians before 12 September 1980 and which had occurred in an organization enjoying legal existence before that date."[189]

Prior to the referendum of September 1987 when Provisional Article 4 of the Constitution was rescinded, about 100 people were excluded for life from taking part in Turkish politics. Among them were former Prime Ministers Demirel and Ecevit who, in defiance of the ban, had repeatedly spoken publicly. As a result, about 130 legal cases are pending against Ecevit and about 45 cases against Demirel.[190]

The 1982 Constitution limits political life in other ways as well. A person dismissed from public service as a result of Martial Law 1402 (See *supra*, "Academic Freedom") may not be elected to parliament (Article 76). An officer of a labor union or professional organization is also banned from serving in parliament (Article 83). About 2 million people who, as a form of protest, did not vote in the 1982 referendum on the Constitution were not allowed to exercise their right to vote until the end of 1987 (Provisional Article 16).[191]

B. Freedom of Assembly

Public demonstrations are taking place in Turkey in increasing numbers. However, these events are almost always followed by repression. Since 1983, "Law 2911 has been effectively used to ban, with some rare exception, all demonstrations, thus curtailing the rights to freedoms of expression and peaceful assembly."[192] In September 1985,

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189/ Inter-Parliamentary Union, 78th Inter-Parliamentary Conference, "Report of the Special Committee on Violations of Human Rights of Parliamentarians (Item XI of the agenda)," Bangkok, 12 - 17 October 1987, at 46, CL/141/11-R.1, 15 October 1987. Emphasis in the original.

190/ State of Flux, at 51.

191/ State of Flux, at 51-52.

192/ Amnesty International, 1 September 1987, AI Index: EUR 44/51/87.

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during the funeral of a popular leftist singer, Ruhi Su, 150 of the 1,500 mourners were arrested for expressing their critical views of the government and held for fifteen days without notification of next of kin.[193]

According to some observers, the most striking improvement in the past few months has taken place in the areas of freedom of assembly and association. "Public meetings, demonstrations and protest marches are now being held on a scale that would have been unthinkable a few years ago. As with other newly acquired freedoms in Turkey, there are no legislative guarantees for those who choose to exercise their rights; in some cases participants in public activities have been detained, beaten, tried and sentenced, but in others the police have taken no adverse steps at all."[194]

The 1982 Constitution prohibits the involvement of independent organizations, particularly professional organizations and trade unions, in political activities. Conferences of such organizations, even theatrical performances, are kept under strict police surveillance. The police often videotape both the proceedings and the audience of such gatherings or meetings.[195]

C. Freedom of Association

In Turkey, the freedom of association for the purpose of very broadly defined political activities is not guaranteed. An example is the trial of seven Board members of the Turkish Medical Association for circulating a petition publicizing their opposition to capital punishment.[196] On the other hand, a similar position taken on the same subject by the Union of Turkish Bar Associations, thus far, has been officially ignored by the authorities.[197]

A welcome development has been the formation of a new Human Rights Association with the goal of ensuring "respect for human rights in Turkey in the contemporary sense" by helping individuals to bring cases of human rights violations before the European Commission. In December 1986, after three prior attempts and after being compelled to amend its statutes, the Association was finally granted approval by the Minister of Interior. It now enjoys more than 500 members and holds press conferences and panel discussions.[198] However, other associations, such as

193/ 1986 Helsinki Report, at 37.
194/ State of Flux, at 54.
195/ Helsinki Violations, at 39.
196/ 1987 Country Report, at 1045.
197/ 1986 Helsinki Report, at 39.
198/ State of Flux, at 56 - 58.

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Physicians for the Prevention of Nuclear War and the Association of Ex-Faculty Members, have been denied approval.[199]

The Law on Associations prohibits such groups from having any ties to political parties, engaging in political activities or maintaining formal relations with foreign organizations. "Association activity is closely monitored by the government. All associations are required to have an annual general meeting, which is attended by officials of the provincial governor's security staff. They must certify that all regulations have been complied with, or the association can be closed. Associations must submit their charters for the approval of government authorities before they are allowed to form."[200]

The most notorious case of interference with the freedom of association is that of the leaders of the Turkish Peace Association (TPA), all prominent individuals and leaders in their respective fields - a former president of the Istanbul Bar Association, a former head of the Turkish Medical Association, a former general secretary of the Turkish Writers Union, the wife of a former mayor of Istanbul, a former ambassador, a former parliament member, and others. The TPA, considering itself a "Helsinki Group," was founded in 1977 by the Istanbul Bar Association to promote nuclear disarmament, compliance with the Helsinki Accords and the peaceful settlement of international disputes. Members of TPA have been prosecuted for their beliefs and affiliation with other peace organizations, and convicted under articles 141 and 142 of the Turkish Penal Code which prohibit propaganda aimed at achieving "the domination of one social class over another." Articles 141 and 142 "are used under the present legislation specifically to punish non-violent opposition in Turkey.... The usage of these articles violates the right to freedom of expression, association and religion."[201]

The government considers the TPA leaders guilty of waging communist propaganda. However, be that as it may, the TPA leaders enjoy enormous popularity, and because of the defendants' prestige, their plight has attracted considerable international attention resulting in shorter sentences. In a verdict pronounced on April 1987, the TPA was found to have been an illegal organization, was banned and its property confiscated. Two members of its executive committee were convicted and sentenced to four years and two months imprisonment, eight others to one year and six

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199/ *Cumhuriyet*, 14 January 1987; as translated and reprinted in State of Flux, at 59.
200/ 1987 Country Report, at 1045.
201/ Amnesty International, "Proposed Revision of the Turkish Penal Code," 25 March 1987.

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months, two others to six months. Charges were dropped against 21 others, two of whom had died, and the remaining 19 because the statute of limitations had expired. The cases of four others were separated pending the outcome of trials against members of the Communist Party of Turkey.[202]

The Political Parties Law, passed in 1983, allows the formation of new parties. On the other hand, the same law requires that a party, to be formed, must have a minimum of thirty members and must be approved by the National Security Council. Furthermore, no political party may be formed around a particular ethnic or cultural group.[203] Under the new law, new parties have been permitted to form in Turkey.[204] However, the law has also been used to curb opponents of the government. A recent (June 1986) example is the prosecution of former Prime Minister Ecevit who was charged for expressing his views in violation of Article 1 and 119, which prohibits former politicians from involving themselves in political parties.[205] In December 1986, the former Prime Minister was sentenced to eleven months imprisonment.

On 16 November 1987, authorities arrested at the airport two leaders of the banned Turkish Communist Party and the Turkish Workers Party who were returning from self-imposed exile since the 1980 coup. The two leaders were accompanied by members of European Parliament. Their British lawyer, John Bowder, stated "we have come legally and properly to see whether Turkey will behave democratically... it is not democratic." Both the President and the Prime Minister of Turkey have said that "there is no room at present for a communist party in Turkey."[206]

D. Trade Unions

Following the 1980 coup, all union activities were banned, including all strikes. Since then, a mostly government appointed Supreme Arbitration Council has replaced the collective bargaining process. Even though some union activity is currently possible, the right to unionize is still severely curtailed. Under articles 51 through 54 of the Constitution, all "political aims" and "political activities" of trade unions remain banned. Workers in the non-public sectors and in certain sensitive industries face even more restrictions [redacted] and in some industries are totally

202/ State of Flux, at 62.
203/ 1987 Country Report, at 1049.
204/ Helsinki Violations, at 5.
205/ Helsinki Violations, at 35.
206/ Chicago Tribune, "Turkey's Arrest of Returning Communists Dents Drive to Join Common Market," 18 November 1987.

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deprived of the right to strike. When workers assert or even threaten to assert their rights, the entire trade union movement suffers new setbacks, either in the form of restrictive amendments to the labor laws or by reduced compensation to workers.[207]

The trial of DISK members (Confederation of Revolutionary Trade Unions), which began in 1981, ended on 23 December 1986. Prison sentences of up to 10 years were imposed against 264 members of DISK. In addition, the defendants were stripped of their basic civil and political rights for the rest of their lives, including the right to engage in unionizing.[208] Prior to the 1980 coup, DISK, which is now a banned organization, was the largest confederation of trade unions. At some point during the prosecution, the total number of DISK defendants had reached 3,694, many of whom had been mistreated and tortured. In January 1986, the military prosecutor read the final indictment against 781 DISK members accused of violating Penal Code Article 141, aiming to achieve "the domination of one social class over another."[209]

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In February 1986, Turk-Is, another confederation of trade unions which was not banned after the coup but was barred from labor activities, organized its first rally since the 1980 coup. The gathering in Izmir, prompted by pension cutbacks and mobilized around the slogan "bread, peace, and freedom," was attended by an estimated crowd of 110,000, including a large number of plainclothes policemen who arrested 77 people for shouting anti-government slogans. In another incident and in an attempt to thwart any possible labor unrest, some 500 labor activists were arrested immediately prior to May Day 1986.[210]

On 7 September 1987 in Paris, at a hearing on Trade Union rights in Turkey held by the Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe, participants took note of legal restrictions on trade union rights and the status of DISK defendants.[211] The International Labor Organization (ILO) has also noted that Turkey's trade Union laws do not comply with ILO standards and has sharply criticized the country for its labor policies as well as for having taken no action to improve

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207/ 1986 Helsinki Report, at 49.
208/ Free Labour World, "Back to Jail for Turkish Trade Unionist?," at 1, No. 1, 20 January 1987, Brussels, Belgium.
209/ Helsinki Violations, at 45-46.
210/ Helsinki Violations, at 46-48.
211/ Human Rights Internet Reporter, at 27, Index 0012.031, Vol 12, No. 1 (Fall 1987).

the situation.[212] According to one report, the ILO has handed a "final warning to the Turkish government to improve its anti-democratic labor and trade laws."[213] In the United States, the AFL-CIO has also taken note of the state of trade union rights in Turkey by recommending the country be denied "most favored nation status."[214]

E. Freedom of Religion

Contrary to the provisions of Article 24 of the 1982 Constitution which guarantees freedom of conscience, religious belief and conviction, The Turkish Penal Code places serious restrictions on these activities. "Amnesty International is currently observing an increase in the number of arrests and trials concerning religious activities in Turkey. Though some of these trials have resulted in acquittal many defendants who have not used or advocated violence have been sentenced to terms of imprisonment.... Most religious activities are tried for offences under Article 163 of the Turkish Penal Code" (TPC) which prohibits activities aiming to convert the state to religious principles.[215] Other articles of the TPC under which religious activities are frequently tried are "Article 140 which provides for the imprisonment of anyone 'working against Turkish interests abroad,' Article 158 (insulting the president) and article 159 (insulting the government or the army). Amnesty International believes that these articles have been used to imprison people in violation of the right to freedom of expression in contravention of Article 10 of the European Convention on Human Rights to which Turkey is a State Party."[216]

"Defendants prosecuted solely on account of their religious activities include members of Islamic brotherhoods, legal political parties, members of associations existing legally outside Turkey, participants in peaceful demonstrations and other non-violent protesters as well as journalists and writers."[217] A Greek Orthodox teacher in Mersin has lost her job and is facing two trials on charges under Articles 163, 175 and 176 of the TPC for "abusing and insulting religious institutions and practices." Her offense was to have claimed during a class that "the prophet was married to more than one woman," that

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212/ 73rd International Labor Organization Conference, Geneva, June 1987.
213/ State of Flux, at 66.
214/ State of Flux, at 66.
215/ Amnesty International, "Turkey: Prosecution of Religious Activities," at 1, November 1987, AI Index: EUR 44/74/87. Hereinafter referred to as Religious Activities.
216/ Religious Activities, at 3.
217/ Religious Activities, at 4.

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"the existence of Allah cannot be proven scientifically," and that "Greeks and Armenians are more civilized."[218]

Since the 1982 Constitution, religious education has become compulsive in Turkey. Even Christian children are forced to attend religious classes that are Islamic in content.[219] Another infringement has been the Department of Religious Affairs practice of sending out sermon scripts for Mullahs to read at Friday services. Because of such State interference in religious affairs, observers have concluded that "Turkey is not the secular state that it claims to be."[220]

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F. Freedom of Movement

"By 1986, there were 8,592 Turks who had sought refuge in various European countries following the military intervention and who had lost their nationality after being charged in absentia under one of the 'Mussolini Laws.' They are not allowed back to their own country. Forty times their number - 352,537 Turkish citizens - have been prohibited from traveling abroad on the grounds that their 'presence in a foreign country is undesirable because of general security considerations."[221]

Article 22 of the Passport Law lists categories of people who are denied passports: "Those who are under general security surveillance,... Those whom the Minister of Interior has deemed undesirable to leave the country for general security reasons,... Those who are on trial for, or have been convicted of, crimes such as crimes against the state, ... crimes with an ideological or political intent,... Those determined undesirable for staying abroad will not have their passports renewed."[222]

According to Turkish Citizenship Law No 403, those who remain abroad after being summoned to return and "engage in activities detrimental to the internal or external security of the Turkish state" are liable to lose their citizenship. Since the 1980 coup, 13,788 Turks have thus lost their citizenship.[223] Though some young people have not returned in order to avoid military service, others who have not returned are trade union leaders, writers, lawyers, journalists and political activists.

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218/ Religious Activities, at 8.
219/ State of Flux, at 41.
220/ State of Flux, at 46.
221/ Index on Censorship.
222/ *Cumhuriyet*, 13 April 1987; as translated and reprinted in State of Flux, at 48.
223/ *Cumhuriyet*, 6 April 1987; as translated and reprinted in State of Flux, at 49.

IX. IRANIAN REFUGEES FORCIBLY RETURNED TO IRAN

In November 1985, an Amnesty International delegation visited Turkey to conduct research into procedures followed by the Turkish Government in dealing with asylum applications. The delegation investigated reports that during 1984 and 1985, contrary to obligations imposed by international law, Iranian refugees fleeing political and religious persecution in their country had been forcibly returned (refoulement) to Iran. Amnesty International reports that, at least on one occasion, 6 members of Kurdish political organizations had been arrested in Turkey and handed over to Iranian police.[224] After noting appreciation for the Turkish authorities' cooperation, Amnesty International expressed its concern "that, in at least some cases, refoulement would appear to have taken place at the border area, and that current procedures do not rule out the possibility of further instances of refoulement, particularly where Turkish border officials may not refer to the central authorities for instructions on specific cases."[225]

Unfortunately, Amnesty International's concern was not idle. In the first six months of 1987, more than 400 Iranian refugees were sent back to Iran to face possible torture, execution or imprisonment, before their requests for asylum were considered by Turkish authorities or the United Nations High Commissioner For Refugees.[226] Despite assurances to the contrary by Turkish authorities, Iranian refugees continue to be sent back.[227]

X. NON-TURKISH NATIONAL GROUPS AND RELIGIOUS MINORITIES

A. Minorities at Risk

"States rarely announce genocidal intention and deny, minimize, or rationalize mass killings during and after the fact. Nonetheless we can anticipate, based on historical and cooperative analysis, which kinds of groups, in which kinds of conflict situations, are most at risk of becoming victims of extreme state repression in the future."[228] Based

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224/ AMNESTY INTERNATIONAL PUBLICATIONS, 1987 REPORT, at 320.

225/ Amnesty International, "Iranian Refugees In Turkey: Memorandum From Amnesty International To The Turkish Government," AI Index EUR 44/17/86, at 1 (1 Aug. 1986).

226/ The New York Times, "Turks Are Reported To Send Many Iranians Home," 31 May 1987.

227/ Amnesty International, "Turkey: Forcible Return of Iranian Refugees Continues," 18 June 1987, AI Index EUR 44/34/87.

228/ Institute of the International Conference on the Holocaust and Genocide, Internet on the Holocaust and

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upon this analysis and compiled from a database of "minorities subject to differential treatment in the last several decades," a list of "minorities at risk" of severe state repression, including genocide, has been drawn. According to this list, the Kurds and the Greek Orthodox in Turkey confront a "high ... likelihood of more serious victimization in the remaining years of the 20th century."[229]

Western Europe has also been concerned with the status of non-Turkish national groups and religious minorities in Turkey. In a recent resolution taking note of such violations, the European Parliament noted that "democracy cannot be solely implanted in a country unless the latter recognizes and enriches its history with its ethnic and cultural diversity."[230]

In addition to being subject to violations of human rights to the extent the general Turkish population suffers, non-Turkish groups and religious minorities are also vulnerable to particular discrimination and persecution because of their minority status. The Turkish "Constitution regards all citizens as Turks. Except for the special status granted to non-Muslim minorities by the Lausanne Treaty (1923), Turkey does not legally recognize the separate development of ethnic minorities."[231] Turkish law strictly prohibits the use of languages other than Turkish. Law number 2832 declares: "The mother tongue of the Turkish Citizen is Turkish. It is forbidden ... to develop any form of activity in which a language other than Turkish is used and disseminated as the mother tongue.[232]

As stated in the most recent U.S. Department of State report, "members of minorities, Muslims and non-Muslims, face no legal limitations on political participation as long as they accept a Turkish national identity."[233] However, therein lies the problem, for "it has been the policy of Turkish governments for many years to seek assimilation of individuals of non-Turkish ethnic backgrounds into the mainstream of Turkish society and culture, often to the point of forcefully discouraging manifestations of ethnic difference. The size of these communities has declined

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Genocide, "Genocides and Politicides since 1945: Evidence and Anticipation," at 4, No 13, December 1987, Jerusalem. Hereinafter referred to as Internet on Genocide.

229/ Internet on Genocide, at 5.

230/ European Parliament Resolution of 18 June 1987, clause 1, Doc. A2-33/87.

231/ 1987 Country Report, at 1038.

232/ Law Number 2932, Article 3, as reprinted in The Review, "Human Rights in the World," No. 38/1987, at 2, International Commission of Jurists.

233/ 1987 Country Report, at 1049 (emphasis added).

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steadily over the years. Non-Moslem minority groups continue to complain about government policies and procedures regulating the operation of community schools, the purchase and sale of community real estate, the administration of church properties, and the activities of parish councils. Government claims on property endowed to charitable religious organizations also continue to be a major concern."[234]

With respect to persecution against the various Christian minorities, the causes "are deeply rooted in historical facts, ... are not specifically connected to any of the Governments or Juntas who have been in power in recent decennia."[235] "The present situation in Turkey should be assessed in its specific historical setting. The domination and oppression of Christian (and other) populations under the Ottoman Empire culminated in the massacres and genocides of the late 19th and early 20th centuries.... Whilst the genocide of the Armenians in 1915 is more frequently referred to," it must be remembered that other national and religious minorities were also subjected to large scale massacres, including Greeks, Assyrians, Chaldeans, Syrian Orthodox, Arabs, Alevis and Kurds.[236]

Although non-Moslems routinely suffer various levels of persecution,[237] the present situation regarding minorities in Turkey should not be assessed solely in the context of a Moslem and non-Moslem dichotomy. As the following two sections focusing on the particularly severe persecution of the Kurds (overwhelmingly Moslem) and the Armenians (Christian) will demonstrate, the more significant factor in the case of those two minorities is their non-Turkish national identity. As such, the persecution aims at destroying their culture, language, and history.

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B. The Kurds

"The Kurdish minority in Turkey has long been denied any semblance of ethnic identity: The Kurdish language, culture, customs and history are not recognized by the Turkish government which denies the very existence of the Kurds."[238] The severe repression against the Kurds dates back to 1923, the establishment of modern Turkey by Attaturk. "Since then the Turkish government has spent

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234/ 1987 Country Report, at 1050.
235/ Churches Committee On Migrant Workers in Europe (CCMWE) Working Party On Christian Minorities in Turkey, "Christian Minorities of Turkey," Brussels, at 2 (June 1981). Hereinafter referred to as The Church Report.
236/ The Church Report, at 2.
237/ 1987 Country Report, at 1050.
238/ State of Flux, at 8.

considerable energy to repress, displace or assimilate its Kurds."[239]

In its 1986 Report, Amnesty International was concerned about the many Kurds in Turkish prisons, some charged with or convicted of violent offenses, others in detention on account of non-violent activities for the preservation of their language and culture, and for their right to be recognized as a separate ethnic group.[240] "Kurds may be found in every area of Turkish life and all levels of society. But the Government remains adamantly opposed to any assertion of a Kurdish ethnic identity and has taken a number of steps to suppress it."[241] The Kurdish issue is so sensitive in Turkey that until recently the subject was totally suppressed from the press and even the use of the word "Kurd" drew government repression (See *supra*, "Freedom to Publish").

In 1981, a former member of Parliament was tried and sentenced to two years and three months at hard labor for an assertion of his Kurdish identity in Parliament while he was a member of that Parliament. Another Kurd was charged with separatism for having in his possession a 1911 map of the Ottoman Empire designating Eastern Anatolia as Armenia and Southeastern Anatolia as Kurdistan. The Turkish government even attempts to extend its repressive policies to Kurds living abroad - requesting that German officials not accept Kurdish names for children of Turkish citizens born in Germany or refusing to issue legal documents to Kurdish refugees in Canada who state their mother tongue to be Kurdish.[242]

In an obvious reference to the Kurdish language, Articles 26 and 28 of the 1982 Constitution bar publication in "languages that are prohibited by law." "Publication of books, newspapers, and any other materials in Kurdish is forbidden, as are books or any other materials in Turkish dealing with Kurdish history, culture, or ethnic identity. Use of the Kurdish language is not permitted for any official purposes, e.g., in the courts, nor is it allowed in certain private situations such as receiving visitors in prison."[243] Kurdish defendants who cannot speak Turkish are forbidden to communicate with their lawyers in their own language.[244] The use of the Kurdish language is an offense

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239/ State of Flux at 114.
240/ AMNESTY INTERNATIONAL PUBLICATIONS, AMNESTY INTERNATIONAL REPORT 1986, at 306. Hereinafter referred to as the AI 1986 Report.
241/ 1987 Country Report, at 1051.
242/ State of Flux, at 116 - 118.
243/ 1987 Country Report, at 1051.
244/ 1987 Country Report, at 1042.

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even in certain private circumstances.[245] Needless to state, not even one single school exists in Turkey where the Kurdish language is taught to the several million Kurds who live there, nor is there a single Kurdish language newspaper or public broadcasting station.

Prisoners in Diyarbekir who insist on their Kurdish identity by speaking Kurdish or singing Kurdish songs suffer additional illtreatment. A Helsinki delegation visiting the area was told of "parents who visited children in prison but could not speak to them because they knew no Turkish and were not allowed to speak Kurdish. [The delegation was] told of mothers gazing at their imprisoned sons through visitor screens, tears streaming down their cheeks, forced to remain mute. Lawyers told [the delegation] of the impossibility of defending a client who spoke no Turkish - because they were not allowed to converse in Kurdish, they had no way of finding out the barest facts in the case, making their representation pure farce."[246]

Under the pretext of protecting villages in Kurdish inhabited areas from terrorist activities, the Turkish government has created a corp of "village guards" consisting of untrained peasants who are paid a substantial monthly stipend and provided with arms. Their number is estimated to be around 6,000.[247] The village guards have been used by the government as another repressive force in the region.[248]

In an attempt to negate the fact that a portion of Turkey is inhabited by Kurds, Turkish authorities recently changed the names of at least 2,842 of 3,524 villages in the predominantly Kurdish areas of Southeastern Anatolia.[249] In addition, on several occasions, entire villages in the Kurdish areas of Turkey's border region with Iran and Iraq have been depopulated under the guise of security measures and moved to other regions.[250] According to Turkish sources, after such evacuations, authorities often demolish houses and cut down fruit trees. When villagers protest such actions and demand to be allowed to return, they are told that they could not claim any rights because they had left voluntarily.[251] When villagers refuse to leave their homes,

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245/ The New York Times, "In Turkey, Springtime Brings Revival of Kurds' Insurgency," 17 May 1987.
246/ State of Flux, at 125.
247/ Newsweek, 30 March 1982.
248/ State of Flux, at 135.
249/ *Tercuman*, "Security and Pleasure Brought With The New Names," 25 May 1986.
250/ *Tercuman*, 11 February 1986; See also *Milliyet*, 20 October 1984; *Yeni Gundem*, No. 41, 21 February 1986; *Tercuman*, 3 May 1986.
251/ *2000'e Dogru*, 14-21 March 1987; as translated and reprinted in State of Flux, at 145.

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authorities cut their water and electricity supply as well as other services, leaving no other choice for the villagers but to move.[252] By February 1987, the government had a list of 3,192 villages to be evacuated.[253] These and other violations raise serious questions about Turkey's compliance with accepted norms of treatment of civilians during armed conflict.[254]

The government denies these charges and, instead, claims that "the goal is to relocate people to better areas, to move people from poor villages to where there are better economic opportunities."[255] In the case of some villages, peasants have been told the move is for forestry reasons. But local leaders believe that "the real purpose was to assimilate the Kurds - to end their separate cultural existence."[256]

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C. The Armenians

"In the official Turkish census report of 1960, the national total of primary Armenian speakers is given as 52,756.... [concentrated in Istanbul (37,280), Mardin (10,232), Kastamonu (1,204), and Sivas (565).] No other Turkish province numbered more than 500 Armenians - the total of the once flourishing Armenian community of Adana in Cilicia being only six! Even more startling is the fact that the district of Van, the ancient heartland of Turkish Armenia, numbered only two persons who dared to list their mother tongue as Armenian."[257]

In 1974, the U.S. "State Department sent a special envoy to visit the Armenian Patriarch in Istanbul.... Patriarch Shnork handed the U.S. representative a three-page document, summarizing the grievances of the Turkish Armenians. This document was subsequently suppressed by orders from Washington, Dr. Kissinger's office denying that any complaints were voiced by the Patriarch."[258] The suppressed document contained grievances about restrictions on the Armenian community which continue to date - real estate and financial restrictions, strict educational restrictions, and interference with the internal affairs of community church organizations.[259] "These restrictions,

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252/ State of Flux, at 149.
253/ *Cumhuriyet*, February 1987; as translated and reprinted in State of Flux, at 146.
254/ 1949 Geneva Conventions, Protocol II, Article 17.
255/ State of Flux, at 147.
256/ State of Flux, at 147.
257/ THE MINORITY RIGHTS GROUP REPORT NO. 32, THE ARMENIANS, at 13 (1987). Hereinafter referred to as the MRG Report.
258/ The MRG Report, at 14.
259/ The MRG Report, at 20.

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besides being against the law, in most cases are also against elementary human rights and conscience."[260]

Measures taken recently by Turkish authorities against the Armenian minority are more subtle. The community is denied the right to teach the Armenian language in its own private schools (*Inter alia*, the Treaty of Lausanne provides that minorities in Turkey may have their children taught in their own language[261]) - authorities allow only one or two hours per week.[262]

Armenian churches are closed by authorities under the pretext of unsafe conditions when the very same authorities deny the necessary building permits to carry on the renovation.[263] Most of these buildings in need of repairs and in danger of destruction are historic monuments, some dating back many centuries. One such example is the total neglect of a 13th century church, the condition of which has generated outrage among European tourists visiting the area.[264] Another example is the fate of the 150 year old historic church of Guesaria (Cesarea or Kayseri) which, after losing its historic relics under the guise of renovations, is used today as a sports facility.[265] "Many foreign scholars and travellers have protested about the neglect and destruction of Armenian cultural monuments in Turkey. For example, the blowing-up of the *vank* (monastic complex) of Khtsgonk, which dates from the sixth century A.D.... The damage is of such a kind that it cannot have been the result of an earthquake and must have been done by explosives."[266]

Other community properties, such as cemeteries, public buildings, schools and orphanages, are selectively confiscated by authorities under one pretext or another.[267]

260/ The MRG Report, at 19.

261/ 1987 Country Report, at 1048.

262/ The Armenian Mirror-Spectator, "Patriarch Kaloustian Deplores Confiscation of Estates in Turkey," 2 Nov. 1985.

263/ *Asbarez English Edition*, "Armenian Church Closed by Turks," 31 Dec. 1985; See also The Armenian Mirror-Spectator, "Turkish Authorities Close Down Armenian Church," 26 Oct. 1985.

264/ The Armenian Reporter, "Total Neglect," 14 Feb. 1985.

265/ Marmara Daily Newspaper, "The Armenian Church In Guesaria," 14 Jan. 1987.

266/ The MRG Report, at 14.

267/ The Armenian Mirror-Spectator, "Turks Plan To Confiscate Mekhitarist Holdings in Istanbul," 18 Oct. 1986; See also The Armenian Mirror-Spectator, "Patriarch Kaloustian Deplores Confiscation of Estates in Turkey," 2 Nov. 1985; *Asbarez English Edition*, "Turkey," 11 Oct. 1985.

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The Armenian Patriarch is denied the right to conduct religious services in historic churches of ancient Armenia.[268] The Patriarch has also complained about the fact that even though Moslems in Turkey have the right to train a phalanx of young clergymen, the Armenians are denied that right.[269]

Armenian clergymen are arrested on trumped up charges. In October 1980, Father Yergatian was arrested and subsequently sentenced to fourteen years in prison (released in 1986 after serving six years of his sentence) and five years internal exile for allegedly participating in anti-Turkish activities including the alleged naming of his dog Attaturk.[270] Father Yergatian was adopted as a Prisoner of Conscience by Amnesty International. Another Armenian clergymen, Guzelian, was sentenced to one year and four months imprisonment for allegedly spreading anti-state propaganda which included the possession of the Bible in the Turkish language.[271]

In a more recent development, Patriarch Kaloustian, representing the Armenian minority of Turkey (non-religious minority organizations are not at all permitted to function in Turkey), during an official visit on 11 January 1987, presented a list of grievances to Prime Minister Ozal. The grievances included the following charges:

1) Armenian community members are not allowed to donate real property holdings to Armenian community institutions.

2) Real property donated to Armenian community institutions since 1936 are gradually taken by the government.

3) The Armenian community is denied the right to develop and build on real property it owns.

4) Turkish authorities interfere in the internal governing and affairs of the Armenian religious institutions.

268/ The Armenian Reporter, "Istanbul Patriarch on Tour of Turkish Interiors; Barred from Conducting Church Services," 19 Sept. 1985.

269/ The Armenian Reporter, "Istanbul Patriarch Complains About Restrictions," 24 Oct. 1985; See also The Armenian Mirror-Spectator, "Patriarch Kaloustian Deplores Confiscation Of Estates In Turkey," 2 Nov. 1985.

270/ The Armenian Mirror-Spectator, "Patriarch Call For Priests' Release," 18 Sept. 1982.

271/ The Armenian Mirror-Spectator, "Armenian Protestant Sentenced In Turkey," 13 Mar. 1982.

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5) A 5% supplementary tax ("Control Tax") imposed on Armenian community properties in the 1970's and officially repealed in 1980 is still demanded and collected by the government.

6) Despite the fact that other communities were granted the right to a one time rent increase, the Armenian community was denied the same privilege on property owned and rented at extremely low and "ridiculous" rates.

7) Of issues relating to education, the following were discussed:

a. The Armenian identity of students whose official papers are only marked with the notation "Christian" is doubted, and they are not permitted to attend Armenian community schools. The grievance also notes that, by express government decision, only the religion is noted and the national minority status of Turkish citizens is no longer noted on identity documents.

b. Armenian students are not allowed to travel outside their immediate neighborhood to attend community school. This has resulted in the inability of the community to relieve overcrowding of some schools and to shift students to schools with smaller attendance.

c. Armenian students in public schools are required to attend mandatory Islamic religion classes.

d. The Armenian community is denied the right to recruit and educate new clerics. The community is also denied the right to import clerics from abroad.[272]

The grievances listed above represent only the tip of the problems faced by the Armenian minority. The European Parliament , taking note of these and other abuses, "calls for fair treatment of the Armenian minority in Turkey as regards their identity, language, religion, culture and school system, and makes an emphatic plea for improvements in the case of monuments and for the maintenance and conservation of the Armenian religious architectural heritage in Turkey."[273]

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272/ *Asbarez English Edition*, "Patriarch Kaloustian Presents Grievances to Ozal," 7 February 1987.

273/ European Parliament Resolution of 18 June 1987, clause 6, Doc. A2-33/87.

XI. CONCLUSION

Despite some progress in the toleration of certain rights, particularly freedom of political figures and journalists, human rights violations in Turkey continue to merit strong condemnation by the international community.

Torture and other cruel, inhuman or degrading treatment or punishment continues to take place in Turkey on a routine basis and on a massive scale. Prison conditions, often akin to torture, are in need of radical change. Thousands remain in detention centers throughout Turkey under the most cruel conditions awaiting trial or the outcome of trials already conducted. The words of a panelist at a 1985 Human Rights Day observance well describe the mood of intellectuals in Turkey: "We are losing our respectability throughout the world, because despite our signature on the [Universal Declaration of Human Rights], we are not observing it... I want to ring an S.O.S. alarm. Human rights are being constantly violated... When one thinks of human rights, one thinks of torture. Torture is Turkey's reality."[274] Since those words were pronounced in 1985, human rights conditions have not improved substantially.

So long as Turkish government apologists continue to use the classic argument of expediency in favor of torture, sufficient political will to stop torture will never be mustered. "Even if torture could be shown to be efficient in some cases, it could simply never be permissible. From the point of view of the individual, torture, <u>for whatever purpose</u>, is a calculated assault on human dignity and for that reason alone is to be <u>condemned absolutely</u>."[275]

Those responsible for the political atmosphere allowing torture must be brought to justice - it is not sufficient to bring only lower level officials to bear responsibility for their actions. Martial laws and emergency measures must be reversed and the Constitution changed accordingly. An independent judiciary must be established. True freedom of expression and assembly with legal safeguards and without the fear of reprisal or subsequent persecution must be established. The rights of non-Turkish national groups and religious minorities, guaranteed by international law, must be restored before Turkey earns the right to be called a democracy.

Turkey can no longer continue to deny and restrict the growing popular debate conducted at great risk about past and present violations of human rights in the country. Furthermore, it is not sufficient to attract international

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274/ *Cumhuriyet*, 14 Dec. 1985; as translated and reported in 1986 Helsinki Report, at 38.

275/ Torture In 80's, at 7 (emphasis added).

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attention elsewhere by pointing the finger to violations of human rights taking place in Bulgaria and, in the process, hoping the situation in Turkey will be forgotten. "One has to earn the right to speak about human rights.... Those who keep silent about the trampling of human rights in Turkey have no right to speak about the Turks in Bulgaria.... We are living at a time when the trampling of human rights is more severe than ever before in the history of the [Turkish] Republic. The trampling of human rights has been legalized."[276]

Without greater international scrutiny, the human rights situation in Turkey is not likely to improve substantially. The international community, including the United States, the Council of Europe, and the United Nations, can and should use their considerable influence to motivate Turkey to take more than symbolic steps to curb human rights abuses, punish the violators, and undertake a credible complaint procedure.

Finally, taking into consideration the number and reliability of the allegations of consistent pattern of gross violations of human rights and fundamental freedoms in Turkey, HRA calls upon the United Nations Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities to formally take note of the seriousness of the violations, to make public its findings under the 1503 procedure, and to appoint a Special Rapporteur on Turkey to make further recommendation as to how the human rights situation might be improved.

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276/ *Cumhuriyet*, 14 Dec. 1985; as translated and reported in 1986 Helsinki Report, at 39.