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OSCE HUMAN DIMENSION IMPLEMENTATION MEETING 2006

STATEMENT IN WORKING SESSION 9: RULE OF LAW II

Rule of law, due process, independence of the judiciary, right to a fair trial and other issues

In **Turkey** Amnesty International is concerned that the right to a fair trial, and in particular the right to an effective defence, is being denied to people charged under anti-terrorism legislation. Many continue to face unending trials, with some still detained after more than a decade.

Such individuals are tried in special Heavy Penal Courts, which replaced the State Security Courts after they were abolished in June 2004. Amnesty International is concerned about a pattern of unfair trial procedures, in particular in relation to people who were charged under previous legislation and whose trials began in the State Security Courts, but for whom the legislative changes and continuation of their cases in the special Heavy Penal Courts have not resulted in justice. Violations of which Amnesty International is aware include:

- Denial of the right to an effective defence and of equality of arms;
- Extremely prolonged pre-trial detention, in violation of the right to trial within a reasonable time or to release from detention;
- Protracted criminal proceedings, in violation of the right to be tried without undue delay;
- Failure of courts to conduct thorough, impartial and *de novo* examination of evidence and its application to law in retrials of cases following European Court of Human Rights rulings which have found Turkey in violation of fair trial provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
- Failure to investigate allegations of torture or other ill-treatment in police or gendarmerie custody;
- Continuing use of statements allegedly extracted under torture or other ill-treatment as evidence for prosecution and in on-going trial proceedings.

Two worrying provisions of the June 2006 revisions to the Law to Fight Terrorism act in Turkey are restrictions on the **right to an effective defence**.

One allows for the defence lawyer to be restricted, on the request of the prosecutor and decision of a judge, from examining the contents of the file about a suspect and obtaining copies of documents. This applies in cases where it is deemed that full access to the file might "endanger the aims of the investigation" into the suspect. In other words the suspect's right to an effective defence, which includes the right to be granted access to appropriate information, is restricted. Amnesty International considers that this may seriously compromise the right of a suspect – if prosecuted – to receive a fair trial.

The right to an effective defence requires also that anyone accused of a criminal offence be able to communicate in confidence with his or her lawyer. A further provision allows for, at the request of the prosecutor and on decision of a judge, the presence of an official during meetings between a person suspected of having committed a terrorist offence and their lawyer, and for a judge to be able to examine documents passed between them. This is stated as applying in cases where there is evidence of the defence lawyer acting as an intermediary between an organization and a suspect. Amnesty International considers that such a measure erodes the right to confidential communication between lawyer and client.

The principle of equal treatment by the court of prosecution and defence (equality of arms) is visibly and blatantly violated in all criminal courts in Turkey. Prosecutors enter and leave the court by the same door as the judges, and sit with them on the bench, raised above the floor of the courtroom where the defence and defendants sit. Such access to the judges and the difference in status gives the prosecution the opportunity to directly influence the judge. Some court decisions appear arbitrary and unfair. For instance, defence lawyers have stated that their requests to have prosecution witnesses brought to court to give testimony and to be cross-examined have been repeatedly rejected, in violation of the right of the defence to question witnesses against the accused.

In some cases, a defendant's right to participate fully in the proceedings and thereby to defend himself has been undermined by the failure of the authorities to provide qualified interpreters.

Various reforms introduced in a new Criminal Procedure Code, which came into force on 1 June 2005, may contribute to strengthening the right to an effective defence. The principle of cross-examination has now been introduced into courts in Turkey and thus lawyers for the defence now can cross-question witnesses. The defence may now summon witnesses to testify, even if they have been refused by the court; however Amnesty International is aware of cases where, despite this law, courts are still refusing to hear defence witnesses.

Many defence lawyers in Turkey have complained to Amnesty International that the principle of the presumption of innocence is often undermined when the court treats the right to silence invoked by some defendants who refuse to give statements in police custody as indicative of links with a political organization.

The right to the presumption of innocence must also be respected by all public officials. Public authorities, particularly prosecutors and police, must not make statements about the guilt or innocence of an accused before the outcome of the trial. In some cases prejudicial public statements have been made about the accused before and during trials by senior police officers.

With regard to the independence of the judiciary, Amnesty International notes that all judges in **Belarus** are appointed and dismissed by President Alyaksandr Lukashenka, and therefore do not have the security of tenure that would enable them to be independent, despite the statement in Article 110 of the Constitution that judges are independent. Furthermore lawyers are subordinated to the Ministry of Justice, and are obliged to be members of the state-controlled Collegium of Advocates.

Amnesty International is concerned at evidence of inappropriate pressure or intimidation being applied to defence lawyers by governmental authorities in **Moldova**. In one worrying recent incident the Prosecutor General's Office wrote to the national Bar Association of Moldova threatening two lawyers, Anna Ursachi and Roman Zadoinov, who had worked closely with Amnesty International on cases of alleged torture, with prosecution for "misuse of official position". In the letter to the Bar Association, the General Prosecutor's Office refers to the public appeals that were issued by Amnesty International on the two cases and claims that there was no evidence of torture in either case. It goes on to say: "In these circumstances the irresponsible and unfounded oppositional behaviour of the lawyers [...] is incomprehensible and questionable...The lawyers have created a bad image for the country internationally using improper methods to defend the interests of their clients." The General Prosecutor's Office asks the Bar Association to ensure that they use all possible means at their disposal "to prevent further damage to the interests of the state".

Amnesty International is concerned that the letter to the Bar Association of Moldova is a deliberate attempt to intimidate Ana Ursachi and Roman Zadoinov, and to prevent lawyers in Moldova from making public information about human rights violations. This is a violation of the right to freedom of expression. To date no charges have been brought against the two lawyers; if they were to be charged with "misuse of official position" they could face a maximum prison sentence of five years or a fine. If the lawyers were ever to be charged and eventually imprisoned for this offence Amnesty International would consider them prisoners of conscience.

In the **Russian Federation** Amnesty International is concerned that the right to counsel has been interfered with by the procuracy in cases in which lawyers, in the exercise of their function, have filed complaints on behalf of their clients alleging that they have been subjected to torture or other ill-treatment. Article 56 of the Criminal Procedure Code, adopted in December 2001, contains provisions intending to safeguard against torture or other ill-treatment and provides that "a lawyer or public defender of a suspect, accused [cannot be questioned as a witness] about circumstances which they learned in connection with a request for legal assistance or in connection with

providing legal assistance”. However, in three cases reported to Amnesty International, a lawyer was called to the office of the procurator and questioned about the complaint made on behalf of their client. Following such questioning the procurator exercised their purported powers to remove the lawyer from the case, citing the fact that the lawyer had been questioned as a “witness”.