
HUMAN RIGHTS AGENDA ASSOCIATION



TURKEY: DEFEND HUMAN RIGHTS DEFENDERS

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Summary

In particular with the reforms since 2001 as part of the harmonization procedure with the European Union (EU) Turkey has taken positive steps to develop and institutionalize human rights and basic freedoms. The reforms led to positive developments in law and in practice. Besides the reforms to adapt law to European standards the reforms that were introduced in line with the judgments of the European Court of Human Right (ECtHR) brought about some positive results. At the same time serious problems have arisen since 2006 that led to tension in the relations with the EU. This development is frequently described with the metaphor of a "train accident".

The most concrete sign of this tension is the fact that during the previous election all political parties used potential membership in the EU as their slogan while during the last election all political parties put their opposition to the EU up front. The reforms stopped and parallel to this development laws were passed that restrict basic rights and freedoms. Increases were seen in many problematic areas: police brutality, torture, ill-treatment and degrading and inhuman punishment; extreme nationalist violence, violations of the freedom of expression, and abuses of the right to life; and pressure, violence, demoralization and intimidation of human rights activists.

This report of the Human Rights Agenda Association (HRAA) concentrates on violence against and intimidation of human rights activists and, while comparing the situation to the past, aims at forming a reaction and finding concrete solutions concerning pressure, violence, demoralization and intimidation of human rights activists.

In this context the HRAA wishes to express its approval of the positive steps the government has taken concerning "freedom of headscarves". At the same time the HRAA is concerned that in the discussion on this subject the basic arguments on human rights and freedoms are missing. The discussion between the government and the opposition has turned into a debate about the regime. It can be surmised that basic rights and freedoms are at risk. The increase of actions related to pressure, violence, demoralization and intimidation of human rights activists are a concrete sign to that effect.

The HRAA believes that not only the Turkish government but also the international community and the cooperation among organizations of civil society are responsible for correcting negative developments and creating solutions.

Introduction

1- During the last two years the EU reform process slowed down in Turkey and backward steps in the area of protecting human rights and basic freedoms as well as an increase of rights and freedoms violations have been observed. The end of reforms was accompanied by new legislation that restricts basic rights and freedoms. Alongside an increase in police brutality, complaints of torture, ill-treatment and degrading and inhuman punishment rose,¹ and extreme nationalist violence, violations of the freedom of expression, abuses of the right to life, pressure, violence, demoralization and intimidation of human rights activists also increased.²

¹ Of 452 people that applied to the HRFT in 2007 for treatment 320 declared that they had been tortured in the same year. In 2006 the number had been 252. See

http://www.tihv.org.tr/EN/index.php?option=com_content&task=view&id=478&Itemid=1.

² See a report of *FIDH*: FIDH mission in Turkey - Summary report "Turkey must end the impunity of political violence" 13.02.2008, available at <http://www.fidh.org/spip.php?article5204>; the annual report of Reporters without Borders 13.02.2008, http://www.rsf.org/article.php3?id_article=25503 and a memorandum of Amnesty

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2- The text you hold in your hands is about the pressure, violence, demoralization and intimidation of human rights activists in Turkey and is based on court files against human rights defenders, interviews with victims and their legal representatives and data from human rights organizations.

3- This report of the Human Rights Agenda Association looks in particular at pressure, violence and intimidation of human rights activists in the years 2006 to 2008. At the same time it will evaluate the historical backgrounds to such acts.

Defining “human rights defender”

4- According to the Office of the United Nations High Commissioner for Human Rights, “human rights defender” is a term used to for people who, individually or with others, act to promote or protect human rights. Human rights defenders are identified above all by what they do and it is through a description of their actions, such as all human rights for all, Human rights everywhere; local, national, regional and international action; collecting and disseminating information on violations; supporting victims of human rights violations; action to secure accountability and to end impunity; supporting better governance and government policy; contributing to the implementation of human rights treaties; human rights education and training.³

5- There are many others who work in a professional capacity as human rights defenders but who are volunteers and receive no remuneration. The most obvious human rights defenders are those whose daily work specifically involves the promotion and protection of human rights, for example human rights monitors working with national human rights organizations, human rights ombudsmen or human rights lawyers. Many people act as human rights defenders outside any professional or employment context. For example, a student who organizes other students to campaign for an end to torture in prisons could be described as a human rights defender. Human rights defenders must accept the universality of human rights as defined in the Universal Declaration of Human Rights. Finally, the actions taken by human rights defenders must be peaceful in order to comply with the Declaration on human rights defenders⁴.

6- Besides local, national, regional and international human rights organization a special rapporteur of the UN is working for the protection of human rights activists and promotion of their goals. The mandate of Special Representative was established in 2000 by the Commission on Human Rights (as a Special Procedure) to support implementation of the “*Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*” (UN Declaration on Human Rights Defenders), adopted by General Assembly resolution 53/144 of 9 December 1998. The mandate calls upon the Special Representative to gather information on the situation of human rights defenders, to enter into dialogue with Governments and other interested actors, and to make recommendations to improve the

International to the Turkish Government 17.01.2008, available at <http://www.amnesty.org/en/library/info/EUR44/001/2008>

³ *Special Representative of the Secretary General on Human Rights Defenders -About Human Rights Defenders*, Office of the United Nations High Commissioner for Human Rights, 14.02.2008, available at

<http://www2.ohchr.org/english/issues/defenders/who.htm>. See also *Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet No. 29*, Office of the United Nations High Commissioner for Human Rights, Printed at United Nations, Geneva ISSN 1014-5567, GE.04-40463–April 2004–11,845, pp. 2-5, available at <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>. *Ensuring Protection - European Union Guidelines on Human Rights Defenders*, Adopted by the Council of June 2004, available at <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf>.

⁴ A.g.e., In Fact Sheet 29 pp. 6-10

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protection of defenders. Actions taken under the mandate include conducting country visits, taking up individual cases of concern with governments and reporting to the Human Rights Council and to the General Assembly⁵.

7- Human Rights are guaranteed under international law but working to ensure that they are realised and taking up the cases of those who have had their rights violated can be a dangerous business in countries all around the world. Human Rights Defenders are often the only force standing between ordinary people and the unbridled power of the state. They are vital to the development of democratic processes and institutions, ending impunity and the promotion and protection of human rights. Human Rights Defenders often face harassment, detention, torture, defamation, suspension from their employment, denial of freedom of movement and difficulty in obtaining legal recognition for their associations. In some countries they are killed or "disappeared."⁶

8- In Turkey human rights defenders have been and are subjected to violations as described in the previous item. One can say that the human rights movement in Turkey is at the same time of movement of victims.

B- Historical Background

9- After the huge damage to democracy and human rights caused by the military coup of 12 September 1980 the first independent human rights organization was the Human Rights Association (HRA), founded in 1986. Between its foundation and 2001 some 400 court cases were filed against the HRA that is still active. More than 300 cases were opened against executives of the HRA. Akin Birdal, former President of the HRA, was tried for his speeches on World Peace Day in 1995 and in 1996 and in these two cases he was sentenced to 20 months' imprisonment. He was released after he had served 14 months. The governors (of certain provinces) ordered the closure of 30 branches for different periods. The branch in Diyarbakir was closed in 1997 and reopened in 2000. Some 60 cases were filed against the chair of the branch, Osman Baydemir in just one year. During the year 2000 the same number of cases was filed against the board of the branch in Izmir. During this time 22 members and executives of the HRA were killed.⁷ In 1998 there was an attempt to assassinate Akin Birdal. A group called "Turkish Revenge Brigade" claimed responsibility for the attack.⁸ The Nationalist Movement Party (MHP) conducted an attack on the general headquarters of the HRA in 1999. During the assault the then President Hüsnü Öndül and the board member Avni Kalkan were beaten.⁹

10- After 2001 hundreds of court cases were filed against the branches and executives of the HRA in Southeast and East Turkey. Between 2001 and 2005 the branch in Bingöl was subject to 95 investigations; court cases against Selahattin Demirtas, chairing the branch in Diyarbakir reached 43. In four trials Mr Demirtas had to defend himself at a state security court. The trials ended in acquittal, were dropped or sentences were suspended. Between

⁵ *Special Representative of the Secretary General on Human Rights Defenders -About Human Rights Defenders, Introduction*, Office of the United Nations High Commissioner for Human Rights, 14.02.2008, available at <http://www2.ohchr.org/english/issues/defenders/index.htm>.

⁶ *Protection Manual For Human Rights Defenders*, Researched And Written By Enrique Eguren, Peace Brigades International, European Office (PBI BEO), Published by Front Line, The International Foundation for The Protection of Human Rights Defenders, Published By Front Line 2005, Copyright © 2005 By Front Line And PBI/BEO, p.3, available at <http://www.frontlinedefenders.org/manuals/protection>.

⁷ From a declaration of deputy chair of the HRA, Reyhan Yalçındağ, 17 July 2007, available at <http://www.ihd.org.tr/>.

⁸ The figures are available in Turkish at <http://www.ihd.org.tr/>.

⁹ A book published on behalf of the 20th anniversary of the foundation of the HRA. "Uzun İnce Bir Yoldayız", 2006/Ankara, p. 42

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October 2003 and September 2004 the branches in the Southeast were subjected to 116 investigations. In 2005 and 2006 some 60 court cases were filed and another 2 investigations were launched against the branches in the Southeast.¹⁰

11- On 14 November 2006 two court cases against Selahattin Demirtas concluded. Diyarbakir Heavy Penal Court No. 5 sentenced him to 15 months' imprisonment under Article 220/8 TPC (propaganda for an illegal organization) for a speech he made in July 2005 on Roj TV. On the same day Diyarbakir Heavy Penal Court No. 4 convicted Selahattin Demirtas to the same sentence under the same provision for a speech he had made on 24 June 2005 on Gün TV.

12- In 1990 the Human Rights Foundation of Turkey (HRFT) was founded by the HRA and 32 individual founders. Since then the HRFT has been engaged with the treatment of torture survivors and the documentation of human rights violations. During its activities the HRFT has become victim of human rights violations itself. Dr. Alp Ayan, psychiatrist at the Izmir representation of the HRFT, and Günsel Kaya, secretary at the Izmir representation and board member of the HRFT spent 113 days in prison (with another 14 people) because they participated in the funeral of the political prisoner Nevzat Ciftci, who had been killed in the massacre in Ulucanlar Prison (Ankara) on 26 September 1999. Nevzat Ciftci was buried near Aliaga district of Izmir province (Helvacı Township).¹¹ The Documentation Centre of the HRFT informed the HRAA during talks on 15 February 2008 that since its foundation 29 court cases had been filed against the HRFT and one had resulted in a negative decision.

13- In December 2003 human rights activists from various areas in Turkey came together in Izmir and founded the Human Rights Agenda Association (HRAA). One month later a case was launched demanding the closure of the HRAA. One year later Izmir Judicial Court No. 7 decided that the conditions of Article 11 of the European Convention of Human Rights (ECoHR) were not fulfilled and rejected the demand.¹²

14- According to a report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, Mission to Turkey, The Special Representative expresses her deep concern at continuing practices of harassment of human rights defenders, and urges the Government to put an end to practices stigmatizing human rights defenders. The Special Representative is also deeply disturbed by the continued perception of human rights defenders as potential threats to the State. She calls on State officials and the media to refrain from stigmatizing human rights defenders as “enemies” in their public speeches and broadcast¹³. *Hina Jilani* stated in her report that important steps had been taken in Turkey in particular during the last years towards respect for human rights and basic freedoms and for becoming a democratic state of law. However, human rights violations and pressure against human rights defenders were still continuing. *Hina Jilani* expressed her concerns and made some recommendations.¹⁴

C- Cases of human right defenders v. Turkey at the ECtHR

¹⁰ I.c. p. 46

¹¹ In this trial 31 people received sentences totalling 48 years. For the background see <http://asiapacific.amnesty.org/library/Index/ENGEUR440711999?open&of=ENG-TUR>.

¹² The verdict of Izmir Judicial Court was passed on 28.09.2004, (Basic No 2004/150, Verdict No: 2004/488)

¹³ *Mission to Turkey*, COMMISSION ON HUMAN RIGHTS, Sixty-first session, Agenda item 17 (b) of the provisional Agenda, PROMOTION AND PROTECTION OF HUMAN RIGHTS HUMAN RIGHTS DEFENDERS, Report submitted by the Special Representative of the Secretary-General, on human rights defenders, Hina Jilani; Addendum, MISSION TO TURKEY, E/CN.4/2005/101/Add.3, 18 January 2005; para: 115-116 available at <http://www.ohchr.org/english/issues/defenders/visits.htm>.

¹⁴ I.c. para.107-123.

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15- The judgments of the European Court of Human Rights (ECtHR) on Turkey show a great variety. Turkey recognized the right to individual petition to the ECtHR¹⁵ in 1987. Since then Turkey paid a leading part concerning the number of complaints and decisions.¹⁶ Petitions that were filed by human rights activists from Turkey have resulted in decisions that certain provisions of the European Convention of Human Rights (ECoHR) were violated. Two of them were passed in 2006 and 2007.

16- *The Case of Kılıç v. Türkiye*, Kemal Kılıç, who was unmarried, lived with his father in the village of Külünçe, outside Şanlıurfa. Besides working as a journalist, he was a member of the Şanlıurfa Human Rights Association¹⁷. Kemal Kılıç, the applicant's brother, was a journalist working for the newspaper *Özgür Gündem* in Şanlıurfa. On 23 December 1992 Kemal Kılıç sent a press release to the governor of Şanlıurfa. This stated that death threats had been made against the United Press Distribution representative carrying out the distribution of *Özgür Gündem* and against the driver and owner of the taxi used for deliveries. It stated that it was known that persons working for *Özgür Gündem* had been attacked or killed and that those involved in the sale and distribution of the newspaper had been the victims of arson attacks and assaults. Reference was made to the fact that in other provinces in the south-east security officers were protecting the offices, employees and distributors. Kemal Kılıç requested that measures be taken to protect the safety of people working for the Şanlıurfa office, including himself, another journalist and the newspaper's distributor and driver. (Para 8-10) By letter dated 30 December 1992, the governor's office replied that Kemal Kılıç's request for protection had been examined. No protection had been assigned to distributors of newspapers in any of the provinces nor had there been any attacks on, or threats to, distributors in the area. His request was refused. (Para 11) On 18 February 1993 Kemal Kılıç left the newspaper office in the centre of Şanlıurfa and walked to the coach station. Kemal Kılıç was the only passenger to leave the coach when it stopped at the junction. He walked up the road towards the village. Ahmet Fidan heard voices arguing and a cry for help, followed by two shots. (Para 14) The incident was reported to the gendarmes who rapidly arrived on the scene. Kemal Kılıç's body was discovered with two bullet wounds in the head. (para 15)¹⁸. For these reasons, the Court 1. *Holds* by six votes to one that the respondent State failed to protect the life of Kemal Kılıç in violation of Article 2 of the Convention; 2. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation into the circumstances of the death of the applicant's brother; 3. *Holds* unanimously that it is unnecessary to examine whether there has been a violation of Article 10 of the Convention; 4. *Holds* by six votes to one that there has been a violation of Article 13 of the Convention.¹⁹

17- In the case *Çetinkaya v. Turkey* (no. 75569/01) the ECtHR ruled on 27 June 2006 that there had been a violation of Article 11 ECoHR (freedom of assembly and association). As the chair of the Izmir branch of the HRA Suat Cetinkaya (himself a lawyer) had attended a press conference related to the events that had occurred in Sivas on 2 July 1993 (more than 30 people had been burned to death in an attack on a gathering of Alevites). Suat Cetinkaya was charged with a violation of the Law on Associations proscribing activities not in line with the

¹⁵ In 1987 it was called the Human Rights Commission

¹⁶ Since 2001 the ECtHR presents statistics at

<http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Reports/Annual+Reports/>.

¹⁷ Kemal Kılıç İHD'nin öldürülen 21 üyesi ve yöneticisinden birisidir. Kendisi aynı zamanda İHD Şanlıurfa Şubesi Yönetim Kurulu üyesiydi.

¹⁸ *ECHR Decision, Kılıç v. Turkey*, Application Number: 22492/93, Strazburg, 28 March 2000, para. 8-14. A.g.e.

¹⁹ *Ibid.*

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declared aims of that association. On 2 November 2000 he was convicted of the offence charged and sentenced to six months' imprisonment, which was subsequently commuted to a fine. He unsuccessfully appealed on points of law. The ECtHR noted Mr Cetinkaya had been convicted in his capacity as director of an association, not for behaving violently or for chanting slogans in support of a terrorist organisation.

18- The Committee of Ministers that observes whether the judgments of the ECtHR are put into practice asked the Turkish government whether the compensation of 2,000 Euro had been paid, but did not ask that the legal provision that resulted in the conviction of Suat Cetinkaya be changed. The HRAA contacted lawyer Suat Cetinkaya who confirmed that the compensation had been paid. According to Article 301 of the Turkish Code of Criminal Procedures (TCCP) Suat Cetinkaya cannot ask for a retrial since his complaint to the ECtHR was pending on 4 February 2003 (judgment on 27 June 2006).

19- The Case of *Taner Kılıç v. Turkey*. The applicant was born in 1969 and lives in İzmir. He is a lawyer and a board member of the İzmir branch of the Human Rights Association for Oppressed People (*Mazlumder*). On 16 June 1999 the Public Prosecutor at the Ankara State Security Court requested the court to issue a warrant authorising the search of the headquarters and branches of the Mazlumder, in order to collect evidence concerning certain acts of the association, allegedly carried out against the "integrity of the country and the secular regime". On the same day the court issued the search warrant. On 19 June 1999 police officers carried out a simultaneous search of all the premises mentioned in the letter of the Under-Secretary of State, including the applicant's home and law office. During the search of his home, the police officers showed the applicant the letter of the Under-Secretary of State. They confiscated two videotapes found in his home and photocopied various documents taken from his office. For these reasons, Court unanimously *holds* that there has been a violation of Article 8 of the Convention.²⁰

20- In the Case of *Birdal v. Turkey*, applicant Akın Birdal is Honorary President of Human Rights Association. On 6 September 1995, on the occasion of World Peace Day, the applicant spoke at a panel discussion which was organised by the United Socialist Party in Mersin. The applicant's speech read as follows:

"We have gathered here for peace. Hello to all who support fraternity for peace. In a system where the imperialist and socialist worlds exist, wars continue and the bloodiest war is in our country. We have reacted against the Serbian brutality over the Bosnian people. However, some of us ignored this dirty war which is against the human dignity. We have observed the consequences of an unjust and dirty war in the country. This war has continued for 11 years as the rights of the Kurdish people have not been recognised. 20,000 persons died as a result of this dirty war. 118 villages were burned down. Kurdish people were thrown out of their villages, off their land. The Kurdish problem exists in Turkey. Turks should also recognise this problem. Turkey is now at a critical point. Solution of the Kurdish problem in a just, democratic and peaceful way has now become a reality in everybody's mind. Then, why do they still want to continue this dirty war? This war caused the displacement of the Kurdish people from their land. Is this war only the problem of the Kurdish people? Is this week of peace only for the Kurdish people? No, it is a problem for the Turkish people, too. While the Kurdish people have been crying for peace for a week, isn't this a problem of the Turkish working class? Isn't the problem of the killing of the children of the Kurdish and Turkish peoples a problem of the Turkish working class? One third of the budget, which is 446 trillion Turkish liras, is used in the east and south-east. All this happens at which price? It is at the price of tears.

We, the Turks, Kurds, Alevis and Sunnis, are all against the war. We want peace. We want the lives of Kurds to be also protected by the Constitution. We want peace for the fraternity of the peoples."

²⁰ ECHR Decision, *Taner Kılıç v. Turkey*, Application Number: 70845/01, Strazburg, 24 October 2006.

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21- On 2 July 1996 the Konya State Security Court convicted the applicant under Article 312 § 2 of the Criminal Code of incitement to hatred and hostility by making distinctions on the basis of race and region. The applicant Akin Birdal was sentenced to one year's imprisonment and a fine of 300,000 Turkish liras (TRL). For these reasons, the Court unanimously *holds* that there has been a violation of Article 6 of the Convention; *holds* that there has been a violation of Article 10 of the Convention²¹.

22-The Declaration on Human Rights Defenders stresses that the state is primarily responsible for protecting human rights defenders. It also acknowledges "*the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms*" and "*the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms*"²².

23- But according to Hina Jilani, Special Representative of the UN General Secretary on Human Rights Defenders, "*exposing human rights violations and seeking redress for them is largely dependent on the degree of security enjoyed by human rights defenders*". A look at any report on human rights defenders throughout the world reveals stories of torture, disappearances, killings, threats, robbery, break-ins to offices, harassment, illegal detentions, being subjected to intelligence and surveillance activities, etc. Unfortunately, this is the rule and not the exception for defenders²³.

24- Human rights defenders in Turkey have themselves been subjected to pressure, violence, demoralization and intimidation.

D- Freedom of Association and Human Rights Defenders

25- Before the new Law on Associations was renewed completely a number of changes were made to this law in several packages for the harmonization with the EU passed in 2002 and 2003. It appeared to be a major achievement that terms of imprisonment were replaced by fines so that nobody would be imprisoned if a violation of the Law on Association was violated. However, the fines were set between 500 and 3,000 YTL (appr. 300-1,800 Euro) that might leave associations with a small budget in a difficult position. Under previous legislation prison terms had been commuted to fines (as a rule) and were not to exceed 10,000 TL (that is 0.10 YTL). According to new legislation an association in Istanbul that had been founded with the pensions of its members was ordered to pay 5,000 YTL.²⁴

26- On 4 November 2004 Law No. 5253 (the new Law) on Association was passed.²⁵ Compared to the "old law" the new law gave more freedom to associations. In particular the provincial directors for associations working for the Presidency of the Associations Department were no longer chosen among police officers but civil servants. Their offices were separated from police headquarters and moved to separate buildings. Associations no longer have to require permission for presenting projects

²¹ ECHR Decision, *Birdal v. Türkiye*, Application Number: 53047/99, Strazburg, 2 October 2007.

²² *Protection Manual For Human Rights Defenders*, Researched And Written By Enrique Eguren, Peace Brigades International, European Office (PBI BEO), Published by Front Line, The International Foundation for The Protection of Human Rights Defenders, Published By Front Line 2005, Copyright © 2005 By Front Line And PBI/BEO, p.6, available at <http://www.frontlinedefenders.org/manuals/protection>.

²³ Ibid. p.6

²⁴ The relevant Turkish news stems from Zaman Gazetesi, 17.12.2003, and can be found at <http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=5&ArsivAnaID=16961>

²⁵ The Turkish text can be found on the pages of the Justice Ministry <http://www.mevzuat.adalet.gov.tr/html/1421.html>

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and receiving donations from abroad; it is sufficient to inform about it. However, following the promulgation of the new law a number of decrees and regulations were issued that restricted the freedoms again.²⁶ The new Law on Association mainly provides for fines;²⁷ only Article 32/p still provides for imprisonment between one and three years.

27- The November 2007 Report of the European Commission on the progress made in Turkey towards membership of the EU said: "*As regards **freedom of association**, amendments to the legal framework introduced in 2004 had positive results. These include an increase in the number of associations and their membership. However, the obligations imposed by the Law on Associations to notify the authorities before receiving financial support from abroad and to provide detailed documents on such support place a burden on associations' operations. Furthermore, some associations face difficulties. The accounts of Amnesty International Turkey have been blocked since 1 January 2007.*"²⁸

28- After the publication of the Progress Report the lawyer of the Turkish section of Amnesty International (AI) was informed that Istanbul Administrative Court No. 3 had stopped the implementation of the decision to block the accounts of AI by a decision of 18.12.2007. There are a number of complaints about fines and blocking accounts of association, but so far no detailed report about these measures is available. In practice, one can say that the new Law on Association is the continuation of the former Law on Associations. As an example, for lawyer Suat Cetinkaya as the chair of the Izmir branch of the HRA Article 30/a (in the new Law on Association; Article 37 in the old Law on Association) was applied. Article 30/a of Law 5253 provides: "*Associations; a) cannot conduct activities outside the aims specified in the statute and subjects that are conducted to achieve these aims.*" As stated before the old law provided for imprisonment, if this provision was violated, but as a rule the prison terms were commuted to fines. In the case of Suat Cetinkaya the sentence of 6 months' imprisonment (verdict passed in 2000) was commuted to a fine of 1.5 million TL (when he had to pay it, it was the equivalent of 3 DM). The minimum fine now would be 500 YTL (appr. 300 Euro).

29- Article 32/p of Law 5253 provides:

p) Whoever founds associations that according to Article 30 (b) are forbidden and executives of association that act against this provision will be punished by imprisonment of one to three years and a fine of 500 million TL (500 YTL), if their acts do not require heavier sentences and the closure of the association will be ordered.

30- Article 30/b of Law 5253 provides:

b) Associations cannot be founded with aims that are clearly forbidden by the Constitution or laws or with the aim to commit acts subject to be a crime.

The provision shows prohibitive mentality and is open to arbitrary implementation.

31- In February 2008 State President Abdullah Gül ratified the Law on Foundations that the 10th President of the Turkish Republic, Ahmet Necdet Sezer had vetoed on the

²⁶ The numerous documents can be found in Turkish at

<http://www.dernekler.gov.tr/Dernekler/Web/Gozlem2.aspx?sayfaNo=51>

²⁷ An overview of the fines for violations of certain provisions of the Law on Association can be found (in Turkish) at http://www.tusev.org.tr/userfiles/image/2007_Dernek_Cezalari.pdf

²⁸ The report can be found at

http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf

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grounds that some provisions were not in line with the Constitution. In the Grand National Assembly of Turkey (GNAT) the debate on the vetoed law had lasted over a month until it was passed with 242 against 72 votes. The law provides that foundations of parishes can obtain property. The law is of specific interest for foundations of minorities. It is problematic in its content and implementation. The Foundation on Economic and Social Studies in Turkey (TESEV) prepared a "Legal Opinion on the Draft Law on Foundations"²⁹ including some recommendations. However, the law was passed without any changes. In an evaluation of the law Prof. Dr. Baskın Oran said:³⁰

The solution on property included in the 1936 Deed, but afflicted with problems will lead to the ECtHR on Strasburg. Since it is not possible to protect the right of citizens of the Turkish Republic with different religions within Turkey the problem has to be solved at an international court. For instance the property the Foundation of Fener Greek Male Lyceum acquired in 1952 and 1958 was taken away by a court's decision and the land was given back to the State. Having been unable to get a positive result the Foundation applied to the ECtHR that awarded 890,000 Euro for pecuniary damage.³¹

E- Actions of pressure, violence, demoralization and intimidation of human rights activists in Turkey between 2006 and 2008

32- On 11 April 2006 the researcher of Human Rights Watch (HRW), Jonathan Sugden was taken to Bingöl Police HQ. at 9am. First he was taken to Malatya and from there he was sent by plane to Istanbul at 9.30pm. On 13 April he had to board a plane to London at 8am. Jonathan Sugden had come to Turkey on 29 March 2006 to work on Law 5233 on Compensating the Damage caused by Terrorism and the Fight against Terrorism. At the same time he was gathering information on the system of village guards.³²

33- In July 2006 Ayhan Bilgen, President of the Association for Human Rights and Solidarity with the Oppressed (Mazlum Der), declared that he was receiving threats from the Turkish Revenge Brigades (TIT), mostly via e-mail. Some letters had been signed with the name of Abdullah Çatlı.³³

34- As members of the Human Rights Advisory Board in the Prime Ministry Prof. Dr. Baskın Oran and Prof. Dr. İbrahim Kaboğlu prepared a report entitled "Rights of Minorities and Cultural Rights". Since the announcement of this report both academics have been the target of the dominant media and nationalist circles.³⁴ They were subjected to prosecution. Ankara Penal Court No. 28 acquitted them, but the 8th Chamber of the Court of Cassation quashed the verdict in May 2007 ruling that "*the discussion of major and minor identity went*

²⁹ A summary can be found at http://www.tesev.org.tr/eng/events/cos_citi_legan_op.php

³⁰ Turkish text can be found at http://www.tihv.org.tr/index.php?option=com_content&task=view&id=1484&Itemid=34 or <http://www.radikal.com.tr/haber.php?haberno=246819>

³¹ See the press release <http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=FENER%20%7C%20TURKEY%20%7C%2034478/97&sessionid=5880773&skin=hudoc-pr-en>

³² An this incident an announcement of the HRAA is available under the title of *İstenmeyen Şey Ne? Sakın İnsan Haklarının Kendisi Olmasın?*, İnsan Hakları Gündemi Derneği (İHGD), 18.04.2006, TR002/2006/Jonathan Sugden, available at <http://www.rightsagenda.org/main.php?id=17>.

³³ In Turkish you can find the text under the title *TİHV Dokümantasyon Merkezi'nin Ekim 2005-Kasım 2006 Dönemine İlişkin Değerlendirmesi*, and the address http://www.tihv.org.tr/index.php?option=com_content&task=view&id=313&Itemid=69

³⁴ An announcement of the HRAA in Turkish entitled *Vandallar İş Başında*, İHGD Basın Açıklaması, 23.12.2005, is available at <http://www.rightsagenda.org/main.php?id=10>.

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beyond the limits of freedom of expression" and "the expressions used had reached the dimension of a danger to society".

35-Following a speech in Cologne in April 2002 a lynch campaign was launched against the human rights activist Eren Keskin. Relying on Article 301 of the Turkish Penal Code (TPC) Kartal (Istanbul) Penal Court No. 3 convicted Eren Keskin on 14 March 2006 for having insulted the armed forces and sentenced her to 10 months' imprisonment. The sentence was commuted to a fine of 6,000 YTL (appr. 3,750 Euro). After the trial had been launched articles and advertisements appeared in the press using discriminating language and trying to show Eren Keskin as a "terrorist". On 6 June 2006 several women's wings of political parties placed an advertisement in newspaper with similar content. On the same day the Istanbul branch of the HRA (that had been chaired by Eren Keskin) received a letter with a skull on it and a suspicious powder in it.³⁵ During the meeting of Alevi women in Cologne Eren Keskin allegedly said that Turkish soldiers assault and rape women.³⁶ In December 2007 the 9th Chamber of the Court of Cassation quashed the verdict of the court in Kartal on formal grounds.

36-During a press conference of the Foundation on Economic and Social Studies in Turkey (TESEV) during which the report on "Facing Enforced Migration" was introduced a group attacked the organizers first verbally and later physically on 6 July 2006. The organizers and observing human rights defenders were subjected to violence.³⁷

37-A court case was launched against the TV channel NTV and some other media that had reported on an incident in ward 14 of Buca Closed Prison (Izmir) alleging that children had been tortured and ill-treated, were being held in bad conditions, were not allowed to see their lawyers and not taken to hospital in connection with a riot on 05.11.2003.

38-Nalan Erkem is a lawyer in Izmir working for the Group (of lawyers) to Prevent Torture. She is a member of the HRAA and the Turkish section of Amnesty International.

39- Her declarations and petitions in the name of the President of Izmir Bar Association or as a board member of the Group to Prevent Torture were done in line with Article 76 of the Law on Lawyer that describes the task to promote the rule of law, the defence and protection of human rights and realization of these notions. Her statement on the ill-treatment of the children resulted in an investigation disregarding legal procedures. Four years later the prosecutor launched a case on charges of "miscarriage of duty". The first and last hearing of this case was conducted at Izmir Penal Court No. 4 on 27 February 2008. Nalan Erkem was acquitted.

40-On 24 July 2006 Ankara Peace Court No. 12 ordered the confiscation of the 28th edition of the journal of the association KAOS GL (Association for Cultural Research and Solidarity with Gays and Lesbians) that had been entitled "Pornography". Demanding confiscation the prosecutor's office had argued that the contents of some articles and some pictures were in conflict with the "*protection of general moral*". An investigation was launched against the owner and editor-in-chief of the journal under Article 226 TPC. The first hearing was held at Ankara Penal Court No. 2. In his defence the owner of the journal, Umut

³⁵ An announcement of the HRAA on this incident in Turkish under the title *Eren Keskin'e Yönelik Linç Kampanyası Derhal Sona Ermelidir!*, 07.06.2006, İHGD: Basın Açıklaması, TR006/2006/Eren Keskin, is available at <http://www.rightsagenda.org/main.php?id=52>.

³⁶ A German translation of the verdict against Eren Keskin can be found at <http://www.aachener-friedenspreis.de/archiv/2006/Keskin-Urteil-deutsch.pdf>

³⁷ A Turkish announcement of the HRAA on this incident under the title *Şiddet Korosu İş Başında! - TESEV Saldırısı*, İHGD Basın Açıklaması, 07.07.2006, is available at <http://www.rightsagenda.org/main.php?id=99>.

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Güner said that the articles in edition 28 had presented views of writers, journalists, academics and artists trying to criticize pornography from a gay-lesbian standpoint. On 28 February 2007 the court acquitted the defendants on the grounds that the journal had not been distributed and, therefore, the "crime" had not been committed.³⁸

41-During a conference of the youth wing of the (governing) Party for Justice and Development (AKP) in İzmir on 18 November 2006 Prof. Dr. Atilla Yayla from Gazi University spoke about the social effects of the relationship between Turkey and the EU. In one part of his speech he included critical remarks about Kemalism. Because he called Atatürk "that man" a lynch campaign was started against him. First a newspaper published in the Aegean region called him a traitor in its leading story. This was followed by verbal attacks of some generals in the national press. After that the prosecutor started an investigation against him and as a result of an internal investigation at Gazi University he was suspended from duty.³⁹

42-Prof. Dr. Atilla Yayla, chairing the Union for Liberal Thought, has been struggling for freedom of expression in Turkey for several years. He could later return to his post at the university, but was tried at Izmir Penal Court No. 8. The first hearing was held on 30 April 2007 and the prosecutor demanded a sentence of 5 years' imprisonment claiming that the conference was held at a public place. On 28 January 2008 the Court sentenced him to 15 months' imprisonment based on Law 5816 for the Protection of Atatürk. The sentence was suspended under the condition that he will not commit another "crime" during this time.

43-The Governor's Office of Istanbul has demanded the closure of Lambda Istanbul, an organization defending lesbian, gay, bisexual and transgender (LGBT) people's rights in Turkey, claiming that the name and objectives of the group are "against the law and morality". The governor had asked in early 2007 that the group be shut down; in July, the local Prosecutor's Office rejected the complaint. The Governor's Office then took the case to a higher court, the Beyoglu Sutluce Court of First Instance No. 5, which heard the case in July 2007 and ordered a second hearing for October. The third hearing was held on 31 January 2008 and the next hearing was scheduled for 6 March 2008.⁴⁰

44-Another court case with the demand of closure was opened against the Pink Life LGBTTT Solidarity Association on claims that the general assembly had been held too early. At the hearing at Ankara Peace Court No. 12 on 25 July 2007 the chairperson was fined 498 YTL.⁴¹

45-On 19 January 2007 the founder of the journal Agos, publishing in Armenian and Turkish, Hrant Dink was killed in front of his paper. Hrant Dink was also a member of Helsinki Citizens' Assembly. Before he was killed he had been threatened many times. There are serious suspicions that the police destroyed important evidence. The suspected killers were arrested, but there is concern that the people behind the assassination are being protected.

46-While the trial on the killing gives reason for concern new trials were opened against the journal. Arat Dink, the editor-in-chief and Serkis Seropyan, owner of the paper were

³⁸ A more complete story in Turkish is part of the human rights report of KAOS GL for 2007, p. 111, available at http://www.kaosgl.org/resim/InsanHaklari/LGBTTT_IH_Raporu_2007.pdf.

³⁹ The HRA, the HRAA, the human rights organization Mazlum-Der and the Association of Helsinki Citizens made a joint declaration in Turkish entitled *Atilla Yayla, Ortak Basın Açıklaması*, on 22.11.2006. It can be found at <http://www.rightsagenda.org/main.php?id=146>.

⁴⁰ A detailed report of HRW can be found at <http://hrw.org/english/docs/2007/10/16/turkey17107.htm>

⁴¹ See the annual report 2007 of KAOS GL p. 108, available at http://www.kaosgl.org/resim/InsanHaklari/LGBTTT_IH_Raporu_2007.pdf.

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sentenced to one year's imprisonment each on 11 October 2007 on charges of having denigrated Turkishness.⁴² Afterwards the prosecutor in Sisli (Istanbul) started an investigation against an article of 9 November 2007 on the allegation that the paper had tried to influence the judiciary.

47-A striking example on how human rights defenders are labelled and run down was the declaration of the General Staff on 8 June 2007. Human rights activists were shown as "terrorists". Some details of the announcement are:

"3. It is time that those people and organizations in the country and abroad, who at every opportunity use the sublime values of humanity such as peace, freedom and democracy as a disguise to the terrorist organization, see the true face of these incidents.

(...)

5. It is beyond doubt that the escalating acts of terror are a very clear indicator of the corrupt ideas of those who indirectly or directly support them.

6. Turkish Military Forces keeps an unwavering will in the struggle against terror and it is an undisputable fact that it will give the necessary response to such assaults.

7. The expectation of the Turkish Military Forces is that the sublime Turkish nation demonstrates en masse its reaction reflex to such acts of terror.⁴³"

48- On 16 January 2008 a stand of the Initiative SayNo to Racism and Nationalism opened on behalf of the anniversary of the assassination of Hrant Dink in Konur Street Ankara was attacked by radical nationalist. The attackers cursed and threatened the group, destroyed posters and shouted slogans.⁴⁴

49- Lawyer Tahir Elçi is charged under Article 288 TPC with "attempting to influence the outcome of a trial" over a press statement he made in connection with a trial against police officers charged with having killed Ahmet Kaymaz and his 12 year old son Uğur Kaymaz. The first hearing against the lawyer was conducted at Eskisehir Heavy Penal Court on 31 January 2008.

50-Turkish Penal Code Article 288:

Attempt to Influence Fair Trial

Article 288 – (1) Anyone who makes verbal or written statements in public in order to influence a prosecutor, judge, court, expert or witnesses before an investigation and prosecution has concluded with a legally binding verdict shall be sentenced to imprisonment for from six months to three years.

(2) (Removed by Law 5377 of 29 June 2005)

51-Expressions unspecified in scope such as "in order to influence" contravene the principle of predictability, and render the interpretation of the judiciary or law officers as the sole authority for qualifying the offence. Such vague formulations in provisions that are not likely to be applied to those in positions of power can work as a tool to intimidate socially weak or dissident circles. This provision risks providing an opportunity arbitrarily to punish any kind of opinion whatsoever that may be expressed about trial proceedings⁴⁵.

⁴² See an article in Bianet of 7 November 2007 at <http://www.bianet.org/english/kategori/english/102745/arat-dink-and-seropyan-sentenced>

⁴³ *BASIN AÇIKLAMASI*, 08 HAZİRAN 2007, NO: BA- 13 / 07, Genel Kurmay Başkanlığı, available at http://www.tsk.mil.tr/10_AR_SIV/10_1_Basin_Yayin_Faaliyetleri/10_1_Basin_Aciklamalari/2007/BA_13.htm.

⁴⁴ Details can be found in Turkish under the title of *Önemli ve Acil Çağrı*, Irkçılığa ve Milliyetçiliğe DurDe!, 16.01.2008, available at www.durde.org.

⁴⁵ *Freedom of Expression in The New Turkish Penal Code*, Human Rights Agenda Association, First Edition: Ankara, September 2006, s.47-48, available at <http://www.rightsagenda.org/main.php?id=103&lg=en>.

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52-Besides being a member of the board of Diyarbakir Bar Association Tahir Elçi is a founding member of the HRFT, the Turkish section of Amnesty International and the HRAA. The court case against him refers to a hearing against the police officers who shot Ahmet Kaymaz and his son Ugur Kaymaz. After the hearing at Eskisehir Heavy Penal Court on 19 December 2005 lawyer Tahir Elci who had participated as the representatives of the intervening party (the wife of Ahmet Kaymaz) told journalists who has asked about the tension with the presiding judge that the "court shows no just treatment for us".

53-At the hearing in his own case lawyer Tahir Elçi said on 31 January 2008 that he did not influence the judiciary and had only demanded that a trial should be impartial and fair. He said: "I am not just anyone making a statement on the killing of father and son Kaymaz. I am their legal representative and as such a party in that trial. It is my duty to protect the interests of their relatives. Certainly I want the court to decide in favour of my clients, since their right to life was violated by public servants." The hearing at Eskişehir Heavy Penal Court was adjourned to 12 March 2008.

54-On 18 April 2007 Eskisehir Heavy Penal Court acquitted the police officers Mehmet Karaca, Yasafettin Acıksöz, Seydi Ahmet Döngel and Salih Ayaz relying on Article 124 TPC ruling that the police officers had only carried out an order. The court case against Tahir Elci is the continuation of actions against human rights defenders. In 1993 the lawyer had been detained, his officers were searched and files were confiscated and he was ill-treated during detention. Tahir Elçi and other lawyers subjected to the same treatment applied to the ECtHR that decided that besides Article 3 ECoHR (prohibition of torture), Article 5/1 ECoHR (right to liberty and security) and Article 8 ECoHR (right to respect for private life) had been violated.⁴⁶

55-Articles 58 and 59 of the Law on Lawyers provide that investigations against lawyers can only be conducted with the permission of the Justice Minister. The fact that the Justice Minister gives such permission in particular if lawyers are representing victims of human rights abuses is contributing to the violence, intimidation and pressure against human rights defenders. It can also be seen as an attempt to influence the judiciary.

56- In its report on "Freedom of Expression"⁴⁷ (January-June 2007) the HRA said that since the beginning of 2006 a total of 19 investigations and court cases had been filed against members and executives of the HRA including former President (now Vice-President) Reyhan Yalçındağ. The HRA added that during two events in Urfa and Batman two board members of Mazlum Der had also been charged. During talks of the HRAA at the headquarters of the HRA on 18 February 2008 the HRAA was informed that court cases had increased lately, some had resulted in conviction and against the branch in Mersin a court case had been filed demanding closure.

57- On 9 September 2007 lawyer Mustafa Rollas went to the police station of the fair in Izmir to see his client. He was not allowed in although he gave details on his identity and the reason for his coming. Chief of Police Ayhan Gökdeniz came outside the station and confirmed that the clients of Mustafa Rollas had been detained, but said that the lawyer could only be present when their statements were to be taken. Mustafa Rollas objected pointing at legal provisions. The person in command of the station said that it was up to him to allow a contact or not and pushed Mustafa Rollas down

⁴⁶ ECHR Decision, *Elçi and Others v. Türkiye*, Application Number: 23145/93 and 25091/94, Strasbourg, 13 November 2003.

⁴⁷ The report can be found in Turkish under the title *İfade Özgürlüğü Raporu, Ocak-Haziran 2007*, İHD, <http://www.ihd.org.tr/rapor/IHD%20ifade%20Ozgurlugu%20Raporu%20Ocak-Haziran%202007.pdf>

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the stairs at the same time ordering police officers to detain him. Some 10 police officers beat Mustafa Rollas on his arm, back and head, handcuffed him on the back and took him inside. Representatives of the HRA and relatives of the detainees were taken away under force. Inside the police station Mustafa Rollas had to wait for 1.5 hours while his hands were tied on the back. During this time police officers cursed at him and abused him verbally. Since 1999 Mustafa Rollas has been working as a lawyer in Izmir. For a long time he was the chair of the Izmir branch of the HRA.⁴⁸

58- On 26 June 2007 the Justice Minister gave permission to the prosecutor in Van to investigate against the lawyers, Murat Timur, Cüneyt Canis, Mehmet Ekici, Ergün Canan, Kerem Akdogan, Dincel Aslan, Bekir Kaya, Bahattin Özdemir and Selcuk Kozagacli. These lawyers represent the intervening persons Metin Korkmaz, Hamide Korkmaz and Seferi Yılmaz in what is known as the "Semdinli case"⁴⁹. During a hearing at Van Heavy Penal Court No. 3 on 13 June 2007 the lawyers had presented their views on the decision of the 9th Chamber of Cassation that had quashed the first verdict in this trial on 8 May 2007. They had argued that the Court of Cassation wanted the case to be heard at a military court. Because the prosecutor had demanded release of the defendants the lawyers criticized him either for "professional deficiency" or unwillingness to provide legal reasons. Finally the lawyers said that the appointment of a prosecutor according to the expected outcome was against the rule of law and a violation of the right to a fair trial.

59- A court case was filed against former President of Istanbul Bar Association Yücel Sayman under Article 125 TPC (insult). The case relates to words Yücel Sayman used when addressing lawyer Kemal Kerincsiz who had asked to be accepted as party the trial against Hrant Dink, publishing director of Agos, Arat Dink, the editor-in-chief and Serkis Seropyan, the owner of the journal. On 7 February 2008 Istanbul Heavy Penal Court started to hear the case. Yücel Sayman was represented by 84 lawyers. Lawyer Murat Inan participated as one of the "insulted lawyers". Kemal Kerincsiz could not participate, because he was under arrest in connection with the operation against the "terrorist organization Ergenekon".⁵⁰

60- Lawyer Kemal Kerincsiz has played an active part in having court cases being filed under Article 301 TPC against many intellectuals and writers. He is heading the extreme nationalist group *Büyük Hukukçular Birliği* ("Great Union of Jurists"). He was one of eight persons including pensioned officers and general arrested during the investigation against the "terrorist organization Ergenekon".⁵¹

61- Hakki Yalcinkaya filed an official complaint against Prof. Dr. Mustafa Erdoğan with the prosecutor's office in Şişli (Istanbul). The HRAA talked to Prof. Dr. Mustafa Erdoğan and was informed that the complaint was related to a column he had written in the newspaper Star on the verdict on Arat Dink and Serkis Seropyan based on Article 301 TPC. Hakki Yalcinkaya is the presiding judge of Sisli Penal Court No.

⁴⁸ Information in Turkish can be found on the website of the Association of Contemporary Jurists http://www.cagdashukukculardernegi.org/basin_bultenleri/basin_bultenleri/genel_merkez_basin_aciklamasi_21_09.2007.html.

⁴⁹ General information in English can be found at a website of Amnesty International <http://asiapacific.amnesty.org/library/Index/ENGEUR440332005?open&of=ENG-TUR>. An update is available under <http://www.amnesty.org/en/library/info/EUR44/020/2007>

⁵⁰ For further background see <http://www.armeniangenocide.com/archive/index.php/t-2095.html> or <http://www.bianet.org/english/kategori/english/101556/lawyer-on-trial-for-insulting-kerincsiz>

⁵¹ For some background on this see <http://www.bianet.org/english/kategori/english/104453/ex-anti-terror-general-sent-to-jail-along-with-companions>

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2 that passed the verdict on Arat Dink and Serkis Seropyan. He claimed that he had been insulted (an offence according to Article 125 TPC) and that the article was an attempt to influence members of the judiciary (an offence according to Article 277 TPC). Prof. Dr. Mustafa Erdoğan is an expert in Constitutional Law, a well known academic and columnist. His articles have contributed to the protection and promotion of human rights. He also is a member of the Union of Liberal Thought.

62- In his complaint Hakki Yalcinkaya particularly pointed at the following sentences: *"rather than reflecting judicial reflections the verdict reads like a political pamphlet and reminds of an amateur history home work. Expressions such as 'actions of ASALA, Russian occupation, terrorists of Armenian offspring in the PKK... (this) is no trial on high treason... But this makes clear that the Court pre-convicted the defendants of high treason. And what about the 'actional risk of a threat'? This word has not meaning in Turkish... Since the mentality did not change, we have a long way to go with 301."* Needless to say that these quotes were taken from various parts of the article Prof. Dr. Mustafa Erdoğan wrote and certain expressions the judge included himself.⁵²

63- Article 277 of Law 5237 (Turkish Penal Code) provides:

Influencing members of the judiciary

Article 277 - (1) Anyone who attempts unlawfully to influence members of the judiciary by giving instructions, exerting pressure or influence for or against one or more of the parties in a trial, defendants, intervening parties or victims in whatever way shall be punished with imprisonment of from two to four years. If the attempt does not go beyond the level of recommendation the sentence shall be imprisonment of from six months to two years.

64- The expression "in whatever way" broadens the area of punishable acts and presents an extraordinary immunity to the judiciary. Any kind of criticism of judicial activities can be punished. The expression of "attempt to influence in whatever ways" should be deleted from the provision. To report on court cases or to express an opinion about a verdict would become a mine field and any kind of opinion could be made liable to prosecution. It cannot be assumed that the judiciary does not make mistakes and the verdicts are not absolute, i.e. not to be criticized. The division of power basically was introduced so that the legislative and executive do not exert pressure on the judiciary. It is no principle to hinder the democratic right of the public to criticize and to establish an area of immunity. On the other hand, the people working in the judiciary need the professional capacity of resisting such an influence.⁵³

65- The World Organization against Torture (OMCT) and the International Human Right Federation (FIDH) that run a joint programme for the protection and observation of human rights defenders were informed that Ethem Acikalin, chairing the Ankara branch of the HRA was arbitrarily arrested. According to information received on 23 January 2008 Ethem Acikalin was arrested in Adana on the grounds that he was conducting activities for an armed gang (Article 220/6 in combination with Article 314 TPC) and that he was making propaganda for a terrorist organization (Article 7/2 of the Anti-Terror Law). These accusations relate to a press conference of the Right

⁵² For the full text of the verdict, see http://www.armenews.com/IMG/agos_301_verdict_English.doc

⁵³ Compare the publication of the HRAA *"Freedom of Expression in the new TPC"*
<http://www.rightsagenda.org/main.php?id=103&lg=en>

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and Freedoms Front in Adana. This press conference in which Ethem Acikalin participated was held on 17 December 2007. It was organized to protest the killing of Kevser Mizrak, a member of the Revolutionary People's Liberation Party-Front (DHKP/C) in Ankara on 10 December 2007. It had been alleged that the security forces killed Kevser Mizrak. The press release condemned extra-judicial executions and called for a prevention of such acts.⁵⁴

- 66- The prosecutor's office in Izmir launched an investigation against the lawyers Aysun Koç, Ail Deman Gürel, Aysun Solakoğlu Ağaoğlu and Kamil Ağaoğlu in connection with "minutes" signed by prison staff on 12 January 2007. Having received a complaint from Izmir F-type Prison No. 2 these lawyers had gone to the prison and talked to the prisoners Zeynel Abdi Usar and Ayhan Usar. After the talks the guardians wanted to inspect the notes the lawyers had taken about complaints of torture and ill-treatment. They attempted to search the lawyers and prevent them from leaving the prison. The "minutes" reveal that the prison staff listened to the conversation of the lawyers with the prisoners although they are not entitled to do so.
- 67- Orhan Kemal Cengiz, a lawyer, human rights defender and newspaper columnist, was the director of the Human Rights Center of Izmir Bar Association and one of the founders of the lawyers' group for the prevention of torture. He is the President of the HRAA. He has been threatened and intimidated and the press has shown him as a target. On 8 February 2008 Orhan Kemal Cengiz complained to the prosecutor's office in Ankara and asked for protection.
- 68- On 18 April 2007, two Turkish nationals and a German were murdered at the *Zirve* Christian publishing house in Malatya. The three had their hands and feet bound together and their throats cut. They were all staff at the publishing house. The *Zirve* staff had received death threats in the months before the murders. The court case against 5 suspects is continuing at Malatya Heavy Penal Court No. 3. The relatives of the victims are represented by lawyers working for human rights. Orhan Kemal Cengiz was active in organizing their work.
- 69- In November 2007, Orhan Kemal Cengiz received a letter that accused a member of the gendarmerie, an academic and a leading politician with involvement in the killing. Orhan Kemal Cengiz sent this letter to the prosecutor's office in Malatya. Shortly after that and immediately after the first hearing an article appeared in a local newspapers in Malatya, which accused the representatives of the intervening parties and included details that could only have been learnt through interception of telephone and electronic communications about the case.
- 70- The letters Orhan Kemal Cengiz received seemed to have been prepared in an attempt to cover up the facts of the massacre in Malatya. Orhan Kemal Cengiz was presented as a devil and confusion about the trial in Malatya was created. The most concrete example for his kind of disinformation was the fact that a person who claimed to be Varol Bülent Aral, who had been arrested in Adiyaman with a Kalashnikov and said to have encouraged the alleged killer Emre Günaydin, toured the newspapers in Istanbul and accused Orhan Kemal Cengiz to be the leader of Gladio who had ordered the

⁵⁴ You can find background to the case on the website of the HRA by searching the Press Releases <http://www.ihd.org.tr/eindex.html>

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killing.⁵⁵ On 15 February 2008 several human rights organizations published a press release in protest at the danger of life of Orhan Kemal Cengiz.

71- In January 2008 Orhan Kemal Cengiz received a letter, the substance of which indicated it had been written by the same person or people who had sent the letter to the Malatya prosecutor. This letter purported to be a letter of support but in fact contained both veiled and direct threats to his safety. Finally, a person introducing himself as Varol Bülent Aral called Orhan Kemal Cengiz over his mobile phone and asked him to come to Adiyaman. Orhan Kemal Cengiz believes that the letters, the newspaper articles and an official complaint filed against him were all prepared by the same person or persons. He is certain that his life is at concrete risk. Having talked to Orhan Kemal Cengiz Amnesty International issued an urgent action on 13 February 2008.⁵⁶ Since 27 February 2008 personal protection over 24 hours a day has been provided by the Turkish authorities. Protection has also been granted to the widow of the German victim in Malatya.

72- Human Rights Association, at the press release dated on 03.03.2008, stated that the Supreme Court of Appeals approved the imprisonment judgment of Rıdvan Kızılgın, former head of Bingöl Branch of the Human Rights Association (HRA) and currently the member of Central Executive Board of Human Rights Association. According to the statement by HRA, Rıdvan Kızılgın was found guilty and inflicted 2 years and 6 months imprisonment on account of the researches by the human rights committee established to investigate the event of being murdered of 5 villagers by unknown persons in Bingöl in 2003.⁵⁷

F- Protection of Human Rights Defenders in National and International Law

73- It is of special important that lawyers and jurists defending human rights issues in courts are protected. Article 57 of the Law on Lawyers provides in its revised form of 2 May 2001:

Offences against lawyers:

Article 57 – For offences committed against lawyers on duty the same provisions will be applied that are valid for offences committed against judges.

74- Article 76 of the Law on Lawyers provides:

Foundation and Capacities of Bar Associations:

Article 76-

(amended: 02.05.2001 - 4667/46. Art.) Bar Associations are professional establishments in the capacity of a public institution that make sure that the profession of lawyers is developed and that care about honesty and confidence among lawyers and in their relations to businessmen. It is a corporate body that carries out all its activities according to democratic principles in order to guarantee the professional order, moral, respect, the rule of law and to defend and protect human rights.

(amended: (18.06.1997 - 4276/3. Art.) Bar Associations cannot conduct activities outside their aims.

(amended: 02.05.2001 - 4667/46. Art.) According to the protocol bar associations take their place next to the chief republican prosecutor of the province.

75- Articles 58 and 59 secures protection for lawyers because of their profession:

Republican Prosecutor Responsible for Investigation:

⁵⁵ An article in Turkish can be found in Milliyet of 19.02.2008

<http://www.milliyet.com/2008/02/19/guncel/axgun02.html>

⁵⁶ It can be found at <http://www.amnesty.org/en/library/asset/EUR44/002/2008/271c8956-db15-11dc-b4a6-0fa73a85cd41/eur440022008eng.html>

⁵⁷ For attention of the press and public opinion, HRA, 03.03.2008, It can be found at the web site; <http://www.ihd.org.tr/basin/bas20080303a.htm>.

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Article 58 - (amended para: 02/05/2001 - 4667/37. Art.) Investigation into offences of lawyer committed because of their duties as lawyers or as part of the organs of the Union of Bars or specific bar associations will be carried out by the republican prosecutor of the place where the offence was committed on permission of the Ministry of Justice. Offices and domiciles of lawyers can only be searched on a court's decision in relation to what the decision specifies as event. Searches can be carried out under control of the republican prosecutor and with participation of a representative of the bar association. Except for cases of *in flagranti delicto* that require heavy penalties body searches of lawyers are not permitted.

The provisions of the Code of Civil Procedure and the Code of Criminal Procedure governing the order of trials are reserved. However, attorneys may not be detained, nor may they be sentenced to light penalties or light fines.

Permission to prosecute, decision to initiate final investigation, and the court where trial will be held

Article 59 – The file for the investigation conducted in accordance with Article 58 will be delivered to the Directorate General of Criminal Affairs of the Ministry of Justice. Should a prosecution be considered necessary as a result of the review of the file, the file will be sent to the office of the public prosecutor of the high criminal court nearest the high criminal court in whose jurisdictional area the crime was committed.

The public prosecutor will prepare an indictment within five days and forward the file to the high criminal court for a decision as to whether the initiation of a final investigation is required or not.

A copy of the indictment is delivered to the attorney on whom a prosecution is being conducted in accordance with the provisions of the Code of Criminal Procedure. Should the attorney request, within the statutory period after the delivery of the indictment, collection of certain evidence or make any other reasonable request, such will be taken into consideration and the investigation may be deepened by the chairperson of the court.

The trials of attorneys on whom a final investigation is decided to be initiated will be held in the high criminal court of the location where the crime was committed. <Supplementary sentence: Article 4667/38 dated 2 May 2001> The situation will be reported to the bar association with which the attorney is enrolled.

76- Article 59 of the Law on Execution of Sentences and Security Measures regulates the right to meet a lawyer or solicitor:

“(…)
(2) Meetings with lawyers and solicitors are conducted by presenting the professional identity, outside holidays and during working hours at designed meeting places where the spoken word is not heard but for security reasons can be observed.
 (…)
(4) (amended: 25/5/2005-5351/5 Art.) Defence documents, files and notes of the lawyer of their talks with their clients cannot be inspected. Only in case that hints and documents are found that offences are committed, the security of the correctional institution is at risk or mediatory services for the communication between members of terrorist or other criminal organizations are provided can on demand of a republican prosecutor and decision of a judge for the execution of sentences during the talks of prisoners convicted for offences described in Article 220, second volume, fourth and fifth section of the Law 5237 (the penal code) with their lawyers a person on duty be present or a judge for the execution of sentence can inspect the documents given to or received from the prisoner. The judge can decide that only part or all of the documents are given or not. The decision can be objected to according to Law 4675.
 …”

77- Turkey has ratified many international treatment including UN Conventions and the European Convention of Human Rights. Article 90 of the Constitution provides:

D. Ratification of International Treaties (As amended on May 22, 2004)
ARTICLE 90. The ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification.
Agreements regulating economic, commercial and technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the state, and provided they do not infringe upon the status of individuals or upon the

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property rights of Turkish citizens abroad. In such cases, these agreements must be brought to the knowledge of the Turkish Grand National Assembly within two months of their promulgation.

Agreements in connection with the implementation of an international treaty, and economic, commercial, technical, or administrative agreements which are concluded depending on the authorisation as stated in the law shall not require approval of the Turkish Grand National Assembly. However, agreements concluded under the provision of this paragraph and affecting economic or commercial relations and the private rights of individuals shall not be put into effect unless promulgated.

Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph.

International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In case of contradiction between international agreements regarding basic rights and freedoms approved through proper procedure and domestic laws, due to different provisions on the same issue, the provisions of international agreements shall be considered.

78- According to a resolution adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, *Basic Principles on the Role of Lawyers (Havana Rules)*:

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

(...)

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

79- In the Case of *Elçi and Other v. Turkey*, ECHR said that:

“The Court would emphasise the central role of the legal profession in the administration of justice and the maintenance of the rule of law. The freedom of lawyers to practise their profession without undue hindrance is an essential component of a democratic society and a necessary prerequisite for the effective enforcement of the provisions of the Convention, in particular the guarantees of fair trial and the right to personal security. Persecution or harassment of members of the legal profession thus strikes at the very heart of the Convention system. For this reason, allegations of such persecution in whatever form, but particularly large scale arrests and detention of lawyers and searching of lawyers' offices, will be subject to especially strict scrutiny by the Court⁵⁸.”

80- The UN Declaration on Human Rights Defenders said that:

⁵⁸ ECHR Decision, *Elçi and Others v. Turkey*, Application Number: 23145/93 and 25091/94, Strasbourg, 13 November 2003, para. 669.

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Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia :

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

(...)

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

81- In the *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*⁵⁹, The Committee of Ministers of The Council of Europe said that:

2. Calls on member states to:

⁵⁹ *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*, Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies, CM(2008)5 add., available at <https://wcd.coe.int/ViewDoc.jsp?id=1245887&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFB55&BackColorLogged=FFAC75> .

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- i) create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights;**
- ii) take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities;**
- iii) strengthen their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated;**
- iv) take effective measures to prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings;**
- v) consider giving or, where appropriate, strengthening competence and capacity to independent commissions, ombudspersons, or national human rights institutions to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights;**
- vi) ensure that their legislation, in particular on freedom of association, peaceful assembly and expression, is in conformity with internationally recognised human rights standards and, where appropriate, seek advice from the Council of Europe in this respect;**
- vii) ensure the effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures;**
- viii) co-operate with the Council of Europe human rights mechanisms and in particular with the European Court of Human Rights in accordance with the ECHR, as well as with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested;**
- ix) consider signing and ratifying the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124);**
- x) consider signing and ratifying the 1995 Additional Protocol to the European Social Charter and to consider recognising the right of national NGOs fulfilling the criteria mentioned therein to lodge collective complaints before the European Committee of Social Rights;**
- xi) provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas;**

82- If all these realities are considered it is not difficult to understand that the pressure, violence and intimidation of human rights defenders in Turkey are a joint attack on all values that create human rights.

Recommendations and Call for Solidarity

The International Community

83- Turkey is a member to the UN, the Council of Europe and the OSCE. She has promised and is obliged to abide by human rights standards. Turkey had also promised to accept human rights standards for an entry to the EU and carry out the necessary reforms. The international community should call and exert pressure on Turkey to abide by human rights standards she is obliged to fulfil.

84- The international community should use all concerned mechanisms in order to demand and end to the pressure on human rights defenders and to exert pressure on the Turkish government.

Organizations of Civil Society

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85- The Human Rights Agenda Association appreciates and is thankful about the solidarity shown to human rights defenders in Turkey by anyone devoted to the protection and promotion of human rights and local, national, regional and international human rights organizations. The HRAA calls on anyone devoted to the protection and promotion of human rights and local, national, regional and international human rights organizations to continue the solidarity and to follow the cases.

86- The HRAA calls on anyone devoted to the protection and promotion of human rights and local, national, regional and international human rights organizations to carry out actions so that the Turkish government will act according to human rights that have been accepted internationally and put into a place of respect.

The Turkish government

87- The Turkish government has to act according to international human rights standards that it is obliged to implement.

88- The Turkish government has to stop acts of pressure, violence and intimidation against human rights activists.

89- The Turkish government has to investigate threats against human rights activists immediately and independently and take all legal measures against the perpetrators.

90- In case that lawyers acting in trials concerning human rights abuses are subjected to pressure, violence and intimidation the Turkish government has to apply Article 57 of the Law on Lawyers.

91- The expression "in whatever ways" has to be removed from Article 277 TPC.

92- Article 288 TPC should be abolished completely. The only restriction that can be imagined is the notion of "presumed innocent" that has been protected by Article 285/4 TPC. Article 277 TPC carries sanction in case of pressure on the judiciary and satisfies the social need to a large extent. Article 288 TPC however gives the impression that its only intention is the restriction of freedom of expression. The "experts and witnesses" mentioned in Article 288 TPC have to be included in Article 288 TPC so that it is prevented to influence them in an unlawful way.

93- Article 301 TPC has to be abolished completely.

94- The Turkish government has to stop investigations and trials intended to exert pressure, violence or intimidation against human rights defenders immediately.

95- The Turkish government has to take all measures for the protection of human rights defenders.

96- The Ministry of Justice should not give permission to investigations against human rights defenders acting in trials opened in connection with human rights violations.

THE HUMAN RIGHTS AGENDA ASSOCIATION (HRAA)

The Human Rights Agenda Association (HRAA) was established in 2003 in Izmir with the involvement of human rights defenders from different regions of Turkey with the aim of being active at the national and international level.

The HRAA believes human rights to be a value above all political ideologies and worldviews. It believes that rights can only be improved by developing an understanding of the source of the problem and by using appropriate tactics and strategies for the implementation of proposals for reform. The HRAA categorically denounces all forms of violence and, while acknowledging that the state is the main perpetrator of human rights violations, it stands equally opposed to human rights abuses committed by armed opposition groups. The HRAA concentrates on human rights violations regardless of the identity of the perpetrator or the victims and, with its independent and impartial stance, aims to develop a model that will make public opinion sensitive towards human rights violations and act as an example for society.

Areas and Methods of Work

- Although the HRAA considers all categories of human rights within its area of work, it periodically focuses on certain rights and violations.
- In addition to Turkey's long-standing human rights problems such as torture and freedom of expression, the HRAA also operates in the areas of relatively new issues such as minority rights, discrimination, economic, social and cultural rights as well as the International Criminal Court.
- The HRAA takes up problems from the point of view of universal human rights values and prepares thematic reports containing its own proposals for the resolution of these problems. It not only submits these reports to the attention of international bodies to which Turkey is a party but also lobbies the Turkish government to convince them to make the necessary reforms.
- The HRAA cooperates closely with the existing human rights organizations in Turkey. It is exchanging opinions and experiences with other organizations for the strengthening of human rights activism including by participating in coalitions which have already been established or that it itself has established.
- The HRAA is working to share the tactics and strategies it develops with organizations in Turkey and in other countries and in this way provide a common ground of experiences
- The HRAA is working to present new developments in the area of human rights for the information and evaluation of human rights defenders in Turkey and elsewhere through the training programs it has prepared.



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