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Amnesty International
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1. Introduction

On 26 December 1978 the Turkish Government imposed martial law in 13 of Turkey's 67 provinces in response to the violent deaths of over 100 persons during religious and political riots in the south-eastern city of Karamanmaras. These riots were the culmination of widespread politically motivated killings during the previous few years. By 12 September 1980, martial law had been extended to cover 20 provinces.

On that day, Turkey's military leaders seized power, abolished parliament and imposed martial law on the whole country. Since March 1984 martial law has been gradually lifted from most provinces and replaced by a state of emergency - a less strict form of government control - in some provinces. Since 19 March 1986, martial law remains in force in five provinces (Diyarbakir, Siirt, Mardin, Hakkari and Van) and a state of emergency in 14 provinces.

In provinces placed under martial law, martial law commanders were given wide-ranging powers for the maintenance of law and order. These powers include the right to search houses without warrant, the right to monitor communications and censor the media, the right to expel persons from the martial law area, the right to ban strikes, meetings and demonstrations and the right to suspend associations.

The martial law commander is also empowered to order the arrest and detention of persons suspected of having committed a criminal offence. The lawfulness of the actions of the martial law commander cannot be challenged in court. His sole responsibility is to the Chief of the General Staff.

Within the martial law districts, military courts are empowered to try a wide range of political offences, including violations of decisions of the martial law commanders and crimes deemed to be committed against national security or the integrity, indivisibility and independence of the fatherland. The martial law commander has the right to decide whether a case will be brought before a civilian or a military court.

Military courts are usually composed of two military judges and one ranking military officer who presides. But in trials with more than 200 defendants there are five judges of whom one may be civilian. Judges are appointed and dismissed by the Minister of Defence acting in consultation with the Chief of the General Staff. Verdicts of military courts may be appealed to the Military Court of Cassation which consists of high ranking military judges.

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Since the declaration of martial law in December 1978 tens of thousands of civilians have been sentenced to imprisonment by military courts. According to a statement by the Chief of the General Staff, between 26 December 1978 and 1 March 1986, 47,508 persons had been sentenced to imprisonment by military courts. According to the same statement, 480 persons have been sentenced to death by these courts in this period, of whom 27 have been executed.

Although the application of martial law is now limited to five provinces, military courts in provinces no longer under martial law have not been abolished. They continue to consider cases which were pending before them when martial law was lifted, in accordance with Article 23 of the Martial Law Act. According to the above statement, 813 such cases were still pending before military courts on 1 March 1986. Trials still in progress include the well known trials of members of the Confederation of Progressive Trade Unions (DISK) and of the Turkish Peace Association (TPA).

In view of the wideranging powers of military courts to interpret often broadly worded political offences and in view of their power to impose severe penalties, including the death penalty, it is especially important that generally accepted principles of criminal procedure are closely adhered to. The present paper addresses the fairness of proceedings against political prisoners in Turkey in the light of international human rights standards, in particular the European Convention on Human Rights to which Turkey is a party.

2. Applicable standards of international law

International law does not specifically prohibit the trying of civilians by military courts. It provides, however, that this may occur only in exceptional circumstances and that established legal procedures and safeguards should be fully respected.

Principle 5 of the Basic Principles on the Independence of the Judiciary, endorsed by UN General Assembly Resolution 40/32 provides:

> "Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."

Similarly, general comment 13(21) by the Human Rights Committee set up under the International Covenant on Civil and Political Rights provides with regard to Covenant Article 14:

> "While the Covenant does not prohibit [military or special courts], nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in Article 14."

Finally, common Article 3 of the 1949 Geneva Conventions prohibits, even in times of civil war:

> "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised people."

Turkey has not ratified the International Covenant on Civil and Political Rights. But it is a party to the Geneva Conventions and it participated in the consensus by which the UN General Assembly endorsed the Basic Principles on the Independence of the Judiciary. Moreover, Turkey is a party to the European Convention on Human Rights. Article 6 of the European Convention on Human Rights provides the following basic standards for a fair trial:

Article 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

   a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 15 of the European Convention on Human Rights provides that States-Parties may derogate from their obligations under the Convention "in time of war or other public emergency threatening the life of the nation". Such derogations are only permitted "to the extent strictly required by the exigencies of the situation". A government availing itself of the right of derogation "shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor."

Pursuant to Article 15, the Turkish Government has since 26 February 1979 regularly kept the Secretary-General of the Council of Europe informed of the extent of application of martial law in Turkey. The reasons for declaring martial law were occasionally given. For example, when extending martial law to the whole country on 12 September 1980, the reasons for this presented to the Secretary-General of the Council of Europe were: "serious threats to internal peace, the total paralysis of the democratic regime, the situation which was endangering fundamental rights and freedoms in the country."

However, at no point did the Turkish Government indicate that it was derogating from any specfic provisions of the European Convention on Human Rights. Article 15 does not specifically require a government to do this, but as the European Commission of Human Rights has observed in the Lawless case, a government must:

> "furnish sufficient information concerning them [the measures in question] to enable the other High Contracting Parties and the European Commission to appreciate the nature and extent of the derogation from the provisions of the Convention which these measures involve."

The notifications of the Turkish Government were not informative either on the measures taken under martial law or on the provisions of the European Convention on Human Rights which were being derogated from. In the absence of such information it will be assumed that Turkey continued to be bound by Article 6 and the other provisions of the European Convention on Human Rights guaranteeing the right to a fair trial.

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3. Independence of the military courts

Article 6 of the European Convention on Human Rights provides that anyone charged with a criminal offence is entitled to a fair and public hearing by an independent and impartial tribunal. The European Commission of Human Rights has observed that judicial independence does not necessarily entail that the judge should be appointed for life or be irremovable in law; that is, that the judge cannot be given other duties without his consent. But it is essential that the judge should enjoy a certain stability, if only for a specific period, and that he or she should not be subject to any authority in the performance of his or her duties as a judge (Sutter v. Switzerland, Application 8209/78, 16 Decisions and Reports of the European Commission of Human Rights p.174).

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

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

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

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

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Major Ustün Günsan, a military judge at the Ankara Military Court was transferred to Diyarbakir after he had complained about pressure being put on judges by the martial law command in a petition dated 27 November 1980. Another military judge, Colonel Hamdi Sevinc, was reportedly forced to retire in November 1980 after he had refused to approve the arrest of the leader of the National Salvation Party, Necmettin Erbakan. Colonel Ismet Aytug, one of the judges in the DISK trial (see below), is said to have been transferred from Istanbul Military Court for permitting defendants to make statements about torture.

The 1982 Constitution contains provisions on the independence of civil and military judges. But its entry into force does not seem to have affected the pressure put on military courts by the authorities.

4. Restrictions on the right of defence

Article 6(3)(a) of the European Convention on Human rights provides that everyone charged with a criminal offence has the right to be informed promptly of the nature and cause of the accusation against him. Article 6(3)(b) provides that such a person shall have "adequate time and facilities for the preparation of his defence." Rule 93 of the UN Standard Minimum Rules for the Treatment of Prisoners provides that "interviews between the prisoner and his legal adviser may be within sight but not within hearing of a police or institution official."

Amnesty International continues to receive reports that lawyers defending political prisoners are impeded in many ways, in particular by insufficient access to their clients and the denial of private conversations. Lawyers also frequently complain of having insufficient time to consult the file and to prepare a defence before the beginning of a trial.

Lawyers defending political prisoners have informed Amnesty International that they were frequently allowed to see their clients only for 10 to 20 minutes each week. In some cases this was further limited to five minutes per week. Detainees subjected to disciplinary punishments (e.g. for refusing to wear prison uniforms or for refusing to sing the national anthem) could not be visited at all. This situation could continue for long periods. Certain prisoners in Sagmalcilar Prison in Istanbul did not have visits from their lawyers for several years. No visits are permitted either during the lengthy period of incommunicado detention immediately after arrest (when ill-treatment is most likely to occur).

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In some prisons lawyer and client are separated by a glass wall and can only speak to each other via a telephone. In clear violation of rule 93 of the UN Standard Minimum Rules for the Treatment of Prisoners, conversations are monitored and taped by prison staff. Amnesty International has been informed that tapes of such conversations have been presented in court as evidence against the defendant. Conversations are subject to interjections by the persons monitoring and the consultation may be terminated if torture, prison conditions or other subjects disapproved of by the authorities are raised. In other prisons lawyer and client are separated by a high wall without being able to see each other and they have to shout in order to make themselves heard.

In certain prisons the defence lawyer is not allowed to pass any document, or even a copy of the indictment, to his client. In prisons where detainees are permitted to receive such documents, they may subsequently be confiscated or destroyed by prison guards.

Complaints to the courts about these interferences with the right of defence have generally met with the response that this was the responsibility of the prison authorities, not that of the court.

Defence lawyers acting in political trials have also themselves been arrested and brought to trial, apparently because of their professional activities on behalf of political prisoners. It appears that defence lawyers are frequently suspected of belonging to or sympathizing with the same organizations as their clients. In such cases the authorities seem to have identified the lawyers with their clients and not to have recognized their activities as the legitimate exercise of the right of defence.

One favourite device has been to charge defence lawyers with "insulting behaviour" for their statements in court. Charges of "insulting behaviour" have been brought against lawyers for claiming that a defendant had been tortured; for arguing that torture is systematic as a result of the 90 day period of permitted incommunicado detention; and for stating that the charges against their clients had not been carefully prepared by the prosecution. In an interview in July 1986 Can Ozbay, a prominent defence lawyer for political prisoners, said that he had been tried 16 times for such "insulting behaviour" in court.

The repression of defence lawyers has been particularly severe in Diyarbakir in eastern Turkey. Amnesty International has been informed that because of the risks to themselves very few lawyers have been willing to defend political prisoners in Diyarbakir, with the result that only a few lawyers were responsible for the defence of thousands of prisoners.

Two Kurdish defence lawyers, Serafettin Kaya and Hüseyin Yildirim, were detained and tortured in Diyarbakir Military Prison apparently for no other reason than their defence of political prisoners. Serafettin Kaya was arrested in 1981 and imprisoned for more than seven months, apparently for having complained to the authorities about cases of torture and restrictions on the right of defence.

Hüseyin Yildirim was imprisoned for six months in 1981|82 apparently because he had acted as defence lawyer for members of the Kurdish Workers' Party (PKK). He claims he was beaten all over with sticks and batons, given repeated beatings on the soles of his feet (falaka) and twice tortured with electricity. He was asked why he acted as a lawyer for members of the PKK and urged to promise not to do so again. When he refused, he was subjected to further torture.

5. Length of criminal proceedings

Article 5(3) of the European Convention on Human Rights provides that a person detained on suspicion of having committed an offence shall be brought promptly before a judge and shall be entitled to trial within reasonable time or to release pending trial.

The standard of "trial within a reasonable time or release" has not been further defined through specific time limits. However, the European Court of Human rights has provided a number of clarifications. It has pointed out that the time period to be considered begins on the first day of detention and ends on the date of the judgment which terminates trial by the court of first instance (Wemhoff case, 11 Yearbook of the European Convention on Human Rights (1969) pp. 800 - 804). The European Court of Human Rights has also indicated that Article 5(3) "implies that there must be special diligence in the conduct of the prosecution of [detained persons]" (emphasis added) (Stögmüller case, 12 Yearbook of the European Convention on Human Rights (1969) p.394).

Contrary to these provisions, political detainees in Turkey have been subjected to excessively long periods of pre-trial detention.

One example is the trial of the members of the Turkish Peace Association (TPA). Twenty-six leading members of the TPA were arrested in February and March 1982 and eventually charged under Articles 141 and 142 of the Penal Code which prohibit forming organizations or making propaganda aimed at achieving the "domination of a social class over other social classes". Before the end of the year, all except five of the defendants had been released.

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In the meantime, on 24 June 1982, hearings had started at the Istanbul Military Court No. 2. By the beginning of 1983 one day hearings were held twice a week but later this slowed down to once every three weeks. Much time was spent on reading out evidence against the accused, including the last will of Tsar Peter the Great who died in 1725 (in support of the prosecution's thesis that the TPA's real intention was to assist the USSR in establishing a communist regime in Turkey).

On 14 November 1983, 23 TPA members were convicted under Article 141 and received five or eight-year prison sentences, to be followed by internal exile. The 23 were immediately sent to prison. Defence lawyers were unable to appeal the verdict until the court released the grounds for its decision on 3 March 1984. On 29 August 1984 the Military Court of Cassation in Ankara quashed the military court's decision on the grounds of insufficient investigation and referred the case back to the court of first instance. An application for the release of the defendants was rejected.

On 8 November 1984 the Istanbul Military Court upheld its original verdict but ordered the provisional release of six defendants. Another appeal was lodged with the Military Court of Cassation. On 19 December 1985, the Military Court of Cassation again quashed the lower court's decision on the grounds of insufficient investigation. A request for the release of the twelve defendants still in prison was rejected. Six of the twelve were released in February 1986 and the release of the remaining six followed in March 1986.

Thus, four-and-a-half-years after the initial arrests the case is now for the third time pending before the Istanbul Military Court. The investigation is still incomplete. It is very difficult to see how the prosecution can be said to have exercised "special diligence" in the preparation of this case.

Another example is the trial of leaders, officials and advisers of the Confederation of Progressive Trade Unions (DISK) which began before the Istanbul Military Court on 24 December 1981. They were charged under Article 146 of the Penal Code which prohibits "attempts by force, to alter, modify or abolish in whole or in part the Constitution of the Turkish Republic . . ." The reading of the 817-page indictment by the public prosecutor took no less than three months. The presentation of the evidence, including the reading out of extracts of thousands of documents, was only completed in May 1984. The trial has now entered into its final stage with the public prosecutor having finished reading his 809-page summing up.

By joining the trial of members of 30 DISK affiliated unions with the main DISK trial, the total number of defendants in the case was brought to 1,477. This obviously made for a trial of considerable complexity. It is also true that by 1984 all defendants had been provisionally released pending the outcome of the trial. It seems nevertheless that any trial lasting for some five years raises questions under Article 6(1) of the European Convention on Human Rights, which entitles everyone to a fair and public hearing within a reasonable time in the determination of any criminal charge against him.

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These cases are no exceptions. In many other cases military courts arrived at a judgment in first instance only five or more years after the defendants had first been arrested. Particularly lengthy have been the many mass trials in which hundreds of defendants were tried simultaneously.

More than 700 inhabitants of the Black Sea town of Fatsa were arrested in mid-1980 and charged with having set up a left-wing administration. Their trial in the Military Court of Amasya started on 12 January 1983 and is still continuing. Those defendants who are still in detention have now been in prison for more than six years without having been found guilty of any offence.

On 4 August 1982 the trial opened at Istanbul Military Court of more than 100 alleged members of the Turkish Communist Party. Verdict was given on 29 July 1986 - five years after some of the defendants had first been arrested.

On 12 December 1984 the trial began at Istanbul Military Court of 305 alleged members of the Workers and Peasants Revolutionary Army (TIKKO). At the start of the trial 150 defendants had already spent three to four years in pre-trial detention. The trial is still continuing.

On 5 August 1986 the Military Court in the southern Turkish town of Adana announced a verdict in the trial of 564 alleged members of the Kurdish Workers Party (PKK). The trial had reportedly lasted for five years.

6. Failure of military courts to investigate allegations of torture

Article 12 of the UN Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment provides:

> "Any statment which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings."

A similar provision is contained in Article 15 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The importance of the strict application of this principle - which is also reflected in Article 14 of the Turkish Constitution - is obvious: if it is known that the courts will not accept evidence obtained under torture, the investigating authorities will be less inclined to ill-treat an arrested person in order to obtain a confession. This is especially important where the confession is the only or the main basis for a conviction. It is clear that the effective application of the principle requires a positive attitude by the courts in investigating allegations of torture by the defendant. Allegations of torture should not be accepted at face value, but they should be seriously looked into. This safeguard is all the more important in view of the pattern of widespread and systematic torture of detainees in Turkey.

In the Turkish press there have been reports of hundreds of defendants in political trials retracting statements which they alleged were made under torture. The reaction of the military courts to these allegations appears generally to have been most unsatisfactory. In some cases defendants were indeed acquitted on the grounds that statements to the police had been obtained under torture. In a few cases also, verdicts were quashed by the Military Court of Cassation on the grounds that evidence obtained under torture had been used as a basis for a conviction.

In numerous other cases, however, complaints about torture in police custody were simply ignored by the military courts. Often the presiding judge refused to consider such complaints and stated that they should be addressed to the public prosecutor or to the competent administrative authorities. If the defendants insisted, they risked being removed from the courtroom. Lawyers have also complained that allegations of torture have been deleted from the minutes of military court hearings.

In December 1980 Abdullah Basturk, the President of DISK, and his co-defendants attempted to present allegations of torture to the Istanbul Military Court. However these are said to have been removed from the official records of the case. In December 1984 alleged members of the Workers and Peasants Revolutionary Army (TIKKO) on trail before the Istanbul Military Court are reported to have attempted to present a petition on their prison conditions. The president of the court is said to have indicated that the petition was not timely. When the defendants insisted, 128 detainees were reportedly forcibly removed from the courtroom.

In some cases there have been more serious repercussions for defendants complaining about torture. In April 1983 a prisoner (whose name is known to Amnesty International but is withheld at the request of his family) made a detailed statement in court alleging that he had been tortured. He was subsequently informed by the prosecutor's office

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that proceedings would be opened against him on charges of false testimony and insulting Turkish officials. The prisoner in question told his family that proceedings had been opened against all defendants in his trial who had made torture allegations in court.

In March 1984 Mustafa Kemal Kacaroglu, a political prisoner in Mamak Military Prison in Ankara who had given evidence of torture before a military court, was charged with "insulting the army" during his testimony. The military prosecution asked for an eight-year sentence. In May 1984 Mustafa Kemal Kacaroglu was sentenced to one year and four months' imprisonment.

7. Conclusions

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

- Lawyers defending political prisoners have been harassed and impeded in many ways, in particular by insufficient access to their clients and the denial of private conversations.

- Detainees charged with political offences have been subjected to excessively long trials and periods of pre-trial detention, amounting to more than five years in many cases.

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

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

- Although martial law has now been limited to five provinces, military courts in provinces previously under martial law continue to function and at least 800 cases remain pending before them.