

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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World Report 2009 Introduction By Kenneth Roth

A grave political crisis in 2008 halted progress in human rights reforms in Turkey for much of the year. The ruling Justice and Development Party (AKP) narrowly escaped closure in July, with the Constitutional Court instead fining it for anti-secular activities. The government failed to honor its post-election pledge to engage in meaningful consultation on a new constitution, needed to strengthen respect for rights.

With reform stalled, the protection of human rights continues to be eroded. Human rights defenders and journalists critical of the state face prosecution, although they continue to raise their voices loudly. Police abuse increased, with particular concern for excessive use of force at public demonstrations and fatal shootings of civilians. Widespread impunity for abuses by the police and other security forces remains.

Turkey's chief prosecutor launched a case in March to close down the ruling party on the grounds that it engaged in unconstitutional anti-secular activities, citing statements by the AKP leadership and the government's attempt in February, by parliamentary vote, to lift the constitutional ban on wearing the headscarf at university campuses.

The European Union and Council of Europe warned that closure of the party on the basis of the evidence presented would be a major blow to democracy. It would also have violated freedom of expression, association, and the right to political participation. The court ruled on July 30 that the AKP had engaged in anti-secular activity, but fell one vote short of closing the party; the penalty imposed instead was to cut its treasury funding.

The pro-Kurdish Democratic Society Party also faced possible closure by the Constitutional Court for activities and speeches deemed by the prosecutor to constitute separatism. The court's January 2008 ruling against the closure of the pro-Kurdish Rights and Freedoms Party set a precedent: statements about the Kurdish problem fall within the boundaries of free speech.

Critical and open debate increased, even as restrictions on free speech continue. In May the government made what amount to cosmetic amendments to article 301 of the 2005 Penal Code criminalizing statements that "publicly denigrate Turkishness" or state institutions, following intense pressure from the European Union. While the Ministry of Justice must now grant permission for investigations under article 301, in a number of cases it did so in 2008.

Prosecutors used other articles of the penal code, press law, and anti-terror law to prosecute speech in 2008, and hundreds of journalists, writers, publishers, academics, human rights defenders, and officials of Kurdish political parties and associations were tried and sometimes convicted, in some cases at the initiative of the government. The courts restricted access to numerous websites-including YouTube-during 2008.

The manner in which the government chose to address the issue of women wearing headscarves at university, and the ensuing political and constitutional confrontation, had the effect of failing to ameliorate the situation of thousands of women. The Constitutional Court on

June 5 overturned February's parliamentary decision allowing headscarves at university.

The trial continued of 19 people accused of the January 2007 murder of Turkish-Armenian journalist and human rights defender Hrant Dink. At this writing, there has yet to be a breakthrough in uncovering a conspiracy behind the killing. Reports by the Parliamentary Human Rights Investigative Commission in July, and by the Prime Ministry Inspectorate in November point to multiple failures by state authorities to act on intelligence reports about plans to murder Dink, and support the Dink family lawyers' demand for criminal investigation of the Trabzon and Istanbul police. At this writing, the trial of two junior Trabzon gendarmerie members is ongoing, and permission has been granted for criminal investigation of six other gendarmerie members.

Most convictions of human rights defenders for speech-related offenses or under the anti-terror law result in fines and suspended sentences, making the prosecution of two members of the Human Rights Association (HRA) stand out. Ethem Akaln, chair of HRA's Adana branch, spent six months in pretrial detention following his arrest in January for "aiding and abetting an illegal organization" after attending a press conference organized by a legal political group. His prior 30-month sentence for speech-related offenses is under appeal at this writing. Rıdvan Kızgı, former chair of HRA's Bingöl branch, is currently serving two-and-a-half years for "concealing evidence" in the 2003 killing by unknown perpetrators of five villagers. A related five-year sentence against him for "aiding and abetting an illegal organization" is currently under appeal.

The decision by an Istanbul court in May 2008 to close Lambda Istanbul, a group working on behalf of lesbian, gay, bisexual, and transgender people, highlighted the hostile environment for the LGBT community in Turkey. The case was initiated by the Istanbul governor's office, which claimed the group's aims were "against law and morality," a view the court supported. Lambda has appealed.

Police torture and ill-treatment is on the rise since 2007. It occurs during arrest, outside places of official detention, and during demonstrations, as well as in detention centers. There were continuing reports of ill-treatment and cruel, inhuman, and degrading conditions in prisons, and of fatal shootings of civilians by police officers. Engin Ceber, age 29, died in a hospital in Istanbul on October 10 after being beaten in police custody and in prison.

During banned Newroz (Kurdish new year) celebrations in March, police used excessive force, including indiscriminate beatings, against demonstrators and children; and two people in Van and one in Yksekova were shot dead. Police beat demonstrators indiscriminately at a May Day protest in Istanbul, and used excessive force to disperse all peaceful assembly in and around the offices of the trade union confederation DSK. The absence of a meaningful domestic investigation into the violence precipitated DSK to apply in August to the European Court of Human Rights. The application was pending at this writing.

Turkish courts continued to show excessive leniency toward police and other members of the security forces charged with abuse or misconduct, contributing to impunity, the persistence of torture, and the unwarranted resort to lethal force.

There was no progress in bringing to justice members of security forces responsible for the deaths of 30 prisoners during a series of prison transfers in December 2000. Two soldiers also died during the operation. In June 2008 the trial of soldiers for ill-treatment and of guards for misconduct during transfer from Bayrampaa prison, where 12 of the prisoners died, exceeded the statute of limitations and collapsed. The main investigation into the deaths in that prison has yet to be concluded.

The retrial of two gendarmerie officers previously convicted for the deadly November 2005 bombing of a bookshop in emdinli continued in the Van military court. The officers were released on bail at the first hearing of the retrial in December 2007 and, according to media reports, returned to active service in the gendarmerie.

On October 20, 2008, the "Ergenekon" trial began. Over 100 defendants-including retired military and gendarmerie personnel, figures associated with organized crime, journalists, and academics-are charged with participating in an ultranationalist conspiracy to foster a military coup through civil disturbance, violent attacks, and planned assassinations. The criminal investigation was triggered by the June 2007 discovery of hand grenades in the Istanbul house of a retired army officer. Related grenades had been used in two attacks on the newspaper *Cumhuriyet* in May 2006, perpetrated by the same gang responsible for the April 2006 attack on the Council of State that killed a judge. While there are doubts that the criminal justice system is sufficiently empowered or independent to deal effectively with the case, it provides an unprecedented opportunity for Turkey to confront the negative role in political life played by elements of the military and state.

Against a background of escalating armed clashes between the military and the Kurdistan Workers' Party (PKK), attacks on civilians continued. Attacks included a suspected PKK bombing in Diyarbakır on January 3, killing six (four of them children); bombings on July 27 in Istanbul, killing 17; and on July 9 outside the US consulate in Ankara, killing six. In the latter two cases the identities of the perpetrators remain unclear.

The European Union remains the most important international actor with the potential to foster respect for human rights in Turkey. The public hostility of some EU member states, notably France and Germany, to eventual EU membership for Turkey-even if those countries did not block Turkey-EU negotiations-lessened the EU's leverage. The European Commission commented on the continuing lack of progress on human rights in its annual progress report published in November.

At this writing, the European Court of Human Rights has issued 210 judgments against Turkey in 2008 for torture, extrajudicial execution, unfair trial, and other violations. In the November Grand Chamber judgment in *Demir and Baykara v. Turkey*-of major significance for furthering workers' rights in Turkey and across Europe-the court held that interference in the right of municipal civil servants to unionize and the cancellation of a collective bargaining agreement violated the rights of freedom of assembly and association under the European Convention. In a September interim resolution about the implementation of European Court judgments, the Committee of Ministers of the Council of Europe called on Turkey "to ensure effective investigations into members of security forces alleged to have committed violations."

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