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TURKEY: Prolonged Imprisonment for Prisoners of Conscience and
Other Political Prisoners Sentenced by Military Courts

On 12 September 1980, when the military seized power in Turkey for the third time in two decades, political life came virtually to a standstill. Martial law was extended from 20 to all 67 provinces in Turkey, parliament was dissolved and all legal political parties were banned. Most trade unions, associations and other legal organizations were also banned.

For more than three years the country was ruled by five generals, the National Security Council. Immediately after the coup they issued a number of decrees declaring that if any of these decrees contravened the 1961 Constitution their provisions would override the provisions of the Constitution.

The Martial Law Act 1402 underwent a serious revision on 19 September 1980. Under Article 15 the number of offences to be tried by military courts was increased substantially to cover almost all political offences. The revised Article 23 now provided that military courts had to finalize pending trials even after martial law was lifted.

In addition, the following provision was included in Article 17(1):

"Sentences and fines imposed by military courts for offences committed after the announcement of martial law have to be increased. They are increased by at least one third of the sentence for that particular offence up to twice the sentence. However, offences against personnel of the martial law have to carry twice the sentence. The increase may not exceed the maximum sentence for that offence in the total of sentences."

At the end of 1981 a consultative assembly of 160 men and women was appointed by the National Security Council. They were to debate and draft a new constitution and further legislation based on the constitution. The final versions, however, had to be approved by the National Security Council.

In November 1982 electors were asked to approve the new constitution by way of a referendum, which was also a vote on whether General Kenan Evren, Chief of General Staff and Head of the National Security Council, should become president for the next seven years. Voting was obligatory, no campaigning against the constitution was allowed and the National Security Council threatened to continue military rule if the draft was rejected. The colours of 'no' votes reportedly shone through the envelopes and the referendum resulted in an overwhelming majority of 'yes' votes by more than 90% in favour of the constitution and of General Evren's presidency.

Provisional Article 15(3) of the 1982 Constitution provides:

"No allegation of unconstitutionality shall be made in respect of decisions or measures taken under laws or decrees having force of law enacted during

this period [from 12 September 1980 to the date of the formation of the Bureau of the Grand National Assembly of Turkey (in December 1983)]."

Thus, neither Articles 15, 23 nor 17 of the Martial Law Act can be challenged as unconstitutional.

From 1984 martial law was gradually lifted in the 67 provinces of Turkey, the process being complete only in July 1987. According to figures published by the Ministry of Justice on 6 April 1988, 5,309 defendants were then still being tried by military courts, with 1,392 of them held in pre-trial detention. In some cases pre-trial detention had amounted to more than seven years. The same statement gave a total of 61,220 people who had been sentenced by military courts between December 1978 and April 1988.

Trials in Turkish courts usually follow a rather complex pattern: Once a suspect has been apprehended, s/he may be held in police custody to be interrogated for up to 15 days (30 under emergency legislation). Some detainees are released by the police without charge. Others are charged by a prosecutor, and a court then orders either their formal arrest or release. During the trial defendants held in pre-trial detention may be conditionally released. On conviction the actual sentence can exceed the time already spent in prison. In such a case the court may order immediate reimprisonment. Often, however, such a decision is postponed until the verdict has been confirmed by the appeal court.

On 3 October 1986 Amnesty International issued a report Unfair Trial of Political Prisoners in Turkey (AI Index: EUR 44/22/86) referring to trials in military courts. Its conclusion that military courts in Turkey do not meet internationally recognized standards regarding fair trials is based on various aspects of these trials, in particular that

- military courts are not independent from the executive authorities,
- the right of defence has been restricted in many ways,
- the defendants have been subjected to excessively long periods of pre-trial detention and
- military courts have repeatedly failed to investigate allegations of torture.

Thousands of members of political organizations, trade unions and associations were among those people tried and convicted by military courts. Many of them received increased sentences under Article 17(1) of Martial Law Act 1402.

On 26 June 1988 the Turkish newspaper Cumhuriyet estimated that at least 10,000 political prisoners convicted by military courts had received increased sentences, their additional terms totalling 31,000 years' imprisonment. The article listed names of 100 prisoners who had received sentences increased by between eight months and more than nine years' imprisonment.

Since 1984 political prisoners who were detained after martial law was lifted, but charged with offences committed during the period of martial law, are tried by criminal courts. On conviction, their sentences are not increased, unlike those imposed by military courts for exactly the same offence committed during the same period.

This practice is a clear violation of Article 14 of the International Covenant on Civil and Political Rights, "*All persons shall be equal before the courts and tribunals*", which sets out internationally recognized standards for fair trials. It is furthermore in contravention of the 1982 Constitution of Turkey which states in Article 10:

"All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such consideration."

In March 1988 the discussion on Article 17 had reached parliament. The weekly journal Nokta reported on a draft law introduced by SHP deputy Erdal Kalkan to abolish this article from the Martial Law Act. This initiative was supported by members of all parties, including the President of the Judicial Committee, Alparslan Pehlivanli (ANAP). By the end of September 1988 the draft law was still with the Judicial Committee, waiting to be finalized and submitted to parliament for debate and vote.

Many members of banned political parties such as the Turkish Workers' Party (TIP), the Turkish Socialist Workers' Party (TSIP) and the Turkish Communist Party (TKP), as well as members of the trade union confederation DISK and the Turkish Peace Association (TPA) are still facing reimprisonment, if their sentences are confirmed by the Military Appeal Court. Since June 1988 some members of the Turkish Workers' Party (TIP) and the Turkish Communist Party (TKP), tried at Istanbul and Ankara Military Court, have been reimprisoned after their sentences had been confirmed by the Military Appeal Court.

1. The TIP-Trial at Istanbul Military Court

The Turkish Workers' Party (Türkiye İşçi Partisi - TIP) was founded in February 1961 by a group of trade unionists. The party was committed to achieving its aims through parliamentary democracy and had fifteen deputies in parliament between 1965 and 1969.

Following the military coup of 12 March 1971 TIP was closed down by the Constitutional Court in June 1971, and in October 1972 20 members of its executive committee were convicted under Article 141 of the Turkish Penal Code of "attempting to establish the domination of one social class over the others" and following separatist policies, because of TIP's protests about the repression of the Kurdish people. The TIP leaders were released in July 1974 as a result of the general amnesty that had been declared in October 1973.

Following the military coup of 12 September 1980 hundreds of TIP members were charged under Article 141 with having turned TIP into an illegal organization, as defined in that Article. On 15 April 1982 a trial against 80 leading members of TIP started at Istanbul Military Court. At that time 24 of them were in pre-trial detention, but most of them were conditionally released during the trial. When the trial concluded, on 26 January 1984, all had been released. The number of defendants had increased to 145, since a number of additional indictments had been combined with the main trial.

Of the 145 defendants 102 were convicted under Article 141 and sentenced to increased terms of imprisonment of between five and 12 years. The cases of five defendants were separated and 38 defendants were acquitted. On the day of the verdict Istanbul Military Court ordered the arrest of 14 defendants, but only two who had attended the final hearing were arrested immediately. In May 1985 the Military Appeal Court confirmed the increased sentences of 72 defendants and sent the files of 30 convicted and nine acquitted defendants back to Istanbul Military Court for a retrial.

In 1988 some 45 of the defendants were facing reimprisonment. Three defendants who had received sentences of between five and eight years' imprisonment are already in prison and serving their sentences:

Name	Sentence	Time to be served still	Prison
Hüseyin Özyılmaz	5 years	24 months	Çanakkale E-type
Mustafa Özkan	5 years	22 months	Aydin E-type
Halis Çelebi	5 years	23 months	Bursa E-type

2. The TKP-Trial at Ankara Military Court

The Turkish Communist Party (Türkiye Komünist Partisi - TKP) has been illegal virtually since its foundation in the early 1920s. For most of the past 60 years the party operated from abroad. Waves of arrests and convictions of alleged TKP members, however, occurred frequently in the history of the Turkish Republic.

In the 1970s the TKP had gained influence in the trade union movement in Turkey and was one of the prime targets for persecution by the military authorities. In early 1981 hundreds of members were arrested in all parts of Turkey and most of them were severely tortured. Reports in the conservative Turkish press appearing at the same time denounced these prisoners as "anarchists and terrorists" being responsible for the political violence of the late 1970s. However, the TKP did not participate in political violence. In the trial at Ankara Military Court the prosecutor stated: "At present the TKP is not an armed organization."

Under an indictment dated 30 November 1981 the main trial against 205 alleged TKP members started at Ankara Military Court on 15 February 1982. As in the other trials further indictments were later combined with the main trial and in 1985 the trial included 288 defendants. On 29 March 1985, 208 of them received increased sentences ranging from two months to 17 years and four months' imprisonment. Of 23 defendants still in pre-trial detention when the verdict was announced, 10 were released, but at the same time the court ordered the rearrest of 16 others.

On 28 October 1987 the Military Appeal Court confirmed the sentences of 104 defendants. Having failed further appeals, 75 of them were actually facing reimprisonment for between one and 49 months as of June 1988. By September 1988 eight of them had been taken to various prisons in and around Ankara:

Name	Original Sentence	Time to be served still	Prison
Süleyman Coskun	8 years 10 months	7 months	Haymana
Ahmet Oktay Tugcu	4 years 4 months	9 months	Ankara Central Closed
Satilmis Göymen	7 years 9 months	10 months	Bala
Kemal Göylüler	5 years 10 months	15 months	Haymana
Ümit Orhan	5 years 10 months	16 months	Çankiri
Cafer Tastan	7 years 9 months	19 months	Bala
Sevinç Tekeli f.	4 years 4 months	22 months	Ankara Central Closed
Ali Kiliç	7 years 9 months	24 months	Ankara Central Closed

SUMMARY

As of September 1988, 45 defendants of the Istanbul TIP trial, 28 of the Istanbul TKP trial and 75 of the Ankara TKP trial were facing further terms in prison as prisoners of conscience after their increased sentences had been confirmed by the Military Appeal Court. Most of them would not now be in prison or in danger of reimprisonment, if their sentences had not been

increased under Article 17(1) of the Martial Law Act 1402. Although the actual increase cannot be given in the cases listed above, Amnesty International believes that most of these prisoners of conscience would have to be released if Article 17(1) were to be abolished.

The draft law to abolish this provision of Martial Law Act 1402 has not yet been finalized by the Judicial Committee and forwarded to the Grand National Assembly for debate and vote. Amnesty International urges the Turkish Government to proceed quickly with this draft law in order to eliminate the present inequality before the law and to ensure that all those disadvantaged by Article 17(1) would benefit from its abolition.