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Turkey Chronicle 2 – Long detention terms in Turkey

by hCa

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Detention, which should be a precaution against an impending crime, has become a punishment in Turkey. Since the late 2000s, many people have been arrested in the well-known Ergenekon, Balyoz, KCK (*Koma Civaken Kurdistan*-the Union of Kurdistan Communities) and other cases. Therefore, thousands of people from different parts of society (journalists, lawyers, military officers, trade unionists, activists etc.) are held in prisons for many years without provable evidence for their detention or any convictions. This question has become a crucial point in the progress reports of the European Commission since 2008. The reports have considered the length of pre-trial detention a cause for concern.¹ The lengthy detentions in Turkey have also been on the agenda of a number of human rights organizations.²

The prolonged detention threatens human security since it undermines the right to political representation and participation by becoming a punishment method. This situation fuels distrust and insecurity feelings among different segments of society. Some in Turkey believed that the AKP government pursue these cases to leave its opponents in the political ground ineffective. It is also maintained that, following the constitutional changes accepted in the 2010 referendum, the government has taken control of the judiciary and has been using these cases to remove all opposition groups.

Failing in their attempts to resolve the long detention problem in domestic level, many people have applied to the European Court of Human Rights (ECtHR). "Now, there are nearly 3,000 cases filed in that court in relation to long detention and trial periods in Turkey, and this number will exceed 3,500 by Sept. 23, 2012, at which time individuals can apply to the Constitutional Court. The right of individual application to the Constitutional Court will eventually cause a drop in the number of applications filed to the ECtHR, but until that time, the commission will serve as an effective domestic remedy. We have reached a consensus with the ECtHR to set up a commission that will deal with these cases." noted Justice Minister Sadullah Ergin while speaking at a press conference held in the headquarters of the AKP in March 2012.³ Regarding long detention process, the ECtHR condemned Turkey many times since Turkey violated the Article 5 entitled "liberty and security" of the European Convention on Human Rights (ECHR).⁴ According to this article, everyone has the right a lawful arrest and detention and will be entitled to trial within a reasonable time or release pending trial.⁵

The ECtHR has repeated its criticisms against Turkey on long judicial proceedings, saying that "The ECtHR had already found in numerous cases that the length of proceedings in Turkey, in administrative, civil, criminal and commercial cases (...) was excessive. The court reiterated that states should organize their courts in such a way as to administer justice without delays which might jeopardize its effectiveness and credibility." Emphasising that there had been repeated

¹ See 'Turkey 2008 Progress Report', p. 6; 'Turkey 2009 Progress Report', p. 17; 'Turkey 2010 Progress Report', p. 7; 'Turkey 2011 Progress Report', p. 6; 'Turkey 2012 Progress Report', p. 7.

² See 'World Report 2013', Human Rights Watch, <http://www.hrw.org/world-report/2013/country-chapters/turkey>, (28 April 2013); 'Uluslararası Af Örgütü Raporu 2012', Amnesty International, <http://www.amnesty.org.tr/ai/system/files/Uluslararası%20Af%20Örgütü%20Raporu%202012.pdf>, p. 53-55.

³ "Turkey to address ECtHR cases on lengthy detentions", Sunday's Zaman, <http://www.todayszaman.com/news-273145-turkey-to-address-ecthr-cases-on-lengthy-detentions.html>, (10 April 2013).

⁴ "Türkiye'ye uzun tutukluluk cezası", Ntvmsnbc, <http://www.ntvmsnbc.com/id/25351446/>, (22 May 2012); "Türkiye taş atan çocuklar davasında 'uzun tutukluluktan' mahkum", Birgün, http://www.birgun.net/actuels_index.php?news_code=1360144733&year=2013&month=02&day=06, (6 February 2013); "AIHM Türkiye'yi 'uzun tutukluluk'tan mahkum etti", AB Güncel, <http://www.abguncel.com/guncel-haberler/1387-aihm-turkiyeyi-uzun-tutukluluktan-mahkum-etti.html>, (15 April 2013);

⁵ See 'European Convention on Human Rights', p. 7-8.



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violations of the right to a fair trial within a reasonable time, the court said it amounted “to a structural and systemic problem with the legal system.”⁶

This long detention issue was first expressed by President Abdullah Gül. He said in December 2011 that “The lengthy detentions are becoming a punishment and I’m really disturbed. The trials must be accelerated. The crimes of those people, if any, must be determined as soon as possible, or else they must be set free.”⁷

In March 2012, it was reported that the Justice Ministry and the ECtHR negotiated on the matter recently and agreed to set up a special mechanism for those who want to complain about lengthy proceedings. Meanwhile, it was reported that the ECtHR announced that it would not accept any case from Turkey in connection to long detention periods until September since the government was drafting formulas to address the issue.⁸ During this period, faced with many criticisms related to lengthy detention terms, many explanations were made by governmental sources. Justice Minister Sadullah Ergin said that necessary reforms would be made with respect to lengthy detentions periods considering also the decisions of the ECtHR. Consecutively, the deputy prime ministers, Ali Babacan and Bülent Arınç, expressed the need for resolve the issue of long detention terms.⁹ Following these statements, Prime Minister Recep Tayyip Erdoğan also felt compelled to provide an explanation with regard to this issue in late January 2013. He said that the judicial system had to be accelerated to avoid causing trouble for people.¹⁰

Nevertheless, it is reported that the long detention issue would not been included in the fourth judiciary reform package which has been negotiating in the justice commission of the parliament since late March 2013.¹¹ Although numerous people have been released during the recent ‘Kurdish opening’ process, long detention still constitutes a problem to be resolved.¹²

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⁶ “Turkish jail term suits to Euro court on halt until panel decision”, *Hürriyet Daily News*, (21 March 2012).

⁷ “Turkish president urges solution to long detention terms”, *Hürriyet Daily News*, <http://www.hurriyetdailynews.com/turkish-president-urges-solution-to-long-detention-terms.aspx?pageID=238&nID=8354&NewsCatID=338>, (2 December 2011).

⁸ “Turkish jail term suits to Euro court on halt until panel decision”, *Hürriyet Daily News*, (21 March 2012).

⁹ “Uzun Tutukluluk Devri Bitiyor mu?”, *Bianet*, <http://bianet.org/bianet/bianet/136998-uzun-tutukluluk-devri-bitiyor-mu>, (16 March 2012).

¹⁰ See http://www.bbc.co.uk/turkce/haberler/2013/02/130208_turkey_detention_periods.shtml, (8 February 2013).

¹¹ “4. Yargı Paketi Adalet Komisyonu'nda”, *Bianet*, <http://bianet.org/bianet/siyaset/145455-4-yargi-paketi-adalet-komisyonu-nda>, (28 March 2013).

¹² “Many journalists protested the detention of the journalists under the KCK case. See “Gazeteciler KCK'den Tutuklu Meslektaşları için Yürüdü”, *Bianet*, <http://www.bianet.org/bianet/insan-haklari/146021-gazeteciler-kck-den-tutuklu-meslektaslari-icin-yurudu>, (20 April 2013).