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Calendar of events

6-10 July

11th OSCE Parliamentary Assembly, Berlin

8-9 July

OSCE Conference on Prison Reform, Vienna

8-26 July

UN Human Rights Committee – 75th Session, Geneva

22-26 July

UN Working Group in Indigenous Populations, Geneva

29 July – 16 August

UN Sub-Commission on the Promotion and Protection on Human Rights,
54th Session, Geneva

9 August

UN International Day of the World's Indigenous People

4-6 September

International Nordic-Kurdish Cultural Heritage Conference, University of
Bergen, Norway

9-13 September

UN Working Group on Arbitrary Detention, 34th Session, Geneva

9-19 September

OSCE Human Dimension Implementation Meeting, Warsaw

26 September

European Day of Languages

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Project information

The organisation

The KHRP is a non-political, independent human rights organisation, founded in December 1992 and based in London. Its founding members include human rights lawyers, barristers, academics and doctors.

The Project is registered as a company limited by guarantee (company number 2922108) and is also a registered charity (charity number 1037236).

The KHRP is committed to the protection of the human rights of all persons within the Kurdish regions of Turkey, Iran, Iraq, Syria and the Caucasus, irrespective of race, religion, sex, political persuasion or other belief or opinion.

Aims

■ To promote awareness of the situation of Kurds in Turkey, Iran, Iraq, Syria and the Caucasus.

■ To bring an end to the violation of the rights of the Kurds in these countries.

■ To promote the protection of the human rights of the Kurdish people everywhere.

Methods

■ Monitoring legislation, including emergency legislation, and its application.

■ Conducting investigations and producing reports on the human rights situation of the Kurds in Turkey, Iran, Iraq, Syria and the Caucasus by sending trial observers and fact-finding missions.

■ Using reports to promote awareness of the plight of the Kurds on the part of the committees established under human rights treaties to monitor the compliance of states.

■ Using the reports to promote awareness of the plight of the Kurds on the part of the European Parliament, the Parliamentary Assembly of the Council of Europe, the national parliamentary bodies and inter-governmental organisations including the United Nations.

■ Liaising with other independent human rights organisations working in the same field, and co-operating with lawyers, journalists and others concerned with human rights.

■ Offering assistance to indigenous human rights groups and lawyers in the form of advice, training and seminars in international human rights mechanisms.

■ Assisting individuals in the bringing of human rights cases before the European Commission of Human Rights.



newsletter

summer 2002

Issue 18

After Eight Years, European Court of Human Rights Rules in Leyla Zana and Kurdish MPs' Case: Turkey Has Violated the Right to Free Elections

In a significant decision handed down on 11 June, the European Court of Human Rights ruled that Turkey violated the right to free elections in the case of renowned Kurdish Parliamentarian Leyla Zana and 12 other former DEP (Democracy Party) MPs whose party survived just one year before being ordered to shut down by the Turkish Constitutional Court on 16 June 1994. In its ruling, the Court declared that Turkey had violated "the very essence of the right to stand for election and to hold parliamentary office" and "had infringed the unfettered discretion of the electorate which had elected the applicants." The MPs' applications had originally been brought by KHRP to the European Commission of Human Rights eight years ago in 1994.

The DEP party, which was founded in May 1993 and supported Kurdish political and cultural rights. After taking her parliamentary oath in Turkish, Leyla Zana, the first Kurdish woman to be elected to the Turkish parliament, added in Kurdish, "I shall struggle so that the Kurdish and Turkish people may live peacefully together in a democratic framework." She also wore the Kurdish colours of red, yellow and green in the parliament which was later held as a crime for which she was charged.

On the same day the DEP party was dissolved, the Kurdish MPs Sirri Sakik, Ahmet Turk and Ms Zana, were arrested after leaving Parliament. Prior to that, on 2 March 1994, DEP MPs Mehmet Hatip Dicle and Orhan Dogan had been taken into police custody. Fearing similar prosecution, DEP MPs Nizamettin Toguc, Mahmut



Leyla Zana, one of the 13 former Democracy Party (DEP) MPs, who has been in prison in Turkey since 1994.

Kilinc, Remzi Kartal, Zubeyir Aydar and Naif Gunes fled to Brussels. Selim Sadak and Sedat Yurttas, the last two MPs to be arrested, were taken into police custody on 1 July 1994. Whilst the DEP party had representatives across Turkey, the 13 MPs had all stood in Turkey's predominantly Kurdish Southeast region.

The MPs case is the latest in a line of cases in which Turkey has been censured by the European Court for dissolving political parties. However, this case is unique in that it is the first time the Court has found Turkey in violation of the right to free elections (Article 3 of Protocol 1) under the European Convention on Human Rights. While previous European Court cases (including the United Communist Party v Turkey; the Socialist Party and others v Turkey; the Freedom and Democracy Party (Ozdep) v Turkey; and Yazar, Karatas, Aksoy and the Peoples' Labour Party (HEP) v Turkey) have all focused on the right of the parties themselves to exist, the ruling in this case focuses on both the right of the electorate to choose its own representatives and the very right of individuals to stand for parliament.

Sentences handed down by the Ankara State Security Council in December 1994 were severe, with Turk, Dicle, Dogan,

Director's Letter



Dear Friends,
Since our last issue, KHRP has continued to extend our work in the Kurdish regions, most recently attending a trial observation in Azerbaijan and continuing our on-going litigation support and training for Azerbaijani lawyers and NGOs in Baku. KHRP is also pleased to have the opportunity to extend our European Court training initiative to Armenia. Along with Azerbaijan, Armenia also ratified the European Convention on Human Rights in April 2002 and later this summer, KHRP will be conducting litigation seminars in Armenia to assist human rights lawyers there with upcoming European Court work.

Turning to the impending mood of war in the Middle East, all of us at KHRP hope that diplomacy will win out over military incursions in 2002. For the Kurds of Iraq, what is most needed is legal recognition of the autonomous regions from the international community and not a heightened state of violence that war brings. The areas of South Kurdistan – still struggling with the aftermath of conflict from the past decade – need justice but not at the expense of human life and suffering.

Kerim Yildiz
Executive Director
June 2002



Remzi Kartal (right), another of the 13 DEP MPs, with KHRP Legal Director Philip Leach. Mr Kartal and four other MPs fled Turkey in 1994 following the closure of the DEP Party.

continued on page 10

Included in this latest issue of *Newsline* are detailed updates on KHRP's continuing litigation work in the Caucasus (page 9). Following on Azerbaijan's recent ratification of the European Convention on Human Rights in April 2002, victims of alleged human rights abuses in Azerbaijan will now be able to bring their complaints to the European Court of Human Rights. KHRP is pleased to have continued our series of litigation support seminars in Azerbaijan throughout the past year as a way of helping Azerbaijani human rights lawyers to prepare for upcoming European Court work.

In other major litigation news, after an eight-year wait, the European Court has at last handed down a positive judgment in the case of Leyla Zana and the thirteen other Kurdish MPs from the Democracy Party (DEP), ruling that Turkey violated the right to free elections (see cover story). This long-awaited judgment surely adds increased moral weight to the growing demand that imprisoned MPs Selim Sadak, Hatip Dicle and Orhan Dogan as well as Ms Zana be released by Turkey immediately.

In other news, KHRP continues to extend our work exposing the potential human rights and environmental abuses posed by large-scale infrastructure projects – work we first started on the Ilisu Dam Campaign – to new Turkish projects including the planned Yusufeli dam (see article on this page). We are also pleased to have continued training and strategy sessions – both in London and on the ground in Turkey – for human rights lawyers and activists working at the European Court (see pages 4 and 10).

Finally, this issue also includes updates from other areas of Kurdish life including urgent reports on imprisoned Kurdish political prisoners in Syria (see page 4); human rights news from Iran (see page 3); and updates on European Court rulings in cases against Turkey (pages 6–7).

Futures in Threat:

A Report from the Yusufeli Dam Fact-Finding Mission by Hannah Griffiths

The town of Yusufeli is tucked away in a valley of the mountains of northeastern Turkey where the River Barhal joins the River Çoruh. The rivers run through the town like two arteries – houses, shops and hotels rise up from the banks and cling to the steep mountain sides surrounding the rivers. The town of Yusufeli is the cultural, economic and geographical heart of the province of Yusufeli, supporting 60 villages dotted along the rivers and in the mountains.

The Yusufeli Dam Fact-Finding Mission arrived in Yusufeli in late April. Too early in the year for the few thousand white water rafters and walkers that come each year, we found ourselves virtually the only visitors to a peaceful and tight-knit community. Local tour guides introduced us to the region: the mountains are full of bears, wolves, eagles and a host of undocumented and unprotected wildlife; the ruins of ancient Georgian civilisation – churches, a castle and a series of mysterious watchtowers dotted across the mountain slopes – are all gradually crumbling.

But the people of Yusufeli have a more urgently pressing problem than conservation of animals and churches – their livelihoods, homes and communities are under immediate threat.

The Yusufeli Dam and Hydroelectric project is planned to be built a few kilometres downstream of Yusufeli. The dam will completely flood the town of Yusufeli, several other villages and the main road and infrastructure, depriving the region's remaining villages of their centre. 15,000 people will be forced to move; the lives of 15,000 more will be drastically changed forever.

The consortium of companies planning to build the dam is led by French company Spie Batignolles TP. British company AMEC was involved in the consortium until March 2002 (see *Newsline* 17). AMEC still has a considerable interest in the dam, however, through its 46 per cent ownership of SPIE and its intention to buy the remainder later this year.

The Fact-Finding Mission set

out to discover whether this French/British company's dam meets internationally recognised standards. International best practice for dam building is recognised as being contained in the guidelines of the World Commission on Dams. Other international standards are more basic. They include those of the World Bank which SPIE have said must be met if it is to continue with the project. These standards cover a range of issues from carrying out proper environmental assessment to consultation with local communities.

Starting with interviews arranged in advance by the Kurdish Human Rights Project and making more contacts along the way, we met with a wide range of people who have differing stakes in the dam's construction including local residents and local politicians, NGO representatives, business people and state officials. We were hampered by the Turkish State security police who followed us and questioned people we had interviewed, intimidating them and warning them not to talk to us.

The police were particularly concerned about our questions on Georgian ethnicity and heritage. The World Bank standards say that if an ethnic minority will be affected by the project their specific needs must be taken into account. Our first job was to establish whether there is an ethnic minority in the region – there is much Georgian cultural heritage and Georgian ancestry and there are several villages where Georgian is spoken. Unfortunately we felt that visiting these villages would put the inhabitants in danger, and so we couldn't establish whether their inhabitants consider themselves to be Turkish, Georgian or both.

The vast majority of people we interviewed do not want the dam to be built. What they do want is a resolution to the uncertainty, they want to protect their livelihoods and valued community, they want to keep their tourist industry and they want investment in the region. A local NGO has it in writing from the President of Turkey that an alternative will be found in Yusufeli and residents' homes

will be saved. Local NGOs and many residents know about and support a viable alternative: a series of three smaller dams which would generate slightly less electricity but would save their homes. But the President's promises haven't been acted on and the dam is officially still going ahead.

The Mission found that none of the international standards for dam construction have been adequately met. If built, the Yusufeli dam will have major environmental and social impacts. Resettlement has not been properly addressed. Local people have not been properly consulted. Impacts on cultural heritage have not been considered. The people of Yusufeli are not allowed a voice to shout with and their rights are being trampled over.

Neither a French nor a British company would be allowed to get away with such a project in their own countries, it is unacceptable that they are accomplices in such destruction abroad. The Mission is calling on SPIE to keep to its promise of only being involved if World Bank standards are met, and to withdraw from the project immediately.

Hannah Griffiths is a Corporate Campaigner from Friends of the Earth of England, Wales and Northern Ireland. The Yusufeli Fact-Finding Mission sent by KHRP and the Ilisu Dam Campaign travelled to Turkey between 23-29 April 2002. The Mission's Preliminary Report is available from KHRP. A full Mission Report is forthcoming.



Mosque near the planned Yusufeli dam which will be submerged if the dam is built.

Threatened by their Protectors: Turkey's Record in Kurdistan is a Grim Warning to Afghan Women

by Isabel Hilton

Next month, on a date yet to be agreed, Britain will hand over command of the 18-nation UN security force in Afghanistan to Turkey. The arrangement was agreed, not without reservations on many sides, last April. Superficially, it seems like a reasonable idea. Turkey, though secular at government level, is a Muslim country with a large army and aspirations to enter the western fold. It is a long-standing member of Nato and an aspirant member of the EU.

Washington was keen on Turkey's leadership of the International Security Assistance Force, not least because it allows the US to argue that the Afghan campaign is not, as is widely believed in the Muslim world, a war against Islam. President Bush asked Congress to pay Turkey \$228m to take the job on. The vice-president, Dick Cheney, turning a blind eye to the State Department's own human rights report, felt moved to reiterate the administration's support for Turkey's application to join the EU.

So much for what Turkey and the US are getting out of it. What is Afghanistan getting? Not much, it seems. The Karzai government has not hidden its anxieties about Turkey's support in the past for General Abdul Rashid Dostum, now deputy defence minister, whose passion for tying people to tank tracks was documented in painful detail by the journalist Ahmed Rashid. Gen Dostum's men, followers of Afghan affairs will remember, also had a remarkably poor record when it came to rape and sexual torture of Afghan women.

How much hope is there that Turkey will provide protection from such abuses? Not much, according to a recent report by the Kurdish Human Rights Project. It claims that Turkish security forces systematically rape and sexually abuse women in Turkey. When victims complain, it is they, not the rapists, who face criminal prosecution.

The document is a trial observation report – not, sadly, a trial of army or police officers for rape, but of women who spoke out and were then charged with undermining the unity of the state. The charges arose from a conference organised in June 2000 by several NGOs to address what they said was systematic sexual violence perpetrated by state officials against women in custody.

The Turkish government's response to the powerful evidence presented was to initiate investigations against 19 of the speakers and subsequently to bring legal proceedings against them for "denigrating" the security forces. A second investigation led to even more serious charges against five speakers, this time before the state security court, for daring to claim that Kurdish women were disproportionately the victims.

By mentioning the fact that Kurdish women were raped in custody and during village raids, the state argued, the conference organisers, lawyers and victims had "incited people to enmity and hatred by pointing to class, racial, religious, confessional or regional differences". The charges before the state council carry a maximum sentence of six years.

It is no coincidence that many Kurdish women are raped. Rape, as the lesson of the Balkans reminds us, is a useful tool in the destruction of a rival ethnic group. Given the social and legal penalties for speaking out, it is a reasonable assumption that the documented cases of rape and sexual torture of Kurdish women represent the tip of the iceberg. Even so, they reveal that sexual torture is routinely used against women in custody, and frequently involves their children and other family members.

Until recently the Turkish government denied that rape and sexual torture took place. Then came a small admission of "isolated cases".

In November last year, an intrepid group held a further conference to mark the International Day Against Violence Against Women. As a result, Eren Keskin, co-founder of a project that supplies legal aid to women raped or sexually abused by state security forces, has been

charged with disseminating "separatist propaganda". The second hearing in the case is set for July, by which time, if things go according to plan, Turkish forces will be in charge of the security of the women of Afghanistan.

The Kurdish report has received little attention, but then the abuse of women in Afghanistan was scarcely a high priority in Washington before September 11. Afterwards, of course, even Laura Bush was moved to protest about the suffering of her Afghan sisters.

Now that the Taliban have been ousted from Kabul, the continued suffering of the women of Afghanistan, like that of Kurdish women in Turkey, is no longer useful. The ongoing abuse is merely an embarrassment to Afghanistan's western "liberators", rather as the suffering of Kurdish women is an embarrassment as long as President Bush needs the Turkish military in charge of peacekeeping in Afghanistan.

©Isabel Hilton

This article was first published in The Guardian on 28 May 2002.

Anti-Torture Bill Rejected by Iran's Guardian Council

In June, Iran's conservative-dominated Guardian Council rejected a bill passed by the Iranian parliament outlawing the use of torture and physical harassment to gain information from detainees.

The bill, which was approved by the parliament in May, sought to ban all forms of physical and psychological abuse, solitary confinement, night-time interrogations, and the use of drugs on prisoners although it did allow for unspecified exceptional "interrogation methods" in cases of emergency and to prevent crime. One clause also argued that pressures on the families of detainees and bans on them contacting their relatives were tantamount to torture.

However, according to Iranian press reports, the 12-man Guardian Council asserted that five articles of the bill were against Islamic Sharia law, two were against the constitution and a further two articles needed to be clarified by parliament.

Although the Iranian constitution prohibits torture, families of detainees have claimed that the authorities have used physical force and psychological pressure to force confessions from those in custody.

The bill is to be returned to parliament again, but if MPs fail to make the changes dictated by the Guardian Council, it will be sent to an arbitration body appointed by Supreme Leader Ayatollah Ali Khamenei which will have the last word on whether the bill will ever become law.

Compiled from syndicated press reports.

KHRP Legal Director Conducts Training and Strategy Sessions in Turkey

From 10-16 April, KHRP Legal Director Philip Leach travelled to Turkey to provide legal training for lawyers in Istanbul and Diyarbakir and to meet with KHRP partner groups to discuss future work plans for collaborative work, including possibilities for upcoming trials observations and joint seminars in Turkey and Europe. While there, Mr Leach was able to speak with a wide range of NGOs and human right defenders and lawyers about on-going co-operation on European Court cases and about new issues to be litigated at the Court. Mr Leach also met with many of KHRP's key partner groups including the Human Rights Association of Turkey (IHD), the Human Rights Foundation of Turkey (HRFT), the Immigrants' Association for Social Co-operation (Goc-Der).

In Diyarbakir, the KHRP Legal Training Seminar was hosted by the Diyarbakir Bar Association at the Diyarbakir Court. There were 60 participants, including lawyers from the IHD and the Bar Association as well as three Public Prosecutors. The second training seminar in Istanbul was hosted by the Foundation for Social and Jurisprudence Research (TOHAV). Among the 30 seminar participants were lawyers from TOHAV, Mazlum-Der and the IHD's Istanbul branch.

Issues discussed at both seminars included procedure and tactics relating to friendly settlements at the European Court; and the recent judgments 'striking out' cases against Turkey under Article 37; possible responses to being 'struck out'; the current workload of the Court and the proposals for the reform of the Court in the report of the Evaluation Group. At the Diyarbakir seminar, lawyers stressed that Convention violations were still happening in Turkey despite the Court's recent decisions to 'strike out' cases on the basis that the Court had frequently specified Turkey's obligations under the European Convention. For example, at the same time the Akman v Turkey case was 'struck out' last year (see *Newsline* 14), three people were killed, allegedly by State agents.

Other issues expressed by human rights lawyers and groups on the ground included concerns about: the Turkish Government's failure to take any positive steps in relation to the right to return to villages apart from its own project on return involving high security villages ("city villages") which had been planned without victims' views about return; the Government's failure to compensate those whose villages had been destroyed; continuing repression against students campaigning for Kurdish language rights (see *Newsline* 17);



KHRP Legal Director Philip Leach (centre) with Human Rights Association of Turkey (IHD) lawyers Meral and Mesut Beştaş, in Diyarbakir.

new amendments to the political parties law; and continuing Government opposition to free expression despite the generally positive public opinion on this issue.

In Istanbul, Mr Leach was also able to visit the Mesopotamia Cultural Centre which has faced criminal prosecution for publishing Kurdish newspapers, magazines, and music cassettes, and also the Istanbul Kurdish Institute (IKI), an organisation dedicated to Kurdish history and culture which also provides Kurdish language classes despite Constitutional bans. The IKI had been closed down on 22 January 2002 as a result of two sets of proceedings against them. Mr Leach advised about the possibility of bringing European Court cases on behalf of both of these Kurdish organisations.



Philip Leach with Cihan Zarakolu, a new KHRP applicant who is taking his mother Ayşe Zarakolu's freedom of expression case (See *Newsline* 15/16) to the European Court following her death last autumn. They are pictured at the Belge Publishing House which has repeatedly faced criminal prosecution for their publications.

Syrian Human Rights Committee Appeals for the Release Kurdish Political Prisoners

KHRP has received an urgent appeal from the Syrian Human Rights Committee (SHRC) regarding the arrest of Syrian Kurd Mosallam Sheikh Hasan. Mr Hasan, who works with the Peasants League in the Aleppo province of northern Syria, was arrested on May 7 in the town of Ain Al-Arab. The SHRC appeal stated that the Syrian intelligence patrol that arrested Mr Hasan first drove him to an Aleppo intelligence branch before moving him to an interrogation centre in Damascus. No detention warrant, legal reference to the court, or any specific charge against Mr Hasan was produced. Additional reports have asserted that Mr Hasan's arrest was directly linked with his interests in Kurdish cultural rights.

This appeal follows other SHRC appeals made earlier this year also regarding Kurdish political prisoners including Ibrahim Na'san ben Abdo who was arrested on 8 January and Hussein Daoud who has remained in Syrian custody since December 2000 when he was deported from Germany after being denied asylum. Mr Daoud, who

has been named an Amnesty International Prisoner of Conscience, was held incommunicado for months and reportedly tortured. He was not charged until nearly a year and a half after he was arrested, was given no due legal process and was subject to an unfair trial. In March 2002, he was sentenced to two years' imprisonment for his alleged involvement with the Kurdish People's Union Party which is prohibited in Syria. He has no right to appeal his case in Syria.

In their most current appeal, the SHRC is demanding the immediate release of Mr Hasan and all other prisoners of conscience and political detainees and is also calling on Syrian authorities, "for the sake of the future of the strong unified Syria and with the solidarity of all citizens" to provide full cultural freedom for Syria's Kurdish minority. They have asked concerned supporters to send appeals to Syrian President Bashar al-Assad, Minister of Justice Nabil al-Khatib, and Minister of the Interior Major-General Ali Hammud along with copies to Syrian ambassadors.

Copies of the SHRC 2002 appeals are available from KHRP's office.

KHRP Reactions and Concerns in Recent European Court Judgments *by KHRP Legal Director Philip Leach*

The Necessity of Fact-Finding Hearings in Cases of Gross Human Rights Violations

The recent judgments in the KHRP cases of *Matyar v Turkey* and *Sabutekin v Turkey* underline the importance of the European Court of Human Rights fact-finding role. This article explains the importance of the fact-finding function in cases concerning allegations of gross human rights abuse.

An emphasis on greater efficiency and productivity is currently very much in vogue at the European Court of Human Rights. This may not be surprising given that the Court faces at present a backlog of more than 19,000 cases. There is no doubt that fact-finding by the Court is expensive and time-consuming (although, perhaps not in the context of cases which in any event take 7, 8 or 9 years to work their way through the Court system). Thus in the present climate it might not appear wise to raise aspects of the Court system which will slow things down, but it is arguably necessary to do so because of the importance of fact-finding to the protection of human rights in Europe.

To put things into perspective, fact-finding hearings are of course not needed in the vast majority of cases which come before the Court, where the facts are rarely in dispute, and most, if not all, cases have been before several domestic courts. However, they are needed in a numerically tiny proportion of cases which concern allegations of very serious human rights abuses, where there has been no, or no adequate, investigation of the matter by the responsible domestic authorities, where there is no effective remedy available to victims and where the facts remain fundamentally in dispute between the parties.

Often the need for fact-finding hearings will arise from a problem of systematic Convention violations. Since the mid-1990s there have been a number of hearings before the Commission (and more recently the Court) in Turkey, in cases of torture, deaths in custody, extra-judicial killings and village destruction arising from the state of emergency in Southeast Turkey.

But we have been hearing for a number of years of tensions in Strasbourg between those who are pro- and anti- fact-finding hearings, reflecting in part the debate as to the Court's role of providing individual or constitutional justice: in other words, should the Court's role be to provide remedies for every individual in Europe whose human rights are violated, or should its role be similar to a constitutional court of Europe, handling only the most significant cases?

The recent Evaluation Group Report to the Committee of Ministers [see *Newsline* 14] alluded to the problems of additional time and expense created by fact-finding hearings, and notes that the Court restricts fact-finding hearings to exceptional cases. The report also noted that these hearings do not always succeed in establishing the facts to the required standard of proof. This is said to be because of the time lag involved. If that is right, then speeding up the process, as everyone desires, will make the hearings more effective. It has often been said that fact-finding hearings do not establish the facts to the necessary standard of proof, but this assumption can be challenged certainly in respect of the Turkish judgments, in which the great majority of judgments following fact-finding hearings have resulted in 'direct' violations, for example, of Articles 2, 3 and 8 of the Convention, not just 'procedural' violations arising from the failure of the authorities to investigate the applicants' allegations.

In exceptional cases, it is suggested that these procedures are essential to the Convention system and should be continued. It is the very failure of the national authorities to provide an effective remedy in respect of violations of the Convention which creates the need for the Court to hold fact-finding hearings. There are particular situations, such as allegations concerning torture or deaths in custody raising issues under Articles 2 and/or 3 of the Convention, where it is the state, rather than the applicant, which has the capability to obtain and/or preserve essential evidence. Where the state fails in its duties in this respect, the case may only be capable of authoritative resolution by the hearing of oral evidence. Where the national authorities fail to conduct such hearings (which must be independent, impartial and thorough), the European Court should do so.

Given also that the burden of proof falls on the applicant to establish her/his case beyond reasonable doubt, to deny an

applicant an oral hearing in some circumstances would be significantly to disadvantage the applicant.

To return to the effectiveness of these hearings, one of the reasons why they haven't achieved all that they might, is the Court's lack of powers. The judges do not have the powers to compel either witnesses to attend or the parties to produce documents. The hearings in Turkey, for example, have seen all sorts of shenanigans: witnesses not turning up; key witnesses only being 'offered' to the judges on conditions such as that they be heard in the absence of the applicant and his/her lawyers; documents not being produced, and so on. An obvious way to achieve much greater effectiveness, would be to give the chamber powers to compel witnesses to attend and to demand documents be produced.

As well as continuing backlog of Turkish cases which involved serious human rights violations, there are now a number of cases lodged with the Court alleging human rights violations at the hands of the Russian security forces in Chechnya, such as torture and 'disappearances'. For the European Court to maintain its credibility these are the sorts of cases for which it needs to retain and use its fact-finding function.

Striking out – dissent revealed amongst European Court judges

In the recent judgments of *Togcu v Turkey* and *T.A. v Turkey* (9 April 2002), both concerning 'disappearances' of the applicants' relatives (see litigation summaries on pages 6–7), the Court has continued its policy of striking out cases on the basis of a formulaic statement from the Turkish Government. In these cases, as in *Akman* (see *Newsline* 14), the applicants refused to accept the Government's offer of friendly settlement, which they considered was not sufficient to resolve their cases.

However, in an important new development, two European Court Judges expressed their concern about this 'striking out' process in their separate judgments in *Togcu* and *T.A.* In both cases Judge Loucaides opposed the striking out of the applications for reasons which are very similar to the reasons why the applicants did not accept a friendly settlement of the case. He argued that there was no acceptance by the Government of responsibility for the Convention violations complained of and that there was no undertaking to carry out any investigation of the 'disappearances'. He also argued that the undertakings given by the Turkish Government added nothing to their existing obligations under the Convention and he noted that the offers of compensation had not been accepted by the applicants, that they had not been determined by the Court and he considered that they could not rectify the Convention violations where the State had failed to take reasonable measures to provide an effective remedy.

Judge Loucaides also said that he feared that "the solution adopted may encourage a practice by States – especially those facing serious or numerous applications – of "buying off" complaints for violations of human rights through the payment of ex gratia compensation, without admitting any responsibility and without adverse publicity, such payments being simply accompanied by a general undertaking to adopt measures for preventing situations like those complained of, from arising in the future on the basis of unilateral declarations which are approved by the Court even though they are unacceptable to the complainants."

He continued: "This practice will inevitably undermine the effectiveness of the judicial system of condemning publicly violations of human rights through legally binding judgments and, as a consequence, it will reduce substantially the required pressure on those Governments that are violating human rights."

The President of the chamber, Judge Costa, stated in his concurring opinions that he came close to the views of Judge Loucaides and stressed that striking out should not be abused and should only be used in narrowly defined cases. Judge Costa said that he was "very concerned by the unilateral nature" of the Government's undertaking.

These are important judicial statements which express fundamental concerns of principle about the Court's use of the striking out procedure, and it is hoped that these views will help put the brakes on the Court's striking out policy in similar serious cases.

Newest European Court of Human Rights Judgment

Turkey Concedes European Convention Violations in Two Unresolved 'Disappearance' Cases

T.A. v Turkey (26307/95) ('disappearance')

This case concerns the 'disappearance' of a Kurdish farmer, Mehmet Salim A. ('A.'), in August 1994 in the village of Ambar in Southeast Turkey. The application was brought by KHRP to the European Court on behalf of the applicant, T.A., the brother of A., on 29 October 1994.

On 20 August 1994, A. was working in a field when the armed men in an unregistered car stopped and asked him to accompany them. When A. refused to go with them, they threatened him with their weapons, blindfolded him. Tied his hands, took his identity card, punched him in the head and stomach and forced him into their car and drove off. Several villages testified that they had witnessed this abduction and that A. had also had his mouth taped by the two men.

A.'s family filed a series of petitions and complaints about his 'disappearance' to the authorities in order to find out where and why he was detained. Among these appeals, his sister wrote a petition to the Deputy Governor in Diyarbakir on 27 August 1994 asking about the 'disappearance'. She was told that her brother was in the hands of the State and that there was nothing she could do for him. After additional requests for an investigation from A.'s family, the Bismil Public Prosecutor finally opened an investigation in September 1994, requesting information from Bismil Gendarmerie Commander and also taking statements from A.'s wife mother, son and a fellow farmer. Following this, A.'s family continued to request information about the progress of the case, but were given no replies from the Public Prosecutor. In the autumn of 1995, the family received phone calls from unknown persons asking for money for Mehmet A.'s release and also to keep secret the names of those who had abducted him as well as where and by whom he had been detained. The family refused these demands. In October 1995, A.'s sister gave a statement to the Bismil Gendarmerie Command that two gendarme officers and a Village Guard in the State's pay were responsible for her brother's abduction. Three days after she had given this statement, the family's house was raided by officers from the Diyarbakir Anti-Terror Branch who allegedly threatened A.'s sister with death and with the abduction of her 12-year old son.

Two and a half years after the abduction, the Diyarbakir Provincial Administrative Council decided not to take any proceedings against the gendarme officers and Village Guard on the basis of lack of sufficient evidence. The family later saw A. on a television news broadcast on 2 February 2000 which said that he had been apprehended in Diyarbakir and although the Bismil Public Prosecutor confirmed that he had been apprehended, when the family tried to get further information and to see A., they were sent from one office to another and finally led to meet a prisoner who was not A. Following yet another petition by the A.'s sister to open an investigation, the Diyarbakir Public Prosecutor issued a decision not to open the case claiming that A. was not the complainant's brother.

The applicant complained of the unlawfulness and excessive length of his brother's detention, of the ill-treatment and acts of torture to which his brother had allegedly been subjected in detention, and of the failure to provide his brother with the necessary medical care in detention. The applicant further complained that his brother had been deprived of the services of a lawyer and of any contact with his family. The applicant invoked Articles 2, 3, 5, 6, 8, 13, 14, 18, 34 and 38 of the Convention.

On 27 August 2001 the Court received a letter from the Government declaring that, "The Government regrets the occurrence of the actions which have led to the bringing of the present application, in particular the disappearance of the applicant's brother Mr Mehmet Salim A. and the anguish caused to his family. It is accepted that unrecorded deprivations of liberty and insufficient investigations into allegations of disappearance, such as in the present case, constitute violations of Article 2, 5 and 13 of the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures with a view to ensuring that all deprivations of liberty are fully and accurately recorded by the authorities and that the effective investigations into alleged disappearances are carried out in accordance with their obligations under the Convention. The Government consider that

the supervision by the Committee of Ministers of the execution of Court judgments concerning Turkey in this and similar cases is an appropriate mechanism for ensuring that improvements will be made in this context." The Government argued that it was no longer justified to continue the examination of the application and requested that the case be struck out under Article 37 of the Convention. The Government also agreed to pay the applicant the sum of £70,000 for a final settlement of the case.

The applicant rejected this friendly settlement and asked the Court to deny the Government's request to 'strike out' the case, arguing that the terms of the declaration were unsatisfactory in that it contains no admission of any Convention violation including a failure to acknowledge that A.'s "disappearance" undermines and is inconsistent with the prohibition of torture under Article 3 of the Convention.

In its 9 April 2002 judgment, the Court decided to 'strike out' the case stating that 'having regard to the nature of the admissions contained in the declarations as well as the scope and extent of the various undertakings referred to therein, together with the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application.' In a strong dissenting opinion, Judge Loucaides stated that he found the Government's declaration to be "perplexing" in that it "seems to imply that the Government consider the Committee of Ministers as a more appropriate mechanism for enduring improvement in cases like this one...than an examination of 'this and similar' cases by the [European] Court...[signifying] a preference for a political organ rather than a judicial one." Judge Loucaides also noted that "the Government do not admit any responsibility...and give no undertaking to investigate the alleged disappearance in this case...and the compensation...cannot rectify a violation in a situation where the State has not taken reasonable measures to give an effective remedy in respect of the relevant complaint through an appropriate investigation."

Please see page 5 for a further discussion of dissenting opinions in this case.

Hüseyin TOGCU v Turkey (27601/95) ('disappearance')

This case concerns the 'disappearance' of Önder Togcu in Diyarbakir, Southeast Turkey in November 1994. The application was brought by KHRP to the Court on behalf of the applicant, Hüseyin Togcu, the father of Önder on 25 October 1995.

Önder Togcu's maternal cousin had been taken into detention in relation to a criminal investigation and, when a photograph of Önder was found on him, he apparently made a statement to the effect that he and Önder were partners in the alleged crime. The cousin was subsequently released without charge. On or about 29 November 1994, Önder's pregnant spouse felt unwell and was taken to the maternity hospital in Diyarbakir. Önder was with his wife at the hospital, but failed to return home and has 'disappeared' since. At about 10:30 on the night of 29 November 1994, the applicant alleges that seven or eight plain-clothes police officers came to the his home in Diyarbakir and enquired about Önder's whereabouts. The applicant told them, knowing that this was not the truth, that Önder had left for Kayseri three days earlier. According to the applicant, the police officers then told him that his son was in the hands of the police and that they would hand over his body in three days. The next day, Ali Togcu, Önder's older brother was apprehended by the police and taken to the Security Directorate. He was subsequently taken to the Diyarbakir Rapid Reaction Force detention facilities where he was interrogated and ill-treated. He was questioned about Önder's whereabouts. When he told the police officers that he did not know where his brother was, he was told that Önder had been apprehended and that a price-list of walkie-talkies and batteries had been found on him. He was also asked where Önder's rifle was. During his interrogation Ali could hear the screams of his brother Önder, although he was being told that Önder had "gone to the mountains". After having been interrogated for about four to five hours and believing that he was dead, the police officers left Ali on a dump in Ergani, about 50 kms from Diyarbakir.

Continuing inquiries about Önder made by the family remained unanswered and family members were allegedly apprehended and detained by police who accused them of meeting and helping

ts in KHRP Cases

Önder, whom they alleged to be in the mountains. Ali Togcu was also allegedly approached by police officers who asked him for money in exchange for which Önder would not be killed. Following an application filed by the applicant's wife on 6 April 1995 with the Diyarbakir Public Prosecutor, she was informed by the authorities that the name of Önder Togcu was not in their records.

The applicant was heard by the Public Prosecutor for the first time on 19 July 1996. On 6 November 1996 the Diyarbakir Chief Public Prosecutor, on the basis of information provided by the Diyarbakir Anti-Terror Department of the Security Directorate to the effect that Önder Togcu had not been detained by them on 29 November 1994, issued a decision not to take any proceedings (Takipsizlik Kararı). The investigation was apparently reopened in October 1999. As the applicant and his wife do not speak any Turkish, their grandson Mehmet, who does speak Turkish, was present when their statements were taken. According to Mehmet, the official court interpreter distorted the statements and when he objected to this, Mehmet was removed from the Public Prosecutor's office and he was not allowed to read the recorded statements.

In almost an identical path as the T.A. case (see above), the Court received a letter from the Government using the exact language of the T.A. declaration stating, "The Government regret the occurrence of the actions which have led to the bringing of the present application, in particular the disappearance of the applicant's son Mr Önder Togcu and the anguish caused to his family. It is accepted that unrecorded deprivations of liberty and insufficient investigations into allegations of disappearance, such as in the present case, constitute violations of Article 2, 5 and 13 of the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures with a view to ensuring that all deprivations of liberty are fully and accurately recorded by the authorities and that the effective investigations into alleged disappearances are carried out in accordance with their obligations under the Convention." Again, the Government claimed that it was no longer justified to continue the examination of the application and requested that the case be struck out under Article 37. The Government agreed to pay the applicant the sum of £70,000 for a final settlement of the case. Again, as in T.A., the applicant rejected this friendly settlement for similar reasons and asked the Court to reject the Government's request to 'strike out' the case.

However, in its 9 April 2002 judgment, the Court – again using identical language to the T.A. case – decided to 'strike out' the case stating that 'having regard to the nature of the admissions contained in the declarations as well as the scope and extent of the various undertakings referred to therein, together with the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application.' In another strong dissenting opinion, Judge Loucaides stated again that he found the Government's declaration to be "perplexing" like the T.A. case and that he found the applicant's rejection of the settlement a reasonable one.

Please see page 5 for a further discussion of dissenting opinions in this case.

Kurdish children receive justice for murdered family members

Semse ÖNEN v Turkey (22876/93) (extra-judicial killing)

This case concerns the killing of Ibrahim and Mome Önen and their son, Orhan Önen, who were in front of their ten other children during an attack on their home in Southeast Turkey in 1993.

The case was first lodged with the European Commission of Human Rights on 15 September 1993 by the Kurdish Human Rights Project on behalf of the ten surviving Önen children who contended that Turkey had breached Articles 2, 3, 6, 8, 13 and 14 of the European Convention on Human Rights. The Önen children alleged that their parents and brother had been murdered by State agents while the Turkish Government contended that PKK guerrillas had a motive for the killing. In 1998, the European Commission held fact-finding hearings in Ankara at which they found Turkey's version of the events in the case to be unsubstantiated and contradicted by substantial evidence. Concluding that the Önens had been murdered by two masked gunmen who entered the family's home after having introduced themselves as soldiers, the Commission

found "grave deficiencies" in the State's investigation. These conclusions were confirmed in the Court's 14 May 2002 judgment.

In its judgment, the Court found the Turkish Government to have violated the right to life of all three Önens in its failure to conduct a serious, adequate or effective investigation into their March 1993 murders. However, the Court found that there was insufficient evidence to establish beyond reasonable doubt that they had been killed by State officers. Most notably, the Court found the investigation team to have committed multiple errors in standard criminal investigation procedures which included a failure to take any photographs of the crime scene, a failure to number and record the location of spent cartridges, drawing an inadequate sketch map of the scene, and taking no eyewitness statements at the crime scene. In addition, the Court found that the public prosecutor in the case requested that the Önen's death certificates state that they "were murdered by fire-armed members of the outlawed PKK terrorist organisation" without having first conducted an effective official investigation. Consequently, the domestic investigation in Turkey proceeded under the assumption that the PKK was responsible for the deaths. In light of Turkey's failure to carry out an adequate investigation into the Önens' murders, the Court held that they had violated both the right to life (Article 2) and the right to an effective remedy (Article 13) of the European Convention on Human Rights. Under Article 41 (just satisfaction), the Court awarded the Önen children a total of 149,000 Euros in non-pecuniary damage and an additional £17,500 in costs and damages.

After Eight Years' Wait, European Court of Human Rights Rules that Turkey Has Violated the Right to Free Elections in Leyla Zana and Kurdish DEP MPs' Case

Selim SADAK and others v Turkey (25144/94, 26149-54/95, 27100-1/95) (right to free elections)

This case concerns the pro-Kurdish Democracy Party (DEP), which was founded in May 1993 and survived just one year before being ordered to shut down by the Turkish Constitutional Court on 16 June 1994. Prior to that, in November 1993, a case, calling for the closure of DEP, was opened in the Court of Appeal. On 2 March 1994, DEP MPs Mehmet Hatip Dicle and Orhan Dogan were taken into police custody followed by the arrests of DEP MPs Sirri Sakik, Ahmet Turk and Leyla Zana two days later. Fearing similar prosecution, DEP MPs Nizamettin Toguc, Mahmut Kilinc, Remzi Kartal, Zubeyir Aydar and Naif Gunes fled to Brussels on 16 June 1994, the same day that the Constitutional Court ordered the closure of DEP on the grounds that the party sought to undermine the "territorial integrity of the state". Selim Sadak and Sedat Yurttas, the last two MPs to be arrested, were taken into police custody on 1 July 1994. The Ankara State Security Court delivered its verdict for the imprisoned MPs on 8 December 1994. Applying Article 8 of the Anti-Terror Law no 3713, the Court sentenced Sakik to three years' imprisonment for "separatist propaganda." In accordance with Article 168 of the Turkish Penal Code, Turk, Dicle, Dogan, Sadak and Zana were sentenced to fifteen years imprisonment for "membership in an armed gang." The Court sentenced Yurttas to seven years imprisonment for "assisting an armed gang" under Article 169 of the Turkish Penal Code. An appeal on 26 October 1995 saw the overturning of the sentences of Turk and Yurttas.

Dicle, Dogan, Sakik, Turk, Zana, Sadak and Yurttas placed an application (no. 27100-1/95) before the European Commission of Human Rights in August and December 1994. This application was subsequently joined with the applications of Toguc and others v Turkey at the European Court. The applicants complained of a violation of Articles 5, 6, 7, 9, 10, 11 and 14, and Articles 1 and 3 of Protocol 1.

In its decision handed down on 11 June 2002, the European Court of Human Rights ruled that Turkey had violated the right to free elections (Article 3 of Protocol 1) declaring that Turkey had violated "the very essence of the right to stand for election and to hold parliamentary office" and "had infringed the unfettered discretion of the electorate which had elected the applicants." Under Article 41 (just satisfaction), the Court awarded the applicants a total of 650,000 Euros in damages and an additional 127,000 Euros in legal costs.

New Admissibility Decisions in KHRP Cases

Interim Admissibility Ruling on Torture Case

Nuray ŞEN v Turkey (41478/98) (torture)

On 30 April 2002, the European Court of Human Rights declared the applicant's complaints in the case of *Nuray Şen v Turkey* in respect of Articles 3 and 13 of the European Convention on Human Rights to be inadmissible and the Court adjourned its examination of the applicant's complaint under Article 5 concerning the length of her period of custody.

Assisted by KHRP, the applicant, Nuray Şen, brought her complaints to the Court in April 1996, initially as a supplementary petition to an earlier case KHRP had brought on her behalf in 1994 regarding the alleged killing of her husband by State agents. This earlier case was declared admissible by the Court in March 1996 who then held a fact-finding hearing in June 1998. Because the taking of evidence was limited to issues declared admissible, it was decided that Mrs Şen's later complaints would be registered as a separate application.

Mrs Şen was the director of the Mesopotamia Cultural Centre (MKM) in Istanbul which focuses on the culture of people who have lived and currently live in Mesopotamia, mainly Kurds. In early November 1995, Mrs Şen travelled to Diyarbakir to appoint a new director to the Diyarbakir MKM branch. On 10 November 1995, she was arrested, along with nine of her MKM colleagues, and brought to the Gendarmerie Intelligence and Anti-Terrorism Headquarters in Diyarbakir where she was held in custody for eleven days. Although she and her nine colleagues were taken for a medical examination at the Diyarbakir Forensic Medicine Institute, Mrs Şen alleges that no examination took place. The medical report of 10 November 1995, drawn up in relation to the ten detainees, stated that there were razor blade injuries on the bodies of two of the applicant's co-detainees.

While in custody, Mrs Şen claims that she was subjected to a range of torture and abuse including being repeatedly beaten and kicked; sexually abused and threatened with rape; continually blindfolded; stripped and held under cold water; subjected to electric shocks; constantly verbally abused; made to run in place for long periods of time; deprived of food; and forced to listen to loud music. She further alleged that she while being interrogated, she was threatened with death and was made to sign a statement without reading it in which she accepted claims that she was connected with the outlawed Kurdistan Workers' Party (PKK). She did not have access to a lawyer, nor were her relatives informed that she had been taken into custody.

On 21 November, she was charged at the Diyarbakir State Security Court and sent to Diyarbakir High Security Prison. She was released on bail on 15 February 1996.

The facts of the case were disputed by the Turkish government who claim that the applicant had told the Public Prosecutor that the police officers had not treated her badly. Following the introduction of Mrs Şen's latter complaints with European Commission, the government claims an investigation was carried out by the Diyarbakir Chief Public Prosecutor who issued a decision in January 1997 not to pursue the investigation as he considered that there was no evidence that the applicant had been subjected to torture. The government also maintained that Mrs Şen failed to exhaust domestic remedies as she could have sought redress under Article 125 of the Turkish Constitution. In turn, Mrs Şen claims that such remedies offered domestically were illusory, inadequate and ineffective. She also maintains that the situation in Southeast Turkey at the time of her arrest was such that potential applicants had a well-founded fear of reprisals if they were to invoke remedies. She further contends that the adequacy of the domestic investigation into her complaints remains to be established by the government who effectively dismissed her complaints with their non-prosecution decision in January 1997. No details have been provided by the government about the Public Prosecutor's investigation and they failed to provide statements by the Prosecutor confirming that she had not been badly treated by security forces.

The European Court ruled that as Mrs Şen did not bring her allegations to the attention of national authorities nor did she

lodge an appeal of the January 1997 Public Prosecutor's decision, she had failed to exhaust domestic remedies. They further concluded that Mrs Şen had not substantiated that she would have been intimidated if she had appealed the Public Prosecutor's decision.

While the applicant's complaints under Article 3 and 13 were ruled inadmissible, the case as regards complaints under Article 5 regarding the length of her 11-day detention, has been adjourned, pending a response by the Turkish government.

Case of Kurdish Victim of Village Destruction whose Two Sons 'Disappeared' in 1994 is Declared Admissible

Abdürrezzak İPEK v Turkey (25760/94) ('disappearance', village destruction)

On 14 May 2002, the European Court of Human Rights declared the case of *İpek v Turkey* admissible in respect of the applicant's complaints of violations of Articles 2, 3, 5, 13, 14, 18 and Article 1 of Protocol No.1 of the European Convention.

KHRP lodged the case with the European Commission on behalf of the applicant, Abdürrezzak İpek, in November 1994. The case concerns the destruction of the applicant's home and the 'disappearance' of his two sons, Servet and İkrım İpek, in 1994.

On the 18 May 1994, soldiers from the Gendarmerie Headquarters in Lice raided the Dahla settlement of Türelı village in the province of Diyarbakir. They gathered the villagers together and set fire to all the houses in the village. Around noon, they released all the villagers but left the settlement with the applicant's sons and five other men. Four of these men were later released but three of them, Servet and İkrım İpek and Seyitham Yolur remained in custody. The applicant requested information from the Lice Police Headquarters, Lice Gendarmerie Headquarters and the Emergency Legislation Governor in Diyarbakir. The authorities however denied that the men had been detained.

The applicant argued under Article 2 that there was a substantial risk that his two sons died whilst in unacknowledged detention, given the high incidence of deaths in custody. He also complained of the lack of any effective State system for ensuring protection of the right to life. Invoking Article 3, he referred to his inability to discover what has happened to his sons. He further complained of a breach of Article 5 in respect of the unlawful detention of his sons, the failure of the authorities to inform his sons of the reasons for their detention and to bring them before a judicial authority within a reasonable time, as well as the inability to bring proceedings to have the lawfulness of his sons' detention determined. He further alleged of a lack of any independent national authority before which his complaints could be brought with any prospect of success as required by Article 13. He also complained under Articles 14 and 18 that his sons had been discriminated against on the ground of their Kurdish origin in the enjoyment of their rights and that the interferences with these rights were not designed to secure ends permitted under the Convention. Finally the applicant complained under Article 1 of Protocol No.1 about the destruction of his home.

The applicant also maintained that there was no requirement that he pursue domestic remedies because there is strong evidence that 'disappearances' in custody have been repeated and have received official tolerance; that there is an administrative practice of not respecting the rule under Article 13 of the Convention which requires the provision of effective domestic remedies; that whether or not there is an administrative practice, domestic remedies were ineffective in this case owing to the failure of the legal system to provide redress; and finally that he had done everything possible to exhaust domestic remedies by submitting petitions and requests, and by pursuing his case in a number of different quarters.

In light of the parties' submissions, the Court considered that the case raised complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application as a whole. The Court therefore unanimously declared the application admissible.

Following Azerbaijan's European Convention Ratification, KHRP Travels to Baku for ECHR Litigation Training and Trial Observation

At the end of May, KHRP Executive Director Kerim Yildiz along with Legal Director Philip Leach and KHRP Chairman Mark Muller travelled to Baku, Azerbaijan for a series of training and litigation support seminars held in conjunction with the Bar Human Rights Committee of England and Wales and the Azerbaijan National Committee of the Helsinki Citizens Assembly (HCA) and to observe the trial of the political prisoner Iskender Gamidov.

On 30 May 2002 KHRP held its second European Court of Human Rights training seminar for NGOs and lawyers in Baku in conjunction with the Azerbaijan National Committee of the Helsinki Citizens' Assembly. This closely followed Azerbaijan's ratification of the European Convention on Human Rights on 15 April 2002. Individuals in Azerbaijan will therefore be able to complain to the European Court about human rights violations occurring on or after that date.

There were 35 participants at the seminar, primarily representatives of human rights NGOs, plus lawyers in private practice. KHRP speakers Philip Leach, Kerim Yildiz and Mark Muller spoke about the practice and procedure of the European Court. Erkin Gadirov of the Baku State University spoke about domestic remedies in Azerbaijan.

A one hundred page 'manual' produced by KHRP, including commentaries on Court practice and examples of Court documents, was translated into Azeri and copies were available for the delegates.

There was a lot of interest from delegates about the practicalities of taking a case to the Court. Questions were asked, for example, on the following: six months time limit; date of ratification; legal aid and costs; fees; Court workload and possible reforms; monitoring of human rights abuses by the Council of Europe; whether regional ECHR courts will be set up; enforcing judgments; language of initial



KHRP Executive Director Kerim Yildiz (centre) and KHRP Chairman Mark Muller (second from right) bring a new computer and printer to the Ronahi Kurdish Cultural Centre in Baku.

application; domestic remedies; documents which need to be lodged with the Court; and the election and independence of ECHR judges.

The delegates also worked through a case study concerning a criminal justice scenario, breaking into three groups to do so (to 'represent' the applicant and the Government and to act as the judges).

KHRP also met with a number of NGOs and lawyers to discuss bringing specific cases to the European Court. The first Azerbaijani interns will be working with KHRP for three months this summer.

On 29 May, KHRP Chairman Mark Muller also attended the trial of Azerbaijani political prisoner Iskender Gamidov who was a Member of Parliament at the time of his arrest in March 1995. In 1992-1993, Mr Gamidov was the Interior Minister under then-President Eichibey and he claims the charges against him were politically motivated.

Azerbaijan undertook a commitment to release or grant a new trial to "those regarded as 'political prisoners' by human rights protections organizations," when it was accepted into the Council of Europe in January 2001. Gamidov was one of three prisoners specifically mentioned in this Council of Europe commitment.

Mr Gamidov was reportedly detained without the necessary prior permission of parliament and it was also alleged that his lawyer was detained on fabricated charges a month before the trial began, leaving him unable to represent Mr Gamidov. At his Supreme Court trial in 1995, Mr Gamidov was sentenced to 14 years imprisonment without the right to appeal. After the trial he was kept for some 15 months in solitary confinement in the prison of the Ministry of National Security rather than transferred to the less strict regime of a corrective labour colony, as required by the Code of Criminal Procedure. It has been further alleged that he has been subjected to increased pressure since his case has been given a wide international profile.

Mr Gamidov's 29 May trial was held at the Gobustan I Prison outside Baku. He had appealed to the court to allow the re-trial of his case to be held in an open courtroom but this was denied. His lawyers also named more than a dozen additional witnesses that they asked to the court to invite to give testimony, but this appeal was ignored. Since the 29 May hearing, the case has been adjourned twice.

In addition to the litigation training and trial observation, KHRP was also able to meet with Azerbaijani Kurdish groups including the Ronahi Kurdish Cultural Centre (KCC) in Baku who secured a desperately-needed new computer and printer with KHRP's assistance.



Azerbaijan: NGO delegates "acting" as the Government prepare.



KHRP Chairman Mark Muller (second from left) and KHRP Executive Director Kerim Yildiz (second from right) with Iskender Gamidov's lawyers.

Human Rights Association of Turkey Representatives Visit KHRP



Nazmi Gür (right) at the NGO reception at KHRP.

From 21–25 May, KHRP was happy to host the visit of long-time Kurdish human rights defender and KHRP Patron Nazmi Gür, along with Kurdish human rights lawyer Osman Baydemir, the Vice President of the Human Rights Association of Turkey (IHD). Mr Gür and Mr Baydemir spent the week meeting with members of the KHRP Legal Team to discuss planning for upcoming work in 2002–2003. In addition to these strategy sessions, KHRP also held an NGO reception for the two human rights defenders where they were able to meet with British human rights groups involved with Kurdish issues including Human Rights Watch, Index on Censorship, Redress, and Amnesty International. Mr Gür and Mr Baydemir also visited the Foreign Office with KHRP Executive Director Kerim Yildiz and met with human rights lawyers involved in KHRP's litigation work.



Osman Baydemir (second from right) and Nazmi Gür (third from right) with KHRP staff.

KHRP Executive Director Travels to US

Between 12–19 May, KHRP Executive Director Kerim Yildiz travelled to Washington DC and New York. While in the US, Mr Yildiz met with a range of governmental and non-governmental groups including the US State Department. During his visit, Mr Yildiz provided briefs regarding the human rights situation in the Kurdish regions including Iraq and Turkey.

KHRP Union Outreach

KHRP attended the Annual Conference of the Fire Brigades Union in mid-May, which was held at the Royal Spa Hall in Bridlington. KHRP already enjoys the support of the Scottish region of the FBU and took this opportunity to promote our work and seek support amongst other branches. An article explaining more about KHRP's vital work will be published in a forthcoming edition of the FBU's monthly magazine, along with an opportunity for local and regional branches to become affiliated with KHRP.

Continued from page 1.

Sadak and Zana receiving fifteen-year sentences for 'membership in an armed gang', Yurttas receiving seven years for 'assisting an armed gang' and Sakik getting a three year sentence for 'separatist propaganda'. Ms Zana, who received the European Parliament's Sakharov Freedom of Thought in 1995, remains incarcerated at the Ulucanlar prison in Ankara along with Selim Sadak, Hatip Dicle and Orhan Dogan. In July 2001, the European Court ruled that they had been denied a fair trial in violation of Article 6.

In its 11 June judgment the European Court ruled that Turkey had violated Article 3 of Protocol 1 of the European Convention in Human Rights (right to free elections) and awarded each of the former MPs 50,000 euros each in damages along with 127,500 in legal costs.

Commenting on the judgment, KHRP Executive Director Kerim Yildiz stated, "In light of Turkey's continued failure to respect the democratic processes most of us take for granted, this decision marks a positive step forward for the recognition of Kurdish political and cultural rights. Considering Turkey's on-going intimidation and harassment of many political representatives from both Kurdish and other minority parties, we hope the government of Turkey will take steps to uphold the right to free elections and democracy."

KHRP Benefit Gig Success

On Wednesday 8th May, Mitch Mitchell and his band the Wild Angels performed a benefit gig for KHRP at the 100 Club on Oxford Street, London. The gig was a great success with over 150 people packed into the club enjoying performances by the band and special guests including comedians Mark Thomas and Mark Steel.

KHRP would like to thank Mitch and Di Mitchell, all performers and everyone who worked hard to ensure the night was a success.



Comedian Mark Thomas performing "I Fought the Law" at the KHRP Benefit.



Mark Steel performing his rendition of "Blue Suede Shoes" at the Benefit.

New KHRP Reports

AB Yolunda Türkiye: Değişim İçin Fırsat mı? Yoksa Yol Ayrımı mı? (Turkey on the Way to the EU: Is it an Opportunity for Change? Or is it a Crossroad?)

Since its EU candidacy was accepted in December 1999, the list of European Court of Human Rights judgments against Turkey in cases brought by the Kurdish Human Rights Project on behalf of Kurdish victims of gross human rights violations has grown to thirty-five. In that same time, Turkey has continued to fail to improve its human rights record or to follow the Committee of Ministers of the Council of Europe's 1999 demand that they ensure that the violations evidenced by the European Court's judgments stop recurring. As clearly indicated by recent statistics on ongoing human rights abuses in Turkey for the year 2001 published by the Human Rights Association of Turkey (IHD) earlier this year (see *Newsline* 17), Turkey has a long way to go to live up in practice to the human rights criteria set out in its EU Accession Partnership Agreement.

This new KHRP Turkish language report offers the European Union a concrete list of recommendations on how to press Turkey to clean up both its atrocious human rights record and its internationally-condemned legal system which falls far from EU standards regarding rule of law, democracy and human rights.

As this new report argues, the time has long since passed for the EU to demand that Turkey implement full respect for the human rights of Kurds and other ethnic minorities in Turkey once and for all. More than eighty long years of Turkish State violence and persecution of its ethnic minorities makes this a moral imperative that can no longer be avoided by Turkey or the EU. As this important and timely report argues, Turkey's EU accession stands now as a test case of the EU's true commitment to human rights, freedom and democracy, with the whole world watching.

(ISBN 975 8317 69 X)

Available only in bookshops in Turkey.

Denial of a Language: Kurdish Language Rights in Turkey

Prompted by recent campaigns for education in Kurdish being waged by Kurdish university and school students in Turkey, KHRP sent a fact-finding delegation to Turkey in February 2002 to obtain accurate and objective information about the student campaign and to investigate the wider status of the Kurdish language both in Turkish law and in practice, not only in education but also in other areas of life including broadcasting, political discourse, civil society institutions, the justice system, cultural life, private and commercial life and the naming of children and places.

The Kurdish education campaigns began on 20 November 2001 when a group of students at Istanbul University signed a petition demanding the introduction of optional Kurdish lessons at the university, and announced their action at a press conference. This action prompted the presentation of thousands of similar petitions at other universities and high schools which caused serious reverberations around the country that included serious clampdowns by Turkish authorities. By 14 February, students at 24 universities across Turkey had attempted to hand in a total of 11,837 petitions and they had been joined by thousands of school pupils and their families who had presented their own petitions. The response of the authorities was swift and harsh: by 14 February, 1,359 had been taken into custody, 143 had been remanded in custody, and 46 had been suspended from their school or university. In addition, a growing number of teachers have been suspended or placed under investigation.

This new report documents the mission's findings and includes a detailed analysis of the findings from the point of view of applicable international legal standards, including the Copenhagen Criteria that Turkey will have to comply with before being accepted for entry

into the EU. The report also explores the basis for potential litigation under the European Convention on Human Rights along with challenges under other international mechanisms and includes a list of the mission's recommendations for reform.

This report comes at a time when Turkey is being pushed, in the context of the EU pre-accession process, to give greater recognition to the rights of minorities, including language rights. This report argues that Turkey has violated a number of international principles and standards, and that wide-ranging changes need to be made to the Turkish Constitution, to legislation and to policy and practice, before Turkey can be considered to have seriously complied with international standards.

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Recent protests for Kurdish language rights in Turkey are the subject of KHRP's new report *Denial of a Language*.

Upcoming KHRP Reports

- Internal Displacement in Turkey
- International waters mission report from Syria and Iraq
- The Yusufeli Dam: A Fact-Finding Mission Report
- Some Common Concerns: The Azerbaijan-Georgia-Turkey Pipelines Project

KHRP Participates in NGO Seminar at the House of Commons: Papers Available

On 23 May, KHRP Executive Director Kerim Yildiz along with fellow Ilisu Dam Campaign Director Nicholas Hildyard delivered a paper on "Resettlement and Human Rights: Conflicts between current ECGD procedures and the European Convention on Human Rights" at the House of Commons as part of an experts seminar entitled "Beyond Business Principles: NGO Seminar on Export Credit Reform". Chaired by Tony Colman MP, this meeting focused on the environmental, human rights, development and debt impacts of projects funded through the UK Export Credits Guarantee Department (ECGD). MPs and government ministers including Baroness Symons, Minister for Trade, attended the meeting which included presentations from fellow NGOs working on ECGD reform including the World Development Movement, Friends of the Earth, Public Services International, War on Want, Jubilee Plus and Campaign Against the Arms Trade. Papers from this seminar are available on the web at <http://www.jubileeplus.org/analysis/articles/uk290502.htm>

NGO Publishes New Report on Forced Displacement in Turkey

The Istanbul-based NGO, Goc-Der (Immigrant's Association For Social Cooperation And Culture), has published a detailed new report documenting the forced displacement of the Kurds in Turkey over the past twenty years. Established in 1997 in response to the massive wave of internally displaced refugees who were being forced out their villages in southeastern Turkey, Goc-Der has remained at the forefront of refugee issues in Turkey. If you would like to obtain a copy of this report in English or Turkish, contact Goc-Der at gocder@hotmail.com.