

UN Human Rights Committee
The Universal Periodic Report on Turkey
(A/HRC/WG.6/21/TUR/2)

27 January 2015

Introduction

The document bearing the above reference was prepared for the UNRC and was prepared for the 21st Human Rights Council Session by way of a Universal Periodic Review on Turkey and was discussed in Geneva on 27 January 2015.

Immediately after the official discussion in the HRC, a side meeting was held in the UN Building, the Palais des Nations, where representatives of various sectors of Turkish life testified as to persistent human rights violations by Turkey.

First, I reproduce extracts from the Report, going from the general situation to the particular mistreatment of journalists and lawyers. I then turn to the side meeting and thereafter to several world perception indices. This is followed by the full report of the Norwegian Bar fact finding mission to Istanbul in October 2014 and this hybrid report ends by stressing the threat to the criminal bar in Turkey and with a little thought as to how to contribute to change.

Extracts from the UPR

There remain “serious concerns regarding deaths resulting from excessive use of force by security officers” (§ 31).

There was concern about “the use of torture, particularly in unofficial places of detention” (§ 42).

There is a recommendation that “Judges and Prosecutors be totally independent from the executive branch, both structurally and functionally” (§ 49).

There is an urgent need to reduce the “excessive length” of court proceedings (§ 51).

All aspects of the careers of lawyers should be administered by the bar association rather than by the Ministry of Justice (§ 52).

There is a recommendation that Turkey ensure the freedom of expression of the press, a safe working environment for journalists and media and full implementation of the rule of law (§ 60).

There was concern “about the continued use of anti-terrorist clauses for the politically motivated prosecution of large numbers of persons” and also about the power of the national intelligence agency to obtain “all sorts of information and data from all individuals without a court order” (§§ 89 & 90).

It was emphasised that “lawyers, exercising their professional duties in terrorism or organised crime cases should be able to perform all their professional functions without intimidation, hindrance,

harassment or improper interference. Lawyers should have access to appropriate information and relevant files and documents” (§ 92).

Comment

These remarks and statements are a strong condemnation of Turkey. However, they are often couched in terms that suggest that matters in Turkey are on the whole improving. Furthermore it appears from people who were able to attend the HRC meeting that the discussion was not in the slightest critical of Turkey, the emphasis being on the improvements.

Side meeting

The side meeting amounted in effect to a series of witness statements from representatives of the law, the press and the victims of discrimination on grounds of gender, religion and sexual orientation.

All said that the situation was getting worse.

There is widespread discrimination on grounds of sexual orientation, for example. The stifling of the press continues and has now spread to the harassment of foreign journalists. The lawyers’ trials continue as do their tribulations.

All this pointed to the fact that the situation is getting worse.

This is born out by other sources.

One set of sources comprises various international indices. Another is the Norwegian report of the study trip to Istanbul.

International indices

World Press Freedom Index 2014

Turkey 154/180

Rule of Law Index 2014

Turkey 72/99

World Corruption Index 2014

Turkey 64/174

The press freedom and the rule of law indices in particular speak for themselves: they state that Turkey is near the bottom of the scale. A vital NATO member and official EU candidate country is a country where, according to these indices, scant regard is paid to the rule of law, suggesting that Turkey is a state where political power prevails over law where the two collide.

Report of a fact finding mission by Frode Sulland and Johannes Bakkevig of the Norwegian Bar to Istanbul, 10 October 2014

“We had the opportunity to meet with Kemal Simsek and his colleague, Rabia Uresin Karjalainen, in the Caglayan Courthouse in Istanbul

Mr. Simsek is the defence lawyer of several of the police officers arrested under the allegations of being a part of a «parallel structure», to undermine the Government. The police officers were arrested and held in custody for more than eight days in July 2014.

It is of great importance, Kemal says, that other European defence lawyers are aware of the situation in Turkey. The governmental action and the arrests in July clearly show an alarming justice situation in Turkey under the current government.

The arrests in July, Kemal explains, followed an anti-graft operation launched in December 2013, where several high-profile figures, including 3 sons of government ministers, were detained. In the operation the police found millions of dollar in cash, stored in shoeboxes, as well as counting machines in their homes.

The operation was undertaken by order of the public prosecutors, according to Turkish criminal law. Still, the Government, considered the operation to be an attack on the government itself.

A few days after the first operation several newspapers reported that a new investigation was expected on 26 December, and there were rumours that it would possibly involve the Prime Minister’s own son. This operation was not carried out, as the public prosecutor was dismissed.

On the 7 January, the government removed 350 police officers from their positions, by issuing decrees that either re-located them to other regions, tasks or forced them to retire. This included high ranking officers of the units dealing with financial crimes, smuggling and organised crime. The Prime Minister described the corruption investigation as a "judicial coup", done by people who wanted to overthrow the Government, and he accused those involved of trying to establish a “parallel structure”.

More than 40,000 policemen and police officers were re-located in the period that followed. High ranking, experienced police officers were set to do simple administrative tasks and road traffic duty.

Following this, the government took control of appointments of judges, by issuing a new law that put the Supreme Board of Judges and Prosecutors under greater governmental control. Critical judges were removed from their positions, and government-loyal judges were appointed. The law was criticised for terminating the separation of powers between the government and the judiciary, and effectively putting an end to judicial independence in Turkey.

Shortly after this, the number of Criminal Courts was dramatically reduced, and six government loyal criminal judges were appointed to leading positions in the Istanbul Court House. These judges were key figures in what was then to come: an operation against high ranking police officers involved in the anti-graft operation launched in December 2013.

In the middle of the night, on the 22nd of July 2014, 72 police officers were arrested in their homes, handcuffed and taken to the Istanbul Court house. According to the Turkish Criminal Procedural

Code, the suspects had to be brought in front of a judge and interrogated within 48 hours. Still, only 23 of them were actually interrogated within the next four days.

After the first four days the police were ordered by the court to release the arrested police officers. But then, as they tried to leave the courthouse, the police surrounded them in the hallway, preventing them from leaving.

Without legal grounds, the Police then took the 72 arrested police officers back into custody. The reason given was that it was done for the protection of the security of the arrested officers. They were then taken to the basement of the courthouse and were held there for the next four days. The conditions were harsh, as they had to sleep on the floor and were refused facilities to wash or shower. The food they were given was impossible to eat, so their lawyers had to bring them food.

As the press attention to the scandal grew, it became more and more obvious that the judges that handling the situation lacked the necessary experience. They were mostly young judges, appointed for their government loyalty, and they were not capable of handling the situation.

More than sixty lawyers were working on the cases, all of them pro bono. During the days of the detentions the courthouse was crowded with both police and government loyal press. And worse: in addition to the regular police forces, more than 300 armed anti-terror police officers were in the courthouse during the eight days of the detention. The lawyers faced very hard working conditions, with constant obstacles made by the police - and ignored by the court.

In several cases the judges held their hearings without the lawyer of the accused present, as the lawyer was prevented to enter the courtroom by the police. The lawyers were also pushed around and intimidated by the police, and faced body searches leaving from one room to another, even within the courthouse.

The hearings held were not recorded, as both the court and the police claimed there were no recorders in function. The court house is a new, modern building, and the attorneys considered it is fully unlikely that it was impossible to provide recordings.

After 8 days, all of the arrested were released, but they are still awaiting their indictment reports to be finished and presented to court”.

No respect for criminal defence lawyers

Mention must also be made of the fact that that lawyers who defend persons regarded as enemies of the state still risk being treated in the same way as their clients. The CHD-KCK lawyers have all been released from lengthy pre-trial detention but still have to stand trial. The alleged terrorist offences of their clients are being imputed to them. So, in some cases, accused persons are in effect being denied defence counsel, or where they may be represented, every effort is being made to impede defence counsel’s work. It was as a result of a polite reminder that defence counsel must be able to perform their duties with out hindrance that the trial of the Istanbul Bar Association was launched and, despite acquittal at first instance, is still going on by way of a prosecution appeal due to be heard in May 2015.

Remedy

The question was raised at the side meeting in Geneva whether some form of sanction might be imposed on Turkey. Both the Council of Europe and the EU have sanctioning powers. However, it was thought, after discussion, that no sanction would be effective, as the result would be the alienation of Turkey from the EU and/or from the NATO.

Slow, constant persistent and patient pressure seems to be the only way to bring about any change, it seems.

The law states of the EU will all, without exception, have to set and keep high standards.

Brussels, 10 February 2015

Scott Crosby, ECBA Human Right Officer