

*APPENDIX TWO**TRIAL OBSERVATION REPORTS:
THE DIYARBAKIR PRISON KILLINGS**INTRODUCTION*

From May 22 to June 5, 1998, the Joseph R. Crowley Program in International Human Rights ("Crowley Program") and the Lawyers Committee for Human Rights ("Lawyers Committee") conducted a fact-finding mission in Turkey that focused, *inter alia*, on the prosecution of security officers for alleged violations of human rights. One of the most important prosecutions is the trial of sixty-five police officers and gendarmes for the deaths of ten inmates of Diyarbakir E-Type Prison ("Diyarbakir Prison Case").¹ Although the killings took place on September 24, 1996, the case was still pending as of May 17, 1999. On June 5, 1998, a member of the delegation observed a hearing in the case. A second Lawyers Committee delegation observed a hearing on January 29, 1999. Below are the trial observation reports of each delegation, followed by a brief assessment of the significance of their observations to the broader issue of police impunity. The reports are intended to provide the reader with a sense of how the procedural obstacles to effective redress of police abuse in Turkey, analyzed in the main report, are manifested in an important impunity case.

I. TRIAL OBSERVATION AND INTERVIEWS

Each of the two following accounts includes interviews with lawyers litigating the case, as well as observations of the hearings themselves.

A. June 5, 1998 Hearing²

On June 5, 1998, we arrived at the court building at approximately 9:30 a.m. There was no unusual commotion outside the courthouse, although we later learned that several members of the victims' families had been denied entrance to the building.

1. For a complete summary of the facts of the case, see notes 225-39 and accompanying text in the main report.

2. Marko Maglich of Fordham University School of Law with a translator represented the Crowley Program/Lawyers Committee delegation at the June 5, 1998 hearing.

We saw no journalists. The hearing was scheduled to begin at 10:00 a.m., but was delayed. We entered the offices of the Diyarbakir Bar Association, located inside the judiciary building, and spoke with victims' lawyers while we waited for the case to be called.

1. Interviews with the Victims' Lawyers

We met with Sezgin Tanrikulu, Tahir Elçi, and Fethi Günüs, who represent the victims and their families. They briefly reported on what had happened in the previous hearing and since, and on what they expected in this hearing.

The lawyers told us that at the last hearing autopsy photographs had been shown to forensic doctors. The victims' lawyers at the time had requested a copy of a videotape of autopsies that had been performed on the bodies of the victims. The videotape is an important piece of evidence because when the bodies of the victims were brought to the morgue, the forensic specialist refused to work overtime to perform the autopsies. As a result, non-forensic medical staff performed the autopsies and the procedures were videotaped. Mr. Tanrikulu told us that the tape is fifteen minutes and fifteen seconds long. The victims' lawyers requested a copy of the tape to enable them to have an independent forensic expert review it. Although the court denied the request, it granted an alternative request to have the court send the tape to forensic experts for review.

The lawyers expected one topic of the hearing to be the report of the forensic experts, although they had not yet seen the report. They were informed that as of June 4, the day before the hearing, the report had not yet reached the court. According to the lawyers, the court told them that it had taken a long time to get the video to the forensic doctors, delaying the report. As it happened, the court faxed the report to the Diyarbakir Bar Association office during our meeting with the lawyers. The report arrived one-half hour before the scheduled starting time of the hearing. Although the hearing was delayed an hour, the lawyers still had only one and one half hours to review and consider the report. The report had been requested on April 24, 1998, one and one half months earlier. Moreover, the report was only one page in length. It stated no cause of death for any of the victims. Mr. Tanrikulu commented that a professional autopsy

was not necessary to see from the pictures that brain trauma was the cause of all the deaths. He noted that the doctors stitched up the dead victims' heads to stop their bleeding. The report gave no reason for the failure to determine and include an official cause of death. We retained a copy of the one-page report.

The lawyers expected a second topic in the hearing would be the ongoing effort to locate defendants in order to obtain their testimony. The court had not been able to locate five of the defendants and therefore had been unable to obtain testimony from them. The court had written to four or five other defendants to invite them to testify at courts in the cities in which they were now posted. Seven prison guards had been invited to testify at the day's hearing.³ The victims' lawyers said that these seven guards were "the last important witnesses to be heard" because the court had denied a request to bring transferred prisoners from Gaziantep to testify. The court had also denied a request to compel the defendants to appear in court during the hearings.

The third topic for the hearing to consider was a reply from prison management to a court request for an explanation of prison visitation procedures. The victims' lawyers argue that, following standard prison practice on the day of the killings, prison officials did not inform the prisoners generally that they were to receive visitors until an hour before the visit and did not specifically identify the individual prisoners that actually had visitors until ten minutes before the prisoners were called to meet them. The victims' lawyers contend that this standard practice belies the defense's theory that a pre-planned prisoner riot precipitated the violence.

We noted that the prosecutor's indictments against the defendants do not allege murder. The indictments charge that the police and gendarmes "abused their duty" in "causing death by injury in a way that the perpetrators cannot be determined and in a manner exceeding the limits of necessity and without intention to kill."⁴ Given the nature of the charge, we asked Mr.

3. Under the laws protecting civil servants, criminal defendants who are civil servants are not required to appear in court. Moreover, under the Law to Fight Terrorism, security forces accused of crimes while on duty may remain on active duty pending determination of the charges.

4. Note that there is a separate case against the prison guards where the indictment alleges "injury," a different crime. The victims' lawyers stressed in an earlier meet-

Tanrikulu what was the prosecution's theory of the case and whether the prosecution accepted the defense's theory that the violence had been precipitated by a pre-planned prisoner riot and resulting fight between inmates and security forces. In response, Mr. Tanrikulu first noted that the question of whether any initial disturbance had occurred is irrelevant to the question of whether excessive force was intentionally used on prisoners after any disturbance had been quelled. Mr. Tanrikulu then explained that the prosecutor's office, despite being legally responsible for the investigation, did not conduct an independent inquiry and had relied entirely upon police and gendarme reports, which, not surprisingly, minimized the officers' responsibility.⁵

2. Trial Observation

We met with the lawyers for about an hour and one half. The case was called around 11 a.m. It took some time to climb the stairs and pass through a hallway into the courtroom because the police were searching those entering. Police officers searched us twice. A group of German nationals was not allowed to enter with their bags "by order of the head of the court." They had no translator, so our interpreter translated the police officers' instructions to them.

While waiting to enter the courtroom we spoke with two young lawyers interning with the Diyarbakir Bar Association. They told us that the police normally try to prevent people from observing such trials and that they are especially resistant to the interns attending. The interns told us that they can usually maneuver their way in. We entered the courtroom and seated ourselves in the gallery, with a direct and unobstructed view of the proceedings.

The court was the Diyarbakir Third Heavy Penal Court.

ing with the delegation that the procedural maneuvers that allowed the various cases to be severed also allowed inconsistent charges against the different defendants in an incident in which it appeared that the guards, police, and gendarmes acted together.

5. The delegation previously obtained copies of the gendarmes' reports. These consisted of virtually identical statements by different defendant-gendarmes, taken by two gendarme investigators and one police investigator. The reports are short, lack detail, and contain clear misstatements of fact. For example, the reports refer to the imprisoned victims as the "arrested and convicted," while the victims were in fact pre-trial detainees. The reports also assert that the victims had not been beaten on the head, while the autopsy pictures clearly show gaping wounds in the backs of the victims' heads.

The gallery where we sat was raised up from the floor of the court. It raked up at a sharp angle, so that when we took our seats we looked downward on the proceedings. The gallery had about twelve rows of finished white stone benches. It was quite full when we entered, but two people moved back to give us seats in the center of one of the forward rows.

Below and facing us sat the three judges behind a judicial bench raised from the courtroom floor. The chief judge sat in the center. One of the other two judges was a woman. To the left of the judges on the same level sat the public prosecutor.⁶ A relief bust of Mustafa Kemal Atatürk, the father of modern Turkey, surveyed the scene from the center of the high marble wall, above the chief judge.

Below and before the public prosecutor, Fethi Günüs sat in the lead victims' lawyer chair. In front of him were twelve other victims' lawyers. Directly opposite the victims' lawyers sat the two defense lawyers, Ziya Özmen and Selim Karakoyun. No defendants were present in court. The bailiff called the names of four or five prison guards who were witnesses, but none were present. The bailiff then called as a witness, Serafettin Cammur, who entered the courtroom and took his place facing the judge.

At first, the judge conducted his own questioning. Responding, Cammur testified that he knew some of the accused because of their popularity and high rank. He told the court that he had worked the night shift and slept in the prison guest house, near the prison on the night of September 23, 1996. He left the prison in the morning of September 24, but returned in the afternoon between 2:30 and 3:00 in the afternoon, even though it was his day off. He stayed in the prison for one hour.

Cammur testified there were crowds around the prison, as well as gendarmes. He had heard that gendarmes had entered the prison, but did not see them himself. Cammur told the court that he himself saw ambulances going in and out of the prison and that he saw people carrying out the injured. Cammur testified that later that night he had learned that there had been fatalities. The judge asked if Cammur knew whether prisoners had been transferred from the prison and when any trans-

6. Our other trial observations in Turkey had, by this time, made us familiar with this arrangement. In Turkey, the prosecutor—considered part of the court—sits on an equal level with the judges, while the defense or victims' lawyers sit below.

fer had occurred. Cammur responded that he had been told that there had been a prisoner transfer, but that he did not know what time it had occurred. When asked by the judge if he had “heard anything,” Cammur testified that he heard an argument between prisoners and police. He further testified that he did not see the argument.

The chief judge then turned to the victims’ lawyers to submit questions.⁷ Mr. Tanrikulu stated to the court that Cammur had previously told investigating gendarmes that he had not only heard, but also seen the events surrounding the alleged confrontation between prisoners and police. Mr. Tanrikulu asked the court to explore the apparent discrepancy between the witness’ testimony and his prior statement.⁸ The judge then asked the witness what he had seen, to which Cammur responded that he had seen “a few things . . . people coming in and out.” He testified that he had not seen any bodies close up. Victims’ lawyers pressed by confronting Cammur with a photo of the split head of a victim and asking how he could “hear” dead bodies.

Victims’ lawyer Tahir Elçi questioned why Cammur was at the prison on his day off. Cammur responded that he was there because he had been staying in the prison guest house. Cammur insisted that he had not been called to report to the prison. He added that even in an emergency, he would not have been called to the prison on his day off.

At this point, defense lawyer Ziya Özmen leapt to his feet and asserted that the deaths resulted from an argument or altercation. The judge asked whether the witness knew of police hitting the victims. The witness replied that he only knew of deaths and injuries and not who had inflicted them.

7. The normal procedure in Turkey is for lawyers to question witnesses through the judge; they would propose a question and the judge would ask it. Sometimes the lawyers would propose a question and the judge would pursue a line of questioning in that area. Occasionally, however, lawyers would address the witness directly. The witness faced the bench throughout, his back to us.

8. Police reports and statements from defendants argue that the victims died from injuries sustained during a fight with prison officers. The victims’ lawyers contend that the fatal beatings took place in a separate room, outside the corridor where the original confrontation took place, and after the victims were bound and subdued. This contention is consistent with statements made by guards and other prisoners to the victims’ lawyers outside the courtroom. However, because of obstacles to producing witnesses and to using witness testimony in civil servants’ trials, the victims’ lawyers have not been able to introduce any direct testimony supporting their version of events.

The chief judge and the lawyers probed further inconsistencies between Cammur's prior statement and his testimony. They confronted him with his earlier statement that he had actually seen some of the events. He responded that he had seen the injured being taken out from far away. Fethi Günüs asserted the area was not large enough for the witness to have seen from far away. "It's not an airport!" said Günüs—a statement the chief judge put into the record.

Günüs criticized the court and prosecutor for the delays and lack of resolution in the case and for reports that victims' families and the public had been denied access to the current hearing. Günüs stated that some victims' family members had been detained trying to attend. He complained that only foreigners and lawyers had been allowed in the courtroom even though the court had not declared the hearing closed to the public. (Observers in the gallery that we spoke with told us that they were lawyers, legal interns, or policemen, along with the German nationals). In response, the chief judge said witnesses' and families' protection were the prosecutor's responsibility. The prosecutor, who had been silent to this point in the hearing, said nothing.⁹ Mr. Günüs also asked why only one of the seven called witnesses had come. The chief judge replied that the court had written to all seven, and to the defendants, but had received no reply.

The chief judge read out the prison authorities' letter on visitation procedures and the forensic report on the videotaped autopsy. Mr. Günüs argued that these, along with the fact that the prisoners took no hostages indicated that, contrary to the defense's contention, there was no organized rebellion. He pointed out that even the one-page report revealed gaping head wounds. He emphasized that the wounds were in the same spot on each victim. He argued that the killers had all hit at the same target and that this was not consistent with the kind of wounds that they would have sustained in a fight with the security forces. He asserted that the victims had been taken out of the corridor

9. The delegation noted the apparent lack of participation by the prosecutor in the hearing. The prosecutor sat silently throughout. He did not question the witness. When the chief judge told the victims' lawyers that the safe passage of the families and the public into the courthouse was the prosecutor's responsibility, the prosecutor sat quietly, covering his mouth and looking down—a posture that he had adopted for much of the hearing.

and beaten. Mr. Tanrikulu made three requests. He asked that the video of the autopsy be shown in court, that the court provide enough security so that the public and victims' families could get from the street to the courtroom, and that the court order the arrest of the defendants.

Defense counsel countered that the Turkish Penal Code prohibited detention of the accused during the trial, on the grounds that if they were found not guilty, the state would not compensate them.¹⁰ Defense counsel further asserted that the victims had no grounds for claiming that a prisoner riot leading to the incident was "impossible." Defense counsel also objected to the German nationals taking notes because they had no translators and could obviously not understand the proceedings. To this, the chief judge replied that they were permitted to take notes. The court then took a recess to consider the lawyers' other requests.

Outside the courtroom during the recess, lawyers told us that hundreds of people, including members of the public and victims' relatives, had been waiting across the street from the judiciary building because they had been denied admission to the hearing. The police had reportedly detained some of them, but subsequently released them when lawyers intervened. The lawyers speaking to us said that two or three relatives of the victims had been able to enter the courtroom.

When the hearing resumed, two more victims' lawyers were present on the left. The chief judge reported that the court was unable to locate one of the defendants to invite him formally to appear in court. Although the chief judge then noted that under Turkish Penal Procedure Code section 223, defendants normally are required to appear, the court did not order their appearance.

The chief judge stated into the record that the court had determined that it needed autopsy reports for each victim and that it needed to know what had happened to the clothes that the defendants had been wearing at the time. He also rejected the victims' request to have the defendants arrested. The chief

10. While most or all of the victims had been in long-term pre-trial detention when they were killed, their arrests were for crimes within State Security Court jurisdiction and this Turkish Penal Code protection therefore did not apply to them.

judge then announced the date of the next hearing and adjourned the court.

As the court adjourned, the mother of one of the victims who had been seated with the victims' lawyers stood up and—speaking in Kurdish—began asking the court for her rights. Someone near us in the gallery who spoke Kurdish translated her words to us. According to that person, she said to the court, “If we don't get results in this court, we will go to the European Court,” meaning the European Court of Human Rights.

As we gathered our belongings to leave the courtroom, a man in sunglasses approached us and asked who we were and what we were doing. Upon our asking him the same, he told us that he was from the police. We asked whether he was on duty. He told us he happened to be on duty, but had only come to the hearing out of curiosity. We asked him about the reports that victims' relatives had been denied access to the hearing. He said, “You got in, didn't you?” When we pressed him, he told us no one had prevented the families from getting into court. The officer visibly chafed under our questions, and we ended the interview. After the hearing, we went to the airport in Diyarbakir for our return flight to Ankara.

3. Interview with Defense Lawyers

On the afternoon of June 5, 1998, on the return flight from Diyarbakir to Ankara, we saw two of the defense lawyers from the hearing, Ziya Özmen and Selim Karakoyun. We formulated some questions in the hope of interviewing them. Upon landing, we approached them. They offered us a car ride from the airport into the city, which we accepted. This ride gave us the opportunity to interview them briefly regarding the case and to record observations that they wanted to make regarding the human rights issues that the delegation was investigating.

The defense lawyers spoke of the facts of the case as they saw them, as well as the roles of the lawyers involved. They first said that the intervention of the special police unit at the prison was warranted because the governor's permission was granted. The lawyers were referring to a special anti-terror police unit that had been ordered into the prison and, according to the victims' families and lawyers, had participated in the violence against prisoners. In the case of a riot, they said, the police may

enter the prison with the governor's permission. They said that the police had entered to "split communication between parts of the prison."

Regarding the prosecution, the defense lawyers said that the job of the judiciary was to find those guilty of a charged crime. If a perpetrator could not be found, there should be no conviction.¹¹

Implying that other prisoners killed the victims, the defense lawyers said that those who died were all informants who after their arrest had provided information to the police about alleged "illegal organizations." The lawyers buttressed this assertion by claiming that every subsequent search of the prison had turned up makeshift weapons—such as knives made from forks, spoons, iron bars, and radiators—illegal documents, and evidence of communications in and out of the prison. The defense lawyers said that they did not have this evidence, but that it was documented by the court and the prosecutor should have it.

We asked them about the reliability of the police's internal investigation in this case. They said that the investigations were reliable because the police were obligated to follow specific procedures in such investigations.

The defense lawyers had a number of criticisms of the victims' lawyers. The defense lawyers stressed that only the victims' lawyers saw inconsistencies between the testimony and prior statement of the day's one witness. The defense lawyer's seemed to imply that the victims' lawyers were improperly basing their position on matters outside of the court record. The defense lawyers also criticized the victims' lawyers for seeking the death penalty in a case where the individual perpetrators are not identifiable. Finally, the defense lawyers criticized the victims' lawyers for requesting that the defendants be detained.

Explaining why they traveled from Ankara for the case, the defense lawyers explained that they had to come in from Ankara because no Diyarbakir lawyer would defend members of the security forces. They also said that a large number of lawyers were listed as victims' lawyers in this case, while the two of them toiled alone for the defendants.¹² When questioned about any dangers

11. We note here that facts as presented in the trial have not yet identified the specific officers alleged to have done the killings.

12. There are 83 lawyers of record for the victims.

to lawyers representing members of the security forces, the defense lawyers said that they did not themselves feel intimidated. They knew of one lawyer, Sadik Tokucoglu, however, who was shot on his way to Izmir to participate in such a case. The defense lawyers also noted that their clients felt much pressure—for the defendants Diyarbakir is a hostile environment where no lawyers would defend them and everyone assumed their guilt.

The defense lawyers expressed an underlying distrust of human rights activists in general. Mr. Karakoyun told us that in police trials, human rights activists tend to sabotage the proceedings. Both Karakoyun and Özmen said that the activists' tactics were to appeal to conscience in order that judicial principles would be undermined. They felt that terrorist and political defendants "held all the power in their hands." They asserted that Turkish human rights organizations are tools for illegal organizations such as the Kurdistan Workers' Party ("PKK"). They felt that the Human Rights Association does "politically motivated work." The defense lawyers also felt that foreign criticism of Turkey's human rights record was unfair. They reminded us, in a pointed comparison to the United States, that there had been no judicial executions in Turkey since 1980.¹³

With respect to the independence of the judiciary, the lawyers emphasized the immunity of judges and prosecutors from both criminal and civil actions for acts undertaken in a judicial capacity. They felt that decisions on transferring judges and prosecutors, however, are made on a political basis.

We told the defense lawyers that our delegation had spoken with several prosecutors. We then asked the defense lawyers about the role of the prosecutor in cases involving alleged police abuses. They told us that the prosecutor represents the victims, in the name of the government. They spoke of the prosecutor's investigative role and noted that defendants in this case had been interviewed in the prosecutor's office. With respect to the prosecutor's apparent passivity at the day's hearing, the lawyers told us that only the victims' lawyers were probing the witness's purportedly inconsistent prior statements because only the vic-

13. As this report goes to press, Turkish authorities must decide whether to end this *de facto* moratorium and allow a June 29, 1999 sentence of execution to be carried out on Abdullah Ocalan, leader of the outlawed Kurdistan Worker's Party ("PKK"). See *Turkey: Will Ocalan Die?*; *ECONOMIST*, July 3, 1999, at 41.

tims' lawyers saw these inconsistencies. They asked why the prosecutor would probe an inconsistency that he did not see.

The interview was brief—about an hour—but we were able to ask some of the questions that we had formulated on the flight to Ankara. Karakoyun and Özmen seemed pleased to have a chance to report their opinions on the Diyarbakir proceedings.

B. *January 29, 1999 Hearing*¹⁴

1. Interviews with Victims' Lawyers

The evening before the hearing, January 29, 1999, we interviewed three of the lawyers representing the victims' and their families, Sezgin Tanrikulu, Mustafa Ozer, and Emin Oktar. These lawyers believe that this case, which has now gone on for two and one-half years, is being deliberately delayed. They report that there have been seven or eight different judges assigned to the case and that the prosecutor has been less than diligent in pursuing the testimony of witnesses. Often a hearing will last less than a quarter of an hour because the witnesses do not attend, a file is lost, a report has not arrived, etc., and then another month goes by before another hearing is scheduled.

In this case, because of the poor job done by the prosecutor in the initial investigation as well as the bureaucratic confusion of the administrative council process, the witnesses have never officially been interviewed in any detail. This means that their testimony is being taken for the first time two and one half years after the killings occurred. Many of the witnesses are no longer working in the region and must be interviewed in remote areas by judges and prosecutors unfamiliar with the case. This does not seem to be a process well-calculated to disclose the truth of what happened. With a reluctant judge and prosecutor and two and one half years of delay, ascertaining what happened in this case will be very difficult.

The victims' lawyers were very pessimistic about any prospects for improvement in the climate of impunity enjoyed by members of the security forces. They were not surprised that a court in Manisa had recently reinstated its decision to acquit police accused of torture there. They noted that the chief prosecu-

14. The members of the second Lawyers Committee delegation were Prof. Tracy Higgins of Fordham University School of Law, Sam Scott Miller, of the law firm of Orrick, Herrington and Sutcliffe, and a translator.

tor in Manisa had previously been in Diyarbakir. According to the victims' lawyers, it is no accident that those judges and prosecutors who can be relied upon to protect the interests of the state end up in the controversial cases.

2. Trial Observation

This hearing was one in a series of evidentiary hearings in the trial of the police and gendarmes accused of beating ten prisoners to death.

On the morning of the hearing, we met victims' lawyer Sezgin Tanrikulu at his office and went to the court house with him. At 9:30 a.m., the security at the court was somewhat higher than we have seen outside the southeast region but did not seem particularly heavy. We spoke with journalists and explained our interest in the case. The press attention in Diyarbakir was substantially less than that in both Manisa and in Afyon, where a hearing in the trial of police accused of killing Metin Goktepe had taken place two days before.¹⁵ We made a point of connecting this case with the Afyon and Manisa cases regarding the impunity question. The cases do not seem to be so linked in the minds of those monitoring the impunity issue outside this region.

Around 10:00 a.m., the case was called. As we entered the courtroom, we were searched and filmed by police and by journalists. The judge took care of some administrative details and then began to report on witness testimony that had been taken at a different location by another judge. Two witnesses had been interviewed in this manner. Five testified in court this day.

The witnesses all reported similar variations on the same story, depending on where they had been located in the prison during the incident. They reported that it was visitation day and that this cell block was to be the third to meet visitors. On the way to the visitation center, the prisoners began talking with other prisoners in other cell blocks, apparently in violation of prison rules. Although the guards warned them not to do this,

15. This delegation also observed a trial in Manisa, as well as the one in Diyarbakir, in a five-day trial observation mission to Turkey in January 1999. The full report on the Manisa trial is available from the Lawyers Committee for Human Rights and from the Joseph R. Crowley Program in International Human Rights at Fordham University School of Law.

one witness acknowledged that this was not particularly unusual behavior. The prisoners were confrontational, and one of them hit the chief guard. After that, a fight erupted. At this point, the guards closed the gates to block off the corridor. The trapped prisoners forced the fifth gate open and asked their friends in other cell blocks to give them extra clothes. Sezgin Tanrikulu later explained that this suggested that the prisoners expected that they might be beaten and wanted the extra layers of clothes to protect themselves from truncheon blows. The fight among the prisoners and guards continued until the guards were ordered to leave the area. The director of the prison and the chief prosecutor called for reinforcements and the police and gendarmes were sent in.

The next involvement of the guards was to carry the wounded from the detention center. Those who testified had either carried prisoners themselves or seen others doing so. They admitted that most of the wounded had to be carried. The judge asked about the location of the wounds, and they said they were all over their bodies, especially on their heads. One of the witnesses said that he fainted because of the sight of all the blood. The wounded were carried to the visitation room. This room is where the victims' lawyers allege that nine of the victims were killed, though none of the witnesses mentioned this fact today. One of the witnesses paused before answering critical questions such as "Did you see what happened after the security forces were let in?" A Turkish observer later expressed the opinion that the witness had paused to convey to observers that he was being compelled to lie under the circumstances.

This story was repeated by all of the witnesses with some variations depending on their individual situations. The judge appeared to the delegates to be reasonably even-handed and conscientious in his questioning. This observation was later confirmed by the lawyers for the victims. They felt that he accurately recorded the testimony when he summarized it for the court reporter. Nevertheless, the judge did not pursue certain obvious questions such as whether the "injured" detainees were still alive at the time that they were removed. There was no mention of anyone who had been killed, only injured. Also, the judge did not show any of the photographs of the victims to the witnesses. It seems that this action would have been relevant and useful as

they testified about the appearance of the victims and the extent of their injuries.

Following the testimony, the victims' lawyers made several requests. They asked that the defendants be arrested—none are currently—and they asked that the witnesses be shown pictures of the victims when they are questioned. The evidentiary status of the photographs is still in question. They also asked that the doctor responsible for sending the prisoners to the hospital be indicted. They requested an investigation of the crime scene and to be provided a copy of the Ministry of Justice investigator's report on the testimony of one of the witnesses. Finally, during the course of his argument, one of the victims' lawyers compared this case to Goktepe and Manisa as a test of Turkey's resolve to prosecute human rights violators.

The defendants' lawyers responded, arguing that the doctor should not be charged, that the defendants should not be arrested, and that the photographs should not be used in evidence. We were not able to speak with the defense lawyers as they are based out of Ankara and left immediately following the hearing. According to the victims' lawyers, the theory of the defense seems to be that there was a riot in the prison and that this force was necessary, though perhaps unfortunate. The victims' lawyers also believe that the defense lawyers mean to imply that the prisoners may have attacked one another. This is consistent with the comments of these lawyers to other delegation members observing an earlier hearing.

Interestingly, the defendants' lawyers also specifically objected to the comparison of this case to Goktepe and Manisa. They said that, unlike those cases in which the victims were presumably innocent, this case involved a prison riot. Hence, the actions of the police were justified here. Note, however, that the prisoners here had not been convicted of any crime. They were imprisoned pending their trial. The only distinction between their status and that of the accused police and gendarmes in this case is that the police and gendarmes are free and remain on duty.

The hearing lasted approximately two hours. After the testimony and the lawyers' arguments, the court recessed briefly, and we left the courtroom. As we left, we were again filmed by press and police. After about ten minutes, the court reconvened. The

judge announced that the motions to arrest the defendants and to charge the doctor were denied at least for now. A ruling on the photographs and the other motions was postponed.

By the time we left the court, security had increased considerably. Outside the courtroom, there were police overseeing and filming our exit. Outside the building, there were many more police and police vehicles, and they seemed to be restricting foot traffic around that courthouse. The police continued to videotape us as we proceeded out of the courtroom, through the courthouse, outside and across a parking lot, where we entered our car and drove away.

II. ASSESSMENT

The Diyarbakir Prison Case involves the prosecution of police officers accused of gross violations of human rights. It has garnered local and international attention as a test case for the Turkish government's commitment to hold members of the security forces accountable for their actions. To date, the Turkish government has a poor record in this regard, though it notes that more police are facing trial than in the past.

The case is a stark example of how the judicial system can fail victims of official abuse. Public prosecutors, under a legal duty to investigate and prosecute crimes fully, look no further than the version of events supplied by the police's internal interviews. Defendants fail to appear in court. Witnesses from the security forces cannot be compelled to appear. Inmates who witnessed the incident have been transferred to prisons in other towns, and the court continues to deny them permission to travel to Diyarbakir to testify. Some testimony from these ostensibly unavailable witnesses is taken in the remote locations in which they are now imprisoned. Judges and prosecutors unfamiliar with the case take that testimony without even the benefit of the case file. Victims' lawyers are not present because the expense and danger are prohibitive.

The trial has been subject to numerous debilitating delays and postponements. For example, after nearly two years of hearings, the court does not yet have autopsy reports. It was not until the June 5, 1998 hearing that the court acknowledged the need for autopsy reports on each victim. Delays continue while the court and lawyers await forensic evidence of obvious materiality.

The witnesses' and defendants' unavailability has also caused numerous delays. In each of the two hearings that we observed, the court denied motions to arrest the defendants. Only one of seven "invited" guard-witnesses appeared at the June hearing. The testimony of the others was postponed. Seven months later, five more appeared. During the period in which they failed to appear, the absent guards were living and working in Diyarbakir, where the court is located.

We saw examples of two other problems that seem to undermine attempts to prosecute alleged police impunity in Turkey: the victims' lawyers' lack of access to potential evidence, and prosecutors' and judges' failure to investigate and prosecute the alleged crimes fully. As to evidence, the lack of important witness testimony created a number of problems in the two hearings. At the June hearing, when lawyers questioned the six guards' failure to appear, the court could only respond that they had sent the guards "invitations" and that the latter had simply failed to respond. Even the witnesses that the court *does* schedule fail to appear. More postponements result. Eventually, the witnesses appear and contribute their pieces of the story, and a meager factual picture emerges piecemeal as months of litigation turn into years.

Other witnesses—the transferred prisoners—never appear in Diyarbakir to give their eyewitness accounts. The court has denied them permission to come. Earlier in the mission, delegates had reviewed the court's denials. The court gave no explanation except that the law permitted them to deny the motions.

The defendants were conspicuously absent from both hearings, as they have been throughout the trial. This absence protects the defendants from being identified by witnesses. Moreover, in both hearings, the court denied motions to arrest the defendants. The defendants remain on active duty and in a position to influence the testimony of others.

In the June hearing, the defense argument against arresting the defendants was that the Turkish Penal Code prohibited arrest on the ground that the defendants' loss of freedom would be uncompensable should the court find them not guilty. The transferred prisoners, meanwhile, are still detained nearly three years later, many of them still awaiting trial on the charges against them in State Security Courts. The fact that the law pro-

vides such a double standard seems to be complemented by a sense that the victims here deserve the inferior treatment that they received. The defense lawyers' objection to arresting the defendants, and the court's yielding to it, revealed an easy acceptance of this double-standard. In the second hearing, the defense lawyers distinguished the Manisa and Goktepe cases on the very ground that the Diyarbakir victims were prisoners, implying that they deserved such treatment.

The observed hearings also underscored the importance of in-court testimony as opposed to testimony collected at remote locations. The victims' lawyers, denied much of the evidence to support their version of events, were nevertheless able to discredit the guards' version by impeaching the one witness who did appear in June. The fact that one witness presented this opportunity highlights the potentially debilitating effect of the continued absence of other witnesses. Not only do missing witnesses represent missing pieces of the story, but also they protect the official story by precluding opportunities to challenge it.

Unequal access to evidence is an additional handicap for the victims' lawyers. For example, the defendants' lawyers reported that weapons and documents were discovered in searches of the prison. To date, none of this evidence has been made available to the victims' lawyers. Moreover, the defendants and their colleagues have direct access to the prison, calling into question the integrity of evidence turned up in those searches. The victims' lawyers, by contrast, are afraid to enter the prison to interview witnesses or search for evidence. They say that the opportunities are rife for the security forces to find some pretext to detain the lawyers if they venture into the prison. Cases such as that pending against twenty-four Diyarbakir lawyers (some of whom represent the victims in this case) would seem to support these fears.

Put to such disadvantage, the victims' lawyers are reduced to implying by circumstantial proof that some story other than that presented by the defense exists. In the first hearing, these lawyers tried to use the prisons' visitation policy to cast doubt on the defense and prosecution theory that the deaths resulted from a riot. The victims referred to the one-page autopsy indicating identical head wounds to question the defendants' assertion the blows were random. Meanwhile, witnesses who might have provided positive proof of a different scenario remain absent from

the courtroom because, as the court said, the law permits their absence.

The prosecutor has refused to make an independent inquiry beyond the story as presented by the police in their internal investigation. Defense lawyers note that investigating officers are bound by certain procedures in questioning their colleagues and that guards were interviewed in the prosecutor's office. The security forces' statements in the record, however, are short and lacking in detail. Moreover, we observed no willingness on the prosecutor's part to probe in-court witnesses beyond their own previous statements. This responsibility is left to the victims' lawyers.

In both hearings, the chief judge appeared fair in his questioning. He allowed the victims' lawyers to probe the witnesses and recorded the proceedings faithfully. As the delegation at the January hearing observed, however, he omitted some obvious questions. Moreover, he denied the victims' evidentiary motions without explanation, again and again.

In Turkey, the standard of proof for criminal conviction is guilt to a moral certainty. The victims' lawyers have been denied the use of evidence to support affirmatively their version of events and are limited to challenging the occasional witnesses' inconsistent statements and employing circumstantial proof such as the visitation policy to cast some doubt on the official story. Under these circumstances, it is difficult to see how the victims' lawyers can meet the burden of proof for conviction. No one denies that the additional witnesses exist. It is only the lawful refusal to allow them to testify at trial and, in the case of security officers, the lawful refusal to compel their appearance, that impose these fetters on the victims. These, in combination with the prosecutor's lack of diligence, may prove fatal to the victims' case.

If the prosecution fails for these reasons, the victims may be denied the effective remedy required by international law. As the European Court of Human Rights said in *Aksoy v. Turkey*, the right to an effective remedy includes a "thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the

complainant to the investigatory procedure.”¹⁶ Nearly three years after ten prisoners’ skulls were caved in, such a remedy continues to elude those prisoners’ families.

16. *Aksoy v. Turkey*, Eur. Ct. H.R. judgment of Dec. 18, 1996, 26 *Reports of Judgments and Decisions* 2260, 2287, ¶ 98 (1996-VI).