

Statement of Kerim Yildiz

1. My name is Kerim Yildiz. I am the Executive Director of the Kurdish Human Rights Project (KHRP), the Third Applicant, which is an independent, non-political, non-governmental organisation committed to protecting the human rights of all persons living within the Kurdish regions.
2. I am from Turkey and since I have been living in the United Kingdom I have closely monitored the economic and political situation in Turkey, in particular in regard to the ethnic minorities, especially the Kurds. I wrote several books and papers on this issue. From my over 10 years experience in the field of international human rights law and as an human rights activist I would like to give the following statement. As the Director of the KHRP I have been working for the past three years to raise public awareness of the social problems, human rights abuses and environmental damage that will be caused by the Baku-Tbilisi-Ceyhan (BTC) oil pipeline, which is planned to run through Azerbaijan, Georgia and Turkey.

New applicant

3. The KHRP is a party to this case because to a majority of the people whom we are representing the CFI is not open. The original application contained 34 statements of anonymous applicants.
4. In May 2004 a new anonymous applicant submitted his statement to the KHRP in order to be represented by us to have his rights effectively protected. He is himself a representative of many more others who would have liked to submit their statements to the KHRP. Unfortunately, our partners in Turkey who are taking the statements of potential applicants face severe practical problems.

5. The agent of the KHRP, Mr. Ferhat Kaya was recently detained and subjected to harassment and ill-treatment or torture. On 5 May 2004 – shortly after Ferhat Kaya had taken the statement from the new anonymous applicant - he was detained. Allegedly he was taken to hospital for examination and then was humiliated by police officers and very badly beaten up. He was arrested on order of the court and is now in Ardahan prison. Ferhat Kaya appealed against this decision. In a fax sent to the KHRP on 10 May 2004 he stated that the detention and arrest were wholly regarding his political activities and were an act to prevent his activities regarding BTC. Ferhat Kaya has previously travelled to the UK and Italy to attend meetings regarding BTC which was public knowledge. He has also assisted people affected by BTC to take cases to the European Court of Human Rights. He was arrested before when he collected statements for this application. These problems explain why only one new applicant applied to us and another reason why none now would wish their names to be used.

6. In his statement the new applicant sets out that his land was expropriated for the construction of the BTC pipeline. He complains of the inadequacy of the expropriation procedure and of the amount of compensation that was paid to him and the denial of access to redress. His complaints are similar to those of the applicants whose statements were submitted anonymously with the application to the CFI in January 2004.

7. At the time that we made our original application, those affected villagers who had given statements did so only on the condition that the statements remained anonymous. Since then but before the recent arrest of Ferhat Kaya some have taken the decision that they will reveal their names to the European Court of Human Rights, a decisions that reflects both the comfort they draw from the number of cases that have been taken to this court and the fact that such applications have official sanction, in the Foreign Minister Gül who advised those dissatisfied with the BTC project to “go to the European Court of Human Rights”.

8. There are others, however, who remain too frightened to give their names, particularly given the nature of the challenge being made in this case, which, from the viewpoint of the Turkish security services, will be perceived as a direct challenge to the State's authority in having signed the Host Government Agreement (HGA). The fears of such villagers are well founded as the former and current detention and ill-treatment or torture of Ferhat Kaya shows (see para. 5). It is my contention that such villagers are thus unable to represent themselves directly before the CFI. In the absence of my acting as a conduit, they will thus be denied access to justice.

Funding

9. KHRP is in no way opposed to the pipeline itself but we are very much concerned that public money is used to subsidise social and environmental problems. Commission decisions on pre-accession funding led to the financial support of up to US \$1.2 billion of public money through major international funders such as the World Bank and the European Bank for Reconstruction and Development to finance the BTC pipeline. This funding is crucial for the construction of the BTC pipeline. BP admitted this in a paper submitted to the World Bank Extractive Industries Review which took place in December 2003: "In a number of projects the very existence of WBG financial participation may make a project happen that otherwise would not be realised. This is especially for cross-border projects or projects in countries that otherwise would have difficulties in attracting finance. The oil and gas industry sees WBG participation as decreasing risk by providing a *de facto* guarantee that projects will take place in an orderly manner with maximum support from the WBG and host governments."¹
10. Turkey has applied for European Union (EU) membership, but the December 2002 EU summit in Copenhagen told Ankara it would have to wait until at least the end of 2004 before negotiations would start and that more progress

¹ Reactions to EIR Report from Representatives of the Oil Industry, OGP, BP, Shell, December 2003.

would have to be made with human rights reforms. This has encouraged Turkey to continue its plan for reform, in particular its legal reform through the enacting of harmonisation laws. In particular, the present AKP Government is very anxious to fulfil the criteria that are set by the EU in order to make it to the negotiation table in December 2004.

11. In my view this determined commitment of Turkey to become a member of the EU makes Turkey amenable to any advice and influence by the European Commission (EC). If the EC had genuinely considered the HGA and other agreements regarding the BTC project and advised the Turkish Government not to sign these agreements because they drive Turkey from (rather than towards) the *acquis*, and they are in breach of the Copenhagen criteria, I have no doubts that Turkey would have reconsidered the terms of the agreements.
12. In the 1980s after the military coup in Turkey, many European States were very concerned about Turkey's democratic and human rights development as a member of the Council of Europe. The pressure from the international community finally convinced Turkey in 1987 to recognise the jurisdiction of the European Commission of Human Rights to receive petitions from individuals under former Article 25 of the European Convention. This has led to an incredible amount of individual applications to the European Commission of Human Rights and the European Court of Human Rights since then.
13. In the present situation Turkey is even more likely to follow advice from the international community despite resistance from the Turkish military. This showed Turkey's extensive law reform, which entailed seven harmonisation packages so far and just recently a constitutional amendment. Any kind of intervention from the EC would have stopped Turkey from going ahead with the BTC project in the present form.

Discrimination of the Mainly Kurdish Applicants

14. Throughout the pre-construction phase the mainly Kurdish applicants were not consulted properly by the BTC subcontractor in Turkey, BOTAS. Freedom of speech and expression, freedom of association and the right to communicate in one's mother tongue are the basis of an effective non-discriminatory consultation as it should have taken place before the beginning of the construction of the BTC pipeline.
15. Kurds mainly reside in the south east of Turkey. However, during the 1984-1999 fighting between the Kurdish PKK and Turkish military hundreds of thousands of people were internally displaced from Turkey's south-eastern provinces². Many IDPs live in extremely difficult conditions in slums on the periphery of cities and towns all over Turkey. Another area in the north-east of Turkey contains about 30% of Kurds, that is the area around Kars and Ardahan where the BTC pipeline will be passing through. Most of the applicants who have sought assistance from the KHRP are of Kurdish origin.
16. Although about 23% of the total population of Turkey are Kurdish³ the Kemalists' idea of an indivisible, unified State based on one people and one language is still prevailing in Turkey. This involves the suppression of the cultural identity of non-Turkish people within Turkey, particularly the Kurds. This is also reflected in Turkey's human rights record. Statistics from the European Court of Human Rights indicate that, in 2003⁴, there were 2,616 new applications lodged against Turkey in Strasbourg concerning torture, disappearance, extra-judicial killing, the destruction and evacuation of villages, violations of freedom of expression and other violations. Of the 549 judgments giving rise to the finding of a violation of the Convention in 2003, 77 – nearly 1/7 of all judgments against all 45 member states - concerned Turkey.

² Global IDP Project, Turkey: EU accession process puts issue of internal displacement on political agenda, 2004; "According to official figures, 353,000 people were displaced during the conflict, while international observers and Turkish NGOs estimate that the total number may be as high as 1 to 4.5 million" (Global IDP Project, Turkey: EU accession process puts issue of internal displacement on political agenda, 2004).

³ David McDowall, *A Modern History of the Kurds*, London, 2004, p.3.

⁴ Cf. European Court of Human Rights, *Survey of Activities*, 2003 (January 2004).

17. A recent KHRP fact-finding mission and two trial observations have found that the repeal of former laws that were not compliant with international standards through the harmonisation packages have not necessarily led to less repression of the Kurds, in particular in relation to freedom of expression and freedom of association. For example, Article 312⁵ of the Turkish Penal Code is an integral part of the legal panoply that can be used against human rights defenders, political activists, journalists, and writers who voice an opinion on the Kurdish problem. This and other articles contain the sort of imprecise language that allows prosecutors and judges to interpret them in a way that the basic fundamental rights to freedom of association and of expression are denied to Kurdish or pro-Kurdish people.

18. The harmonisation packages now give Kurds the right to learn their mother tongue. Yet to date only three Kurdish Language schools have been opened: in Urfa, Batman and Van. They are private schools so available to the very few. They opened after months of bureaucratic obstructions had been overcome. The majority of Kurds, especially women, does not speak nor read Kurdish so the prohibition on Kurdish language has been one of the most striking human rights abuses.

19. Most of the people in the area around Ardahan and Kars and thus the applicants who are represented by KHRP are of Kurdish origin and their first language is Kurdish, a lot of them do not speak Turkish. They form part of a significant minority group within Turkey. However, no provision was made by BOTAS to cater for their needs as a minority group and in particular their language needs. Documents and project literature that were sometimes handed out to the applicants were usually in Turkish or occasionally English or some other foreign language. Group meetings held in villages and individual meetings held with some of the applicants were conducted in Turkish. This was a failure on the part of BOTAS to properly introduce and implement provisions providing for the translation and provision of materials related to

⁵ Article 312 incriminates actions which “incite hatred and animosity in the heart of the people on the grounds of differences of class, race, religion or region”.

the BTC project into Kurdish and the presence at meetings and BOTAS offices of Kurdish interpreters.

20. Furthermore, a general atmosphere of repression can be found in the area around Kars and Ardahan. A fact-finding mission to the area in March 2003 found evidence of political repression so as to hinder people from speaking openly to the delegates about the project. The delegates of this fact-finding mission were themselves detained on two occasions and, due to police harassment and intimidation, were forced to abandon a number of planned visits.

Impossibility to commence actions in Turkey

21. Several applicants have tried to take legal actions against the pipeline and the expropriation procedure, but the reality on the ground does not allow them to succeed. Due to the limited financial means of the Applicants and the lack of legal aid provisions they were not able to secure independent representation and advice.
22. Further, BOTAS has employed most of the lawyers practising in the Ardahan region. Applicants who did attempt to obtain legal advice were unable to find a lawyer who would represent them.
23. The vulnerable position of the applicants in relation to the State and the language difficulties which they face resulted in the lack of independent legal assistance and any domestic remedy which is available in theory being inaccessible. An Amnesty International Report highlights this problem stating: “Independent legal aid must be offered to the people affected by land acquisition. Without relevant legal assistance from the first negotiation meeting, fair negotiation may be impossible.
The present arrangement is that court fees will be paid by BOTAS, the Turkish state-owned company in charge of land acquisition and constructing the pipeline, but nothing in the IGA, HGA or other project documents guarantees legal aid to landowners. There are likely to be a large number of land disputes

about legal title and about levels of compensation. This could have grave consequences on the population's ability to obtain fair compensation. The majority of the people in the pipeline zone are rural and would have practically no experience in a court of law. Some may not speak Turkish as their first language. In these circumstances, the provision of legal aid is fundamental to a fair hearing and may be the only way to enable people in the zone to challenge expropriation by BOTAS.”⁶

24. This illustrates a distinct campaign on the part of BOTAS to dissuade the applicants from pursuing any remedies which were open to them.
25. It is highly difficult for the applicants to overcome all these practical hurdles, like language and financial problems and intimidations. Most of the applicants who are represented by the KHRP claim that they were told by BOTAS that they could not start legal action against the expropriation; they were actively discouraged by BOTAS from pursuing a legal challenge to the rate of compensation being offered and that they would not achieve anything by bringing a case to court. They were also told that if they went to court the compensation which they would receive would be reduced.
26. Even if that would not be the case it is my understanding that the ‘prevailing legal regime’ of the HGA incorporated now into the Turkish law renders any domestic remedies which the applicants may have had recourse to in theory unavailable and inaccessible in practice. It is notable that none of the attempts by those giving evidence via KHRP or by the First Applicants Mr. Korkmaz to gain access to justice have proved successful. In my experience none of these will be successful, both due to the said prevailing legal regime and the practical hurdles described above.

Kerim Yildiz

Place and Date

⁶ Human Rights on the Line: The Baku-Tbilisi-Ceyhan pipeline project, May 2003, para. 4.1.2.