

## TORTURE - WORKING SESSION 9

### **Current Situation**

The state of Turkey has been a practitioner of torture for decades. Its use of torture against the Kurds, however, climaxed during the civil unrest of the 1980s and 1990s, when outbreaks of violence between the Kurds and the Turkish military reached their height. In recent years of greater peace, however, the instances of torture and abuse have somewhat decreased. In addition, the Turkish government has made legislative reforms in order to modernise its penal system in accordance with recommendations made by the EU. The new Turkish Penal Code redefines the crimes of torture and ill-treatment, increased the statute of limitations for crimes of torture to as much as 20 years, and increased the minimum jail term for conviction of torture from 3 months to 3 years. Nevertheless, legal shortcomings continue to exist. For example, independent medical reports of torture victims are rarely admitted as evidence in court despite the fact that official medical examination reports are often skewed and, in one instance at least, a doctor was accused of participating in the beating of a prisoner.<sup>63</sup> Furthermore, the changes to the Penal Code have not been implemented on the ground. Allegations of ill-treatment often go uninvestigated, and known perpetrators of torture and other abuses have not been held accountable for their actions. Those who are indicted are often

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<sup>63</sup> 'Continuing Abuse in F-Type Prisons', BIA News Centre 18 July 2007.

acquitted, or use tactics to delay proceedings such that the statute of limitations tolls, or the case is thrown out on other grounds. The state of Turkey also continues to allow evidence alleged to be extracted under torture to be brought before court, which goes against international human rights standards and Turkey's legal obligations as a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the ICCPR.

### **OSCE Commitments**

We recall to the Turkish state the following commitments that it has made and ask it to renew its undertaking to respect them.

- Participating States will “ensure that all individuals in detention or incarceration will be treated with humanity and with respect for the inherent dignity of the human person”. (Vienna Document 1989, “Questions Relating to Security in Europe: Principles”, par. 23.2)
- In addition, they will “observe the United Nations Standard Minimum Rules for the Treatment of Prisoners as well as the United Nations Code of Conduct for Law Enforcement”. (Vienna Document 1989 “Questions Relating to Security in Europe: Principles”, par. 23.3)
- Participating States “reaffirm their commitment to prohibit torture and other cruel, inhuman or degrading treatment or punishment, to take effective legislative, administrative, judicial and other measures to prevent and punish such practices”. (Copenhagen Document 1990, par. 16.1)

- The participating States “stress that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”. (Copenhagen Document 1990, par. 16.3)
- Participating States will “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”. (Copenhagen Document 1990, par. 16.4)
- The OSCE will “take up with priority for consideration and for appropriate action...any cases of torture and other inhuman or degrading treatment or punishment made known to them through official channels or coming from any other reliable source of information”. (Copenhagen Document 1990, par. 16.6)
- Participating States will allow an individual or his counsel the right to “make a request or complain regarding his treatment, in particular when torture or other cruel, inhuman or degrading treatment has been applied, to the authorities responsible for the administration of the place of detention and to higher authorities, and when necessary, to appropriate

authorities vested with reviewing or remedial power". (Moscow Document 1991, par. 23.2(ix))

### **Assessment 2006-2007**

In 2006 and 2007 countless human rights defenders and NGOs have issued complaints, reports and appeals to the government of Turkey and the international community deploring the continued practice of torture and outlining the problems discussed above. The Turkish government's reluctance to systematically collect data on occurrences of torture and other abuses, however, makes accurately monitoring the situation on the ground difficult. Nevertheless, several known cases of torture and abuse attracted international attention in 2006-2007.

In December 2006 the Court of Cassation upheld the March 2006 convictions of 8 men in relation to their alleged connection to the Bolshevik Party (North Kurdistan/Turkey), despite the fact that the Chief Prosecutor recommended quashing the original verdicts convicting them. All of the men denied connection to the party in their trials, but the prosecution produced statements purportedly extracted under torture to convict them. The decision to uphold these convictions is particularly troubling in light of the fact that the 8th Chamber of the Court of Cassation is currently hearing a case against the four police officers accused of torturing one of the convicted men.

Conditions in F-type prisons (those with isolation cells) continue to attract international censure. According to lawyer Güray Dag, on 13 June 2007 injured prisoner Kemal Avci was beaten by prison guards and a doctor when he asked to be taken to a hospital. When he complained of this treatment, he was put in a solitary cell for 20 days for “resisting the doctor and civil servants on duty”.<sup>64</sup> Other lawyers from the Contemporary Lawyers’ Association (CHD) stated that six other prisoners who complained of mistreatment were forbidden to see their families for one month and prevented from communicating with anyone for 45 days.<sup>65</sup>

### **Recommendations to the Government of Turkey**

On 28 June 2007, BIA News Centre reported that former head of the Human Rights Association (IHD) Akin Birdal listed concrete steps the Turkish government could take to prevent the use of torture in its prisons. We support and also recommend some of his suggestions, urging the state of Turkey to:

- internalise and truly implement the international and regional conventions against torture to which it has signed;
- take the Law on Police Duties and Authorities before the Constitutional Court and cancel it;

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<sup>64</sup> ‘Continuing Abuse in F-Type Prisons’, BIA News Centre 18 July 2007.

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- sign and ratify the Optional Protocol to the Convention Against Torture, and implement it through such measures as systematic but unannounced prison check-ups by an independent monitoring group;
- create and enforce mechanisms to punish torturers and otherwise stop encouraging this practice.

KHRP encourages the state of Turkey to make its purported “zero-tolerance” policy on torture a reality and eradicate this blemish on the country’s human rights record. KHRP calls on all NGOs, IGOs, government bodies and human rights defenders to support Turkey in this endeavour. It also further recommends that the Turkish government take all necessary steps to stop the practice of torture within its borders, and accordingly urges the state of Turkey to:

- with the aid of an independent monitoring group such as a human-rights-focussed NGO, collect current, accurate and disaggregated data on the occurrences of torture and other serious abuses by law enforcement officials on a regular basis such that a clear picture of the practice of torture and efficacy of anti-torture laws can be achieved;
- seriously and thoroughly investigate allegations of human rights violations by law enforcement officials, and ensure that their trials are independent, impartial and transparent to both the families of the victims and the public overall;

- repeal the statute of limitations for crimes of torture, as this step will remove the incentive for judges and defense counsel to delay trials endlessly;
- hold strict standards on the collection of evidence, and refuse to accept as admissible evidence allegedly extracted by torture unless a thorough investigation reveals that it has not been;
- provide training to all law enforcement officials, gendarmerie, judges and prosecutors on the new anti-torture laws and international human rights standards.

### **Recommendations to the OSCE**

Recalling its stated commitment to uphold the security and well-being of prisoners and eradicate the practice of torture throughout the OSCE region, KHRP urges the OSCE to:

- facilitate dialogue amongst OSCE participating States and provide support for discussions of and investigations into allegations of torture, abuses, degradations and other forms of ill-treatment;
- liaise with NGOs, human rights defenders and official state bodies to remain informed on the topic of torture and any developments that relate to its practice within the OSCE region;
- support Turkey in its endeavours to stop the use of torture