

Report

International Investigative Mission

Turkey:

Torture, still a routine practice

**Comments on the Report of the Republic of Turkey
Concerning the Implementation of the UN Convention against Torture and Other
Cruel, Inhuman or Degrading
Treatment or Punishment¹**

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1. Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Second, Third and Fourth periodic reports of Government of Turkey CAT/2/20/Add.8.

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Executive summary

This report stands as a comment on the report of the Republic of Turkey concerning the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Turkey on August 2nd 1998.

Legislative progress has been undertaken in Turkey in order to comply with EU standards: for example, death penalty was abolished. Named the "Adjustment Package", these changes may be regarded as an important signal of the determination of the Turkish government towards better protection of human rights in the country.

The FIDH welcomes the recent legal reforms which nonetheless remain insufficient. For instance, the definition of torture set out in the Turkish legislation is narrower than the one required by the Convention, whose scope extends to people acting with the support or acquiescence of public officials. Furthermore little has been done to eradicate the practice of torture. Indeed the report indicates that there is no decrease in the infliction of torture compared to previous years in Turkey.

These treatments especially occur to people falling under the jurisdiction of the State Security Court, ie people suspected of political crimes, and particularly, those suspected of being connected to the Kurdistan Workers' Party (PKK)- now called Kurdistan Freedom and Democracy Congress (KADEK). Reported cases of torture of ordinary criminal suspects also occur although the custody period has been shortened. New torture methods are being used that leave no physical signs.

Cases of torture and ill treatment are still very numerous in the Kurdish regions and women often undergo sexual violence.

When it comes to the prevention of torture by the state authorities, the report underlines that although the relevant laws do exist, there are not properly implemented in practice. Thus the report pinpoints the lack of effective and adequate control of the legality of detention by a legal authority within a short period after detention. The right of access to a lawyer is the most frequently denied and harassment and intimidation of lawyers has risen acutely. The same situation applies to family members and the access to doctors is seriously impeded by the conditions under which the examinations take

place (presence of the law enforcement officials, threats on prisoners to withdraw their complaints...).

The FIDH is particularly concerned with the de facto impunity of torturers, which remains a major obstacle in the fight against torture. Turkey fails to carry out adequate and effective investigations into the alleged violations of the right to live and the right to be free of torture. The report presents evidence that public prosecutors routinely refuse to investigate allegations of torture. If they do, however, trials of torture frequently last for months or years. The FIDH is therefore very concerned with the compromised independence of the domestic judiciary.

The FIDH is further concerned with the detention conditions, which do not comply with the international and regional obligations of Turkey especially for political prisoners. Numerous allegations of torture are reported during the transfer of prisoners into F-type prisons. The total isolation of prisoners in F-type prisons is of particular concern as the use of solitary confinement endangers prisoners' mental and physical health.

Therefore, the FIDH urges the Turkish authorities to implement in practice the changes that have occurred in law but which, at this stage, remain mainly theoretic.

The FIDH recommends the Committee Against Torture urge the Turkish Government to:

- Reform the Turkish Courts and strengthen the control of the legality of detention;
- Recognize full access to a lawyer from the outset of the custody;
- Fully implement the legislation adopted regarding the treatment of arrested and / or detained persons;
- Effectively implement the Istanbul Protocol's provisions;
- Put an end to the solitary confinement system;
- Carry out an impartial and effective investigation of torture case and in particular of the prison operations that took place in 1995, 1996, 1999 and 2000 and effectively sanction the authors;
- Ensure that victims of torture obtain redress and have an enforceable right to fair and adequate compensation;
- Ensure education and training programme for all the public officers.

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Introduction

Following are our comments on Turkey's second, third and fourth periodic reports to the UN Committee Against Torture, regarding its compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The information in this report is based on the outcomes of a FIDH fact-finding mission to Turkey undertaken between December 25, 2002 and January 6, 2003. The members of the delegation were Elsa Le Pennec (researcher) and Catherine Teule (Secretary General of the French League for Human Rights).

The aim of the mission was to collect first-hand information to better assess the practice of torture in the country and examine the implementation of the recent legal reforms recently adopted by the Turkish government.

During the mission to Turkey, the FIDH delegation held meetings with many individuals and organisations - both governmental and non-governmental. The delegation met representatives of the main Turkish NGOs including the Turkish Foundation for Human Rights (TIHV), the Human Rights Association (IHD), Mazlum-der, lawyers of the Project "Legal Aid for Women Raped or Sexually Assaulted by State Security Forces" in Istanbul, TOHAV, The Turkish Medical Association, Heads of the Ankara, Istanbul and Diyarbakir Bar Associations, lawyers of the Working Group on Torture Prevention of the Izmir Bar Association. The delegation also met with Turkish authorities including the Undersecretary of the Ministry of Interior, the Chairperson of the Turkish Human Rights Presidency, and the Chairman of the Parliamentary Commission on Human Rights.

1. Preliminary observations

Turkey ratified the Convention Against Torture² on 2 August 1988.

Turkey made declarations under Article 21, recognizing CAT's competence to receive inter-State complaints, and Article 22, which permits the CAT to receive individual complaints. The Turkish government made a reservation in accordance with article 30, paragraph 2 of the Convention to the provisions of paragraph 1 of this article.

Turkey presented its initial report to the Committee against Torture in April 1990³.

Turkey is party to the following UN human rights treaties which

have corresponding treaty bodies: the United Nations Covenant on Economic Social and Cultural Rights⁴; the United Nations Covenant on Civil and Political Rights⁵, the International Convention on the Elimination of all forms of Racial Discrimination⁶, the Convention on the Elimination of All Forms of Discrimination against Women⁷ and the UN Convention on the Rights of the Child⁸.

Regarding relevant UN Charter based bodies, it should be noted that the UN Special Rapporteur on Torture carried out a visit to Turkey from 9 to 19 November 1998 and issued a report on January 27, 1999⁹.

On a regional level, Turkey is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹⁰ and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹¹.

Furthermore, as a candidate to accession to the European Union, Turkey needs to fulfill the political conditions known as the "Political Copenhagen criteria" according to which a prospective member must "*be a stable democracy, respecting human rights, the rule of law, and the protection of minorities*". In that framework, the fight against torture is of course a key issue.

The Copenhagen European Council concluded that if the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfils the Copenhagen political criteria, the European Union will open accession negotiations with Turkey without delay.

Drawing on the analysis of the 2002 Commission's Regular Report on Turkey's progress towards accession¹², the fight against torture was identified by the European Commission as one of the main priorities for Turkey in 2003/2004. In its communication to the Council "Strengthening the Accession Strategy for Turkey"¹³ adopted on 26 March 2003, the Commission suggested a revised "Accession Partnership for Turkey" which further insists on the importance of the fight against torture and ill-treatment.

2. General background

The Turkish Republic is founded on the principle of a unitary State. The organization and functions of the administration are based on the principles of centralization and local administration.

Article 138 of the Constitution states that "*judges shall be*

independent in the discharge of their duties; they shall give judgment in accordance with Constitutional law; and their personal conviction conforming with the Law." It also stipulates that: "... No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, or send them circulars, make recommendations or suggestions."

The Constitution makes the initial appointments of judges and public prosecutors and their subsequent promotions to the Supreme Council of Judges and Public Prosecutors. According to Article 159, the Supreme Council is chaired by the Ministry of Justice and composed of seven members. The Minister of Justice is constitutionally a member both of the executive and of the judiciary. All political life in Turkey is under the control of the judiciary.

The Turkish Government has accelerated its studies concerning political, administrative and judicial reforms in the year 2001. Efforts have been witnessed in order to review the Constitution with priority given to the process of reform in the fields of democracy and human rights on the basis of Turkey's international commitments and EU standards. The Turkish Grand National Assembly (TGNA) passed three additional separate packages known as the "laws of adjustment" in February, March and August 2002.

The FIDH particularly welcomes the legislative package of harmonization adopted by the Turkish Grand National Assembly (TBMM) on 3 August 2002, and more recently the Law Amending some laws N°4778 adopted on January 11, 2003. These changes may be regarded as an important signal of the determination of the Turkish government towards better protection of human rights in the country.

Nevertheless, as will be seen below, in spite of abundant legal reforms, little has been done to eradicate the practice of torture and the FIDH still stresses the deficiencies of the "adjustment packages" together with the particular concern of the factor of effective practical implementation.

Indeed, torture and ill treatment are still routinely practiced in Turkey.

The government's report provides a detailed overview of the new legislation. However, the report fails to give sufficient information regarding the concrete situation and in this aspect does not comply with the CAT's General Guidelines¹⁴.

3. Legal and institutional structure

3.1. Legal provisions relevant to the practice of torture

The domestic law of Turkey has numerous provisions prohibiting and criminalizing torture and ill treatment by State officials.

Most notably:

Article 17/3 of the Constitution provides that "[n]o one shall be subjected to torture or ill-treatment incompatible with human dignity".

Article 243 of the Turkish Penal Code (TKP) establishes maximum criminal sentence of 8 years for [any] *official who tortures an accused person or resorts to cruel, inhuman or degrading treatment in order to make him confess his offence*. Article 245 establishes upper limit of criminal sentence of 5 years criminalizing ill treatment inflicted by law enforcement.

Article 23 of the Regulation on Apprehension, Custody and Interrogation¹⁵ provides that "*the person under custody (...) cannot be submitted to physical or emotional interventions which disrupt free will, such as mistreatment, hampering free will, torture, administering medicine by force, tiring, misleading, use of physical force or violence, use of devices*" and Art 135/a of the Criminal Code of Procedure further criminalizes prohibited methods of interrogation.

In addition, on August 3, 2002, Turkey abolished death penalty¹⁶. Amendment made to article 38 of the Constitution titled "principles relating to offenses and penalties" provides that "capital punishment may be imposed only in case of war, threat of imminent war and for offenses of terrorism".

The legal status of international conventions in Turkish law is regulated in Article 90 of the Constitution. According to paragraph 5 of this provision, "... International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements, on the grounds that they are unconstitutional."

3.2. Institutional organization of the criminal and justice system

According to the Turkish Law, the power of the judiciary is exercised by judicial (criminal), military and administrative

courts. These courts render their verdicts in the first instance, while superior courts examine the verdict for subsequent rulings.

Criminal courts of original jurisdiction are Justice of the Peace Courts (Sulh Ceza Mahkemeleri), Courts of General Criminal Jurisdiction (or Courts of First Instance) (Asliye Ceza Mahkemeleri), and Heavy Penal Courts (Aoir Ceza Mahkemeleri). Justice of the Peace Courts and Courts of General Criminal Jurisdiction have one Judge, and are generally located in the capitals of sub-provinces. Heavy Penal Courts are composed of three judges, one of whom is the head, and are located in provincial capitals.

In addition, State Security Courts deal with political and serious criminal cases deemed to be threatening to the security of the State.

State Security Courts are composed of panels of five members: Three civilian judges and two prosecutors. State Security Courts try defendants accused of crimes such as terrorism, gang-related crimes, drug smuggling, membership in illegal organizations, and espousing or disseminating ideas prohibited by law, such as those "damaging the indivisible unity of the State." Indeed, these special courts deal mainly with cases under the Anti-Terror Law¹⁷ and sections of the Criminal Code relating to free expression. They may hold closed hearings and may admit testimony obtained during police interrogation in the absence of counsel. SSC verdicts may be appealed only to a specialized chamber of the Court of Cassation (Appeals Court) dealing with crimes against state security.

Turkish courts have no jury system, a judge or a panel of judges decides all cases, and render decisions after establishing the facts in each case based on evidence presented by lawyers and public prosecutors. The Supreme Court of Appeal (also known as the Court of Cassation) is the only competent authority for reviewing decisions and verdicts of lower-level judicial courts, both civil and criminal.

Article 9 of the Turkish Constitution provides for an independent judiciary. Under Article 138, judges are protected from instructions, recommendations or suggestions that may influence them in the exercise of their judicial power. Furthermore, no legislative debate may be held concerning the exercise of judicial power in a pending trial and both legislative and executive organs are required to comply with court decisions without alteration or delay. Article 139 of the Constitution provides judges with security of tenure, although certain limited exceptions are authorized.

However, there is continuing concern regarding the extent of the independence of Turkish judges in practice. These concerns center on the make up of the ruling body of the judiciary, the High Council of Judges and Prosecutors and its potential to exert undue pressure on members of the judiciary. Established by Article 159 of the Constitution, the High Council is responsible for appointing, transferring, promoting, disciplining and dismissing judges. The Minister of Justice, a Minister of Justice Under-Secretary and five judges selected by the President, thereby failing to separate the judiciary from the executive, chair the Council. In addition, decisions of the Council are not open to judicial review.

4. The practice of torture

Reported information shows that Turkey has been found responsible for carrying out torture and other forms of ill treatment in the course of or soon after the taking of people into police and gendarmes custody, particularly during interrogation.

4.1. Victims

People suspected of political crimes, and more particularly, those suspected of being connected to the Kurdistan Workers' Party (PKK) - now called Kurdistan Freedom and Democracy Congress (KADEK) - and others falling under the jurisdiction of the State Security Court, are more likely to be subjected to arbitrary arrest and detention, ostensibly under the Law n° 3713 on "Combating Terrorism" adopted on 12 April 1991, the so-called "Anti Terror Law" and subsequently subjected to torture and cruel, inhuman or degrading treatment or punishment¹⁸. People detained under the Anti-Terror Law are tried in the State Security Court, rather than the regular court system. This law fails to safeguard the protection of human rights, and some articles actually encourage violations. Reported cases of torture and/or ill treatment of ordinary criminal suspects, and particularly street children, especially when placed in pre-trial detention, are also of particular concern¹⁹. It is further reported that members of security forces, including "special teams" and anti-terror squads, and Jandarmas committed serious human rights abuses, including torture, particularly in the southeast.

4.2. Methods

The most common methods reported are:

Methods that leave no physical signs: stripping and blindfolding; undressing; sexual harassment; exposure to pressurized cold water, including in the ears and vagina;

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exposure to a ventilator; forced prolonged standing, in the cold; isolation; loud music; forced witnessing or hearing of torture; near-suffocation by placing bags over the head; hindering urination; deprivation of food, beverage and toilets; insults; threats to detainees' relatives; mock executions.

Methods that probably cause physical signs: systematic beatings, including continuous beating on a certain location (fist, kick, stick, drag); pulling out hair, beards, moustaches; squeezing the throat.

Methods that leave signs only detectable by advanced investigation methods²⁰: beatings on the sole of the feet (Falaka) and genitalia; electric shocks; hanging by the arms; "Palestinian hanging" (hands tied behind the back and the body suspended by the tied hands); squeezing and twisting testicles;²¹ vaginal and anal rape including with truncheons or other objects, and other forms of sexual abuses²².

After the recent shortening of the custody period in the Turkish criminal system, torture methods switched to methods that leave no physical signs. In this regard, persons suspected of falling under the Jurisdiction of the State Security Court are more likely to be subjected to more sophisticated torture. However, there is no change in psychological torture methods.

The practice of abducting and torturing people without bringing them into custody has allegedly increased in the past few years, especially in Istanbul, Izmir and Ankara, as a means of circumventing the new regulations on custody periods²³. In addition, the practice of torture in prisons and the repeated excessive and disproportionate uses of force by the security forces since 1995 are alleged to be widespread²⁴.

Some examples of torture and ill treatment are the following:

1) On 23 October 2001, at 7am, the corpse of **33 years old Yunus Güzel**²⁵ was found in his cell at the Anti-Terror department in Istanbul Police Headquarter. He had been detained during operations between October 16 and 22 directed against alleged members of the Revolutionary People's Liberation Party/Front (DHKP/C) and presented as a potential "living bomb" (suicidal attacker). The police announced that he had hanged himself with his bed linen, fixed to the bed that he erected at the wall. However, it has been reported that there was no linen in the room that day, and the persons who were detained on the same day testified that they saw Yunus Güzel being tortured. G. was buried in Hatay on 25 October. Meanwhile Vahit Güzel, Y.G.'s elderly brother, stated that traces of beatings and electric shocks could be seen on the forehead and various parts of his brother's body.

2) On July 2, 2002, lawyer Merve Sen, from the Istanbul Bar was appointed as a lawyer for **16 year-old I.T**²⁶ who was taken into custody because of burglary. He was reportedly beaten, deprived of food and water, insulted, asked to sign a document stating that he was using his right to remain silent and refused. He was threatened with rape with a truncheon. The lawyer wrote a document stating that IT had been ill-treated during this police custody. I.T. was then taken to the Sisli Eftal hospital where doctors issued a medical report. The Istanbul University Psychotic branch gave him a medical examination report according to which he was injured on his right side and suffered a Post traumatic Syndrome Disease (PTSD) due to a high level of physical and psychological ill-treatment.

3) On 30 April 2002, around 10.30 pm, **21 years old Cengiz Yetkin**²⁷ was driving a car on Karsiyaka Izmir street with friends when he was arrested by police officers. He was reportedly insulted and seriously beaten by the police officers while kept under police custody at the Karsiyaka Bostanli police station. He was first taken to the Forensic Medicine Institute and then transferred to the Ege University Hospital where he was treated for bleedings and ecchymosis on his face. The day after, he was presented to the Public Prosecutor and released. Due to the beatings he was subjected to during the police custody, C.Y. was treated at the Human Rights Foundation's branch office in Izmir on May 3.

4) On 12 October 2002, at 7 pm, a **woman Sevcan Serin**²⁸ was taken into custody in the Kemeralti police station with her husband and children. Police officers are alleged to have beaten her husband for one hour and she and her children forced to witness and hear. Her two-months pregnant daughter was threatened with rape.

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Particular concerns are:

Reported cases of torture and ill-treatment in the Kurdish regions (East and Southeast):

Although armed conflict between government forces and the opposition Kurdistan Workers Party (PKK-KADEK) had virtually ended by 2000, and the State of Emergency (OHAL) in the Kurdish regions was lifted on November 30, 2002, repression of human rights activists, pro-Kurdish political parties and organizations has continued. Local party offices, the Human Rights Association (IHD) and the Turkish Human Rights Foundation's branch offices have been regularly raided, and their officials and supporters have been illegally detained, tortured and have "disappeared".

It has been reported that in February 2003, the Turkish government was precisely considering reinstating the State of

Emergency Rule in the southeast, namely in the cities of Diyarbakir, Batman, Sirnak, Siirt, Van and Hakkari to "maintain order" in case of a war in Iraq. For the time being, such measures haven't been put into practice; however, there is a concern related to the presence of Turkish military forces at the Iraqi border and its impact on the human rights situation in the southeast region.

In this context, the FIDH is gravely concerned about reported cases of people being detained and tortured by police in Diyarbakir under Article 3/c of Legal Decree N° 430. Under this decree, prisoners who have to be questioned as part of the investigation of offences giving rise to the declaration of a state of emergency may be returned to the custody of law enforcement agencies for an additional ten days of questioning. The article can be applied again after the end of the ten day-period, which allows police officers to hold individuals in custody for long periods of time²⁹.

1) On 26 July 2002, **Remzi Karadumam** (36), **Ugur Usar** (26), and **Resat Usar** (26)³⁰ were taken into police custody at the Anti-Terror branch of Ankara police headquarters. Two days later, they were handed over to the Anti-Terror Branch of police headquarters in Diyarbakir. On 30 July, a court ordered that they be remanded to Diyarbakir prison. A lawyer met them in prison on 31 July, and reported that they had been subjected to torture and ill treatment including beating and electric shocks while taken into police custody in Ankara. This reportedly worsened after they were transferred to police detention in Diyarbakir. There, they were also apparently sprayed repeatedly with pressurized cold water, had their testicles squeezed, were blindfolded continuously, forced to stay standing by having their wrist handcuffed to an elevated point, not given anything to eat and drink, and two police officers reportedly forced the detainees' head between their legs by sitting on their shoulders. The lawyer observed that the three men were in a very bad physical and psychological state and that there was severe bruising and marks of biting on the arms and legs of R.K. On the basis of the testimonies, the lawyer lodged a complaint about the alleged torture and ill treatment with the Diyarbakir Prosecutor. As a result of the complaint, the three men were taken from prison to be examined by doctors at the local Institute of Forensic Medicine who determined that they should rather be examined at the Medical Faculty of Dicle University, where there was a greater expertise in documenting such injuries. However, on the same day, the Diyarbakir State Security Court (DGM) ordered that R.K, U.U., and R.U. be brought instead to the Anti-Terror Branch of Diyarbakir police headquarters for further interrogation. This was carried out under article 3c) of the Legal Decree N° 430 (which allows individuals to be returned from prison to police detention for an additional 10 days of questioning). Consequently, the three men were taken back into police custody where they were at risk of further torture and ill treatment and not taken to the Medical Faculty of Dicle University.

2) On November 6, 2001, while travelling from Diyarbakir to Van by bus, a **woman B.K.**³¹ was arrested by the gendarmes and taken into custody at the Balaban gendarme station. She was reportedly blindfolded and transferred to another place. There, jandarmas took her fingers print. Later one, she learnt that she was in Gevas jandarma station. She was held in a small cell completely isolated without any access to a lawyer or even to other arrested persons. B.K. was allegedly forced to stay in a corridor and then brought to another cell where jandarmas started to interrogate her while she remained blindfolded. She was beaten, subjected to falaka, threatened with death and rape, insulted, forced to remain naked, exposed to pressurized cold water and sexually abused. She was further forced to drink a juice with a pill inside and lost control. When she woke up, she felt a strong pain in her genital organs and asked to go to the toilets because of the bleedings. B.K. was reported to have been raped for

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five days in the jandarma station and forced to sign documents. She was then presented to a doctor three times during the custody period for a medical examination, but was unable to report the torture due to the presence of a jandarma in the examination room.

3) **Seval Bayindir**, deputy SG of the People's Democracy party (HADEP), alleged that her brother **Önder Bayindir**³² was subjected to torture at the Eskisehir Police Headquarter. She visited him in prison and he told her that he had been sprayed with high-pressurized cold water, beaten to the head and had his testicles squeezed during the two-days custody. **Önder Bayindir** was detained on November 25, 2002 on the allegation of "supporting an illegal organization". Last year, he was discharged from Eskisehir Anatolian University for four semesters for having signed petitions demanding education in Kurdish.

4) **Siracettin Karatas**³³, working for the Kurdish newspaper "Azadia Welat" in Mersin, alleged that he was ill treated after his detention on November 16, 2002. Police officers stopped him in Demirtas quarter when he was distributing the newspaper and asserted that an arrest warrant had been issued against him. They beat and kicked him and took him to the Yumuktepe Police Station. He was handcuffed and thrown into a cell and then interrogated by Anti-terror department's officers. He was threatened with death and told to go back immediately to Bitlis. He was allegedly beaten again and twice taken to the hospital, but despite pains in his hands, his face and in his back, the doctor did not note any complaint. The next day at 3 pm, Demirtas was taken to the prosecutor's office and released without even seeing the prosecutor.

5) A 24 year-old man **Okan Yurdabak**³⁴ was detained at the gendarmerie station in Satay district (Van) on November 5, 2002 after a quarrel between inhabitants of Beyaslan village concerning the ownership of land. Two people had accused him of shooting in the air and the soldiers had asked him for his weapon. When he insisted that he did not have any weapon, he was thrown into a cell, stripped naked and a lieutenant, a sergeant together with a soldier beat him. Later on, they poured salt over his mouth and eyes and he was subjected to the falaka. At the end, the sergeant and the soldier took him to the bathroom and raped him with a truncheon. On November 6, a doctor examined him but he was not informed about the medical conclusions. The prosecutor ordered his release apparently criticizing the soldiers for having ill-treated him. On November 7, Okan Yurdabak filed an official complaint. The prosecutor sent him to Van State Hospital, where he was given a medical report certifying inability to work for 15 days.

Sexual violence perpetrated by State actors

In November 2002, the Ankara Chamber of Doctors, which held a symposium on "Violence against women and doctors" concluded, "*some 58 percent of Turkish women are subjected to beating, violence and sexual harassment*". The FIDH is gravely concerned that Kurdish women, especially those in the southeast, and those whose beliefs are deemed unacceptable to the government or the military are more likely to be subjected to sexual violence and other forms of ill treatment particularly in the Anti-Terror branches of police headquarters.

Forced virginity exams (damaging the mental and physical integrity of women) are of particular concern in Turkey, where they are used as a means of criminalizing, threatening and abusing women, and they target two groups of women particularly vulnerable to such forced virginity exams, i.e. women suspected of prostitution and women detained for

political reasons. In this regard, the FIDH stressed that the United Nations Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) has considered such coercive practices as a form of degrading treatment³⁵.

In addition, the FIDH is gravely concerned by the fact that the definition of rape by the Criminal Chamber of the Turkish Court of Cassation (Yargitay, Besinci Ceza Dairesi) only covers situations involving a man and a woman with the provision of vaginal penetration by the penis ("*Inserting the perpetrator's genital organ (penis) in a woman's body (vagina) in a normal way or in the anus of the female or male victim*"). Other forced sexual acts (such as oral intercourse or penetrating the victim with other parts of the body or with objects) are therefore excluded from the definition of rape.

Some examples of sexual violence perpetrated by State actors in Turkey are the following:

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1) On September 23, 2002, 21 years old Kurdish **woman X**.³⁶ was arrested by police officers and taken to the Anti-terror Branch of Istanbul Police Headquarters on suspicion of being a member of an illegal organization and was detained for 4 days until September 27. X. was reported to have been forced to stand on her feet with her hands pressed to the wall, forced to do movements, beaten, forced to recite the Fatiha sura (a verse of the Coran), deprived of food and toilets, subjected to pressurized cold water, including into her vagina, forced to lie naked on the ground, seized by the hair, to have been spat into her mouth and nose, threatened with rape, stripped naked, blindfolded, her breasts squeezed, forced to take a police officer penis into her mouth, subjected to the Palestinian hanging and given electric shocks (including into the vagina). On September 27, X. was sent to the public prosecutor's office at the Istanbul State Security Court and examined by a forensic doctor (Adli Tip Hekimi). After a very detailed examination, the doctor identified some marks of torture on her back and shoulders. The victim is now held in Bakirköy Women and Children' Prison and Detention centre. She is gravely affected psychologically. A judicial prosecution against the perpetrators is being prepared by the lawyers and the trial file opened by the State Security Court is being followed by the lawyers of "Legal Aid for Women Raped or Sexually Assaulted by State Security Forces" Project in Istanbul.

2) On September 24, 2002, around 6.30 pm, 27 years old Alevi **woman Y**.³⁷ was arrested by police officers at the Göztepe Cesme bus stop, in Istanbul. She was taken into a police car where the police officers addressed her by another name and brought her to the Anti-terror branch of the Istanbul Police Directorate. There, female police officers carried out a body search and she was accused of being a member of an illegal organisation and strongly urged to admit it, and to work for the police. She was allegedly blindfolded, and forced to remain standing. An officer called "Sari" (blond) and whom the victim knows from his voice, reportedly made sounds that suggest sexual intercourse, opened the victim's mouth and spat into it, while other officers held the victim's hands from behind, hit her head preventing her from spitting and forcing her to swallow. At this moment, police officers continuously touched X's body through her clothes. She was reportedly subjected to food, water and sleep deprivation during the whole night while remaining blindfolded, forced to perform movements, mocked, threatened, held by the hair, thrown to the ground and beaten. She was asked if she was virgin and mocked for being from Tunceli, in the southeast. In the morning, she was taken to another floor, stripped naked, and police officers opened her mouth again, spat into it forcing her to swallow many times and rubbed their penises against the victim's sexual organs while she remained standing and blindfolded. She was sprayed with high-pressurized cold water. The last day, police officers sexually abused her, trying to insert a hose into her anus by force while spraying her with high-pressure water. She was reportedly kicked in the stomach and on the sexual organ. On September 27, the victim was brought to the public prosecutor's office at the Istanbul State Security Court. She was presented to a doctor (Adli Tip Hekimi) who conducted a very detailed medical examination and identified marks of torture on her back and shoulders. The victim is now held in the Bakirköy Women and Children's Prison and detention Centre and had applied to be admitted to the Bakirköy Psychiatric Hospital due to serious physical and psychological consequences of the torture she was submitted to.

3) On December 19, 2000, 22 year-old **woman Z**.³⁸, detained in Ümraniye prison, was subjected to violence and sexual abuse during the so-called "Return to life" operation³⁹ in the Istanbul prison. It was reported that Special teams (security forces) used bulldozers to destroy the walls and enter the prison. Prisoners were forced to gather together into the women's ward where the victim was in an open space and they were subjected to a high-pressure water cannon. She was subjected to verbal and physical abuse and threatened with rape. She was then subjected to sexual abuse by the security forces at the moment of the operation. Following these events, X began a death fast in prison and has contracted the "Wernicke Korsakoff" syndrome.

5. Definition of torture (issues under article 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

Although Turkish legislation contains a number of provisions that can potentially be applied in protecting persons from torture, no specific criminal provisions corresponding to what is required by the CAT has been adopted.

Among the numerous provisions mentioned in the government's report, Article 243 of the Turkish Penal Code⁴⁰ deserves closer analysis.

Article 243 provides that "a public officer or a civil servant who tortures or treats a person in a cruel, inhuman or degrading way in order to make him confess his offence, or to prevent a victim, a plaintiff, an intervener in a lawsuit or a witness from indicating the incident or from lodging a complaint or reporting an offence, or for the reason that a person complained, notified or testified about a crime, or for other reason, shall be punished by heavy imprisonment for up to eight years and shall be disqualified from the civil service temporarily or for life".

The FIDH welcomes the amendment to the first paragraph of Article 243, made by Law N°4449 adopted on 26 August 1999, which increases the maximum sentence of imprisonment prescribed from five to eight years. However, this provision remains much narrower than the definition of Article 1 of the Convention against Torture, notably as only a *public officer or civil servant* appear to be covered by this provision whereas the definition in the Convention is much broader and includes persons acting *with the support or acquiescence of public officials*.

The FIDH *would like to urge the government of Turkey to adopt without delay legislation typifying torture as a criminal offence as required by articles 1 and 4 of the Convention Against Torture*.

6. Prevention of Torture

6.1. Existing Norms and rules concerning detention (issues under article 11)

6.1.1. Control of the legality of detention

Article 13 of the Regulation on Apprehension, Custody and

Interrogation provides that "if a person apprehended for crimes committed by one or two persons is not released, he must be arraigned before the competent judge no later than 24 hours after (...) If the crime falls under the scope of the State Security Courts, this period is of 48 hours". This period may be extended under written order of the Public Prosecutor up to 4 days in the case of collective crimes, including crimes falling under the jurisdiction of the State Security Courts⁴¹. If the investigation is still not completed after 4 days, the prosecutor may request the judge to extend the custody period to 7 days before the suspect is arraigned before the judge. For crimes committed in the emergency regions and falling under the jurisdiction of the State Security Courts, the 7 day-period may be extended to 10 days upon request by the prosecutor and decision by the judge.

However, in practice, a fact that contributes to the practice of torture in Turkey is the lack of an effective and adequate control of the legality of detentions by a legal authority within a short period after detention.

6.1.2. Access to a lawyer/Restriction to the right to be represented by a lawyer

Article 144 of the Code of Criminal Procedure (CMUK) provides that "A person who is arrested or detained may communicate with his defender in a confidential environment where third parties cannot hear what is said without the requirement of a letter from the attorney. The correspondence of these persons with defenders cannot be subject to control".

In addition to the Code of criminal procedure, Turkish regulations contain a number of provisions for the protection of rights of suspects, accused persons or persons on trial to be assisted by a lawyer.

The Regulation on Apprehension, Custody and Interrogation sets out the principle and procedure to be applied by police officers when a person is apprehended and placed in custody or detention⁴². Although article 20 of the Regulation provides that any detainee held for common criminal offences has the right to see a lawyer as soon as he is detained by the police, ("the apprehended person may meet with his lawyer at any time without the power of attorney being sought and out of the hearing of others"), it is still reported to be delayed, in practice, for detainees falling under the jurisdiction of State Security Court in contradiction with the new law adopted following the entry into force of the second EU adjustment package on February 4, 2002.

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Article 21 of the Regulation further provides for the right of lawyers to "have an unrestricted access to the detainee's file as regards the suspect's statements, expert reports and records of the procedures at which the suspect is entitled to be present". Article 58 of the Law on Lawyers also provides that " (...) Lawyers should not be subjected to body searches unless they are suspected of offences requiring heavy sentencing".

However, in practice, for years now, the right of access to a lawyer is the most frequently denied and harassment and intimidation of lawyers has risen acutely.

Both the United Nations Committee on Human Rights and the Committee Against Torture, in criticizing the practice of incommunicado detention, have stressed that detainees must be given an opportunity to consult with lawyers from the first moments of the detention.

In spite of these conclusions and domestic regulations, on 14 January 2001, Turkey's three Ministries of Justice, Interior and Health adopted the so-called "Tripartite Protocol" that

provides a legal basis for the harassment of lawyers making prison visits. As well as the violation of lawyer-client confidentiality (Articles 1, 4 and 6 of this Protocol), though protected by a wide range of legal provisions including the above-mentioned article 144 of the Turkish Code of Criminal Procedure, the "Tripartite Protocol" not only permits the searching of lawyers' briefcases but also allows for restrictions to lawyers' visits and eavesdropping on private conversations between prisoners and their lawyers.

Lawyers from various Bar Associations (Ankara, Diyarbakir, Izmir and Istanbul) have documented the systematic and worrying violation of the right to offer and provide legal counsel in particular, since the December 19, 2000 transfer into F-type prisons. Many lawyers have either been banned from seeing their clients or have been given only limited access to the special type prisons.

Examples of the procuracy-investigative and judicial bodies intentionally violating defendants' rights as guaranteed by law are numerous. The range of violations of their rights and harassment faced by human rights lawyers includes:

- 1) Systematic and humiliating body searches imposed on lawyers, at the new special type prisons, included women being forced to take off all their clothes including bras and other underwears. A female lawyer who was strip-searched was forced to remove her sanitary pad, which caused significant personal distress and humiliation;
- 2) Hindering meetings of lawyers with their clients by the personnel of the different law enforcement agencies;
- 3) Allowing meetings between lawyers and their clients only for a few minutes;
- 4) Failure to respect the right to unrestricted access to detainee's files;
- 5) Confiscation of legal files; handwritten notes, taken on the occasion of discussion between lawyers and their clients, returned incomplete or completely confiscated
- 6) Threats from prison staff and office raids.

In connection with the isolation of high-security prisoners, the FIDH is concerned about the situation of KADEK (PKK) President **Abdullah Öcalan**, serving a life sentence as sole inmate in solitary confinement in the Cell Type Closed Prison of Imrali in the Marmara Sea. Relatives and legal representatives from the Asrin Law Office have not been allowed to visit Mr. Ocalan since 27 November 2002. Their right to visit him, fixed once a week on Wednesdays, has been violated under the repeated excuse of bad weather conditions⁴³. Despite the fact that article 28 of the Internal Regulation Remand Institutions clearly provides that "*...the Article 107-116 and 144 of the Code of Criminal Procedure are applied to the acceptance of a representative or a visitor*" in order, the possibility of provision of legal aid and counselling has been gravely violated. (Footnote: Human Rights Association of Turkey, IHD, "*The report of investigation & inquiry of the claims regarding the solitary confinement in the closed prison of Imrali*", February 8, 2003).

6.1.3. Family members

Article 135 of the Code of Criminal Procedure (CMUK) provides that detainees have the right to inform their relatives of their arrest. Article 6 of the Regulation on Apprehension, Custody and Interrogation further obliges the authority to inform the person apprehended of his right to inform his relatives of his apprehension. According to article 155 (amended) of the By Law on the Administration of Penal Institutions and Detention Centres and the Execution of Sentences, inmates are further entitled to make telephone calls to their relatives once a week⁴⁴.

Unfortunately, the reality is far from these provisions.

Relatives of prisoners identified a range of harsh measures suffered during visits to their family member in prison. Types of harassment and intimidation have included prolonged denial of access to their family members, confiscation of correspondence, videotaping and tape-recording of conversations and humiliating strip searches⁴⁵.

6.1.4. Access to doctors

Article 10 of the Regulation on Apprehension, Custody and Interrogation provides that any person in police custody or making statements must be given a medical examination immediately upon arrival and prior to departure from a custody period if transferred for any reason.

Article 10 of the Regulation on Apprehension, Custody and Interrogation further provides that "in cases where there is no restriction with regard to the investigation and to security considerations, the doctor and the person will be left alone during the examination". The existing wording of this provision unfortunately leaves the decision to the discretion of the individual institution administrators.

In spite of these legal provisions, the FIDH remains very concerned about major deficiencies in the safeguards against torture, and particularly, by the conditions under which medical examinations of persons in police custody take place in Turkey.

In practice, indeed, especially in the southeast of Turkey, law enforcement officials are systematically present when suspects are examined at the outset and at the end of their custody. Some of the persons interviewed, including the doctors concerned, indicated that the law enforcement officials had been present despite their objections. It is

further reported that many prisoners have been warned not to make any complaints to the doctor about how they had been treated⁴⁶.

The medical staff must enjoy maximum independence vis-à-vis the detaining authorities as regards the medical decisions they make. In this perspective, the FIDH is further concerned about the practices of the Turkish authorities that weaken the relationship between doctor and patient and that often cause doctors to engage in conduct contrary to medical ethics. Police and security officials exert pressure on doctors to suppress medical findings and sign false medical certificates refuting the occurrence of torture. Death fasting prisoners have also been forcibly transported to hospital where many have refused treatment. In some cases, these prisoners have been reportedly segregated from all other patients in the hospital⁴⁷.

The FIDH welcomes the issuance (circular addressed to all provincial health directorate on September 20, 2000)⁴⁸ by the Ministry of health of Standard forensic examination forms, sexual assault examination forms for women and for men. However, forensic doctors have reported that these forms are not being used in practice, due to a lack of training, time and laboratory equipment to fill these reports properly.

The FIDH reminds the urgent need for prisoners/arrested people to have access to independent and impartial doctors. The FIDH further recalls that the medical examination must in all cases be conducted out of the hearing of law enforcement officials and must be conducted out of sight of officials unless the doctor concerned requests otherwise in a particular case.

6.1.5. Conclusion regarding pre-trial detention practices

The FIDH believes that the following measures should be adopted:

- 1) Control of the legality of detention by an independent judicial body within a short period after detention;
- 2) Measures should be adopted to guarantee in practice the right, already provided by law, for suspected or accused persons to have unrestricted access to a lawyer and be assisted by a lawyer upon detention; and to put a stop to the humiliating practice of body searches on lawyers and detainees relatives;
- 3) The obligation to notify family members of an arrest, which is already provided for by law, should be guaranteed in

practice. Regular family visits from the moment of the detention should also be respected in practice;

4) Guarantee in practice the right to have access to a doctor immediately upon arrest and detention, without the presence of the law enforcement; the right for detainees to have adequate medical treatment; ensure that medico-legal autopsies are carried out by trained forensic specialists in accordance with internationally recognised standards;

5) Prevent de jure and de facto acts of violence during transfers from the place of detention to the court and/or other prisons;

6) Guarantee in practice that detainees are not brought back to police and gendarmerie custody under article 3/c of the Legal Decree N° 430 after having been remanded to prison.

6.2. Prohibition of Statements made under Torture being used as Evidence (issues under article 15)

Turkish legislation bans the use of evidence produced by torture. Article 135/a of the Code of Criminal Procedure provides that "*the statements of the suspect must be based on his own free will. Statements obtained through prohibited measures cannot be considered as evidence (...)*"

Article 254 further provides that "*...evidence gathered illegally as a result of intentional acts of investigation by prosecuting organs cannot constitute a basis for the verdict". In addition, Article 23 of the Regulation on Apprehension, Custody and Interrogation is dedicated to the "prohibited methods of interrogation".*

However, in practice, convictions are based almost exclusively on confessions by the detainees⁴⁹, in contravention to the above-mentioned domestic legislation, article 15 of the Convention against Torture⁵⁰, and the Guidelines on the Role of Prosecutors⁵¹.

6.3. Education (issue under article 10)

Though welcoming the Human Rights Education Program of Turkey (1998-2007) issued by the National Committee on the Decade for Human Rights Education, the FIDH is concerned by the lack of an effective training program on torture, its impact on survivors and the need for its prevention. Such training is very much lacking staff in enforcement centres, police officers, gendarmes, prison, military and medical personnel in Turkey. Unfortunately, there remains a gap in education and training with regards to the Article 10 of the CAT.

7. Right to complain, Obligation to investigate, Initiate Legal Proceedings and Punish torture (issues under article 12)

7.1. The right to complain (issues under article 13)

In Turkish law, in order for an investigation into an allegation of torture to be opened, the alleged victim must be able to support his claim with either a medical certificate or an eyewitness. Clearly, the very nature of torture makes it difficult to provide eyewitness testimony and, consequently, the accuracy of medical certificates takes on decisive significance in the context of potential impunity of perpetrators. Furthermore, detainees frequently cannot identify their torturers because they are blindfolded during interrogation.

The FIDH urges Turkish authorities to fully implement the prohibition against blindfolding detainees adopted in May 2002, including by informing the police, gendarmes, and lawyers of the new rule.

7.2. The obligation to investigate, prosecute and punish torture (issues under article 12)

In Turkey, the de facto impunity of torturers remains a major obstacle in the fight against torture. International and regional monitoring bodies have held on many occasion that Turkey has failed to carry out adequate and effective investigations into the alleged violations of the right to life and the right to be free of torture.

According to Article 153 of the Code of Criminal Procedure, the Public Prosecutor is obliged to launch an investigation whenever a person complains to him about the occurrence of torture or ill-treatment. Furthermore, the provisions specify that the prosecutor must *ex-officio* start an investigation upon receipt of any information about torture or ill-treatment, regardless of whether there is a complaint or not.

In practice, however, the FIDH has been informed of a certain number of cases where judges and law-enforcement agencies do not adequately respond to complaints of torture.

For a number of reasons, both institutional and because of certain legal inadequacies, Turkey does not comply with its obligation to investigate, prosecute and punish torture in the overwhelming majority of cases. Consequently, the persistence of torture is due in part to the failure of prosecutors to monitor adequately the treatment of detainees

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during the detention period and to investigate, in a serious manner, allegations of torture made by the detainees⁵². Public prosecutors who are supposed to directly act by launching investigations upon allegations routinely refuse to investigate allegations of torture. They are either not opening or delaying investigations.

Failure to investigate and prosecute those suspected of murders, torture and other mistreatment seems to occur more frequently when the victims are Turkish citizens of Kurdish origin. Indeed, especially in the Southeast, superiors are using their authority in order to prevent their servants from being tried.

In addition, judges often simply do not take evidence of torture into account. In limited numbers of court cases, torture perpetrators are tried without arrest; therefore, they

can continue their public services. In these trials, defendants are not seriously interrogated. In the very few cases that result in conviction, sentences are often reduced or postponed. According to the data in the judicial records, there was a total of 772 court cases launched in relation to deaths in detention, and a total of 1344 public servants were tried in those cases between 1990 and 2000. 222 out of 308 court cases resulted in conviction between 1994 and 2000, but none of the convicts was in jail as of April 2002⁵³.

Two particularly serious torture cases perpetrated in police and gendarmes custody deserve analysis:

Trials for torture frequently last for months or years. Proceedings against security officials often are delayed because officers do not submit statements promptly or attend trials. Another fact is that many trials are closed because they exceed the time limit:

1) On Dec 26, 1995, 15 students and one of their teachers were taken into custody at the Anti-Terrorism Branch of the **Manisa** Police Department, western Turkey, during eleven days, and charged with being members of an illegal organization. Throughout this period, the victims were reportedly stripped naked, sexually assaulted, hung by the arms, subjected to pressurized water and given electric shocks on different parts of their body, including genitals.

In collaboration with the Izmir Treatment Center of the Human Rights Foundation of Turkey (HRFT), the Medical Chamber of Izmir prepared an alternative medical report on March 14-16 1996 concluding that juveniles had been tortured. The report was based on the official forensic reports, the narration about the detention period by the juveniles themselves, which lawyers forwarded from prison and the quotations concerning their complaints, body diagrams and similar material. The report of the medical chamber indicated that the official examinations during detention were deficient and inadequate. In preparing the official forensic reports, the standards were violated or not applied at all. The official reports were not scientific and could not be taken as evidence that the juveniles weren't tortured. After release, some of the youths applied to the Examination and Report Commission of the Medical Chamber of Izmir. After detailed physical and psychological consultations and evaluations of each, it was proven that the youths were tortured and were still suffering from various health problems related to torture.

Meanwhile the lawyers applied to the European Court for Human Rights, pointing out that the duration of detention exceeded the limits of international agreement. This was followed by a visit of the European Committee for the Prevention of Torture (the CPT delegation inspected Manisa police HQ and interviewed the juveniles and their families).

These developments led to a trial against ten policemen, charged under Article 243 of the Turkish Penal Code, defining torture as a crime. The first hearing was held on June 24, 1996 in Manisa. The policemen did not attend the hearing and caused a delay in the identification process. The trial continued for almost two years and resulted in acquittal.

After the lawyers' appeal, the Court of Cassation took up the case. On October 12, 1998, six months after the verdict, the court decided to quash the acquittal. The Court of Cassation concluded that the evidence concerning torture was clear and the policemen had to be sentenced. In consequence, it demanded the re-trial of the policemen at the local court in Manisa. In spite of this decision, the local court confirmed the acquittal.

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After a second appeal on February 2, 1999, the case was taken to the General Assembly of the Court of Cassation (the highest judicial organ for criminal cases in Turkey), which confirmed the former decision of the Court of Cassation insisting on a sentence for committing the crime of torture. This verdict was final and had to be put into practice by the Manisa Penal Court.

It took the Supreme Court almost ten months to reach a verdict and to complete all official correspondence. The new trial at the Manisa Penal Court started on December 28, 1999. Only two of the accused policemen attended the hearing. According to the verdict of the Court of Cassation, the local court had to sentence the policemen, but the Manisa Criminal Court decided to postpone the session to gather the testimonies of the defendants. There was a series of delays, many of which appeared to be intentional. Indeed, this process was slowed down with distractions and obstructions. As an example of such obstruction, the written testimony of a police officer, assigned to Van Police HQ, could not be gathered despite six formal requests by the local court. The Minister of Interior replied to a parliamentary question: "At the time of the first and second requests the police officer was on duty out of town and when the other four requests were sent, he was on vacation. Therefore, he couldn't testify". All testimonies could be gathered on November 15, 2000, and the local court finally sentenced all defendants to ten months' imprisonment for each victim totalling 60 to 130 months' imprisonment per policemen.

But the court did not allow the lawyers of the defendants to make a last defence. The lawyers appealed the decision and, on 2 May 2001, the 8th Chamber of the Supreme Court quashed the sentences ruling that the lawyers had been restricted (procedural fault). The next trial at the local court started on July 18, 2001. The same process of obstructions and postponements was repeated and the trial lasted for one year and a half. Meanwhile all demands for investigations and trials concerning the negligent attitude of the local court and of some other officials resulted in rejections and acquittals. Finally all procedures were completed on October 16, 2001 and the Manisa Penal Court renewed its verdict, sentencing the policemen to the above-mentioned sentences.

The trial at the Izmir State Security Court (DGM) against the juveniles, based on the accusation of being members of an illegal organization resulted in acquittal on November 29, 2000. Due to a "friendly settlement" at the ECHR, which was suggested by the Turkish government, the State had to pay compensation to the children.

At the moment the case is once again before the Court of Cassation, on procedural grounds. If the Supreme Court does not confirm this verdict on the procedural fault before 25 June 2003, the defendants will go unpunished, since the time for conviction under Article 243 TPC will have expired by then.

Considering the efforts by the accused policemen, authorities and by the local court to lengthen the case as much as possible, in spite of the positive verdict of the Court of Cassation, it is most likely that the case won't come to an end before that date.

The Manisa case is just one example of many torture cases in Turkey. However, this case differs from others firstly because it gathers broad circles of families, lawyers, politicians and artists around the fight against torture. Furthermore, this case is of utmost importance for Turkish scientific NGOs, and in particular for the Human Rights Foundation of Turkey (HRFT). The "alternative forensic reports", which were provided by the Examination and Report Commission of the Medical Chamber of Izmir in collaboration with the Izmir Treatment Center of HRFT, were among the most important proofs, which led to the verdicts of the Court of Cassation.

2) Süleyman Yeter's case

On February 21, 1997, **Suleyman YETER**, member of the Limter Is trade union and a journalist; was placed in custody with a group of friends, accused of being members and leader of the MLKP organization (Marxist Leninist Communist party). After that they were transferred to the office of counter-terrorism within the head office of the police prefecture, in Istanbul, where they were kept in detention and tortured until March 6, 1997.

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At the hearing before the DGM judge (State Security court) in Istanbul, on March 6, 1997, Suleyman YETER and his friends filed a complaint against the police officers. Thanks to the efforts and perseverance of their friends and family, and supported by public opinion, the Tribunal State Security judge, who had questioned the suspects, decided to launch an enquiry into the allegations against the policemen.

Following the complaint by fifteen victims, the public prosecutor of Fatih (neighborhood of Istanbul) opened a case against eight policemen. As for Asiye Güzel ZEYBEK, who was raped in custody and imprisoned in Kirklareli, she was not able to file a complaint within the deadlines, and was therefore only heard as a witness. Asiye then obtained a report confirming rape from the department of psycho-traumas of Cerrahpasa medical school. Despite this medical report, the public prosecutor of Fatih refused to launch an enquiry. The case is currently before the European court of human rights. Sultan ARIKAN SECIK, also a rape victim, and other victims identified the torturer policemen without hesitation.

The medical reports, that confirmed inability to work, established by the prison doctor and by the DGM forensic scientist, and the detailed reports by the TIHV (Foundation for Human Rights in Turkey), both acknowledged torture and mistreatment suffered by the various victims during custody.

Suleyman YETER, after his release by the 3rd DGM, continued to prosecute the torturers before the 7th Chamber of the Criminal court. For this reason, he has often been placed in custody and tortured by policemen and soldiers. He insisted that the torturers be tried despite the threats that he received, and the acts of torture he suffered. Each time, before the tribunal, he talked about the threats and acts of torture he underwent. During the last hearing, he showed the court the after-effects of those torture acts on his leg, convincing the Registrar to describe them in the minutes.

On April 29, 1999, Suleyman and his friends were due to be confronted to their torturers before the 7th Chamber of the Criminal court, but Suleyman could not make it to the hearing, which was the most important of the case. Indeed, on March 5, 1999, Suleyman, and other persons present that day, were arrested in the building of the newspaper "Solidarity for a world without exploitation" and placed in custody again. However, Suleyman's name was not immediately registered, unlike those of his friends. It was only after remarks and pressure from Suleyman and his friends that the policemen finally accepted to register his name.

The policemen responsible for Suleyman's placement in custody that day are those who were accused of torture in the above-mentioned case. Suleyman was due to identify them at the hearing. According to the testimony of Bayram NAMAZ, also placed in custody, the last time he ever saw him, Suleyman was being taken to be questioned by Yusuf ÔZ, who was to be identified as torturer. When the policemen came to take Suleyman, his co-detainee offered him his coat, but the policemen replied that he would no longer need one.

Following numerous torture sessions, Suleyman YETER died on March 6, 1999. The report by the first section of the Direction of forensic science dated July 28, 1999, clearly stated that the cause of death was torture. After observing and analyzing several scars, bruises and scratches, the doctors stated. "according to the definition of torture set out in the World Health Organization Tokyo Declaration, he suffered a general trauma of the body while in custody".

Suleyman's family and lawyers, and various organizations filed a complaint with the public prosecutor of Fatih, supported by the above-mentioned report, testimonies, photographs and other pieces of evidence. However, the heads of the police prefecture were not targeted. Only one case was opened against a deputy-superintendent and three policemen on the basis of articles 243, 452/2 and 31,33 of the Criminal code.

The lawyers filed a complaint against the police prefecture and the Head office of the counter-terrorism department, because they deemed that they had not taken any preventive measures: the interrogation did not take place in compliance with applicable norms, and the superior instances were responsible for the conditions that facilitated

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acts of torture. According to the lawyers, the policemen who took part in the interrogation could not be the only ones considered as responsible in so far as they were obeying orders. The 6th Chamber of the Criminal court of Istanbul refused to register the complaint and moreover, even refused to hear those responsible as mere witnesses.

Parallel to this, the statute of limitations for the case before the 7th Chamber of the Criminal court will expire soon. Just like the others, the suspected policemen's lawyer, İlhami YELEKCI, gave up the case, which implies that the proceedings will resume soon. For this reason, in order for the suspects to hire new lawyers, the case began from scratch. It is a method used for gaining time.

During the last two hearings, the policemen's lawyers tried to bring repentant individuals to the bar, in order to prolong the trial even more. During the penultimate hearing, the suspects' lawyers asked for the audition of Semra POLAT DUYAR, a repentant, who has no link whatsoever with the case. Following the refusal by the court, another repentant, Ahmet Hasim BARAN, was proposed because he used to belong to the same organization as that of the victim's torturers. Each time their demand is refused, the lawyers resign under the excuse of limitation of the rights of the defense.

During the last hearing, held on November 6, 2002 - the statute of limitations expiring on December 17 - one of the judges reacted and questioned the fact that the case was not being judged, and he opposed the request for postponement due to abusive use of the rights of the defense and of non accurate excuses. If a verdict is not rendered during the hearing of December 2, 2002 or before December 17, 2002, the case will be closed due to expiry of the statute of limitations.

Notes: the judgment in this case was rendered on December 2, 2002. Among the suspected policemen, four were acquitted. The two others were sentenced to symbolic short sentences, and, given their promise to not re-offend, these sentences were commuted to suspended sentences.

An action for annulment was made before the Court of cassation against the acquittal judgments and the suspended sentences. As long as the Court of cassation does not render its final decision in this case, the actions risks being disallowed due to expiry of the statute of limitations.

For years, the state has sought to break up large groups of organised, left wing political prisoners. The prisoners themselves, well aware that isolation from their comrades would leave them at the mercy of torture methods of the prison warders, have conducted a series of hunger strikes, rebellions and hostage seizures to block transfers. Since 1995, major military operations aiming at putting an end to prisoners' protests denouncing detention conditions have included the following events without resulting in any full and effective investigation:

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In January 1995 at the **Istanbul Umraniye Prison**, Turkish security forces killed three prisoners. One year later, in September 1996 at the **Diyarbakir Prison** ten prisoners were killed and many other inmates injured. In addition to these events, the following operations in Turkish prisons since 1999 deserve further analysis:

1) On 26 September 1999 at the **Ankara Central Closed Prison and Penitentiary** [commonly known as **Ulucanlar Prison**] in which 10 political prisoners were killed and 28 have been injured in a violent clash with guards and soldiers:

Following the events of 26 September 1999, the UN Special Rapporteur on Torture advised the Turkish authorities about his concerns in this prison where an excessive use of force by law enforcement officials had taken place⁵⁴. In June 2000, the Human Rights Sub-Committee of the Turkish Grand National Assembly (TGNA) issued a press statement on its report on the Ulucanlar killings and concluded that excessive use of force had been used. The Subcommittee report asserts that there was tangible evidence that acid was thrown onto the inmates and further stated that they had observed on corpses and on the wounded traces of burns that could not have been inflicted by flames. Forensic experts testified that these could possibly have been inflicted either by dehydrate and sulphuric or nitric acids; (...) forensic experts have also reported on the wounded and the killed bruises in the shape of rails, rounds and rifle butts. Likewise, they also noted head and body injuries, broken jaws and signs of suffocation." According to the Special Rapporteur's report, the circumstances of the ten prisoners' deaths in the Ulucanlar prison were reportedly disputed and legal representatives and relatives of the dead were denied access to the bodies during the autopsies. Nevertheless reports emerged that the dead prisoners had had their throats and faces slashed, and their arms and legs were broken.

However, despite these conclusions issued both at the domestic and international level, there has been no follow-up to date.

2) On 5 July 2000, 61 prisoners were seriously wounded at the **Burdur High Security prison**. State security forces were alleged to have thrown smoke bombs, tear gas and nerve gas into prison wards and to have started to break down cell walls with bulldozers. Security forces reportedly attacked prisoners with iron poles, truncheons, roof tiles and stones, dragged unconscious prisoners out of the wards with long-handled hooks, and sexually assaulted unconscious female prisoners.⁵⁵ Lawyers permitted to meet some of these prisoners on July 8 stated that all had visible signs of severe injuries on their bodies and had difficulty breathing and speaking. However, in April 2001 - nearly a year after the attack - the Governor of Burdur rejected the prosecutor's request to open an investigation concerning 405 security officers, against whom a formal complaint had been lodged.

3) In the early morning hours of December 19, 2000, over 10000 members of the Turkish security forces commenced a simultaneous military raid into twenty prisons across Turkey. "**Operation return to life**", as this planned military intervention was called, aimed at enforcing the transfer of over a thousand prisoners into Turkey's newly-constructed "**F-type prison**" and to halt the widespread hunger strikes and "death fasts" of political prisoners who had been protesting against the introduction of F-type prisons since October 2000.

During the operation, many prisoners who were already weakened as a result of their hunger strike were allegedly sprayed with inflammable liquid and burned alive. In the case of Istanbul Barmapasa prison, sporadic gunshots were reportedly heard as well as helicopters used to transport police directly inside the prison. In Istanbul Umraniye prison, it was reported that bulldozers were used to destroy walls and enter the prison. Within both of these prisons, reports have indicated the use of chemical gasses and special explosive bullets by State Security forces⁵⁶. Similar operations were undertaken in prisons in Ankara (including the Ulucanlar prison), Ceyhan, Bursa, Aydin, Buca, Usak, Canakkale, Kirsehir, Nigde and Cankiri. By the time the operation was over, 30 prisoners lay dead alongside two dead prison gendarmes.

Many prisoners have submitted formal complaint about the excessive and disproportionate violence and ill treatment they suffered in the course of the December 2000 prison intervention and their transfer to F-type prisons. However, rather than initiating investigations into the actions of the security forces, the Turkish State has instead commenced investigations against the prisoners themselves.

8.Redress (issues under article 14)

Torture victims seldom if not ever obtain redress in Turkey. One the reason is that in practice, civil procedures depend on the result of criminal procedures so that it is impossible to obtain compensation in the civil courts for torture if there has been no conviction of the person responsible. However, one of the most important reasons, which make it merely impossible to obtain redress, is the lack of independent court of law as an autonomous constituent of the state power in the Republic of Turkey.

The FIDH urges the Turkish government to ensure full reparation and redress, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

9.Detention conditions (issues under article 16)

Concerning the existing legal guarantees to protect detainees, the Protocol on the Effective Operation of Administration, External Protection and health Care Services in Penal Institutions and Detention Centres ("*Triple Protocol*") signed by the Ministry of Justice, Ministry of Interior and the Ministry of Health, which came into force on January 17, 2001, contains provisions regarding the admittance, treatment, medical examination and transfers of prisoners in accordance with relevant legislation.

The discrimination in the treatment of detainees throughout the legal and systematic isolation of political prisoners is of particular concern in Turkey. Article 78/3 and Article 78/4 of the Official Prison Regulations, adopted in 1983, introduced the category of "political prisoner" as well as the category of "terrorists and anarchists". Today, those subjected to the most alarming examples of this discrimination are prisoners who are charged and sentenced under the Anti-Terror Law that was adopted by Turkey in 1991⁵⁷.

The generally poor conditions of detention in prisons have remained key problems in Turkey since the 1980's. Following the military overthrow of the Turkish government in 1980, left-wing movements, including Kurdish movements for minority and cultural rights, have been systematically and brutally repressed and Turkey's prison system has been flooded with thousands of political prisoners. Beginning in 1989, a growing trend of prisoners being tortured during forced transfers into smaller cells started. In reaction, throughout the 1990s, increasing numbers of prisoners' protests were organized in

the form of large-scale hunger strikes. The military operations conducted to put down these prison protests during the past ten years have been notably bloody⁵⁸.

The FIDH has documented a wide range of allegation that prisoners were beaten and submitted to intrusive or humiliating search techniques by members of the gendarmerie and prison staff either during the transfer into the F-type prisons or upon admission into the new prisons. According to the Human Rights Association (IHD), prisoners transferred during the 19 December operation were allegedly subjected to wide-ranging ill treatment and torture including incidents at the Edirne and Kandira F-Type prisons in which prisoners were reportedly raped with truncheons, beaten and forced to eat their own hair after having had it forcibly shaved off⁵⁹.

Yet, in his report from his visit to Turkey in November 1998, the UN Special Rapporteur on Torture Sir Nigel Rodley stated "*...the practice of torture in prisons and use of excessive force to terminate disturbances are also alleged to be widespread.*"⁶⁰

In this regard, the FIDH welcomes the announcement in the State Report of the coming setting up of "well-trained emergency intervention teams". However, the FIDH urges the government to provide law enforcement officials with a full and effective human rights training in line with the UN Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials and the Basic Principle on the Use of Force and Firearms by Law Enforcement Officials.

The F-type prisons' solitary confinement and related concerns

A matter of particular concern is the phenomenon of isolation of prisoners that has been introduced through the F-type prisons. It has been generally acknowledged that the use of solitary confinement endangers a prisoner's mental and physical health and must only be applied with extreme caution. In addition to the genuine threat of increased ill-treatment and torture posed by the F-type prisons, it is important to note that the F-type's introduction of isolation can itself be seen as a form of cruel, inhuman or degrading treatment or punishment. Under certain conditions, it has been considered as constituting inhuman treatment. The Committee against Torture has expressed repeated concerns about the use of isolation and in certain instances has recommended its abolition⁶¹.

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Whilst the amendment on 1 May 2001 of Article 16 of Law N° 3713 on Combating Terrorism⁶² (so-called "Anti-terror Law" which had previously provided for isolation of all political prisoners) is welcomed, the FIDH remains deeply concerned by the inadequacy of these provisions which failed to address key concerns from leading Turkish and international human rights organizations. The amendment offers only limited amelioration of F-type confinement and fails to effectively protect all prisoners against isolation or to guarantee an acceptable level of association. Although the amendment of Article 16 provides for prisoner participation in educational, sports, vocational training and other social and cultural activities, participation in these activities can only take place within the framework of certain rehabilitation and educational programs, which are to be developed with specific categories of prisoners in mind. The categorization of prisoners is to be based upon the nature of offence committed, the prisoner's conduct and the prisoner's areas of interest and capabilities. In effect then, rather than offering objective criteria against which prisoner's participation in communal activities can be monitored, this amendment offers instead highly subjective criteria for these program which is open to abuse by prison authorities. Furthermore, the duration and objective of the program, as well as the number of participants allowed to participate in them, are all made subject to the security conditions and facilities within the institution.

of cultural relativity {that} may enter into the determination of what acts may amount to degrading treatment"⁶³.

Without reasonable access to communal activities, the detainees' physical and psychological health remains in danger alongside their increased risk of facing torture or ill treatment in 1-and 3-person isolation cells.

In this context, the FIDH recalls the absolute necessity for prisoners to be able to spend a reasonable amount of time each day in open-air activities.

The FIDH is also concerned about the inappropriate treatment in relation to the cultural background of the majority of Turkey's political prisoners. For the most part, Turkey's political prisoners come from Turkish and Kurdish working-class and peasant communities where daily social life evolves from one's "extended family". Unlike the situation in most European prisons where 1 - and 3-persons cells are welcomed as appropriate for prisoners' privacy and mental well-being, for the majority of Turkish and Kurdish political prisoners, living in cell isolated from others amounts to a particular form of mental torture. In this regard, the definition of the terms "cruel, inhuman or degrading treatment or punishment" can be subjectively defined, as Professor Sir Nigel Rodley has pointed out with regard to a "*notion of a sort*

Conclusions and Recommendations

Conclusions

The remaining widespread use of torture and other ill treatment in Turkey profoundly worries the FIDH. The monitoring of the practice of torture indicates that there is no decrease in the infliction of torture compared to previous years in Turkey

While acknowledging that Turkey's recent efforts and reforms have produced significant changes in law, the FIDH stresses that very few concrete changes in practice are as yet apparent in Turkey. Many of the reforms require the adoption of regulations or other administrative measures. Some deficiencies remain apparent from a legislative perspective, but the deficiencies are most acute from the level of implementation of legislation and the enforcement of the law against perpetrators of such violations. Certain practical safeguards are still lacking and until these are in place, implemented and enforced in practice by executive and judicial bodies at different levels throughout the country, people are at risk of severe ill-treatment by the police, gendarmerie and security forces and Turkey will remain in breach of its most fundamental obligations under the CAT.

Some main areas of concern which contribute to the practice of torture and other ill-treatment are:

The compromised independence of the domestic judiciary: The absence of independent and impartial enquiries to apportion responsibility for torture in police and gendarmes custody and deaths in detention which have resulted from torture or armed interventions by the security forces demonstrates the lack of will on the part of the Turkish authorities to combat impunity.

The failure to investigate prisoners' killings and to bring the perpetrators to account and provide adequate remedies for the victims had indeed bred a culture and cycle of impunity and resulting resentment.

Recommendations

In this context, the FIDH reminds the urgent need for Turkey to ensure that changes in theory are matched by equivalent changes in practice.

Regarding the criminal justice system in Turkey, the FIDH recommends that the Committee Against Torture urge the Government to:

- Reform the Turkish courts and in particular, lift the State Security Court;
- Introduce a law providing for the possibility of questioning the legality of a detention before an independent court immediately upon arrest through a procedure such as that of *habeas corpus*

Regarding the treatment of arrested and/or detained persons in Turkey, the FIDH recommends that the Committee against Torture urge the Government to:

- Ensure that all persons deprived of their liberty by law enforcement agencies, irrespective of the crime of which they are suspected, be granted the right of access to a lawyer from the outset of their custody;
- Ensure the implementation in practice of the recent changes made in the State Security Courts (DGM) Law allowing detainees held for offences under the jurisdiction of these courts to meet with their lawyers immediately and at any time, and to inform their relatives on their arrest;
- Fully implement the prohibition against blindfolding of detainees adopted in May 2002, including by informing the police, gendarmes, and lawyers of the new rule;
- Put an end to the practice carried out under article 3c) of the Legal Decree N°430 which allows individuals to be returned from prison to police detention for an additional 10 days of questioning;
- Ensure the implementation in practice of the article 155/a of the Regulation on Execution and Remand Institutions that put in order a convict's request for making him benefit from the right to phone call;

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- Effectively implement the Istanbul Protocol's provisions (Principles on the Effective investigation and Documentation of Torture and other cruel, inhuman or degrading treatment or Punishment, Article 6 a) contained in the article 10 of the Regulation on Apprehension, Custody and Interrogation) providing detainees with prompt medical examinations, including daily examinations during periods of interrogation, that are free from interference from law enforcement officials and conducted by independent doctors;

- Prevent de jure and de facto acts of violence during transfers from the place of detention to the court and/or other prisons;

- Put an end to the humiliating practice of searches on visiting days, by lifting restrictions on visits by lawyers and detainees' relatives;

- Ensure the right of prisoners to spend a reasonable part of the day outside their cells, and in particular, ensure that the provision for communal activities within special-type prisons in Turkey be closely monitored by independent external monitoring bodies and not left to the discretion of individual institutions;

- Implement in practice the national system of visiting boards to visit police and gendarmes stations to interview detainees and inspect facilities, including regular and unannounced inspections by independent and competent administrative authorities, including members of the public.

- Put an end to the solitary confinement system and enter meaningful negotiations in the desperate prison situation prevailing since the forced introduction of F-type prison in December 2000.

Regarding the impunity of torture perpetrators in Turkey, the FIDH recommends that the Committee against Torture urge the Government to:

- Carry out a full, impartial and effective investigation of the prison operations that took place in 1995, 1996, 1999 and 2000, especially with regard to the excessive and disproportionate use of force; investigate the revelations concerning the use of chemical substances and special bullets, and the acts of torture that were perpetrated during the operations carried out on 19 December 2000 and during the transfer of prisoners to the F-type prison; promptly publish the results of this investigation; ensure that those responsible are prosecuted without delay and provide appropriate and adequate remedy to the victims;

- Ensure that proceedings against torture perpetrators are not delayed and do not result in acquittal due to the time limit; and in particular, ensure a fair and timely verdict in the "Manisa Youth trial" and the "Süleyman Yeter trial";

- Ensure that sentences for torture or ill treatment are commensurate with the gravity of the crime.

Regarding medical issues, the FIDH recommends that the Committee against Torture urge the Government to:

- Ensure a systematic use of the Standard forensic medical forms elaborated by the Ministry of health in general and the General Forensic Examination Forms, Sexual Assault Examination Forms For Women and For Men in particular;

- Ensure that doctors are provided with adequate and sufficient laboratory equipment in order to prepare adequate medical reports.

Regarding education, the FIDH recommends that the Committee against Torture urge the Government to:

- Ensure education and training for all judges, Public Prosecutors, civil servants, prison superintendents, health personnel in penal institutions and internal security personnel. This should include specific training on the Convention Against Torture, Standard Minimum Rules for the Treatment of Prisoners, the Regulation on Apprehension, Police Custody and Interrogation and education designed to prevent gender-specific forms of torture, including rape and other form of sexual violence.

Regarding the issue of redress, the FIDH recommends that the Committee against Torture urge the Government to:

- Ensure that victims of torture obtain redress and have an enforceable right to fair and adequate compensation.

Turkey: Torture, still a routine practice

Notes :

- 2.** Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 39/46 of December 1984, entry into force on 26 June 1987.
- 3.** See Initial reports of State parties due: Turkey 31/08/89, CAT/C/7/Add.6. See also Conclusions and recommendations of the Committee against Torture: Turkey, 14/11/90, A/46/44, para.87-117.
- 4.** International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entry into force 3 January 1976, signature on 15 August 2000.
- 5.** International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entry into force 23 March 1976, signature on 15 August 2000.
- 6.** International Convention on the Elimination of All Forms of Racial Discrimination adopted by General Assembly resolution 2106.
- 7.** International Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, accession on 20 December 1985.
- 8.** Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, ratification on 4 April 1995.
- 9.** E/CN.4/1999/61/Add.1.
- 10.** Turkey ratified ECHR on 18 May 1954.
- 11.** Turkey ratified the European Convention against Torture on 26 February 1988.
- 12.** 2002 REGULAR REPORT ON TURKEY'S PROGRESS TOWARDS ACCESSION {COM(2002) 700 final}, 9.10.2002.
- 13.** COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, Strengthening the Accession Strategy for Turkey Brussels, 26.3.2003, COM (2003) 144 final.
- 14.** The Guidelines specify regarding Part 1 h (iii) "The States parties should provide, in particular, information concerning: ...iii) Complaints, injuries, indictments, proceedings, sentences, reparation and compensation for acts of torture and other cruel, inhuman or degrading treatment or punishment.
- 15.** The Regulation on Apprehension, Custody and Interrogation entered into force on 1 October 1998.
- 16.** "The Third Adjustment Package" consists of the "Law No. 4771 Amending Various Laws" endorsed by the Turkish Grand national Assembly on August 3, 2002.
- 17.** Law N° 3713 on "Combating Terrorism", adopted on 12 April 1991.
- 18.** See for example Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 February to 3 March 1999, CPT/Inf. (2000) 17, 7 December 2000; Report of the Special Rapporteur on Torture, E/CN.4/2001/66. 25 January 2001. Para 1139.
- 19.** Committee on the Rights of the Child: Turkey 09/07/2001. CRC/C/15/Add.152 (Concluding Observations/Comments).
- 20.** See below at 7.1.4 (Access to doctor): Problems involving the lack of forensic training and equipment of medical personnel.
- 21.** TIHV, Human Rights Foundation of Turkey, *Recent situation on Human Rights in Turkey* (2001-2002), Prof. Dr. Veli Lök, Izmir Medical Chamber, President of the Examination and Report Commission.
- 22.** Project "Legal Aid for Women Raped or Sexually Assaulted by State Security Forces", Sexual violence perpetrated by the State, A Documentation of Victims Stories.
- 23.** Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, Para. 16.
- 24.** See below at 8.2 and 10 for cases; See also Observer mission report, "The F-type prison crisis and the repression of human rights defenders in Turkey", Report from a fact-finding mission to Istanbul and Ankara on 5-11 May 2001 with Updates, KHRP, OMCT and the EMHRN, October 2001.
- 25.** Human Rights Foundation of Turkey, TIHV, Press Release 11 July 2002.
- 26.** IHD Istanbul branch office, 2002 Report, *2002 Dönemi Iskence Basvurulari Raporu*, n°96.
- 27.** Human Rights Association of Turkey, IHD Izmir branch office, 2002 Report Torture and Ill-treatment, issued on December 28, 2002, Case n° 1.
- 28.** *Ibid.* Case n° 8.
- 29.** Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey from 21 to 27 March 2002 and Response of the Turkish authorities www.cpt.coe.int/en/states/tur.htm
- 30.** IHD Diyarbakir branch office, 2002 Report (except December).
- 31.** *Ibid.*
- 32.** Human Rights Foundation of Turkey, TIHV, Press Release, November 2002.

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33. *Ibid.*
34. *Ibid.*
35. See Concluding Observations of the CEDAW: Turkey. 12/08/97. A/52/38/Rev.1, para.178: "The Committee noted with the gravest concern the practice of forced gynaecological examinations of women in the investigation of allegations of sexual assault, including of women prisoners while in custody. The Committee emphasized that such coercive practices were degrading, discriminatory and unsafe and constitute a violation by State authorities of the bodily integrity, person and dignity of women".
36. Project "Legal Aid for Women Raped or Sexually Assaulted by State Security Forces, Case N° 160.
37. *Ibid.*, Case n° 159.
38. *Ibid.*, Case N° 153.
39. See below. Issue under article 16 of the CAT in Section 10. On 19 December 2000, Turkish security forces commenced a simultaneous military raid into twenty prisons across Turkey in which 30 prisoners were killed, aiming at enforce the transfer of over a thousand prisoners into Turkey's newly constructed "F-type prisons.
40. Turkish Penal Code, Law N° 765.
41. Article 14 of the Regulation on Apprehension, Custody and Interrogation.
42. The Regulation on Apprehension, Police Custody and Interrogation entered into force on 1 October 1998.
43. See News Flash "Council of Europe Anti-Torture Committee examines conditions of detention of Abdullah Öcalan, Strasbourg, 19/02/03. Website: www.cpt.coe.int
44. Details arranged in a Regulation published in the Official Gazette on 23/6/2001.
45. Observer mission report, "The F-type prison crisis and the repression of human rights defenders in Turkey", Report form a fact-finding mission to Istanbul and Ankara on 5-11 May 2001 with Updates, KHRP, OMCT and the EMHRN, October 2001.
46. Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey from 21 to 27 March 2002 and Response of the Turkish authorities www.cpt.coe.int/en/states/tur.htm
47. See Observer mission report, "The F-type prison crisis and the repression of human rights defenders in Turkey", Report form a fact-finding mission to Istanbul and Ankara on 5-11 May 2001 with Updates, KHRP, OMCT and the EMHRN, October 2001.
48. See Government's report to the CAT, **CAT/2/20/Add.8**, para 112 - 113.
49. See for example the Manisa Case and the Süleyman Yeter Case, below at 8.2.
50. Article 15 of the CAT provides that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".
51. Adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 190. Paragraph 16 of the Guidelines bans the use of illegally obtained evidence which constitutes a grave violation of the suspect's human rights.
52. Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, para. 113 ©.
53. See Human Rights Foundation of Turkey, HRFT, Press Release 11 July 2002, www.tihv.org.tr
54. Annual Report of the Special Rapporteur on Torture, E/CN.4.2001/66.
55. *Ibid.*
56. See "Gergege Donus (Return to Reality), "Radikal, 2-5 July 2001; "Pathologists blast Government account of prison crackdown deaths".
57. Law N° 3713 of 12 April 1991. See below.
58. See above.
59. Human Rights Association of Turkey (IHD)-Istanbul Branch Report, 19 *Aralik Katliam Raporu* (2001).
60. Report of the Special Rapporteur on Torture, E/CN.4/1999/61/Add.1, 27 January 1999, para.24.
61. CAT expressed concern on the use of isolation in its reports: Finland, 12 November 1999, A/55/44, para. 54; *Luxembourg*, 11 May 1999, A/54, para. 174(a). CAT recommended that the use of solitary confinement be abolished except in exceptional cases in: Norway, 27 May 1999, A/53/44, para. 149-156. CAT recommended the abolition of the automatic period of solitary confinement for persons convicted of terrorist offences in: Peru, 15 November 1999, A/55/44, para. 61 (c).
62. Law N° 4666, adopted by Turkish Parliament on 1 May 2001, entry into force on 5 May 2001 amended article 16 of Anti-Terror Law N° 3713 of 12 April 1991, which had previously provided for isolation of all political prisoners.
63. *Rodley, NS*, The Treatment of Prisoners under International Law: Second Edition, (Oxford 1999), p.104.

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