

**REPORT NO: 4**

**THE REPORT ON “FIGHTING AGAINST TORTURE AND ILL-TREATMENT”**

**Ankara, Wednesday, November the 26<sup>th</sup>, 2008**

*This is an unofficial translation and the original report is in Turkish.*

# THE REPORT ON “EFFECTIVE FIGHTING AGAINST TORTURE AND ILL-TREATMENT”

## INTRODUCTION

As known, torture and ill-treatment are crimes against humanity. Nobody can be held subject to torture, ill-treatment and degrading treatment. In fact the level of development is held as equivalent to protection of human rights in that country and the investments are made if respect for human rights reached to a certain level. Sometimes the foreign policies of some states are conducted through human rights. Prohibition of torture and ill-treatment constitute a significant part of human rights.

Two procedures can be followed for the effective fight against torture and ill-treatment;

a) By a deductive approach the subject can be evaluated according to the actual developments. In this way the cases may be forgotten after a while. Any action can be consumed as if it is an appetizer.

b) Or by an inductive approach, the case can be taken into consideration as a whole; and can be laid on the table with all their sides. New cases can be prevented by this way.

Here we applied the second approach; the inductive approach.

Our aim is to determine what should be done in order to reach a sustainable success in terms of the fight against torture and ill-treatment, to carry out an evaluation in the light of the universal standards and to revise the existing mechanisms.

In order reach a real success all the state powers (legislation, execution, jurisdiction, NGO, media) should cooperate. Otherwise success will not be sustainable.

There are differences in numbers which are shared with the public. The reason for this might be that there is difficulty in terms of law concerning some news on ill-treatment and torture on the media. An act of torture and ill-treatment is either not submitted to the prosecutor of the Republic or not being pursued or the objection to the decisions of the Republic Prosecutor is rejected. In all these cases there may be an event but this does not exist in the law world. As known law can function when a case or a crime is proved. If there is no evidence, there is no punishment.

In short, sometimes every allegation about torture and ill-treatment are presented as if they are real and the difference between allegation and the legal validity is neglected. Sometimes every negative behavior is perceived and presented as torture among the public without meaning the technical sense.<sup>1</sup> The reason for why there are high statistics in the numbers for torture discussed among the public is because the cases which are not counted as crime are included in these numbers.

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<sup>1</sup> For instance, there is a style of speech among the public as, “Since Bayburt became Bayburt it haven’t been subject to such kind of a torture”.

One shouldn't be mistaken to think that the level that is reached concerning the fight against torture is enough. The concentration should not only be towards decreasing the number of cases but the reasons and solutions to the problems which are still happening. Even one cases of torture is an important problem.

The aim of the "zero-tolerance policy for torture" is also this; not only to decrease the torture cases but also to eradicate it wholly and to determine the level of success at this point. Therefore, instead of a dangerous consolation by saying that the torture cases are decreased, the reasons, the definitions and the solutions for this problem should be concentrated.

Our Presidency as it did before for the first time for Missing Children and Report 2007, Turkey Human Rights Report 2007, and Honor Killings Report 2007, this report is published also for the first time.

Ankara, Wednesday, November the 26<sup>th</sup>, 2008

Prof. Dr. Hasan Tahsin Fendođlu  
Human Rights President

## I. WHAT HAVE BEEN DONE SO FAR AND THE EXISTING SITUATION

1. Turkey, ratified the main international treaties generally on human rights and in particular on torture and ill-treatment;

a.ECHR,

b.UN Convention on Torture (1984),

c.European Convention on Torture (1987).

d.As it is in the 3rd article of the ECHR,

e.The article 17th of our Constitution forbids ill-treatment and torture,

f.Turkey did all the necessary legislation work which is consistent with the standards of developed countries.

g.Although Turkey is dealing with terrorism, Turkey didn't make any concession. Turkey carries out human rights and security at the same time. While the detention period in England is 28 days, in Turkey this is only 24 hours.

h.Turkey, while ratifying the international agreements, by the amendment in 2004, on the article 90<sup>th</sup> of the Constitution, the international agreements on human rights will be superior<sup>2</sup>.

i.Especially during the past 5 years in our country, the effective fight against torture and ill-treatment in the scope of the "zero-tolerance policy" continues not only at the legislation process but also at implementation.

k.There have been many education activities in all our ministries and other government institutions.

l.By the Prime Ministry circulars, and by the circulars of Ministries of Justice and Interior, it is shown that the government will show zero tolerance to any kind of in human and degrading treatment.

m.What have been done concerning the fight against torture and ill-treatment, in the last five years can briefly be summarized as follows;

- 1) (Since 2003) The imprisonment punishments given for these kinds of crimes cannot be postponed by courts.
- 2) (Since 2003) The imprisonment punishments given for these kinds of crimes cannot be turned into compensation by courts.
- 3) (Since 2003) These cases are considered as urgent cases and a hearing a law suit cannot be postponed for more than 30 days, and the hearings will be held on judicial holidays as well.
- 4) For these crimes to become invalid after a period of time has become more difficult. Compared to the previous TPC 5 years was added (since 01/06/2005).
- 5) The people who committed these crimes can be sentenced to heavy life imprisonment according to the TPC, article 95 (since 01/06/2005).
- 6) The punishments for these crimes are increased. (TPC. Article 94,95 and 96) (since 01/06/2005).
- 7) The crimes can be committed intentionally as well as by negligence. According to the number of the victims there is the crime. The statements which are taken by torture are forbidden evidence and they are not legally valid according to Article 148 of the Turkish Penal Procedural Code.
- 8) According to the law 4483, there is no need for the permission of the director, for prosecution; the Prosecutor of the Republic can directly do the prosecution. Due to the

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<sup>2</sup> see. Constitution, articles 2,5,38

aim of going towards the suspect through the evidences the criminal laboratories are improved further.

- 9) “The regulations for capturing, detention and taking the statements” are regulated again in detail(2005).
- 10) As known, according to the second adaptation law, numbered 4748 and dated to 26.03.2002 to the EU, an attachment is made to the law on government officials indicating a compensation punishment to the ones who commit torture and ill-treatment. According to this, if a person takes compensation after his/her cases is seen by the ECtHR, this compensation will be paid by the government official who failed to prevent the case. A very new decision taken by the Council of State, the department 5<sup>th</sup>, 2007/7369 and numbered 2008/3234 is very important.
- 11) In the scope of the institutionalization of human rights, the Ombudsman Institute Act was accepted(2006).

### III. THE MONITORING OF THE DETENTION CENTERS AND PRISONS:

It is given special importance to the inspection of detention centers and the prisons where are the possible places for these crimes.

1. The inspection of the detention centers (2.456+ 2.888=5.344 ) and the prisons (384) are conducted by the prison monitoring councils, by governors, chief prosecutors, inspectors from the ministry of Justice, prosecutors , judges the Human Rights Commission of the TGNA, the Human Rights Boards at the Provinces and the Sub-Provinces.

The prisons are especially monitored by the independent “Commissions for Monitoring the Prisons” which include also the NGO representatives. The law amending the law on the Prison Monitoring Commissions dated to 20.11.2007 and numbered 5712, entered into force by being published on the official gazette dated to 4.12.2007 and numbered 2670. By law, the numbers of members of the Commissions are changed into 5 permanent+ 3 transitory from only five members. It became compulsory that at least one of the permanent members is a women.

2. The Prisons and Detention centers are open for inspection of the European Committee for Prevention of Torture and UN Committee for Prevention of Torture.
3. Our Presidency, by the Human Rights Boards, since April 2008, started to inspect the detention centers as sudden visits or as provisioned visits, by the committees consisting of at least 3 members of the Boards one of whom is from the local NGO representatives. The Human Rights Boards of the Provinces and Sub-Provinces conducted 7961 visit in the year 2007 and most of them are the sudden visits. This practice is an important development for the National Prevention Mechanism which is necessary to be established under the scope of OPCAT.
4. Of the 2.456 detention centers of the Gendarme General Commandership, 1.638 are in line with the standards determined by the European Committee for Prevention of Torture and the work carried out to bring the others to the same standards are continuing.

#### IV. TORTURE AND ILL-TREATMENT CASES ARE DECREASING IN THE LAST FIVE YEARS BUT;

It is no doubt that even a single case of torture gives us sorrow. Therefore we have to take more measures to prevent it. The crimes against torture and ill-treatment show a gradual decrease according to five important inputs given below;

- a) According to the number of applicants to the Chief Prosecutor of the Republic
- b) According to the decisions of the Turkish Courts
- c) According to the allegations of violations made to our Presidency and to the Human Rights Boards of the Provinces and Sub-Provinces
- d) According to the number of applications to the ECtHR
- e) According to the decisions and judgments of ECtHR

According to these five inputs, the crimes of ill-treatment and torture decrease gradually. Especially after 2003, the cases at the ECtHR are mostly about freedom of expression and demonstration, and just trial and the length of the trials, and property rights.

One shouldn't be mistaken to think that the level that is reached concerning the fight against torture is enough. The concentration should not only be towards decreasing the number of cases but the reasons and solutions to the problems which are still happening. Even one cases of torture is an important problem. The aim of the "zero-tolerance policy for torture" is also this; not only to decrease the torture cases but also to eradicate it wholly and to determine the level of success at this point. Therefore, instead of a dangerous consolation by saying that the torture cases are decreased, the reasons, the definitions and the solutions for this problem should be concentrated.

#### V. SUGGESTIONS:

It possible to make the suggestions below as a result of our work;

##### A. SUGGESTIONS CONCERNING JUDICARY:

1. When the candidates of judges and prosecutors are starting their jobs, respect for human rights should be inserted to their oaths.
2. Even if there are not many, the court decisions about torture and ill-treatment leave a negative image. Therefore, the judiciary should evaluate sensitivity of the issue more carefully.
3. In the face of crimes of ill-treatment and torture, new jurisprudence focusing on human rights may be necessary. Adaptation laws about torture and ill-treatment and the justifications of the other laws can be analyzed again and new jurisprudence can be established. The ratio legis of the adaptation laws and the other laws can be considered.
4. Another important point on this issue is torture and ill-treatment crimes shouldn't become invalid after a certain period of time has elapsed and the public opinion shouldn't be disturbed. In order for that the torture and ill-treatment crimes do not become invalid after a certain period of time has elapsed, other measures should be taken to give a pace to the judgments. In the administrative adjudication as well as in the judicial adjudication, many cases are left to the next year. To solve the conflicts as soon as possible is also one of the fundamental human rights. Long adjudication

damages the confidence on justice. The saying that `late justice is injustice` explains this. Immediate and important measures should be taken which will resolve this problem. In Spain as well there was the same problem and the number of cases reduced to half which is left to the next year, by increasing the number of judges. There can be other measures to be taken besides these measures.

5. Our country needs a judicial reform in line with the ECtHR and ECHR standards. The establishment of the regional courts and the judicial reform which are the prerequisites for the EU membership criteria, will reduce the problems of just trial.
6. The decisions of the High Directorate of Judges and Prosecutors that result in changes in the situation of the judges and prosecutors, which are not subject to judicial control are not compatible with the rule of law and democratic state and the democratic system. Therefore, new regulations are necessary to make the decisions of High Directorate of Judges and Prosecutors under the judicial control.
7. In order to reach the universal standards, the study visits conducted by the Ministry of Justice to other judicial bodies in Europe are evaluated very positively. The conduct of these visits will be more useful if all the prosecutors and judges are included in a regular time schedule. In order to see the application of human rights abroad, it will be very useful to conduct internships at these human rights institutions.

#### B. SUGGESSTIONS CONCERNING EDUCATION:

1. Including the torture and ill treatment, in order to prevent the violations of human rights, it is important to raise awareness among the primary and secondary education students. In order to achieve this, the Human Rights Boards of the Provinces and Sub-Provinces should activate the Human Rights branches in every school which is foreseen seen in the concerned regulation. These students should elect the school representative for human rights and all the school representatives should once a month come together in the leadership of our Boards to discuss human rights issues as violence, children's rights, ill treatment towards children. The same meetings can be organized at the Boards level throughout the country.
2. To deliver the human rights courses as a separate course at schools as well as a subject among the other courses will be more useful than the existing system. At the higher education system, at the law departments and also at the other relevant departments human rights should be thought as a separate and compulsory course. Moreover, at also the faculties of education human rights should be thought as a compulsory course with a necessary amount of time. The reason for this is, the teachers who will give compulsory human rights courses and as subjects included in other courses at the secondary level and at primary level should have the necessary competence. Apart from this the public officials which give service to the people should be educated in human rights and this should be provided by their institutions.
3. As it is mentioned human rights is not given as a compulsory course at all of the law faculties. Therefore, the candidates to be judges and prosecutors are well educated enough in human rights. These candidates start working in the rural areas and therefore cannot find the opportunity to improve themselves in this area or they have limited opportunities. Therefore, if one does not have special interest in international developments in human rights, he/she does not have enough information. Moreover, the crimes of torture and ill-treatment should be thought more intensively at the concerned faculties. The judgments of the court (Supreme Court) and the jurisprudence should be investigated more, analyzed (practical work) and in order that

the implementation is better new formulas should be generated. The professors should ask for more academic work from their graduate and post-graduate students on torture and ill-treatment.

4. The human rights education of the candidates to be judges and prosecutors are very limited in terms of its content and its time, during their internships. Due to the reasons mentioned, the education given to these candidates can be formulated for a longer period and in broad human rights issues in the universal standards. Torture and ill-treatment crimes can be thought more intensively to the candidates of judges and prosecutors and the examples from the practices can be discussed and the problem can be evaluated from all of its aspects.
5. On the other hand, the area of human rights is a dynamic and improving area. Therefore, the government officials which are special government officials (prison guard and officials working at the prisons included), should continuously be informed regularly in determined chapters.

#### C.SUGGESTIONS FOR THE SECURITY FORCES:

1. After the latest amendment in PVSK; do the cases of the security forces using excessive force show an increase? Is there an increase in the other crimes that the police may commit? We don't know the answers to these questions, these should be investigated.
2. Generally the reasons for the use of excessive violence from time to time by the police officers can be counted as the lack of education, excessive work load, and limited rights of the employee. These subjects can be investigated. It may be thought that the police officers who work excessively, who has difficulties in living conditions and the ones who cannot participate to social life may not respect human rights enough. If it is necessary the number of personnel can be increased and in the scope of the financial possibilities, their working conditions can be improved.

#### D.SUGGESSTIONS FOR THE DETENTION HOUSES:

The custodies belonging to The General Command of Gendarme which were suitable for standards were shut down. The custodies of sub-province police stations are being utilized in order to substitute for those closed. The quarterly reports of inspection related to custodies are carried on. These drawbacks should immediately be compensated and the custodies should be in line with the standards. If necessary a relevant chapter should be put at the national budget.

#### E.SUGGESTIONS ON PRISONS:

1. The prisons are especially monitored by the independent "Commissions for Monitoring the Prisons" which include also the NGO representatives. There are concrete activities conducted in order to get rid of the defects which are reported by this committee. The committees that are established by the Human Rights Boards of the Provinces and Sub-Provinces conduct visits to prisons and detention centers. These visits that are conducted by these committees should be allowed in all of the provinces. This is necessary for transparency and democratic state principle. If it is necessary, the regulation should be made in the legislation.

2. In order to improve the situation concrete activities are conducted. It may be necessary to make the reports sent by the Monitoring Commissions public will provide with transparency. In fact, except from the prison security regulations of the Ministry of Justice, it is decided to make public the number, the subject of the reports and also the suggestions which belong to the previous year.
3. By 31/12/2007, 37.608 convicted, 53.229 detainee, 90.837<sup>3</sup> people in total are in prisons. Among the prisoners whose cases are still pending constitute 59% of the total. There are too many detainee. Imprisonment is a transitory solution. By imprisoning people which is a transitory solution, taking people's liberties is not compatible with democracy. Therefore, measures should be taken to reduce the number of imprisoned.
4. The number of doctors, nurses, psychologists, sociologists and social researchers should be increased. Among the prisoners who have continuous illnesses, the sick and the old people should be given special attention.

#### F. SUGGESTION FOR INSTITUTIONALIZATION:

1. The institutionalization of human rights is very important but cannot be evaluated enough. To take measures before a crime is committed is a preventive work. Educational work is also a proactive work. One of the most important institution for the fight against torture and ill-treatment is the Ombudsman Institution. However, if the act which is approved two years ago, could be implemented, and for instance if the police ombudsmanship, gendarmerie ombudsmanship, prison and custody ombudsmanship were established, many sad cases in Turkey perhaps wouldn't have happened. These departments would conduct their inspections better and in time and the violations wouldn't have happened. Similarly establishment of a national human rights institution according to the Paris Principles is also important.
2. The people who conduct an investigation should be hierarchically and organically independent. The National Prevention Mechanism (OPCAT) foreseen in the scope of the Optional Protocol of the Convention Against Torture (OPCAT), is signed by Turkey on September the 14<sup>th</sup>, 2005. Of the 37 countries which ratified OPCAT, only 9 countries are EU member states. The ratification process and implementation afterwards should be given a pace and the work should be started. The subject is; the ones who will conduct the investigations should be completely independent who do not have hierarchical organic dependence to their directors and who are experts in their area and who are secure concerning their future. As a result, in our time, it could be said that without institutional and financial independence the inspectors (or any other similar authority) will see their colleagues closer to themselves, and the objectivity of their inspections will be seriously questioned. Needless to say, those whose rights are violated should have the move effective remedy. However, the one whose right is violated, without any doubt, has the right to apply more effectively (article 13, ECHR).<sup>4</sup>

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<sup>3</sup> The total number of prisoners reached at 100.599 in the prisons on October 2008.

<sup>4</sup> ECHR, article 13.

## G. CONCLUSION

The fundamental problem in Turkey is human rights spirit and consciousness couldn't be absorbed enough. In this respect, the sustainability and the scope of the education and awareness raising in human rights is essentially important.

All the law enforcement officials (the police, gendarmerie, the prosecutor of the republic, the judgment, superior judgment) are the duty bearers in order to reflect the reforms to the implementation. In other words, the implementation and its inspection are very important. Every institution should continuously renew itself in terms of human rights. Before blaming each other, the individuals and the communities should think of their own responsibilities as every body has a duty in this respect.