HRFT
Human Rights Foundation of Turkey

TREATMENT and REHABILITATION CENTERS REPORT

1996

Ankara, October 1997

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INTRODUCTION

Metin Bakkalcı*

The Project for the Treatment and Rehabilitation of the Tortured, implemented by the Adana, Ankara, İstanbul and İzmir Treatment and Rehabilitation Centers, has been one of the most important projects of the HRFT since its inception. Following the efforts that began in 1990, our Centers received 2174 applications until the end of 1995, and 588 during 1996, adding up to 2762. Hundreds of health professionals, including volunteers as well, have offered their services to help solve physical, psychological and social problems of the tortured. In 1996 the "5 Cities Project" was still being implemented for the five provinces of Diyarbakır, Van, Malatya, Gaziantep and Mersin, areas yet without such centers yet despite the presence of widespread violations.

As far as the Treatment and Rehabilitation Project is concerned, the year 1996 was a period during which important steps were taken in the transition from the initial phase to the institutionalization phase. It has now been established more firmly that the process of treatment and rehabilitation of survivors of torture is a "specific" area; that the medical discipline has a very important place in this process; but the specificity of this area necessitates a broader environment including the medical discipline as well. And it is now crystal-clear that success in this environment requires high-quality activities at all levels and such an understanding can only be materialized if necessary institutions, contacts and qualifications are in place. Concrete steps were taken and our work was brought to maturity in this regard.

Considering the dimensions our own activities have taken on as well as the intensive international interest and support which became more visible after the Adana trial in particular, it will not be an overstatement to say that the HRFT Treatment and Rehabilitation Project will be an active focal point in the process of treatment and rehabilitation of survivors of torture.

The Treatment and Rehabilitation Project includes not only treatment services but also training and scientific studies and activities aiming at enhancing the quality of these services.

This report containing the results of the activities of the HRFT Treatment and Rehabilitation Project in 1996 is published in Turkish and English like in previous years.

Publication and presentation dates are obviously important for the functionality of annual reports. Thus, the publication of the 1996 report in July 1996 would have suited that functionality. In the coming years, greater care will be given to this.

The Treatment and Rehabilitation Centers Report 1996 comprises two parts after the foreword by Yavuz Önen, the President of the Governing Board, assessing the year 1996 from human rights aspect.

The first part furnishes an account of the medical efforts of the Foundation during 1996. It contains information and comments on those who applied to the HRFT Treatment and Rehabilitation Centers in Adana, Ankara, İstanbul and İzmir, with complaints consequent to torture.

The second part comprises articles concerning a number of issues our Treatment and Rehabilitation Centers dealt with during 1996.

In the first place, there are four interrelated articles on the “Adana Trial”, which was of concern to our entire Foundation, including in particular our Adana Center. If viewed from a certain perspective, this trial can be seen as something that forced the Foundation on the whole and the Adana Center in particular to deal with a matter falling outside its proper scope. However, if judged by its results, it is understood that this was a development that reinforced the basis of our scope and rendered us more effective on that stronger basis. We thank all our local/international friends who were with us in the course of these developments that made us even more effective.

This part also contains a brief article on the education meeting entitled “Approaches to the examination, diagnosis and treatment processes of survivors of torture, and issuance of reports,”, which was completed in December 1996 as the product of a collective effort of six months, including its preparation and implementation.

An article on the so-called “the case of torture of youths of Manisa”, which severely wounded the public conscience and is in fact a bitter picture of our country, is also included in this part, especially in connection with the HRFT’s efforts.

We would like to state that publication dates will receive greater priority, which is a must for the functionality of the reports. With this in mind, we shall also attach importance to a more elaborate coverage of all efforts relating to the Treatment and Rehabilitation Project.

Activities of the HRFT are the product of hundreds of sensible people, including health care staff and human rights advocates, who work towards a shared goal in various parts of the country. We thank all of our friends who have contributed to these efforts and to the Human Rights Association and the Turkish Medical Association which supported our work from the very outset.

Ankara, May 1997

FOREWORD

Yavuz Önen*

The Customs Union Decision that was ratified by the European Parliament in December 1995 and entered into force on January 1, 1996, required a process of harmonization in the commercial, economic and democratic spheres. Many laws, both with a technical and political content, had to be rearranged in order to meet the expectations, demands and requirements of the European Parliament. However, political uncertainty prevailed throughout the first half of 1996, associated with the attempts to form a new government. The Welfare-True Path Coalition that was formed at the end brought to the post of prime minister the chairman of a party aiming to govern the entire social life according to Islamic rules, the first of its kind under the Republic. After almost one year of experimentation with political Islam in power, the coalition government had to face many problems. The Welfare Party put into effect a special program aiming at extending the sphere of influence of political Islam in the domestic and international sphre and maximizing its political achievements, which began to shape the agenda of Turkey. Regarding democratization and human rights, the outcome of that agenda was no different from its earlier versions.

Under the Welfare-True Path coalition government, the systematic and widespread practices of torture, threats against right to life and murders by unknown assailants, forced migration, and the burning and destruction of villages continued. Murderers and perpetrators were either not prosecuted or, when prosecuted, were not seriously tried by courts. The promises about democratization steps, which had been made to the domestic and international public, were not kept. The policies of disinformation and protraction were maintained with new promises and public statements embellished with a pretended defense of democracy and human rights.

Political instability and social unrest continued under this government, too. Two motions to investigate into allegations of corruption involving Mercümek (Welfare) and Çiller (True Path) were shelved with the votes of Welfare and True Path deputies.

Under conditions of stagnating investment, rising unemployment, high inflation rate, drugs and weapons traffic and a rentiers' economy geared to the need of laundering the black money generated by that traffic, the already existing unjust income distribution has been transformed into a life style hostile to working people.

1996 witnessed a very striking event which revealed the forces on which the antidemocratic structure of Turkey is based. In this incident, to be known as the Susurluk traffic accident, a car bumped into a truck: among the passengers of the car were an MHP (Nationalist Movement Party) militant "ülkücü", who had been wanted for 20 years as the suspect of many murder cases, a senior police chief, the very founder of the special teams, and an MP who is the head of village guards, with more than ten thousand armed men under his command. Some weapons used in previous assassinations were found in the car. The only survivor of the crash was the MP. But it was the state who got the severest wound. It became obvious that murders by unknown assailants and political assassinations were directed by an organization within the state, and the same organization also controlled various other areas of illicit practices including drugs and weapons trafficking, gambling and tribute collection. This has proved the assertions of advocates of human rights, democracy and peace.

Interior Minister Mehmet Ağar had to resign as it was disclosed that he had made available the state's resources to those gang leaders who were involved in murders by unknown assailants, drug trafficking and weapons trade. The role of MP Sedat Bucak, the head of the village guards, within this ring was also uncovered.

A widespread civil protest, one-minute darkening for perpetual enlightenment, was staged every evening against the gangs, but society's reaction failed to produce the desired action against the actors of Susurluk. The coalition's Welfare Party wing played down the Susurluk incident as a strong trump against their partner, True Path Party, and against the military. The letters sent by the İstanbul State Security Court to the government to secure the removal of parliamentary immunities of Ağar and Bucak were referred to Parliament only after being blocked for three months.

The sequel to the Susurluk incident, or perhaps what one might call the second Susurluk incident, was the refusal of the officialdom, including the Parliamentary Investigation Committee, government and the National Security Council, to probe into the counter-guerrilla operations in Turkey - to use a term that was first heard in this country about quarter a century ago. The system once more preferred to cover up the incidents instead of finding out the assailants.

In late 1996, two specific items were introduced onto Turkey's agenda: the debate within the National Security Council (MGK) and, in connection with it, the struggle against the growing influence of political Islam and its future potential. The tension and debate between the MGK and the government became part of an almost public debate. Following the MGK meeting of February 28, 1997, MGK's demands to restrict the sphere of influence of political Islam were summarized in 18 points, which the government was instructed to implement.

Concurrently, the media were supplied with statements to the effect that the state's national security strategy had undergone major changes. As part of the

National Security Council's Strategies Concept, abbreviated as MASK, it was determined that the nature of internal threat had changed. Religious reactionaries were no less dangerous than the PKK, and together with the latter, they were described as the domestic enemies. This was the announcement of a program of struggle against the rise of political Islam, against the efforts of some of the religious sects to impose the Sharia - the Islamic canon - as the rule to govern the sphere of everyday lives, and against the Hizbullah, the armed Islamist faction.

During the first quarter of 1997, the possibility of a new military coup was the most important public issue in Turkey. Polarization within society sped up. Violence kept on climbing and some began calculating the balance of armed strength. Defenders of democracy, human rights, peace and freedom were forced to take sides, to choose between the military and the Islamist foci of power. One of the poles was the Welfare Party, the political representative of the Sharia, with its mayors, MPs, employers' associations, foundations, journalists, radios and TV channels, who began to declare publicly that they could resort to violence to bring the rule of the Sharia. While doing so, they attempted to present themselves as defenders of human rights and democracy, arguing that the introduction of eight-year compulsory elementary education for all would result in the closing down of Imam-Preacher Schools (Religious vocational high schools) and creating the impression that Muslims are oppressed.

This confrontation within society became more severe when the Turkish Armed Forces stepped in politics through the National Security Council, and the risk that this can lead to a civil war is still continuing.

While such important developments were taking place, Foreign Minister and Deputy Prime Minister Tansu Çiller stated that instruments of torture in police stations should be destroyed - thus, for the first time ever, she admitted the existence of torture in Turkey. The government sought to improve its image by reducing detention period for ordinary offenses. However, no one can claim that the four days' time limit can prevent torture. To prevent arbitrary detention at least to some extent, the practice of detention without a court order must be abolished. At any stage of detention, the detainee should be given unconditional access to lawyer and medical care and should be allowed to see members of her/his family. It is known that there have been cases in which detention was not recorded at all or was recorded with a delay of several days and that official complaints of torture brought to the attention of courts are not dealt with seriously. The large disparity between the law provisions and the practice has taught us that legal arrangements by themselves are not a guarantee against torture.

Cases of torture and deaths under torture in 1996 revealed what the prevalent practice and intention in Turkey were. To cite one example, Metin Göktepe, a reporter of the newspaper Evrensel, was detained while carrying out his duty in Gaziosmanpaşa, İstanbul and was killed by the police. This was a grave case of torture, revealing the extent of excessive violence the police could resort to in their dealings with citizens, and what was equally serious was the protection of the violators. The investigation commenced against the accused policemen was prolonged, the trial was protracted and carried to an area where it was impossible to

achieve any results. The trial of the torturers and murderers was transferred to places outside the province in which the incident took place. Currently, it is continuing in the province of Afyon.

In May, June and July 1996, thousands of political prisoners staged a hunger strike in many provinces of Turkey to make known their humanitarian demands for the improvement of prison conditions. The strike later took the form of fasting to death. Twelve died and health conditions of many others seriously deteriorated as the Welfare-True Path Coalition turned a blind eye to the events and Justice Minister Şevket Kazan moved too slowly to prevent deaths. The hunger strike and death fast, which was given an end upon the mediation of some intellectuals, laid open the hostile feelings of the government towards political prisoners.

Another instance of brutality took place in Diyarbakır Prison. The prisoners who had been taken to a hallway for ordinary visits were assaulted. Ten lost their lives - their heads were crushed - as a result of the assault launched by the wards and special team members who had been brought from outside. Medical reports of Forensics supported the fact that the beating particularly aimed at killing people.

In a country where reporters like Metin Göktepe have been killed, hunger strikers allowed to die and heads of inmates of Diyarbakır prison were crushed, another source of concern is the investigations opened against the institutions defending human rights while criminals are left at large. Following a campaign launched by the Ministry of Foreign Affairs in 1996, the HRFT became the target of a wide scale investigation covering its Headquarters, Documentation Center and Treatment and Rehabilitation Centers. The police, prosecutors, and inspectors of the Ministry of Health and General Directorate of Foundations carried out investigations. The authorities in Ankara and İzmir issued a decision of non-prosecution. However, our İstanbul and Adana representatives, and the physician working at Adana were put on trial, on charges of operating an unlicensed health center, and failing in notifying police centers and prosecution offices of torture survivors, respectively.

The defense stated that the HRFT's treatment and rehabilitation centers were specific institutions which might not fully conform to the existing legal regime and that the physicians could not be forced to disclose names of torture survivors. It was further argued that the non-disclosure of survivors' names was part of the physicians' responsibility in their relations with the patient and that this was an established rule of medical ethics. Our İstanbul representative Dr. Şükran Akın was acquitted at the first hearing. The Adana trial was concluded at the eighth hearing: our representative Lawyer Mustafa Çinkılıç was acquitted while Dr Tufan Köse was fined. This judgment will be taken to the Supreme Court and, if it is not quashed, an application will be lodged with the European Court of Human Rights as domestic remedies will have then been exhausted.

During the hearing in İstanbul and especially those in Adana, we benefited from the strong support extended by national and international organizations, including mass democratic organizations, human rights organizations and organizations of lawyers and physicians. Many people and organizations sent messages to the Ministries of Foreign Affairs, Justice, Interior and Health to protest the legal actions

commenced against us and the systematic repressive steps taken against us. We received messages of sympathy. We thank all those people and organizations. This exemplary solidarity paved the way for a number of steps to be taken in the national and international spheres in the future.

At a meeting held in Stockholm with the participation of nearly eighty representatives of more than thirty organizations from ten countries, steps were taken to establish support committees in various European countries.

As regards to the Kurdish problem, which is the direct or indirect source of many human rights violations, the policy of attempting to reach a solution under an emergency regime or through military means was maintained in 1996 as well, with extensive armed clashes, deaths and violence directed against civilians. Many illegal acts of the gangs and secret organizations feeding on this conflict were covered up. As human rights defenders we shall continue to stand up for peace, democracy and freedom against the policies of war.

At a time human rights advocates need solidarity and support more than ever, I urge every individual who wants to be proud of her/his “humanity” to join the human rights struggle.

Ankara, May 1997

HRFT Treatment and Rehabilitation Centers Report

1996
Evaluation Results

HUMAN RIGHTS FOUNDATION OF TURKEY
TREATMENT AND REHABILITATION CENTERS
1996 EVALUATION RESULTS

INTRODUCTION

The Human Rights Foundation of Turkey (HRFT) is an independent non-governmental organization established in 1990 in accordance with the Turkish Civil Law, as an outcome of the related studies conducted by the Human Rights Association (İHD) and the Turkish Medical Association (TTB). Along with the headquarters located in Ankara, the HRFT also has representation offices in İstanbul, İzmir and Adana.

The HRFT carries out its activities in accordance with all international conventions, whether undersigned by Turkey or not.

The HRFT works on the basis of projects. The projects prepared are communicated to non-governmental international human rights organizations and then, as soon as the required support is secured, are put into practice. As a matter of principle, the HRFT strictly refrains from accepting support or donations from governments as well as institutions or individuals involved in practices violating human rights.

At present, the HRFT conducts its studies within the framework of two main projects: The Treatment and Rehabilitation Centers Project and the Documentation Project.

The Documentation Project aims to monitor and document human rights violations.

The Treatment and Rehabilitation Centers Project provides treatment and rehabilitation to people who suffer from health disorders due to the torture and ill-

treatment they have been subjected to during official or unofficial detention periods and in prisons, taking into account the physical, psychological and social integrity of people. In the Tokyo Declaration by the World Medical Association, torture is defined as; "The deliberate, systematic, wanton infliction of physical or mental suffering by one or more persons acting alone or on the authority or any authority to force another person to yield information, to make a confession, or for any other reason." In Turkey, torture not only takes place during detention or in prisons but is also frequently applied during village and house raids, while searching and quartering in houses, and in cases of kidnapping by plainclothes officials or by people reporting to have acted in the name of some secret organizations of the state. As torture is very likely to influece the relatives of the tortured person, providing solutions to the problems of relatives of torture survivors related to traumatic periods has also been considered within our field of work. Within this framework, relatives of torture survivors are also provided with the required service.

The HRFT carries out its work by means of its representation offices located in Ankara, İstanbul, İzmir and Adana. At these centers, teams formed of general practitioners, psychiatrists, social workers, psychologists and medical secretaries, arrange the treatment and rehabilitation work in cooperation with specialists from all medical disciplines. The preliminary evaluation of applicants is carried out at the centers, and then a treatment and rehabilitation plan is constructed. In line with the plan constructed, the required medical examination, laboratory examination and treatment are carried out by specialized people and institutions either on a contractual or voluntary basis. Apart from the contributions of volunteer physicians, all expenses are covered by the HRFT. The period of treatment is coordinated by the teams in charge at the centers. The results and evaluations of the work are publicized in the form of regular reports.

As the number of applicants from the cities where the Foundation has no centers is quite low, social and financial support to make treatment services available for those who have suffered from torture in the region is secured through the "5 Cities Project" implemented in Mersin, Gaziantep, Malatya, Diyarbakır and Van. The project is realized through the active support of the Human Rights Association branches and the medical chambers in those cities. In the cities where the project is in effect, a network of individuals and institutions who voluntarily referee is formed to admit the applicants and maintain the necessary contacts with the centers where they are to be treated. Regular communication with the referees is secured by the Project Coordinator at the Headquarters. Whenever there is an application, the referees contact the Project Coordinator and get an appointment. HRFT also covers all the expenses for the applicants' transportation to the city, their accommodation and nourishment. This project is prmarily carried out in Ankara. However, centers in other cities also accept applicants within the framework of the 5 Cities Project when necessary.

Infliction of torture sometimes causes losses of organs or extremities, or dysfunctioning. When the budget allocated to the Treatment and Rehabilitation Project remains insufficient, “special projects” are developed to provide solutions

to the health problems of such cases. The HRFT has developed a humane-medical institutionalization that organizes the multi-disciplinary studies of health care workers from various branches and professions, who perceive to be involved in the treatment of torture survivors as a requirement of being human and as an ethical responsibility of health workers.

METHOD

This report is prepared retrospectively on 588 applicants to the Treatment and Rehabilitation Centers of the HRFT in Ankara, İstanbul, İzmir and Adana in 1996. The data were obtained using a 46 items' questionnaire on the characteristics of applicants. The questionnaire was prepared to find out their sociodemographic characteristics, information on detention and prison periods, torture methods, and the consequent physical and psychological complaints.

The tables and graphics in the report are designed using the Microsoft Excel 5.0 computer program.

There is no information regarding torture or detention periods of 12 applicants since they are relatives of torture survivors. Therefore, evaluations have been carried out taking into consideration the available data on 576 applicants. The data of a total of 82 people who went through the period of torture, which caused their application to the HRFT, in prisons or at home, in an open field, etc. have not been included while analyzing the developments during and after the detention period. Those analyses have been carried out taking into account the data of 494 people.

In 1996, "Special Projects" have been prepared for two applicants. Information related to these projects is not included in the report.

As for the hardships encountered during the conduct of the study, the lack of standardization in connection with the fact that the data are gathered at four centers and the applicants' difficulty in remembering certain details were singled out.

FINDINGS

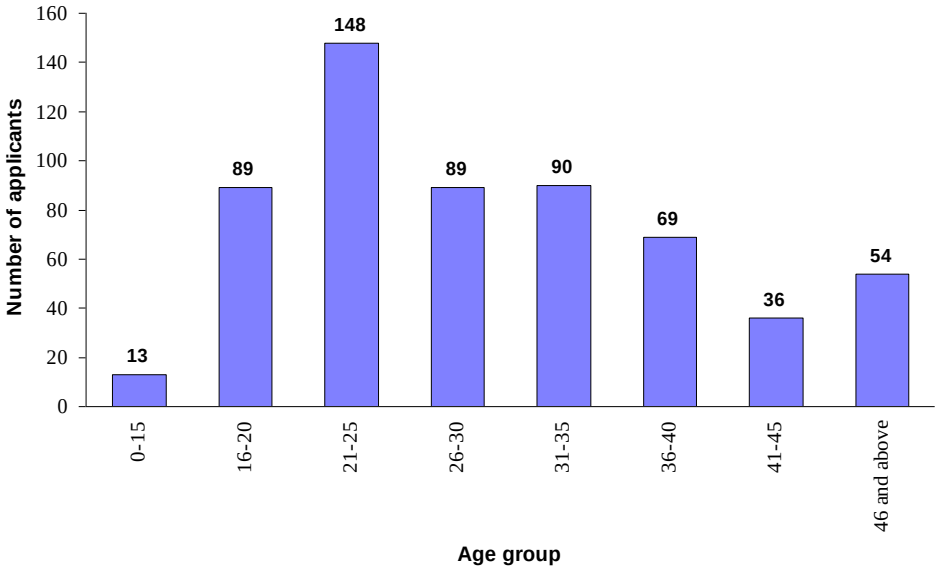
A. The Sociodemographic Characteristics

In 1996, a total of 588 people applied to the HRFT, 576 declaring they had been tortured or ill-treated, and 12 stating they had been influenced by the period of torture their relatives had gone through.

Of the 588 applicants, 160 were female, and the remaining 428 were male.

The age of our applicants varied between 8 and 67. The mean age was 30.14 and the standard deviation was 10.48 (Graphic 1). Of the 13 people who were in the 0-15 age group, 12 applied, stating they had been tortured.

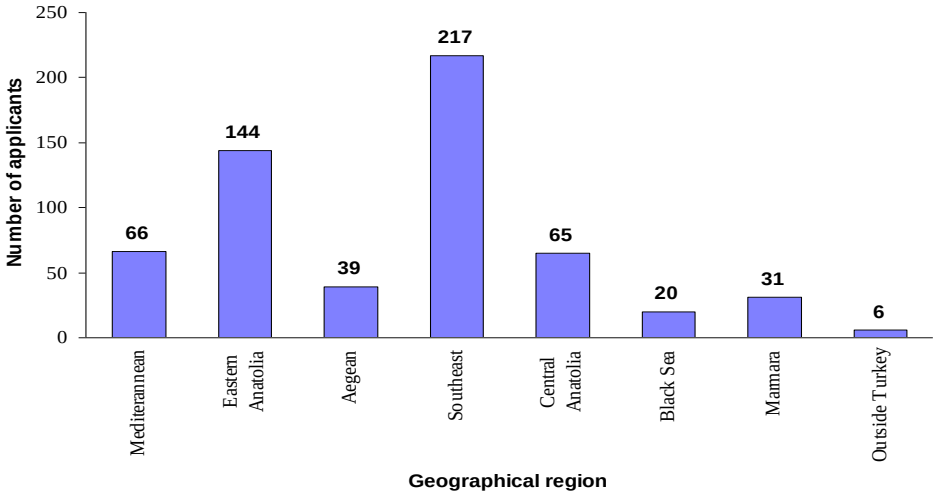
Graphic 1. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to the age groups



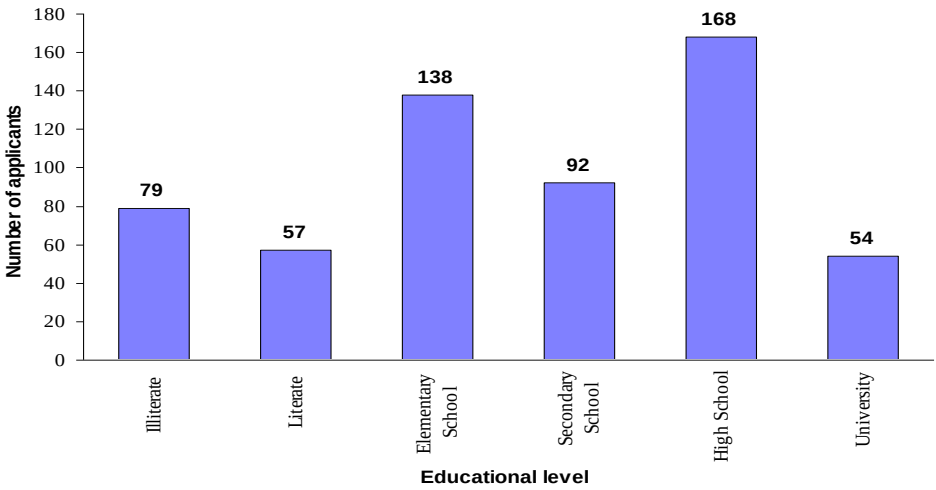
Regarding the distribution of the applicants according to the place of birth, the Southeast Anatolian Region ranked first with 36.9% (217 people) followed by the East Anatolian Region with 24.5% (144 people) (Graphic 2).

When the educational levels of the applicants were analyzed, it was determined that high-school graduates came first with 28.6% (168 people) followed by primary school graduates with 23.5% (138 people) (Graphic 3).

Graphic 2. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to place of birth

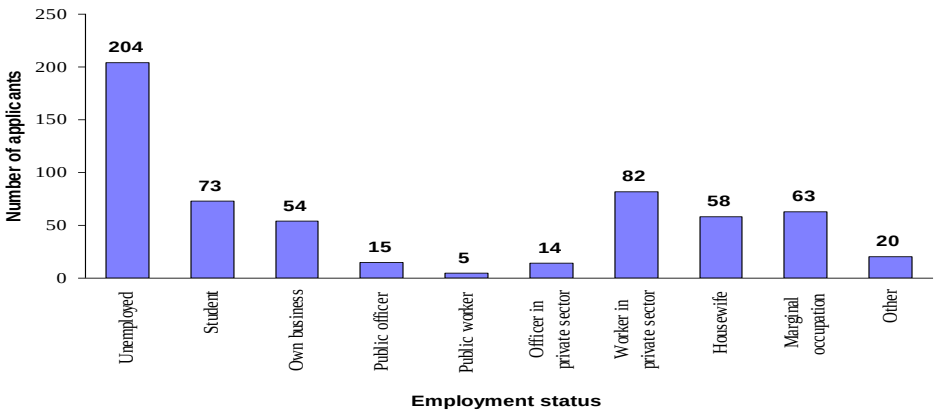


Graphic 3. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to educational level



Regarding the employment status of the applicants, 34.7% (204 people) were unemployed (Graphic 4). The high rate of unemployment, as a factor having negative influence on the treatment period, prevailed among the current problems.

Graphic 4. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to employment status

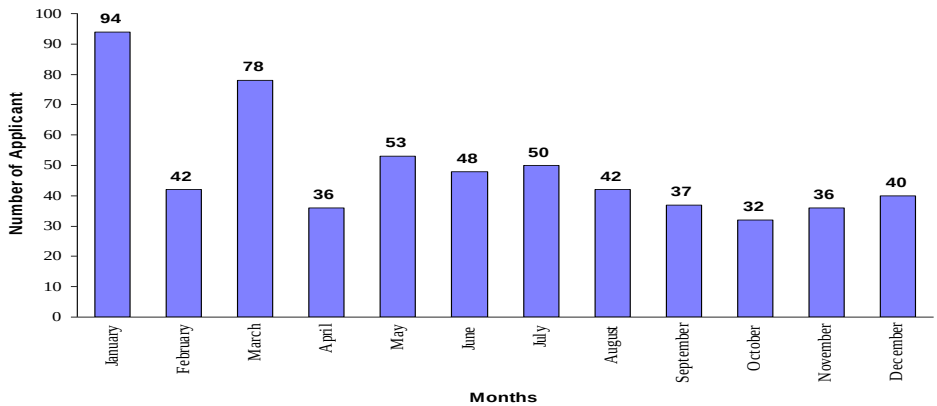


When the marital status of the applicants above 15 were evaluated it was seen that 49.9% (287 people) of the applicants were single, 47.5% (273 people) married, 1.6% (9 people) divorced, and 1.0% (6 people) widowed.

Considering the total number of applicants, the HRFT Istanbul Treatment and Rehabilitation Center was first with 178 applicants, whereas 168 applications were filed in Adana, 167 in İzmir, and 75 applications were filed in the HRFT

Ankara Treatment and Rehabilitation Center.Considering the monthly distribution of the number of applicants, the peak point was reached in January (94 people), while October was at the bottom with 32 applicants (Graphic 5).

Graphic 5. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 by months



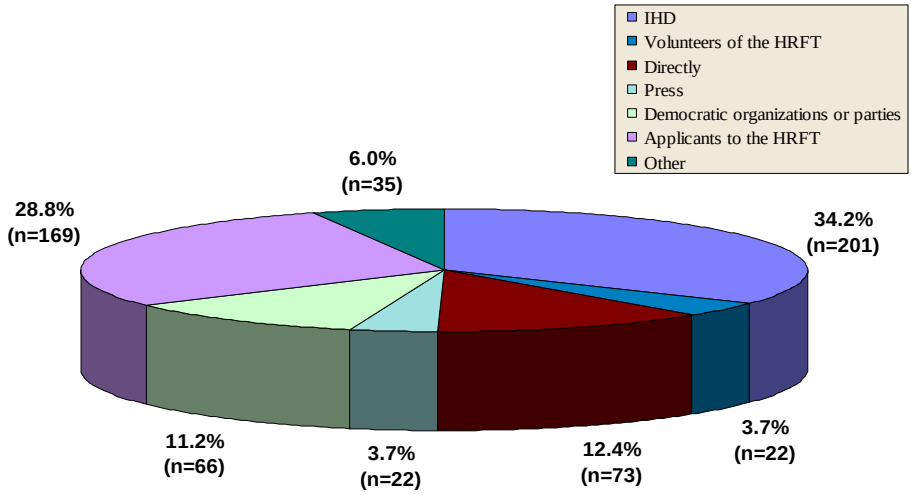
The Human Rights Association (IHD) was first in the list of channels of information and reference with 34.2% (201 people). It was determined that 169 people (28.8%) were referred to the HRFT by former applicants who had received medical assistance from the HRFT (Graphic 6). These ratios are in conformity with the ratios of previous years. However, it was determined that there was an increase in the ratio of referrals by former applicants compared to the previous year's rate of 19.5%.

B. Information Regarding the Period under Torture

Of the 588 applicants, 576 were torture survivors. Therefore, evaluations in this chapter reflect information regarding the period of torture that the aforesaid 576 people had gone through. The data on torture survivors, who stated they had experienced torture more than once, were evaluated on the basis of the particular period of torture that led to their application to the HRFT.

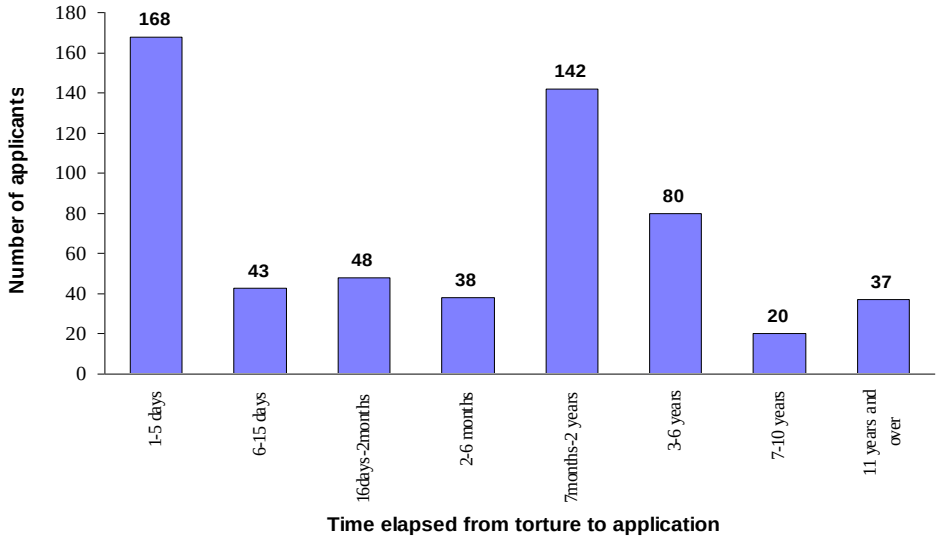
50.5% of the applicants (291 people) declared that they had last been subjected to torture in 1996.

Graphic 6. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to channel of contact



As a result of the research conducted to determine the time elapsed between the infliction of torture and the application to the HRFT, the ones who were tortured just 1-5 days before ranked first with 29.2% (168 people). In the second and third places were those tortured 7 months-2 years before (24.7%, 142 people) and at least 11 years before (6.4%, 37 people), respectively (Graphic 7).

Graphic 7. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to the time elapsed from the torture practice (that led to their application), to their application



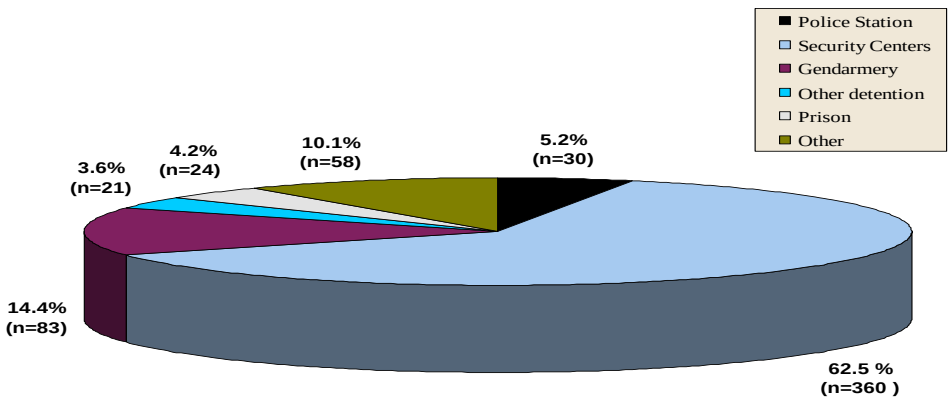
Among the applicants, 21.7% (125 people) indicated that infliction of the torture which caused their application to the HRFT had taken place within the borders of the Emergency State Region.

Regarding the reasons of torture, 90.8% (523 people) stated to have been tortured on political grounds and 7.5% (43 people) on non-political grounds, whereas 1.7% (10 people) stated that they had been tortured without any declared reason.

Security Directorates occupied the first rank with 62.5% (360 people) in the list of places where the torture, which caused the survivors' application to the HRFT, took place. The ratio of those who have stated they had been tortured in prison was 4.2% (24 people), followed by others who were tortured at home, in the open field or at work, etc.; generally speaking, at unofficial places with 10.1% (58 people) (Graphic 8).

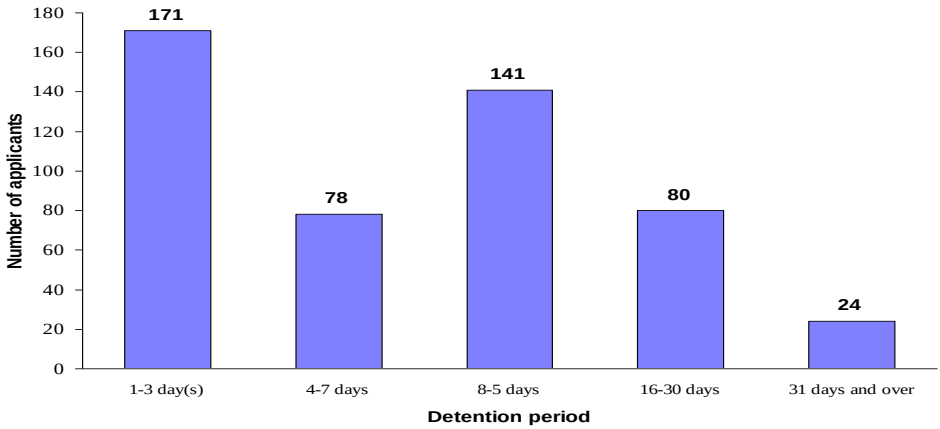
As 24 applicants were tortured in prison and 58 in places evaluated under the heading of "others" and during unofficial periods, they were left out while evaluating the period of detention and its results. Therefore, the aforesaid evaluation was based on the data of 494 people.

Graphic 8. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to the places of torture practice that led to their application to the HRFT



Of the applicants included in the group whose period of detention and its outcomes have been evaluated, 34.6% (171 people) stated that they had experienced a detention period of 1-3 days that resulted in their application to the HRFT, whereas 21.1% (104 people) stated that they had experienced the same for 16 days or more (Graphic 9).

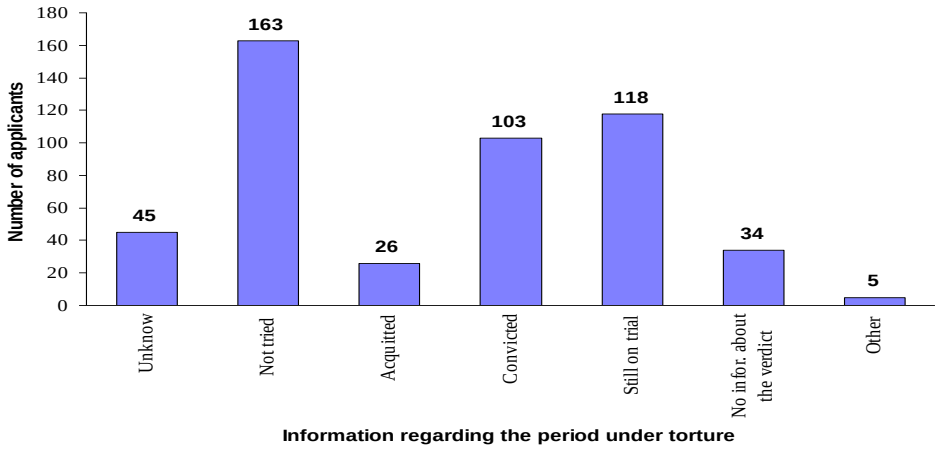
Graphic 9. The distribution of the 494 detained applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to the duration of detention that led to their application



37.5% (185 people) of the applicants in this group indicated that they had been arrested following their detention, 34.2% (169 people) stated that they had been released either by the prosecution office or by the court and 28.3% (140 people) declared that they had been released without being taken before a prosecution office (Graphic 10).

Of the applicants in this group, 20.9% (103 people) stated that the trial launched against them had resulted in conviction, 23.9% (118 people) that the trials were still going on, whereas 5.3% (26 people) that the trials had resulted in acquittal. 33.0% (163 people) of the applicants stated that they had not been put on trial.

Graphic 10. The distribution of the 494 detained applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to the legal process that followed the detention period that led to their application

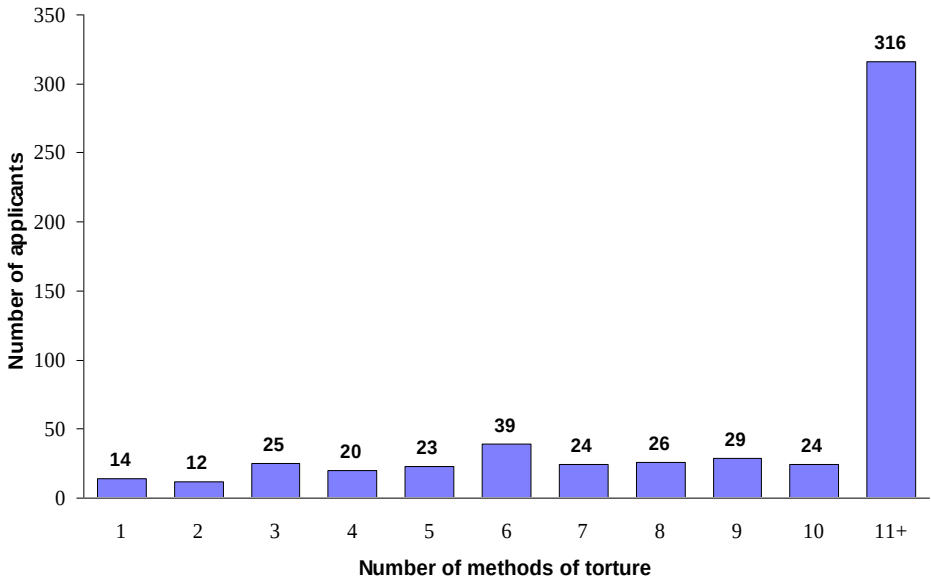


Methods of torture inflicted on the 552 applicants (except the 24 survivors tortured in prison) to the HRFT Treatment and Rehabilitation Centers are shown in Table 1. As for the most common method of torture, beating was on the first rank with a percentage of 97.1 (536 people). Insulting was the second most frequent method with 92.6% (512 people) and threatening of the survivor came third with 82.4% (455 people). Although almost all the detained applicants state that they were blindfolded when they are questioned in detail, only 75.9% (419 people) considered blindfolding as a method of torture and hence stated that they had been blindfolded.

Of the detained applicants, 31.2% (172 people) stated that they had been sexually harassed and 3.8% (21 people) stated that they had been raped. 44.2% (244 people) of the aforesaid applicants stated that they had been given electric shocks and 43.3% (239 people) had been suspended on a hanger.

Of the 552 applicants, 2.5% (14 people) stated that they had been subjected to at least one method of torture, 2.2% (12 people) to 2 methods, 4.5% (25 people) 3 methods, while 57.2% (316 people) stated that they had been subjected to 11 or more methods of torture (Graphic 11).

Graphic 11. The number of methods of torture inflicted on 552 applicants to the HRFT Treatment and Rehabilitation Centers in 1996, who tortured during official or unofficial detention



Of the 576 torture survivors who applied to the HRFT, 42.5% (245 people) acknowledged that they had been detained once, 25.5% (147 people) had been detained twice, and 28.3% (163 people) three times or even more. It was determined that 21 applicants had never experienced an official detention period.

Among the 310 applicants who had been detained twice or more, 95.8% (297 people) indicated that they had been tortured not only during the detention period that had led to their application to the HRFT but also during other detentions.

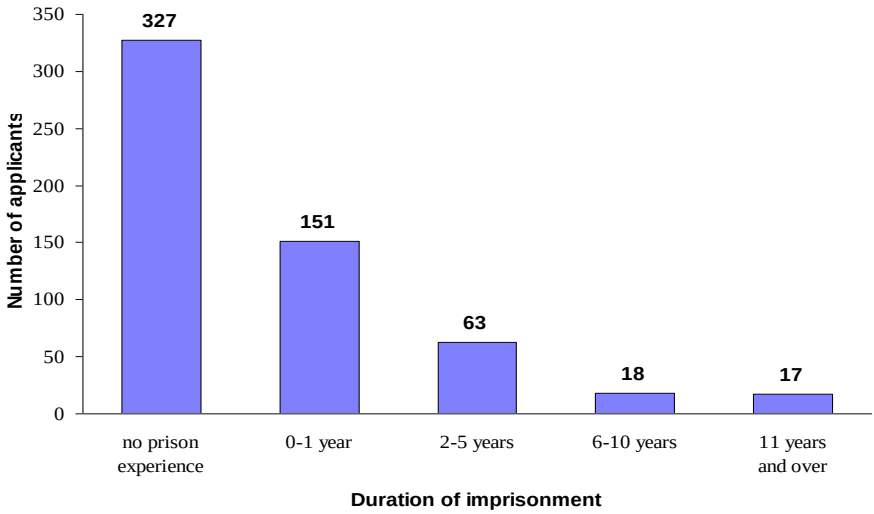
56.8% (327 people) of the 576 applicants stated that they had never in their lives been to prison. 26.2% (151 people) acknowledged that they had stayed in prison for a year or less, whereas 3.0% (17 people) were determined to have spent 11 years or more in prison (Graphic 12).

Table 1. Methods of torture inflicted on the 552 torture survivors who applied to the HRFT Treatment and Rehabilitation Centers in 1996.

Torture methods	n	%
Beating	536	97.1
Insulting	512	92.6
Threats (other than death threats) against the person	455	82.4
Blindfolding	419	75.9
Death threats	399	72.3
Stripping	293	53.1
Restricting food and water	288	52.2
Forcing to wait on cold floor	282	51.1
Cell isolation	265	48.0
Pressurized/cold water	255	46.2
Creating a sense that torture will begin at any time	255	46.2
Threats related to relatives	253	45.8
Electricity	244	44.2
Suspension on a hanger	239	43.3
Sexual harassment	172	31.2
Squeezing testicles	167	30.3
Restricting sleep	166	30.1
Restricting defacation and urination	163	29.5
Puling out hairs/mustaches/beards	160	29.0
Witnessing torture	151	27.4
Falanga	114	20.7
Forcing to extensive physical activity	95	17.2
Forcing to listen to marches or high volume music	71	12.9
Mock execution	63	11.4
Strangling	44	8.0
Torturing near relatives	44	8.0
Forcing to obey nonsense orders	39	7.1
Asking for serving as an informer	29	5.3

Rape	21	3.8
Burning	14	2.5
Other	162	29.3

Graphic 12. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to the period spent in prison.



24 of the applicants applied to the HRFT due to the torture inflicted on them in prison. Among them, 18 declared that they had been subjected to falanga, 17 insults and 13 to threats.

Out of the 249 applicants imprisoned at some time in their lives, 97.6% (243 people) stated that they had not been able to get the required medical aid in prison.

Regarding the 576 applicants, 22.7% (131 people) were determined to carry permanent traces and/or physical sequelae due to torture.

Of the 576 people, 14.1% (81 people) stated that after experiencing torture, they had, by themselves, applied for and received a forensic report certifying the torture inflicted on them. The ratio of those who filed an official complaint following torture was 15.3% (88 people).

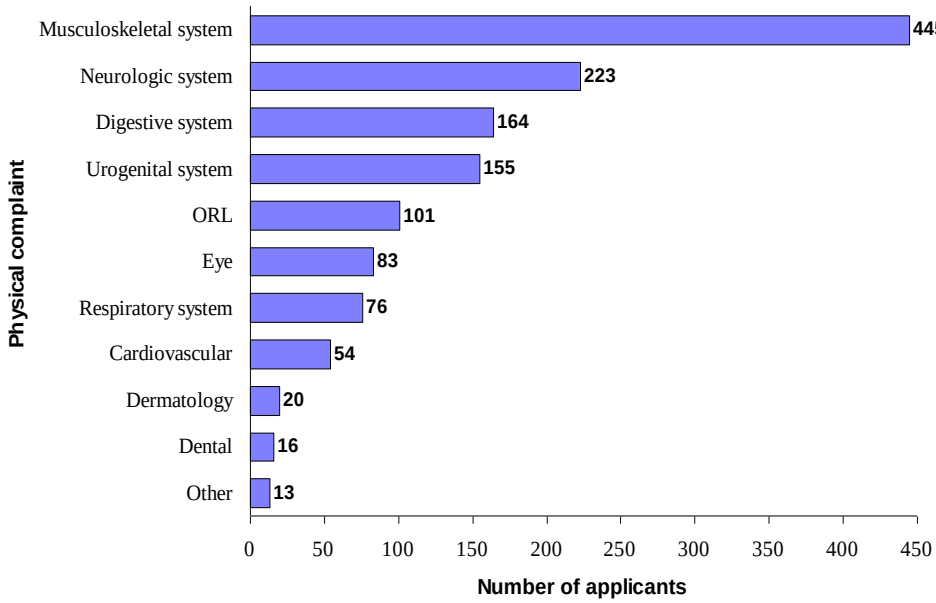
Of the applicants, 44.8% (258 people) said that that they had staged hunger strikes. Among the mentioned 258, 85.3% (220 people) stated that they had been provided with salted and sugared liquids during the hunger strike.

C. The Treatment Period

Of the 576 applicants to the HRFT Treatment and Rehabilitation Centers in 1996, 45.3% (261 people) had only physical complaints and 2.3% (13 people) had only psychological complaints, whereas 52.4% (302 people) sought medical support for both physical and psychological complaints.

When the physical complaints of the applicants was evaluated taking frequency as the basis, complaints related to the musculoskeletal system ranked first with 77.3% (445 people), followed by the neurological system with 38.7% (223 people) and the gastrointestinal system with 28.5% (164 people) (Graphic 13).

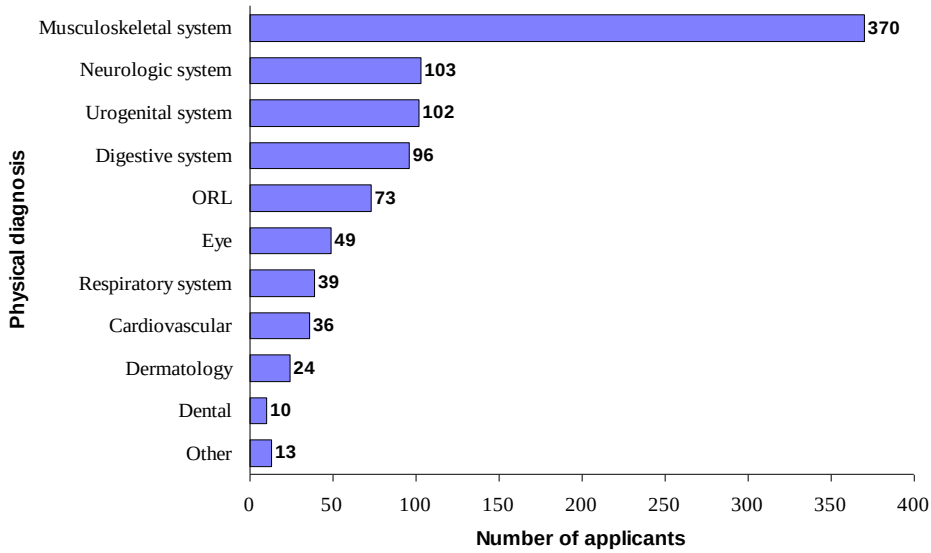
Graphic 13. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to their physical complaints



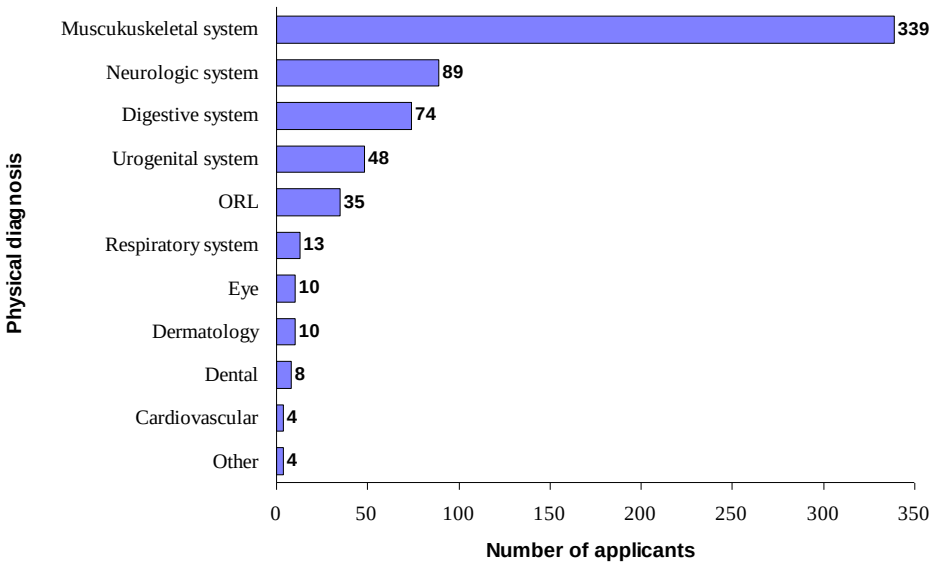
The relation between the torture inflicted on the applicant and the diagnosis obtained as a result of the medical and laboratory examinations, was studied within the framework of 3 pre-defined options: “Related to torture", "Not related to torture" and “Relation could not be determined".

When the frequencies of the diagnoses that the 576 applicants received were evaluated, the diagnosis related to musculoskeletal system was in the first place with 64.2% (370 people) (Graphic 14). It was found that the diagnoses of 58.9% (339 people) who received a diagnosis related to musculoskeletal system were associated with the infliction of torture. No physical diagnosis could be determined on 8.3% (48 people) of the applicants. Twelve applicants abandoned treatment before any diagnosis could be made.

Graphic 14. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996, according to their physical diagnosis.



Graphic 15. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996, according to their physical diagnosis related to torture



When the applicants' psychological complaints were evaluated on the basis of frequency, sleep disturbances ranked first with 42.5% (245 people), followed by memory impairment with 33.0%, (190 people), anxiety with 28.6%,

(165 people) concentration difficulties with 28.5%, (164 people) and inattentiveness with 28.3%, (163 people) (Table 2).

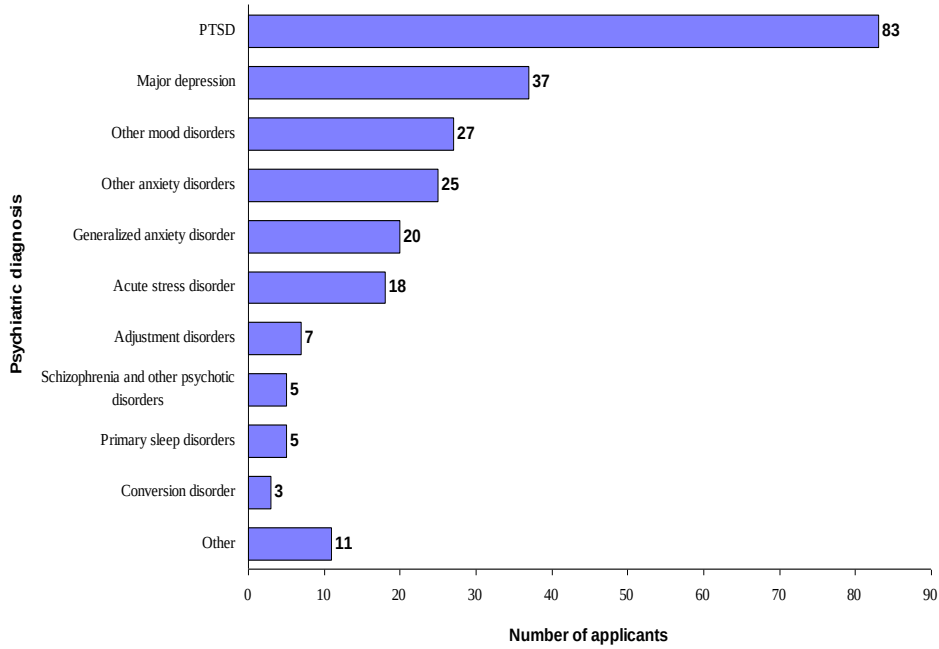
Table 2. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to their psychological complaints

Psychological Complaints	n	%
Sleep disturbances	245	42.5
Memory impairment	190	33.0
Anxiety	165	28.6
Concentration difficulties	164	28.5
Inattentivenes	163	28.3
Flashback	153	26.6
Worry	150	26.0
Irritability	147	25.5
Weakness, fatigue	122	21.2
Nightmares	108	18.8
Anhedonia	85	14.8
Loss of motivation	80	13.9
Fear	79	13.7
Hopelessness	58	10.1
Avoidant behavior	51	8.9
Suspiciousness	39	6.8
Obsessional thoughts	31	5.4
Considering suicide	18	3.1
Loss of sexual Interest	16	2.8
Other	54	9.4

In general, applicants to the HRFT have sessions with a psychiatrist. However, the ones who object to these sessions for various reasons are not compelled to do so. 14.4% (83 people) of the tortured applicants in 1996 (the ones tortured) were diagnosed as having PTSD, and 6.4% (37 people) as having major depression (Graphic 16).

It has been observed during the HRFT treatment and rehabilitation procedures that as the accumulation of knowledge about torture as a traumatic experience and about the treatment of survivors expands, the psychological diagnoses are transformed from comprehensive diagnoses such as depression, anxiety, psychosis to more detailed diagnoses, enabling an extensive assistance to the applicants about their treatment through a better understanding of the applications.

Graphic 16. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996, according to their psychiatric diagnosis related to torture

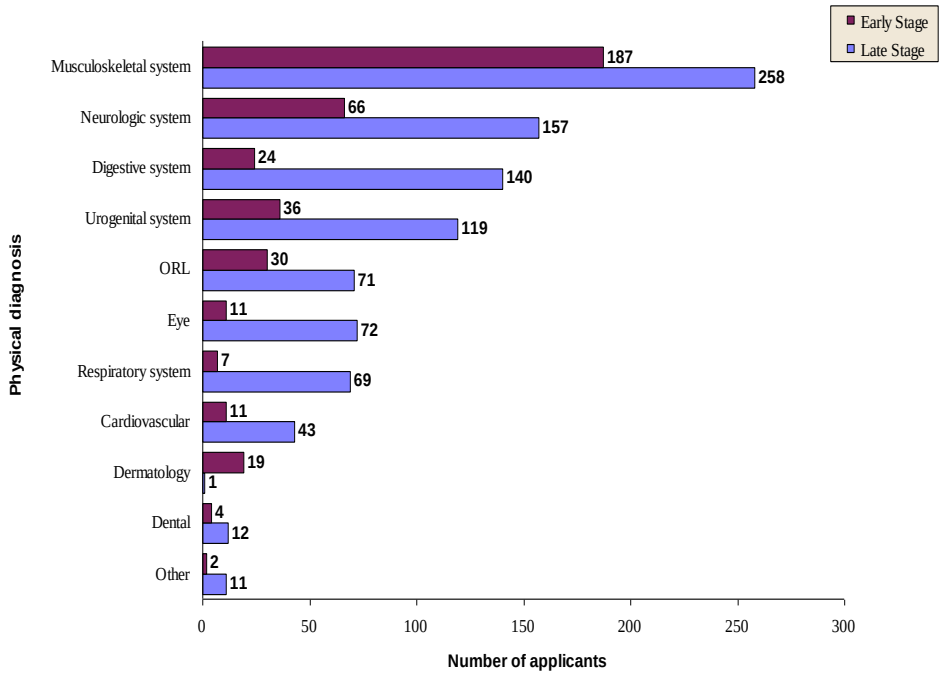


When the applicants in this group are divided according to the time elapsed between torture and application to the HRFT into sub-groups, i.e. as (early stage) and those who applied later (late stage); significant differences were revealed regarding the physical and psychological complaints and diagnoses.

Torture survivors who apply within the first 15 days after torture are assessed under the title of early stage while those who applied later are assessed under the title of late stage. The number of early stage applicants in 1996 was 211 and of late stage applicants was 365. When these two sub-groups were compared according to their physical and psychological complaints, significant differences were revealed.

Regarding the physical complaints of these two sub-groups, the early stage applicants with musculoskeletal system complaints ranked first with 88.6% (187 people), followed by neurological system complaints with 31.3% (66 people), and the urogenital system complaints with 17.1% (36 people). The late stage applicants with musculoskeletal system complaints also ranked first but the ratio decreased to 70.7% (258 people). In this sub-group, complaints about neurological system were observed with a frequency of 43.0% (157 people) and about gastrointestinal system with a frequency of 38.4% (140 people) (Graphic 17).

Graphic 17. The distribution of the early and late applicants according to their physical complaints.



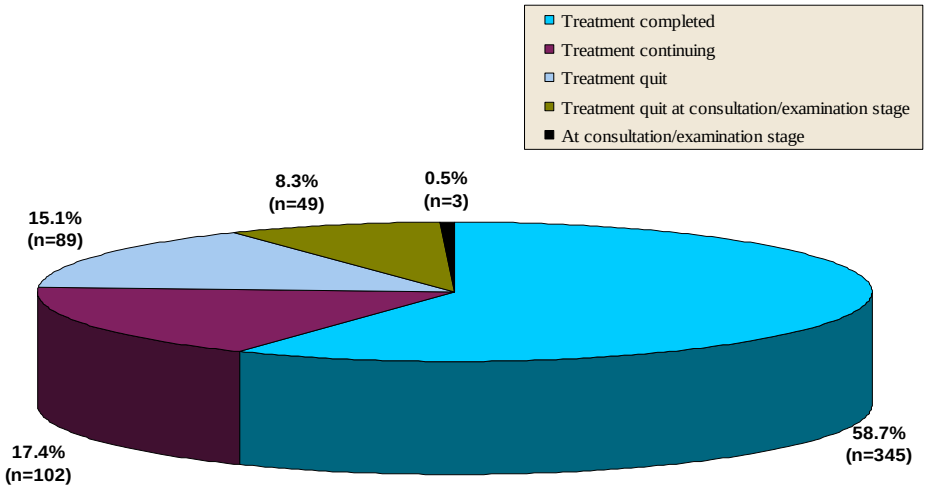
When a comparison was made with regard to the frequency of psychological complaints, sleep disturbances occupied the first rank with 25.1% (53 people), the second was worry with 22.3% (47 people) and then came anxiety with 21.8% (46 people) for the early stage applicants. For the late stage applicants, sleep disturbances again ranked first but this time the proportion doubled and became 52.6% (192 people). Memory impairment ranked second with a frequency of 42.2% (154 people), then came inattentiveness with 37.0% (135 people) and concentration difficulties with 35.9% (131 people) (Table 3).

23.4% (138 people) of the 588 applicants in 1996 abandoned the treatment processes at consultation, examination or treatment stages. The treatment of 58.7% of the applicants (345 people) was completed. The treatment of 17.3% (102 people) was still continuing while data for the report were collected (Graphic 18). It was seen that the proportion of abandoning treatment decreased when compared to the proportion in 1995 (27.3%).

Considering the treatment given to the applicants in 1996, it was found out that pharmacological treatment was given to 85.4% of the applicants (502 people). The ratio of those who received psychotherapy was 24.7% (145 people) and who received physiotherapy was 14.0% (82 people). 4.8% (28 people) underwent surgical interventions, 2.9% (17 people) orthopedics interventions,

and dental treatment was applied either solely or in combination to 1.2% (7 people) of the applicants.

Graphic 18. The distribution of the applicants to the HRFT Treatment and Rehabilitation Centers in 1996 according to their treatment procedures.



CONCLUSION

In a country where human rights are violated systematically, the HRFT aims to present a brief account of generous efforts of hundreds of medical staff from various occupations through its annual HRFT Treatment and Rehabilitation Centers Report.

Table 3. Psychological complaints of the early and late stage applicants to the HRFT in 1996 according to their psychological complaints.

	Early stage applicants		Late stage applicants	
Psychological Complaints	**n**	**%**	**n**	**%**
Sleep disturbances	53	25.1	192	52.6
Memory impairment	36	17.1	154	42.2
Anxiety	46	21.8	119	32.6
Concentration difficulties	33	15.6	131	35.9
Inattentivenes	28	13.3	135	72.9
Flashback	33	15.6	120	32.9
Worry	47	22.3	103	28.2
Irritability	33	15.6	114	31.2

Weakness, fatigue	21	10.0	101	27.7
Nightmares	23	10.9	85	23.3
Anhedonia	7	3.3	78	21.4
Loss of motivation	13	6.2	67	18.4
Fear	28	13.3	51	14.0
Hopelessness	12	5.7	46	12.6
Avoidant behavior	14	6.6	37	10.1
Suspiciousness	11	5.2	28	7.7
Obsessional thoughts	6	2.8	25	6.8
Considering suicide	2	0.9	16	4.9
Loss of sexual Interest	0	0.0	16	4.4
Other	11	5.2	43	3.0

The fact that 50.5% (291 people) of the 576 people who applied to the HRFT in 1996 were tortured in 1996 supports the assertion that torture is systematically applied in Turkey.

Torture was inflicted to 90.8% of the 576 applicants for political reasons but this should not be taken to mean that those detained for non-political reasons are not exposed to torture systematically.

It is quite significant that although there is no treatment and rehabilitation centers in the Eastern and Southeastern Anatolia region, the South-eastern and Eastern region ranked first regarding the birth places of the applicants and also that 21.7% of the torture incidents that led to application to the HRFT took place in the Emergency State Region.

Unemployment, a major factor that negatively affects the treatment and rehabilitation, was again at a significant level this year. Projects have been developed concerning supplying work and occupation and social support.

Long detention periods facilitate infliction of torture. The sum of the number of applicants who were released before appearing before a prosecutor and the number of those who were released by the prosecutor or the court constituted 62.5% of the total number of the applicants, and this should be evaluated within the ongoing discussions about arbitrary detentions.

The statements of the applicants made it clear that psychological torture methods are more common but such torture methods as electric shocks or hanging are also applied systematically. These findings should be assessed within the discussions on the prevention of torture and certification of the symptoms of torture by medical reports.

The statements of the applicants revealed that hunger strikes still have the characteristics of being a frequently used method of claiming rights during

detention or prison life. The statements supported the argument that the studies of the medical circles on the attitude of physicians during hunger strikes and to the treatment of the strikers were urgent needs.

That many symptoms of torture were not mentioned in forensic reports although they were observed, should be evaluated within the content of the forensic report procedures, Forensic Medicine Institute, and the responsibility of the physician in prevention of torture.

Although the proportion of those who abandoned treatment decreased in comparison to the previous year, it still constitutes an important problem.

With the hope of a world where torture is thrown into the dark pages of history.

Studies and Assessments
On Torture and
Its Consequences

ADANA HRFT TRIAL

Metin Bakkalcı*

It was perhaps unimaginable, even two years ago, that the Treatment and Rehabilitation Center of the Adana Representation of the HRFT, which have four employees and about thirty volunteers, and the efforts undertaken there by Mustafa Çinkılıç and Tufan Köse on purely humanitarian and professional motives might give rise to a public issue debated at various levels at home and in places as remote as Zimbabwe and the European Parliament and the Philippines and the USA.

Efforts and people as ordinary as these, under no ordinary domestic circumstances, have become part of "extraordinary facts and extraordinary people" in the public reminiscence.

This is a story that lasted for one year.

This is the story of a campaign launched on political purposes.

This is a story of how those who are quite reluctant to do anything against torturers attempted to punish those who treat survivors of torture, for their very humanitarian efforts.

This is the story of how those who try to fulfill one requirement of social solidarity were brought to trial while the public was getting better acquainted with the faces of commissioned and noncommissioned assailants of various torture and murder cases for months.

This is a story of the attempts by the Ministry of Foreign Affairs that create an impression that it has the wishful thinking of being superior to the judiciary.

This is a story of the conditions under which the human rights advocates pursue their struggle and the context of human rights, and of the power and weaknesses of the executive power, law and state in our country.

This story started as follows:

One day, the effectual work of the HRFT, which has been organizing the treatment and rehabilitation of torture survivors, documenting the human rights abuses and bringing the related reports to the public opinion for 7 years, in strict conformity with all legal requirements, disturbed the Ministry of Foreign Affairs. The Ministry of Foreign Affairs called almost all units of the state, particularly the armed ones, to a meeting via secret letters, and launched a campaign against the HRFT.

Acting upon the mentioned start, the Ministry of Health, the General Directorate of Foundations and the Ministry of Justice initiated investigations against the HRFT, while the prosecutors launched trials. The prosecution offices in Ankara and İzmir decided not to prosecute. The issue was conveyed to the agenda of the Ankara State Security Court. The trial launched in İstanbul resulted in acquittal during its first hearing. The Adana trial was concluded on 2 May 1997, during the eight hearing. Our Adana Representative, Lawyer Mustafa Çinkılıç, was acquitted of operating an unlicensed treatment center. Dr Tufan Köse, the Center's physician, was fined for his failure to notify the competent authorities of the identities of and information about our tortured applicants. No doubt that the values which are the achievements of centuries cannot be obliterated by one judgment. Therefore, we shall make further efforts to secure the quashing of that decision, on all legitimate platforms we have right to.

The court demanded, the identities of and information about our applicants, and names and addresses of those who made their medical expertise available to the Foundation. At the beginning of this period, we summarized our assertion as follows:

"Certain universal values that are no more argued, should once more be emphasized:

1) Condemnation of torture.
2) Maintaining public support for torture survivors.
3) Maintaining the security of torture survivors.

The function and the reason for the existence of the HRFT, is to put those values into practice at home, too. The HRFT, with the concrete steps it has taken, has contributed considerably to both the materialization of those values, and to the similar efforts all over the world.

In practice, maintaining support for and the security of torture survivors means that the relation of the survivor with the related organization is a secret one based on confidence. Disclosing no information **without the consent of the person**, one of the universal principles of medical ethics, holds vital importance from many aspects in the case of a specific issue such as torture. What has indisputable priority in this specific issue is that the torture survivor should

psychologically, sociologically and physically be restored to and enjoy good health." All kinds of attempts to undermine those fundamental principles, regardless of the reason behind, mean directly supporting torture and torturers. The implementations initiated as dictated by the Ministry of Foreign Affairs, aim at putting a discussion, that has already been concluded at the universal scale, on the agenda. The HRFT is a party in that discussion.

And, as we have already said, this trial was an opportunity for Turkey.

The trial was covered more than 100 times by the domestic and international press. 150 people and institutions from abroad took an active position to support the Foundation. The hearings were attended by representatives of the World Medical Association, the International Rehabilitation Council for Torture Victims, the Danish Medical Association, the Berlin Treatment Center (Behandlungszentrum für Folteropfer), the Swedish Support Committee, the Italian Treatment Center (Medici e Psicologi contra la Tortura), the Center for Victims of Torture in Minneapolis, the American Association for the Advancement of Science and the Lawyers Committee for Human Rights, and members of parliament and representatives from various countries. Local organizations which attended the hearings included the Turkish Medical Association, the Human Rights Association and the Contemporary Lawyers Association, and Union of Chambers of Turkish Engineers and Architects. Surveys of literature and scientific studies to be submitted to the Curt Board were conducted by various people/groups.

Thus a supportive platform was formed at the national and international level, and this process re-confirmed our assertion explicitly by ending up this discussion that has already been concluded at the universal scale, with the same conclusion. Furthermore, it constituted a sample case that will be cited for long at home and abroad. Scientists from both the medical profession and other disciplines, and all the related circles at home and abroad had profound contribution to this end which is an outcome of the seven years' accumulation of the Foundation.

We thank all those who contributed to this shared success, from and outside Turkey. Our activities shall be even more effective from this time on.

Ankara, May 1997

THE STORY OF THE ADANA TRIAL

Mustafa Çinkılıç*

INTRODUCTION

The Adana trial is a concrete manifestation of the intentions of the State of the Republic of Turkey towards the Human Rights Foundation of Turkey (HRFT) and is the acid test of its approach to the human rights question nationwide.

What follows is a brief account of the legal stages of the Adana trial, including its beginning and development. This summary is aimed at refreshing the memories of those who followed the hearings and describing the developments in an easily understandable form to those who could not. Although I was one of the defendants, the story is told as it would be related by a third person, in a language as objective as possible.

STAGES OF THE TRIAL

Being a party to the general and regional human rights conventions and declarations, the Turkish government expected that positive comments would be included in the US government's "Human Rights Report 1995 - Turkey". However, while the report was at the drafting stage, the Turkish authorities learned that it contained statements about the continuation of systematic torture in Turkey, which were based on the HRFT documents. Thereupon, the Ministry of Foreign Affairs attempted to prove the unreliability of the HRFT documents on which the US report was based. It began manufacturing information and documents, which would be used to prove that the report was groundless.

The Ministry put into action a plan to present the HRFT Treatment and Rehabilitation Centers, which have been operating since 1990 and which published their first report in 1992, as if they did not exist or were carrying out illegal activities.

As part of this plan, the Ministry of Foreign Affairs wrote a letter, dated December 21, 1995, No: 1819-13790, to demand an inspection of the Ankara,

Istanbul, İzmir and Adana Representations. Thereupon, the General Directorate of Health Services of the Health Ministry wrote a letter on January 8, 1996 under No: 152, to the governors of the provinces in which these Representations are located, and demanded that an inspection be carried out through Provincial Health Directorates, which were required to communicate the results of the inspection by the evening of January 10, 1996. The information so gathered was relayed to the Ministry of Foreign Affairs.

With reference to the letter of the Health Ministry dated January 16, 1996, No: 15A/212, which contained the results of the inspections, and to its own letters, the Ministry of Foreign Affairs sent the Head Office of General Staff, the Ministry of Justice, the Ministry of Interior Affairs, the Ministry of Health, the National Intelligence Agency Undersecretariat and the General Secretariat of the National Security Council a "Secret" letter captioned "The HRFT Treatment and Rehabilitation Centers", dated January 29, 1996, No: AKGY-164-1037 The letter asked these agencies to participate in a meeting to be held at 15:00 on February 1, 1996, "through their experts equipped with information on the subject".

The meeting decided that the General Directorate of Foundations would carry out an audit while the Ministry of Health would determine whether "the Centers did not exist or were operating without permission". The role of the Ministry of Justice was to bring our representatives and physicians to trial. Thus the process began. The subsequent developments have clearly shown that this was a contrived process, which had the political aim of declaring the HRFT centers illegal in order to undermine their reliability.

With reference to a previous letter from the General Directorate of International Law and Foreign Relations, dated December 28, 1995, No: 063514, the Ministry of Justice sent a "very urgent" and "secret" letter, dated February 9, 1996, No: 7482, instructing the Adana Public Prosecution Chief Office to "determine whether the physician complied with the notification rule" and to take steps accordingly. The Prosecution Office took steps upon receiving that letter, sent the related documents to the prosecutor of the preliminary investigation bureau and initiated an investigation on February 14, 1996 under No: 1996/5092.

As part of this investigation the prosecutor sent a "very urgent/secret" letter to the Adana Health Directorate to inquire if the HRFT had a Treatment and Rehabilitation Center in Adana and if the center was in compliance with Laws numbered 1219 and 2219, and asked about the names and addresses of the Center's officials and physicians.

In its "secret" letter 4491 of March 5, 1996 to the public prosecutor, the Health Directorate replied that the Representation was inspected pursuant to the letter 152 of January 8, 1996, that the permission was to be issued by the Governorate under Law 1219 but no application had yet been received from the Center, that the authorized person was identified as Lawyer Mustafa Çinkılıç and that the Representation was informed of the situation through letter 4178 of March 1, 1996 in order for the Center be able to operate within a legal framework.

While this correspondence was continuing, the Ministry of Justice sent a letter on February 29, 1996, under No: 9864, to demand “a very urgent” reply to its letter 7482 of February 9, 1996. Such demands for information, which have the nature of interventions in the trial, continued throughout the proceedings.

On the same date as the Health Directorate’s letter was issued, the public prosecutor wrote a letter to the Execution Office of the Public Order Department of the Adana Security Directorate to demand that the Foundation’s physicians and other officials be brought before him. The Public Order Department wrote a letter, dated March 6, 1996, No: Execution Office/A.Ds.6, to the Regional Directorate of Foundations to inquire about the situation and the Directorate communicated the identity of the Representative of the Foundation and the telephone number of the HRFT in letter 249 bearing the same date. On the same day, the Foundation’s Representative, a lawyer, was taken to the public prosecution office “under police supervision”, in violation of the Law concerning Lawyers.

The Representative’s testimony was first received in his capacity as a witness. However, the next day, statements of the Representative and the physician of the Foundation were taken in their capacity as defendants. The physician was told that he had been fined TL 12,525,000 for “his failure to fulfill the obligation to make notification” and he would not be prosecuted if he paid this fine within ten days.

The physician refused to pay the fine as he believed that he had not committed an offense because he had complied with the principle of confidentiality of the relation between the patient and the physician as well as the principle of “health first”, which is incorporated in article 530 of the Criminal Code on which the charge brought against him was based. The payment of this fine would amount to the acceptance of the charge.

Upon this refusal, the prosecutor brought charges on March 21, 1996 (preliminary number 96/5092, reference number 96/1242, indictment number 96/1242) against Tufan Köse, the Foundation’s physician, and Lawyer Mustafa Çinkılıç, the Foundation’s Representative, respectively for failure to report a crime pursuant to article 530 of the Turkish Penal Code and for “disobeying the orders of official authorities” pursuant to article 526 of the same Code. Thus a trial was launched at the Adana Penal Court of Peace No: 4, under No: 1996/690.

The prosecutor demanded that the Foundation’s physician be fined one and half times as much the originally stated amount and the Representative be imprisoned for three to six months and fined.

The first hearing was held on May 10, 1996, and the judge was B. A. A. The lawyers for the defense submitted a petition which, on the basis of supra-national human rights documents, explained the nature of the patient-doctor relationship, the motives behind the trial and the political character of the trial. The defendants also submitted petitions that included their defenses to the court.

The judge demanded the Representation and the Headquarters of the Foundation deliver the originals of the medical records and documents, and the medical reports concerning the 167 people treated at the Center and the correspondence relating to their treatment. The next hearing was scheduled for July 5, 1996.

In its reply to the Court, the Representation said that the information and documents required were kept at the Headquarters whereas the Headquarters proposed to present, instead of the demanded documents, the annual report which was prepared on the basis of the information demanded by the court.

The second hearing took place on July 5, 1996, and there was a new judge - Judge Ş. S. Defense lawyers presented three files on the confidential nature of the relationship between the patient and the physician, and the treatment and rehabilitation of survivors of torture, namely:

a) A file on the conditions under which similar centers elsewhere in the world operate;

b) Opinions of scholars in Turkey on the nature of the relationship between the patient and the physician, especially including the approach to survivors of torture,

c) Opinions of foreign scholars on the same subject.

The judge again demanded the information on 167 people, on the grounds that it was incomplete, and scheduled the next hearing for September 13, 1996.

The Representation's and Headquarters' replies to this demand were similar to their previous replies.

An examination of the file shows that the Ministry of Justice sent a letter dated July 15, 1996 numbered 37974 and inquired about the results of the hearing held on July 5, 1996, through the prosecution office, and the court provided information on the case file.

In the meantime, the following developments took place in the Health Ministry inspections initiated upon the instructions of the Ministry of Foreign Affairs:

The Adana Provincial Health Directorate, in its letter 4178 of March 1, 1996, stated that the HRFT Treatment and Rehabilitation Center in Adana was within the scope of Law numbered 1219. The Center was asked to submit the documents ascribed in that law within 15 days, in order to be able to carry on its activities. The required documents were submitted to avoid an interruption in the activities. All of the required documents were delivered on March 14, 1996, yet neither the has permission been issued nor have any transactions been carried out to date contrary to what was stated in the Provincial Health Directorate's letter 4491, dated March 5, 1996: "... the operation permit will be issued by the Governorate. However, an application has not yet been received regarding the operation permit of the Center".

Although the documents required by the Provincial Health Directorate were submitted in order to avoid the interruption of activities, an appeal was lodged on April 16, 1996 to secure a review of the Health Directorate's conclusion that the Representation was within the scope of Law numbered 1219 on the grounds that this conclusion was not based on the legal and material realities. As that appeal went unanswered, the trial of nullity numbered 1996/823 was brought before the Adana Administrative Court No. 2 on August 15, 1996 for the annulment of the Health Directorate's conclusion that the center was within the scope of Law 1219.

In the trial before the Penal Court of Peace, on the other hand, the third hearing was held on September 13, 1996. This time, the judge was the same one as at the first hearing. Therefore, a broad summary of the files presented at the second hearing was submitted to the court board. The next hearing was scheduled for November 8, 1996.

Meanwhile, on November 1, 1996, the Foundation's Istanbul Representative was acquitted of the charge of violating Law numbered 2219, at the first hearing held in the Beyoğlu Penal Court of Peace No: 3, as "the elements of an offense were absent".

Before the hearing scheduled for November 8, 1996, the accused lawyer furnished the court with copies of the above mentioned acquittal verdict, the decisions not to prosecute given by the İzmir and Ankara prosecution offices and the Prosecution Office of the Ankara State Security Court as well as the minutes of the inspection conducted at the Foundation by the Chief Inspector of the Ministry of Health; and his acquittal was sought for an offense the elements of which were absent.

The fourth hearing was held on November 8, 1996, and there was another judge, S. M. The defense lawyers stated that the file was complete and they were ready to present their defense if the verdict would be disclosed. The judge said that the verdict would not be disclosed and granted the lawyers time to prepare their defense. The next hearing was scheduled for January 17, 1997.

The fifth hearing was held on January 17, 1997. The judge was the one who had been present at the first and third hearings. The lawyers of the defendants said that they were ready to make their pleas, but the judge said he would not make a decision and ordered that the original or an attested copy of the minutes of the inspection by the Ministry of Health's inspector, which was attached to the petition by the defense lawyer on November 5, 1996, be demanded from the Ministry of Health and Provincial Health Directorate. The trial was adjourned until February 21, 1997.

An examination of the case file shows that the Adana Chief Public Prosecutor sought information about the proceedings for submission to the Ministry.

In the meantime, the trial of nullity launched against the Ministry of Health at the Adana Administrative Court No. 2 on August 15, 1996 with Ref. No. 1996/823 was concluded on December 20, 1996, under decision No: 1996/1597.

The decision, which was in favor of the Foundation, stated briefly that “permission was not required as Law No. 1219 was not applicable to the center.”

The sixth hearing took place on February 21, 1997. There was yet another judge - Y. Ç. - who had no idea about previous proceedings.

The defense was ready. The minutes demanded from the Ministry had been included in the file and the court had been informed of the favorable decision of the Administrative Court, based on the inspection minutes. This time the original of the verdict was submitted to the court to avoid a new adjournment, but the judge mentioned that the file was directly associated with the Administrative Court’s decision and decided that “the file be requested from that Administrative Court for examination”. The next hearing was scheduled for March 28, 1997.

The seventh hearing took place on March 28, 1997. The judge was the same as the one at the previous hearing. The file requested from the Administrative Court had arrived. The judge wanted to adjourn the trial saying that the Administrative Court’s decision had not yet become decisive and he would make a decision after the Administrative Court’s decision became final. However, the defense lawyers had anticipated that the proceedings would be protracted on this account and had brought a copy of the decision containing a note that it had become decisive, which was presented to the judge.

Upon the submission of the copy containing the note of conclusiveness, the judge ordered that the file be studied for judgment and scheduled the next hearing for May 2, 1997.

The eighth hearing was held on May 2, 1997. The judge was the same as in the previous one. The written defense presented before the hearing was read out by Yusuf Alataş, one of the defense lawyers. The defendants expressed their agreement with that defense and added their own views as well.

After the presentation of written and verbal defenses, the judge read out his judgment - which he had previously jotted down on a piece of paper - to **acquit** defendant Mustafa Çinkılıç of the charge of refusing to comply with the orders of competent authorities and to punish defendant Tufan Köse for the offense of not reporting a crime, Under Article 530 of the Turkish Penal Code.

The defendants and their lawyers said that they would file an appeal, and submitted an application to save the statute of limitations.

CONCLUSION

At the time this article was penned, the legal process that embraces this trial had not yet come to an end although the local court had disclosed its decision. However, we deem that process to have already been completed and the defendants to have been acquitted of the charges, for the following reason:

The political authority realized the groundlessness of its claims - while the proceedings were continuing in Adana no charges were brought against the

physicians of the Istanbul Representation, who have worked for a longer period of time and diagnosed and planned the treatment processes of a greater number of torture survivors. This is also confirmed by the statements of the Ministry of Foreign Affairs officials that they did not want to interfere in the relationship between patients and physicians since they faced international reaction to the Adana trial, which was an attempt to intervene in this relationship. Unfortunately, this is not reflected in the judgment of the court. Debate on the punishment of the physician will of course continue. However, the physician is exonerated on legitimate grounds because he kept the promise he had made to his patients and defended the principles of his profession without compromise.

My acquittal in my capacity as the Representative of the Foundation, which has not been appealed against by the prosecutor and hence became decisive, the Administrative Court's decision that a permit is not required; and the acquittal decision ruled in the trial brought against the Istanbul Representative, which states that elements of an offense are absent, can be regarded as an indication of the fact that the political authority realized that its permit requirement was groundless. This has confirmed the validity of our position as a specific center to which Law numbered 1219 is not applicable, which we defended from the outset.

The legal process may continue at the appeal stage or before the European Court of Human Rights in the form of an individual application, etc. No matter what, I am happy to experience personally that hearts of human rights advocates, wherever they may be, beat at the same pace.

Adana, May 1997,

ADANA HRFT TRIAL
and
MEDICAL ETHICS

Tufan Köse*

Our Foundation has been prosecuted on various occasions during the last few years. The first question to be asked is: “Why are we brought to trial?”. This question has only one answer: We are the monitors and living witnesses of the anti-democratic practices and human rights violations in this country. Through our work, we put forward definite evidence and refute the official claims in its many aspects. In a country where more than three thousand survivors of torture have been treated by the HRFT, the official denial of the presence of systematic torture is stripped of all validity and credibility.

The way the trials we faced were commenced, the absurdity of the charges, the way these trials were held and the slow pace of the proceedings clearly show that the judiciary is not independent in Turkey. In Turkey, a functioning and effective judicial system is absent. Ignoring all the other relevant spheres and just looking at how the judicial system functions, we can say that democracy in Turkey still remains a wish.

In the trial against the HRFT Adana Representation, there were two defendants: lawyer Mustafa Çinkılıç, Adana Representative of the HRFT, and Tufan Köse, a physician at the Adana Treatment and Rehabilitation Center.

To operate a treatment center without permission and to fail in the completion of the formal procedure for starting such a center were the charges brought against our Representative Mustafa Çinkılıç.

In Turkey, commissioning and operating a private outpatient and inpatient clinic are governed by the Law numbered 1219. Our representative was accused of not complying with that law.

But the HRFT Adana Treatment and Rehabilitation Center is not an outpatient or inpatient clinic. This was clearly indicated in the minutes by the Ministry of Health's Chief Inspector Nevzat Koç, after the inspection he carried out in our center on April 9, 1996: **"The Representation does not contain a section which offers medical services as a treatment and rehabilitation center subject to the Law numbered 1219".**

Furthermore, similar charges brought against the HRFT İzmir Treatment and Rehabilitation Center had been dropped and the trial involving our İstanbul Center ended in acquittal at the first hearing.

The Adana Representation of the HRFT brought a cross-action before the Adana Administrative Court No. 2, arguing that the Law numbered 1219 was not applicable to the Adana Treatment and Rehabilitation Center and that the decision was a political one and was against the public interest. The court's decision (No: 1996/823) was in our favor: ***"To take permission from the respondent Administration in respect of the said activity of the Representation of the Foundation who does not carry out any activity that would fall within the scope of the Law numbered 1219, is not necessary under the Law numbered 1219. Therefore, the Administration's conclusion that the Representation is within the scope of the Law numbered 1219 and should be evaluated within such scope lacks legal bases. For the reasons set out, it is ruled unanimously, on December 20, 1996, ... that the sued act be annulled".*** The quoted decision indisputably confirms the validity of our argument.

In our country, there are no legal provisions governing how to commission and operate a health center, with *sui generis* procedures of functioning, that will provide treatment to survivors of torture. It should be noted that this is an important deficiency in a country where there are more than one million survivors of torture according to the most optimistic estimates and torture is regarded as a public health issue.

What has been stated up to this point leads to the assertion that: our Representative was accused of failing to comply with the requirements of a non-existing legal provision. He was acquitted of the charges in that trial.

In my capacity as the physician of the HRFT Adana Treatment and Rehabilitation Center, the charge against me was that I failed to comply with Article 530 of the Turkish Penal Code, which reads as follows:

"In cases when circumstantial evidence points to a crime committed against people, if physicians, surgeons, midwives or other health workers, after performing the help required by their profession, do not notify the judiciary or the police magistrate of the issue, or if a delay occurs in the denouncement then they shall be punished by a light fine of up to thirty liras, -with the exception of the cases when the denouncement may subject the person they helped to prosecution."

Evidently, this law provision aims to protect interests of those who need treatment and dispense with the obligation of denunciation if this is likely to result in the prosecution of the person.

Furthermore, Article 198 of the Turkish Penal Code has the following provision: **"A person who discloses, without relying upon a legitimate reason, a secret which s/he became cognizant of by virtue of her/his official title or rank, or profession or trade, disclosure of which might be harmful, shall be punished by imprisonment of up to three months and shall be fined up to 50 liras".** This provision explicitly imposes an obligation of non-disclosure on health sector employees.

Here I would like to cite a number of passages from my defense at the hearing held on May 10, 1996:

"... I worked in a very special area not regulated by law. Applicants were in a very tense and unconfident psychological mood when they came to us, because of what they had gone through under torture and in prison. The organization of the process of examination and treatment depended, in the first place, on the creation of a relation based on confidence. I was loyal to the Foundation's principle that required me not to disclose to any person, institution or press organ the personal information I had access to during my interviews with them without their consent, and I explained this principle to them. I encouraged them to lodge official complaints. But it was totally out of the question that I would make complaints on their behalf, despite their wish to the contrary. Most of the applicants tended not to file a complaint, mainly for two reasons. Firstly, they believed that the judicial proceedings would not result in anything detrimental to torturers. Secondly, there was the risk that they would be persecuted by the security forces again because of their complaints.

I know that not reporting in these circumstances does not constitute an offense. However, I believe that I would have had to do so even if I knew that this constituted an offense. Universal principles of medical ethics prevent us from disclosing private information we had access to in our relations with the patient, particularly when this would impair the treatment process. In line with this, there is an obligation to keep confidential the relation between the patient and the physician."

Communicating the information on applicants to judicial authorities, **despite their wish to the contrary or** without their consent, would have undermined their confidence in us. I think this was the motive behind the trial.

Considering the importance of the opinions of professional associations such as the World Medical Association and the Turkish Medical Association, and of scholars in Turkey and abroad in this matter, I would like to make a number of quotations:

- The World Medical Association, International Code of Medical Ethics: Duties of Physicians in General, Paragraph 5: **"A physician shall**

respect the rights of patients, of colleagues, and other health professionals, and shall safeguard patient confidences."

- The same Code, Duties of Physicians to the Sick, paragraph 3: **"A physician shall preserve absolute confidentiality on all he knows about his patient even after the patient has died."**
- The World Medical Association Declaration of Geneva, paragraph 5: **"I will respect the secrets which are confided in me even after the patient has died;"**
- The World Medical Association Declaration on the Rights of the Patient of (Lisbon, 1981): **"All identifiable information about a patient's health status, medical condition, diagnosis, prognosis and treatment and all other information of a personal kind must be kept confidential, even after death"."**
- The British Medical Association's opinion on the records kept concerning patients:
  - **Patient consent should be sought, for example, for the sharing with other health professionals of information necessary for the effective care of the patient.**
  - **Reports to third parties can only be provided with specific patient consent.**
  - **Only in exceptional cases, such as when there is a serious risk to other people, can the doctor dispense with the need for the patient's consent, but if possible, should first discuss their intention to do so with the patient.**
  - **Individuals should have control over information about themselves and how it is used.**
  - **The approval of a local research ethics committee must be obtained for the use of medical information in research.**

"Non-disclosure of secrets by physicians is not only an indisputable issue of medical ethics but has also become part of international rules and is guaranteed by the legal system." (Prof. Dr. Zuhal Amato, faculty member in the Public Health Department, also responsible for Medical Ethics Courses at the Dokuz Eylül University Faculty of Medicine)

"Let us formulate the issue briefly at the outset. The issue is related to people who applied to a physician because of their health problems associated with torture. Their conscious is not blurred, the sense of reality is intact and they are in a position to make their own decisions. They definitely refuse the offer to make a complaint in connection with the torture inflicted on and prevent the physician from taking any such initiative on their own behalf. What is the physician supposed to do in these circumstances? Indeed, there is a simple but long-established answer to

this question: "The physician must respect the course of action chosen by the patient, within the framework of the rights of the patient". However, some preliminary information seems necessary as we have reached a position to discuss this simple answer.

Due to the complex experience involving doubts about who can be complained about to whom, the applicant's basic confidence has already been damaged very deeply. Torturers can foresee this result and often do not forget to warn survivors of torture that they will be detained again if they file a complaint and will not survive torture again.

What the physician can do is no more than giving a message like this: "If I were you, I would file a complaint. Even if I didn't get any results under domestic law, I would do my best to confront them in supra-national judicial bodies and to ensure that the people responsible for this and those who protect them be condemned in the conscience of humanity. I think such an initiative would be very useful for restoring my psychiatric health". Going beyond such a recommendation would constitute an offense under domestic and international law and the very obvious violation of the Hippocratic Oath. Nobody should force physicians to follow such a dishonorable course.

The HRFT was born out of necessity in this country. It is an organization built on the social support extended to survivors of torture. It is one of the instruments whereby society apologizes to them." (Alp Ayan, M.D., Psychiatrist of the HRFT İzmir Treatment and Rehabilitation Center)

"The issue does not fall within the scope of Article 530 of the Turkish Penal Code, which is related to obligatory notification to be made by the physician, but, on the contrary, is within the scope of Article 198 of the same Code, according to which the physician is prevented from disclosing information confided in him. Even cases of influenza and traffic accidents must be kept secret, if the patient asks the physician to do so, let alone those cases disclosure of which would, in the judgment of the patient, cause him to suffer. The disclosure of professional secrets is also forbidden by law." (Assoc. Prof. Hamit Hancı, "Hekimin Yasal Sorumlulukları" (Physician's Legal Responsibility), 1995. p. 115).

"Regardless of the reasons for which they underwent torture, it may take a long time for the physician to win the confidence of these people because of what they lived through. The physician should not make promises s/he cannot keep. The sense of confidence of these people is very fragile and any mistake the physician may make in this respect can totally destroy the relation between the patient and the physician.

The patient must feel assured that all information s/he will give to the physician or to the treatment institution will remain confidential. If the patient is not assured of this or if this basic rule is violated, it is impossible to establish and maintain a therapeutic relationship between the patient

and the physician." (Prof. Cem KAPTANOĞLU, faculty member of the Department of Psychiatry, Faculty of Medicine, Osmangazi University).

"In all disciplines of medicine, non-disclosure of the information obtained is a general rule.

Non-disclosure is not limited to the prohibition of transferring the information on the patient to other people or institutions, without the patient's consent. It also covers the safeguarding of the file and all documents concerning the patient.

A person who was exposed to psychological, physical and/or emotional traumas establishes a special relation with the person and institution treating him. Especially among people who were subjected to intentional traumas by human beings, such as rape, torture and abuse, confidence in people was undermined. This is not a pathological reaction but is part of a real experience. The survivor knows by personal experience that other people can harm her/him. Particularly those who have lived through oppression and violence over and over find it necessary to test all of their relations, whether old or new. For them it is difficult to establish and maintain relations of trust. They pay attention to every detail and can establish close relationships after very careful consideration.

To sum up, it is an indispensable prerequisite to observe the rule of confidentiality in institutions offering services to people who have had traumatic experiences. Otherwise nobody would apply to these institutions." (Prof. Şahika Yüksel, Director of Psycho-Social Trauma Program, Department of Psychiatry, Faculty of Medicine, Istanbul University).

"Privacy in the treatment relationship is based on the patient's freedom to choose the people to whom s/he will convey private information. This is a prerequisite for the establishment of a therapeutic relationship.

...Considering that it is ethically prohibited to disclose the identity of the patient even at medical meetings, the disclosure of patients' identities by physicians to judicial authorities, without the consent of patients, is not permitted by medical ethics. Disclosure of the secrets to which a physician had access in the process of treatment constitutes an offense both under the rules of ethics and law. This also implies the infringement of personal rights of the patient." (Assoc. Prof. Mustafa Sercan, Bakırköy Psychiatric Hospital, Dr. Doğan Şahin, İmago Psychotherapy Center, Assoc. Prof. Raşit Tükel, Department of Psychiatry, Istanbul Faculty of Medicine)

Immediately after the commencement of this action, 4 organizations carrying out work in the same field abroad were contacted to inquire about the practice in their countries. These were Physicians for Human Rights, Boston, MA, USA, International Rehabilitation Council for Torture Victims in Copenhagen, Denmark, Behandlungszentrum Für Folteropfer (Treatment Center for Victims of Torture) in Berlin, Germany and Medical Foundation for the Care of Victims of

Torture in London, UK. The answers furnished by these organizations were identical:

- Government agencies have not taken any steps to inspect our center except for financial purposes.
- No steps have been taken to force us to disclose the identities of those applying to our center.
- No steps have been taken to force us to disclose the identities of consultant physicians working for our Center.

A file containing the opinions briefly quoted above was submitted to the court. However, the judge did not pay any attention to scientific opinions, the Code of the World Medical Association or the approaches of other organizations engaged in similar activities abroad.

At the final hearing held on May 2, 1997, the court found me guilty. I was fined TL 18,787,000.

This trial re-opened unduly the debate on the principle of professional's duty of non-disclosure, which is in fact an easily understandable duty.

This trial totally ignored intellectual heritage of thousands of years, in an effort to rediscover America.

The party which in fact lost in this trial is the political power. It will be difficult for the political power to answer the question, *"Is it true that a physician has been brought to trial and punished in Turkey for his refusal to disclose the patient confidences?*".

Like millions of my colleagues in the world and in Turkey, I shall continue to commit this "offense" by refusing to disclose the information I receive from my patients.

The developments triggered by this trial have brought a number of benefits to the HRFT, which can be listed as follows:

- Applicants saw that the promise of confidence we made to them was kept at the cost of punishment. Their confidence was refreshed.
- Many human rights organizations and democratic forces in the world gave an incredible example of solidarity, proving that we are not alone.
- We also received constant support from many mass democratic organizations, professional associations and trade unions in Turkey.
- Pressures applied in Turkey on health sector laborers were put on the agenda in their diverse aspects.
- Universal principles of medical ethics were discussed and made known in their various aspects.
- The first steps have been taken towards a significant legal achievement.

- Important advantages have been obtained as regards the promotion of the HRFT in Turkey and in the world.

Finally, I would like to express that I am proud to work for the Human Rights Foundation of Turkey, an organization which has proved through everything it has done that it is the representative of a great future in this country.

Adana, May 1997

TORTURE AND THE MEDICAL PROFESSION*

Mustafa Sercan, Doğan Şahin***, Raşit Tükel****

PSYCHOLOGICAL PROBLEMS CONSEQUENT TO TORTURE

The psychological integrity and health of a person might deteriorate if s/he "experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others", and under conditions that may lead to "reactions such as fear, helplessness, or horror". Torture is one of the severest of such traumatic incidents.

The following are generally observed in various psychiatric disorders consequent to torture:

a) re-experiencing the incident of torture in various ways

- recurrent and intrusive distressing recollections of the incident of torture,
- recurrent distressing dreams of the incident
- acting or feeling as if the incident of torture were recurring
- intense psychological distress at exposure to cues that symbolize or resemble an aspect of the incident of torture
- physiological reactivity on exposure to cues that symbolize or resemble an aspect of the incident of torture

b) Persistent avoidance of stimuli associated with the incident of torture and numbing of general responsiveness

- efforts to avoid thoughts and feelings associated with torture

- efforts to avoid activities or situations that arouse recollections of the incident
- inability to recall an important aspect of the incident of torture
- markedly diminished interest in significant activities
- feelings of detachment or estrangement from others
- restricted range of affect
- sense of a foreshortened future

c)symptoms of increased arousal

- difficulty in falling or staying asleep
- irritability and outbursts of anger
- difficulty in concentrating
- hypervigilance (being on guard)
- exaggerated responses

GENERAL PRINCIPLES IN TREATMENT OF TORTURE SURVIVORS

Any kind of psychiatric treatment is conducted within the framework of specific rules and principles. The psychiatrist undertakes certain responsibilities in her/his relation with the patient. Privacy in the treatment relationship is one of the foremost of these responsibilities. Privacy in the treatment relationship is based on the patient's freedom to choose the people to whom s/he will impart private information. This is also a prerequisite for the establishment of a therapeutic relationship. Communication of private information to others by the therapist without the consent of the patient will above all create a serious problem of confidence in the therapeutic relationship. As is the case in all treatment applications, "confidentiality" is also essential in the psycho-therapy relationship.

These principles are strictly defined regarding the treatment of torture survivors. The fruition of the treatment is bound to compliance with these principles.

The first of the general principles determined by the Rehabilitation and Research Center for Victims of Torture (RCT) concerning the psycho-therapy of torture survivors is the rule of abstention from any circumstance that may lead the patient to recall the incident of torture. Hence, it is required:

- to be in eye contact with the patient during examination,
- to abstain as far as possible from keeping the patient waiting,
- to ask the patient what recalls torture and abstain from those,
- to prevent a strong light from falling on the patient,
- that the physician shall demonstrate on her/his own body how the necessary equipment for the treatment is to be used.

To meet a person in uniform or to speak about the traumatic incident may recall torture. Even during a therapy session, the conversation about the traumatic experience should be phased in after an introductory stage. When this point is not considered the result will be the re-traumatization of the patient. During the therapeutic relationship the patient should be prevented from impairment and the relationship should depend solely on the treatment of the psychiatric pathology. Any intervention that does not serve this objective would, on the part of the therapist, amount to malpractice of her/his profession, and abuse of her/his responsibility to the patient.

Great attention should be paid to abstention from any kind of materials, apparatus and circumstances that may lead to terrific emotional outbursts in the form of re-experiencing the incident of torture through images and sounds, and may revoke the incident of torture. This frequently happens particularly at times when patients are taken to hospital, undergo medical examination or intervention or are given anesthesia.

The patients should be informed during the first interview that they may not disclose their names or other identifiable characteristics if they do not want to. The patients whose confidence in other people has been eradicated, and who can easily be scared and become suspicious of everything because of the severe traumata they had been through, can enter into a treatment relationship only on condition of having freedom in giving as much information as they want and in answering the questions. Insistent questions particularly about their identities and experiences lead the patients to recall their experiences under torture, and hence disrupt the treatment relationship.

One of the most arduous tasks of the institutions providing medical treatment to torture survivors is to gain the confidence of the patient and start the treatment afterwards. Such institutions should guarantee that no information is transmitted to the police or other official institutions, and the information given by the patients shall not be passed to the judicial or administrative authorities.

THE ETHICAL AND LEGAL ASPECTS OF THE ISSUE

Physicians are governed by the Code of Medical Deonthology with respect to medical ethics.

Considering that it is ethically prohibited to disclose the identity of the patient even at medical meetings, according to Article 4 of the Code of Medical Deonthology, disclosure of patients' identities by physicians to judicial authorities, without the consent of patients, is not permitted by medical ethics.

For the professions dealing with people's lives, like the medical profession, the secret information about the private life of a person is considered as a professional secret. In modern law, secrecy is accepted as a personal value and a person's domain of secrecy is under the legal protection applied to personal rights (Article 23 of the Turkish Civil Law, Article 49 of the Code of Contracts and Torts).

Determining the type of information that will be considered secret involves a value judgment. In general, “the information and events that are condemned and disgusted by society, that affect the economic status and future of the patient, and hence should preferably be kept private” are described as secret. The miscarriage of a woman, the pregnancy of an unmarried woman, committing suicide, homosexuality, extra-marital sexual relation of one of the spouses, diseases like tuberculosis, AIDS or syphilis that may be condemned or disgusted by society, and events and information about honor and respectability communicated to the psychologist can be depicted as secret. Hence, the infliction of torture during which subjection to any kind of humiliation, including rape, is possible has the characteristics of a secret that cannot be disclosed without the consent of the concerned person.

Secrets will no longer be secrets when they are disclosed. The way they are disclosed has no significance; even a single person who learns about the secret means disclosure. Also, communication of a secret to another physician without any medical requirement is regarded as disclosure.

The Code of Criminal Procedures recognizes the possession of state secrets or professional secrets among the conditions of withdrawal from appearing as a witness or an expert. In that case, the physician may disclose the professional secret only on the permission of the person whose secret it is.

With respect to the context of the law provisions mentioned above, disclosure of secrets to which a physician had access during the course of treatment constitutes an offense both ethically and legally. This also implies the infringement of the personal rights of the patient.

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THE MANiSA TRIAL

Pelin Erda*

The developments that led to this trial were triggered by an operation launched by the Anti-Terror Department of the Manisa Security Directorate on December 26, 1995, in which 16 youths were detained. This operation was not based on a denunciation or a *fragrante delicto* incident or the like. The reason for the detentions is not known. After 11 days in detention, 12 were arrested and 4 were released on January 5, 1996 to be tried without arrest.

Of the 16 detainees, 7 were under 18, including one who was under 15 (14 years old). Eight of the 16 were high school students, three were university students, one was a teacher and one was a waiter.

The rule that detainees must undergo a medical examination every 48 hours was not observed. Two of the medical examinations, those dated December 27 and December 29, were made by calling to the Police Headquarters physician in charge at a health unit. (A physician who was not on duty at the time, was chosen for this task.) Upon a torture complaint filed by a number of relatives, the prosecutor demanded on December 31 and January 2 that medical examinations be conducted, and the police took the detainees to the Manisa State Hospital for this purpose. Later, as a routine practice, the detainees underwent a final medical examination prior to their first court hearing. Thus, the rule that detainees must undergo a medical check every 48 hours was not observed in any of these examinations.

The detainees were subjected to various forms of torture which was noticed by their parents who saw their children twice while they were in detention.

These visits took place on December 31, 1995 and on January 2, 1996, in the presence of five or six policemen, and lasted only a minute or two. During the visit on December 31, MP Sabri Ergül was present in his capacity as a counsel for E. S. E, one of the defendants, and he made a number of observations. A press conference was held on January 2, 1996, the day the last visit took place, and it was publicized that the detainees had been tortured at the Security Directorate.

The Security Directorate held a press conference on January 4 to exhibit the sixteen to the public as “terrorists”. A complaint was lodged with the Ministry because the detainees were declared “terrorists” without trial, but the Ministry rejected this complaint.

Article 6 of the Juvenile Courts Law describes everyone under the age of 15 as a **child**. Article 19 of the same Law stipulates that preliminary investigation of charges against children be conducted directly by the public prosecutor or by the deputies s/he will appoint. In contravention of this provision, M. G., who was under 15 at that time, was kept in detention for eight days, and a report on the child’s intellectual capability was drawn up on December 29, six days after the date of detention. During the preliminary investigation, M. G.’s testimony was taken by the police, which constitutes a violation of Article 19 of the Juvenile Courts Law. A complaint was filed against the prosecutor who authorized this investigation.

“Duly put into force International Conventions have the power of law” according to Article 90 of the Constitution. The Convention on the Rights of the Child was incorporated into our domestic law as of January 27, 1995. Article 1 of the Convention says, “a child means every human being below the age of eighteen years”. This provision of the Convention, which has the power of law, was violated in our case. The special rule concerning the interrogation of detainees under the age of 18 was violated. Furthermore, the Code of Criminal Procedures amended by Law 3842 stipulates that testimonies of those under the age of 18 cannot be received in the absence of their counsels. This rule was not observed at all.

In addition, a number of other rules were violated during the initial statements made before the Public Prosecutor and the Coroner, which is called “preliminary investigation” in law. On the morning of January 5, 1996, 16 detainees were taken to the İzmir State Security Court, and until the completion of the preliminary investigation, they were guarded by the police officers who had detained them -who also transferred those arrested to the prison. Even at that time they were threatened by those police officers and had to confirm some of the statements they had given to the police. As a result 12 of the detainees were arrested. Although 3 of the detainees explicitly stated before the judge and the public prosecutor that they had been tortured, the Public Prosecution Office of the State Security Court did not take any steps. Article 153 of the Code of Criminal Procedures reads: “The Public Prosecutor shall inquire into not only those matters

which are against the defendant but also those in favor, and shall attempt to gather and safeguard those pieces of evidence which would otherwise be lost." Thus, the public prosecutor was supposed to investigate the claims of torture, and where necessary, to require a further medical examination, and his failure to do so constitutes another violation.

In Short, the preliminary investigation with respect to the 16 was not in accordance with the procedure.

Their lawyers first met the teenagers on January 11, 1996, contacted the HRFT and filed a complaint with the State Ministry Responsible for Human Rights on January 12. At the meeting held on January 15, they took the children's statements concerning torture, and on January 16, they lodged an official complaint with the İzmir Public Prosecution Office. The next day the Forensic Physician of İzmir went to the Buca Prison to examine the children, but the children demanded that they should undergo a medical examination at a hospital as the visible traces of torture had disappeared. The forensic doctor refused to refer them to a hospital. On January 23 the children's lawyers filed another petition with the İzmir Public Prosecution Office to demand examination at a hospital, whereupon, on January 24, the prosecution office sent a forensic physician to the prison, who decided that the children should be referred to a hospital. Yet, they were not sent to hospital on various pretexts. The lawyers of the children, among them was MP Sabri Ergül, and the parents held a press conference on February 12 to make the situation known to the public. MP Sabri Ergül also raised a motion in Parliament. On February 19, 1996, while the issue was being discussed in Parliament, the children were referred to hospital owing to public pressure, but all the visible traces of torture had disappeared - as two months had passed after the event - except the disorders consequent to torture.

In the meantime, on January 23, 1996, the Public Prosecution Office of the İzmir State Security Court brought charges against the children, demanding that one be punished for leading an illegal organization (Article 168/1 of the Turkish Penal Code), eight for being members of such an organization (Article 168/2) and seven for aiding and abetting (Article 169/1).

In the first place, the Prosecution Office of the İzmir State Security Court should have separated the preliminary investigation documents concerning M. G., a fourteen year old, and should have referred the file to the Juvenile Court which was supposed to determine whether M. G. was to be tried together with the other detainees (Article 9 of the Juvenile Courts Law). This rule was not observed and M. G. was directly put on trial. Furthermore, Article 1 of the Convention on the Rights of the Child which has had the power of law since January 27, 1995, describes everyone under the age of 18 as a child. Given this, permission should have been obtained from the Juvenile Court before bringing charges against all

those detainees who were under the age of 18. The failure to do so is a violation of rights.

At the first hearing held on March 12, 1996, the court ordered, pursuant to Article 375 of the Turkish Penal Code and Article 25 of the Juvenile Courts Law, that the trial was to be held *in camera* because of the age of M. G. After a hearing that lasted about 7 hours, H. K. and J. K. were released and the next hearing was scheduled for April 16, 1996.

On February 14, 1996, hospital records were studied and it was found that M. A., aged 16, was suffering from tuberculosis, which was made public by the İzmir Medical Chamber at a press conference. M. A. was sent to İzmir Thoracs Diseases Hospital first. Later M. A. had to be transferred to the prisoners' ward of the İzmir State Hospital because this teenager's feet were chained in the former hospital.

On March 22, 1996, an application was lodged with the European Commission of Human Rights regarding the detention period. The grounds for that application were the failure to observe the four-day time limit for detention as provided in Article 5 (3) of the European Convention on Human Rights, and the rules of access to a lawyer during interrogation and of non-discrimination under Articles 6 and 14, respectively. (In our case, discrimination stemmed from the application of the Law to Fight Terrorism to dispense with the imperative provision of the Code of Criminal Procedures concerning access to a lawyer). The application was filed directly as there were no domestic legal provisions.

Witnesses were heard during the second hearing held at the İzmir State Security Court No: 2, on April 26, 1996. All the witnesses stated that they had not seen or heard anything supporting the charges in the indictment. None of these testimonies were against the defendants. Three policemen also testified, who were identified by the children as torturers. At the end of this hearing M. A., S. T. and Ö. Z. were released and the next hearing was scheduled for May 30, 1996.

At the hearing held on May 30, 1996, the lawyers submitted evidence in certain matters which they wanted to be considered, and the next hearing was scheduled for July 4, 1996 for the consideration of these demands and for the submission of medical reports. No one was released at this hearing.

On June 4, 1996, the Manisa Public Prosecution Office brought charges against 10 police officers of the Manisa Security Directorate Anti-Terror Department, and indicted that each of the defendants should be sentenced 14 times to a prison term of 1 year to 7 years for violating Articles 243 and 245 of the Turkish Penal Code (inflicting torture to extract confession).

At the hearing held on July 4, 1996 the lawyers requested that the trial launched under file No. 1996/128 at the Manisa Heavy Penal Court be admitted as

evidence and recognized as a dilatory case. The court decided to demand the said file from Manisa and scheduled the next hearing for August 8, 1996. None of the defendants were released.

On July 24, 1996, during the first hearing of the trial launched against the 10 police officers the Manisa Heavy Penal Court decided to ask the Ministry of Justice if Manisa was an appropriate venue for this trial and scheduled the next hearing for August 21, 1996.

During the hearing held at the İzmir State Security Court on August 8, 1996, it was decided that the proceedings be suspended as the file relating to the trial at the Manisa Heavy Penal Court was in the Ministry and the medical reports were included in that file. Although the defense stated that defendant A. M. B. attempted suicide three times and was diagnosed as suffering from major depression, which was shown by a medical report, and sought that the defendants be released, neither this defendant nor the others were released. On the contrary, A. M. B. was sent to the Muğla Prison on the same day, away from their family, without considering their psychological state.

During the second hearing of the trial against the 10 police officers on August 21, 1996, it was seen that the Ministry of Justice had written to the Manisa Heavy Penal Court stating that Manisa was an appropriate venue for the trial, thereupon the trial continued in Manisa.

At the hearing held on September 10,. 1996, the İzmir State Security Court lifted the decision to hold hearings *in camera* as M. G. had reached the age of 16. Members of the families of the children and the press were admitted to the court room for the first time. At this hearing the court rejected the demand to gather the evidence submitted by the defense. It decided that, upon the examination of the case file of the trial against the police officers, it was not necessary to wait for the completion of that trial, and that the file of another trial against M. G., which was launched without receiving testimony, be brought and examined. Once again, nobody was released.

On October 15, 1996, the İzmir State Security Court, composed of new judges now, studied the file. M. G.'s file was separated, the public prosecutor was furnished with the file to state his opinion on the case, and the next hearing was scheduled for November 27, 1996. M. G., aged 15, and A. M. B., aged 16, were released so that no defendant under the age of 18 remained under arrest.

On January 6, 1996, the trial of the police officers at the Manisa Heavy Penal Court resumed. At that hearing, the physicians and nurses who had examined the children in detention, testified. The trial was adjourned until December 25, 1996 for the completion of the deficient documents.

On November 27, 1996, the public prosecutor read his opinion on the case at the İzmir State Security Court. The trial was adjourned until January 16, 1997 for the disclosure of the verdict.

At the hearing held on December 25, 1996, in the trial against the police officers, the defense lawyers and the intervening party reported evidence to the Manisa Heavy Penal Court. The court decided to gather some of these pieces of evidence and scheduled the next hearing for February 3, 1997.

On January 16, 1997, the İzmir State Security Court held its final hearing. The defense lawyers stated that Article 168 of the Turkish Penal Code was in contravention of the Constitution and so it should be referred to the Constitutional Court. This demand was turned down by the Court. Then they argued that the State Security Court did not abide the rule of a "natural judge", and hence should not have jurisdiction, that the trial in question constituted a violation of numerous articles of the Code of Criminal Procedures and many of the international conventions, that there was no evidence against the defendants and the existing evidence was in favor of them, and the conclusions drawn both in the indictment and prosecutor's opinion on the trial were legally incorrect. The defendants pled not guilty. The court found A. G. (accused of leading an illegal organization) as well as F. D, A. Y., L. K. and E. S. E. (accused of being members of an illegal organization) guilty of being members of an illegal organization. M. A., S. T., A. M. B., Ö. Z. and J. K were found guilty of aiding and abetting as stated in the charges brought against them. H. K., F. A. and E. K, tried on the charges of aiding and abetting, as well as A. Y. K. and B. Ş., for whom the prosecutor demanded acquittal, were acquitted. Thus, 5 of the defendants were sentenced to 12 years and 6 six months each, one defendant to 3 years and 6 months, and considering their age, 4 defendants to 2 years and 6 months each. Five were acquitted.

On February 3, 1997, in the trial of the police officers, the witnesses for the defense and for the interveners were heard and the trial was adjourned until April 30, 1997 for the other witnesses to be heard.

On March 7, 1997, the verdict of the İzmir State Security Court was referred to the Supreme Court as it was appealed against both by the prosecution and defense.

On March 14, 1997, Manisa Penal Court of Peace held its final hearing in the trial brought against A. G., M. G., F. D., A. Y., L. K., E. S. E., M. A., F. A., S. T., A. M. B., J. K., E. K., and Ö. Z. for violating Articles 536 and 537 of the Turkish Penal Code (these articles are concerned with writing slogans on walls, sticking up posters and distributing handouts, without permission). The court acquitted all the defendants as "there is no conclusive evidence, other than their police statements, that the defendants committed these offenses".

On May 14, 1997, the final hearing was held in the trial that commenced without even receiving M. G.'s testimony. The court ruled that there were no grounds for punishing M. G. for violating Article 12 of Law 2253.

On May 21, 1997, Manisa Heavy Penal Court acquitted M. G., A. G. and F. D. of the charge of throwing a Molotov cocktail (deliberately burning a building), under Articles 369 and 411 of the Turkish Penal Code.

The legal struggle on behalf of these youths is still continuing.

İzmir, May 1997

TORTURE AND OUR RESPONSIBILITY
"THE MANiSA TRIAL"

Türkcan Baykal*

On December 26 and 29, 1995, the Anti-Terror Department of the Manisa Security Directorate detained 16 youths, mostly high school students, from their schools and homes and kept them in custody until January 5, 1996. Five of the detainees were girls, and seven were under 18 (children according to the definition of the UN) at that time.

The detainees were brought before court on January 5, 1996 on the charges of "being members of and having gone into action for an illegal organization". Four were released, due to insufficient evidence, to be tried without arrest, and 12 were arrested and sent to Buca Prison. Later, 7 of them were released on various dates (2 at the hearing held on March 12, 1996, 3 on April 16, 1996, and 2 on October 15, 1996) to be tried without arrest. Five of the youths are still in prison.

Lawyers of the youths contacted the İzmir Representation of the HRFT and the İzmir Medical Chamber on January 11, 1996, stating that, contrary to the official medical reports, the youths were heavily tortured in detention and had serious health problems and complaints. They demanded an alternative medical report and/or an interpretive report on the official medical reports.

The "İzmir Tabip Odası (İTO)" (İzmir Medical Chamber) took a number of initiatives to arrange for the examination of the youths by independent medical specialists, but failed to achieve any results. Thereupon, İTO undertook a study to establish the health status of the youths more clearly and to review the scientific

and ethical validity of the official medical reports. For this purpose, the youths in prison were asked, through their lawyers, to give as detailed an account as possible of what they had gone through in detention, and to relate the conditions under which the official medical examinations had been carried out and the attitudes of the physicians. In addition, illustrations from an anatomy atlas of Forensic Medicine were sent to the prison so that the youths could locate their complaints. Together with these documents, the lawyers furnished the İTO Human Rights, Examination and Report Committee with the four official medical reports drawn up for each detainee during the custody period and (to the extent available) hospital reords of those who were referred to hospital during that period.

The İTO Human Rights, Examination and Report Committee studied these documents in which the youths stated that they had been subjected to various forms of torture in detention, including beating, pulling out hairs, blindfolding, enforced standing, stripping naked, hosing with cold water, enforced standing in a cold place or near a fan after being hosed with cold water, electric shocks (especially to the genitals), insertion of a truncheon into the anus, squeezing testicles, sexual harassment, enforced listening to high-volume music, humiliating treatment such as compelling to dance to a marching tune, being compelled to see or hear each other's subjection to torture, various threats including that of death, mutilation, more severe torture and rape, heavy insults, and keeping in a small cell or waiting in a corridor blindfolded, exposed to assault.

A study of the illustrations on which they indicated their complaints revealed that there was a high degree of correlation between the indicated complaints and the forms of torture they said they had been exposed to and that most of the complaints were persisting. Particularly, the youths suffered from symptoms such as sleeplessness, waking up in horror at night, nightmares with torture themes, fear, panic attacks, recurrent intrusive recollections of the detention experience, flashbacks, forgetfulness, which are categorized as symptoms of Post-Traumatic Stress Disorder.

Regarding their forensic examinations, the youths stated in their individual statements that the police officers had stood either next to them or near enough to hear the conversations during the examinations, that nobody had asked these policemen to leave the place of examination, and that the physicians had not asked the youths to undress, but just had looked at them from a distance without conducting any sort of examination and had not put to them any questions concerning their complaints, traumata or what they had gone through.

A study of the official medical reports shows that four reports were issued for each of the youths (by general practitioners in all cases) without any consultation or further analysis or examination. None of the youths had urogenital

examination. Psychological considerations were also absent and in no case was psychiatric consultation requested.

The physicians did not use the Forensic Examination Form, which should be filled according to the circulars by the Ministry of Health: almost all of the reports merely comprised of the words “no signs of blows or exertion of force were detected”, jotted down under what was written by the police. There was not a single record relevant to the complaints or history of traumata or to any questions on these issues.

As a result of these investigations, “individual interpretive reports” were drawn up retrospectively for each of the youths, which included the following: a) a brief detention history; b) complaints; c) official medical reports; d) a section about those tests and analyses that were supposed to be carried out in order to verify the truth of the accounts of torture and complaints; e) an interpretation section covering the consistency of complaints with case histories and deficiencies of the medical reports on the basis of case histories and complaints. A “General Assessment Report” that includes ethical and scientific assessment of all the official medical reports was also drawn up, taking account of all the documents (See Annex 1).

The Turkish Medical Association initiated an investigation of the physicians who had issued the official medical reports.

Six of the eleven youths who had been released applied to the HRFT İzmir Treatment and Rehabilitation Center on various dates to receive treatment and/or to be issued with reports. Four preferred to receive psychiatric assistance directly, without formally applying to the Foundation and contacted our volunteer psychiatrists. The HRFT volunteer psychiatrists diagnosed PTSD in five of the ten youths and major depression in two, and provided treatment and gave medical advice.

On various dates, four of the applicants to the HRFT asked the İTO Human Rights, Examination and Report Committee to draw up an alternative medical report on the bases of their case histories. To arrange for these alternative medical reports, which were to be the third type of report to be drawn up after detention and torture (excluding the official ones), the HRFT and the İTO cooperated to have a physical and psychological evaluation of each, to do consultations where necessary and to carry out detailed tests and analyses. Subsequently, the account of torture as given by each, anamnesis of complaints, and the results of consultations and tests were interpreted and evaluated in detail as a whole. All these details were put into a coherent whole in individual alternative medical reports. All of the four reports concluded on the basis of objective, scientific data and evaluations that “the youths had been tortured in detention”.

Throughout all these, medical information and advice has been offered to the lawyers of the youths and families, concerning the health problems associated with torture and imprisonment and in connection with the forensics. The family members were contacted on various occasions, particularly during court hearings, and were furnished with information on the functions of the Foundation. They were told that they could apply to the Foundation if they needed to do so. Six family members applied to the Foundation on various dates, and they had access to volunteer psychiatrists of the Foundation.

The aforementioned is a technical statement of the bare facts, an account of what could have been done -most of what could not have been done is not mentioned here. The story told here is limited to a description of the torture experienced in detention and of what happened afterwards. However, the youths and their family members have gone through and are still going through several traumatic processes after the detention period as well. This is indeed a process, a series of consecutive traumas, rather than an individual one experienced over a fortnight, which will be briefly described below.

As previously mentioned, 12 of the 16 youths were arrested after detention and spent various terms in prison. Five are still in prison. They lived through - and some are still living through - various forms of repression and difficulties in the Buca prison. For most of them, prison meant an aggravation of the existing health problems instead of having access to a solution to their health problems. Of the 4 females arrested in the Manisa case, 3 were diagnosed as having tuberculosis and the only one without tuberculosis was the person who was released first (in March), an example which shows the gravity of their medical conditions in prison.

The youths and their family members indicated that after being released the youths were constantly harassed and threatened by the policemen who had tortured them; they were constantly followed with the aim of intimidation and were threatened. Some of the youths could not go to school because of this, and some of the families left Manisa. Whenever they appear before the court, the youths have to see their torturers, laughing at them, passing remarks and insulting them. They have to listen to the testimony of the physicians who issued the reports, saying that “we allotted sufficient time and examined without clothes; none bore signs of torture”.

In the trial brought against them, they faced charges based on their police statements, and for a very long period, they were threatened with very serious punishments. And finally they were given heavy punishments although there was no evidence other than their police statements - which were stated to have been extracted from them under torture. On the other hand, there was no sign that the trial they brought against the policemen for inflicting torture would come to an end. The present and the future of these youths are under a permanent threat. Those

who are not in prison are facing the threat of being imprisoned again if the Supreme Court ratifies the sentences; those who are in prison are facing the threat of losing the hope of returning to their own lives. The families whose children are in prison are constantly under the stress and anxiety caused by prison conditions.

Despite all these negative experiences, there was a positive aspect: the power of solidarity and joining hands against torture. Despite all that happened, the youths and their family members maintained their determination to unmask the torturers at all times. A ring of solidarity was formed with the participation of people from various parts of society: lawyers, health sector employees, families, executives of various parties, volunteer organizations, women's working groups, artists and media employees. Thanks to their efforts, what happened in Manisa became more visible and aroused reaction among a larger part of society.

This was a process that enabled the uncovering of problems, if not their solution, through intense communication between the lawyers, family members, the Medical Chambers of İzmir and Manisa, and the İzmir Representation of the HRFT, many aspects of which were very instructive. Once again, it became clear how important it was to have a close cooperation between people and institutions from different parts of society, especially between lawyers and health sector employees.

The youths from Manisa were not the first survivors of torture -nor will they be the last, unfortunately. We all bear a responsibility to end this. This can only be achieved if large parts of society join hands in the struggle against torture. It is important that every one asks the question, "Did I (we) do my (our) best to prevent and eradicate torture?". Unfortunately, there remain many things that have not (could not have) been done in every case -only for the time being I hope.

İzmir, May 1997

Annex 1: General Assessment Report*

MATERIAL ASSESSED:

* The account of the detention periods of the people in their own handwriting that were obtained through their lawyers,

* The complaints and symptoms described in detail and located on the body illustrations of the anatomy atlas of forensic medicine by each of the teenagers in prison on January 22, 1996 on the request of the İzmir Medical Chamber,

* The photocopies of the official medical reports (4 reports for each person) issued during the period in detention (a total of 47 reports);

* Detailed documents concerning the interviews with their lawyers,

* The handwritten and undersigned statements of the applicants on the attitudes of the physicians who conducted the forensic examinations.

GENERAL ASSESSMENT

How the medical examination of the detainees should be conducted is described in detail in various documents such as the circular of the Ministry of Health dated 22 December 1993, numbered 6039 and the "Forensic Medical Form" attached to it, the circulars 6065 and 6070 of the Ministry of Health dated 13 April 1995 and 5 December 1995, respectively, and the circular issued by the same on 10 February 1993, and many statements and circulars of the Turkish Medical Association.

* The way the incident took place (anamnesis concerning the trauma), the claims of ill-treatment, and the psychological and physical complaints should be filled in the "Complaints" section of the official medical report.

* Findings should be recorded only after the anamnesis concerning the complaints is obtained and the person is examined carefully and in detail.

* The explanations of the person about the causes of those findings should be recorded next to the findings in the report.

* Not only the physical, but also the psychological complaints and findings should definitely be considered.

* The forensic examination report should include not only positive but also negative findings.

-None of the official medical reports included a Forensic Examination Form or a similar form or a separate record. All the reports were jotted down under the police statement.

-Almost all the reports included no information other than “no sign of blows or exertion of force is detected” or “no pathological findings, physical or psychological, are detected”.

-In none of the reports was a notice or any information regarding the complaints. There was also no data indicating that their complaints had been asked about.

-In none of the reports was a notice that could indicate that the account of the traumata of the applicants had been asked about or investigated into, or any information on the traumata had been obtained.

INVESTIGATING PHYSICAL SYMPTOMS OF TORTURE

* The forensic examination has profound importance for people released from detention or prison. Due to the nature of torture, attention should be paid to make much more detailed and elaborate medical examinations than routine examinations, considering torture and other forms of human rights abuses. As it is already known, torturers implicitly aim to hide away and prevent the disclosure of the traces and thus they pay attention to this point while inflicting torture. That is why systematic torture cannot often be brought into light through routine medical examinations.

* In cases where claims of torture are of concern, examinations and inspections should be conducted completely in line with the claims. Opinions of experts should be taken and the person should be referred to the appropriate institutions for all the necessary consultations. In order to scrutinize the claim of torture, all the necessary laboratory and x-ray examinations, and etceteras should be carried out as detailed as possible (The examinations and consultations that should have been carried out but were not written down in the official medical reports, and interpretations on the findings are put down in detail in the individual evaluation report prepared for each of the cases.)

-None of them was referred to or examined by a specialized physician. (The only exception was H. K. Although psychiatric consultation was suggested in the records of the outpatient clinic, nothing with respect to this point was

mentioned in the forensic report nor his psychological state. Thus, he could not be referred to a relevant institution.)

-X-ray or laboratory examinations were not demanded or made in any of the forensic examinations.

* Examination of the genital region constitutes an important part of the forensic examination and is especially required and should not be neglected (with the consent of the person) if there are claims and/or complaints related to that region.

- The genital region was not examined during the forensic examinations in any of the cases. There was no notification, either, indicating that the examination was suggested, but refused, in any of the official medical reports. (Only S. T. was taken to the state hospital -for treatment not for an official medical report- because she had genital bleeding but she did not accept the examination since the security forces did not leave the room.)

However, all the male cases indicated that they had been subjected to torture methods such as giving electricity by attaching a cable to the penis, squeezing testicles, inserting a truncheon into the anus. Furthermore, they indicated, 20 days after having been released from detention, that their complaints pertinent to these methods of torture were still continuing (pain around the testicles, edema; pain and difficulty during urination, pain and difficulty during defecation, pain around anus.)

In cases of such complaints, in addition to routine forensic genital examination, gynecological examination in females and urological, proctological or surgical examinations in males are essential.

- Neglecting genital examinations and necessary referrals to specialists was a very important omission that caused deficiencies in determining signs of torture. Thus, it has become impossible to establish the types of torture mentioned above.

* Investigation and determination of torture method of squeezing testicles can only be possible through combining the findings of urological consultation, ultrasonographic examination of the genital area and tri-phased dynamic scintigraphic examination focused on the genital region. It is impossible to detect torture without using these tools. Detection through routine inspection (visually) may only be possible in cases where extensive torture left visible signs. In cases where this torture method was of question, complaints in accordance with this type of torture were reported.

-However, in none of the cases the examination methods mentioned above were used in the forensic examination. Even the routine genital inspection

was not performed thereby making it impossible do detect torture even in cases with visible signs.

* If there is a claim of electrical torture, the regions where electricity was applied must be inquired and extensively examined. Because the electricity *picure* is so small that it can easily be overlooked (1-4 mm). (Absence of electrical *picure* does not mean that electricity was not applied because if the method is used carefully no visible signs remain.) The only way to prove electrical torture definitely is to search for and to find the electrical *picure* and to pathologically examine a biopsy specimen obtained from that region.

Additionally, pain in some muscle groups on the axis of electricity (the route of the flow of electricity between the ends of the two cables) may be helpful in diagnosis. If one electrode was attached to the right foot and the other was moved over the body beginning with the genitalia, pain and cramping in the right calf, and thigh and spasms in these muscle groups may be frequent and typical.

-In all the cases except one, there were claims of electrical torture and all of them were able to describe it in detail.

A considerable number of the cases described pain and spasms in their right thighs and calves whose locations correlate with electrical torture in history.

-However, electrical *picures* were not searched for in any of the cases. There are no records of muscular examination in thigh and calf regions in the reports.

In addition to these;

* Otoscopic examination by an otorhinolaryngologist to investigate into the complaints of aural discharge, pain, nosebleeding and tinnitus, and the audiologic examination necessary to investigate loss of hearing, frequently detected after aural traumas, were not performed.

-Otitis was diagnosed in H. K. and M. G. by the prison doctor on January 23, 1996 and prescriptions were given. Both had histories of aural trauma, pain and discharge in both ears after torture. Complaints and the diagnoses were supportive of trauma history. However, they did neither have otoscopic examinations nor were referred to an otorhinolaryngologist during their forensic examination.

* X-rays, computerized tomography, whole skeletal scintigraphy, orthopedics and traumatology consultations may play important roles in clarifying the torture history and musculoskeletal system pain. Whole skeletal scintigraphy and x-rays may help obtaining important data for determining beating that could not be determined otherwise.

* Torture types such as pressurized cold water, forcing to wait in cold and applying ice-packs may predispose the person to infections and common cold. A complaint-focused investigation (such as upper or lower respiratory tract infections, sinusitis and urinary tract infection) is necessary for this reason. Detecting these torture methods is almost impossible without such data. Existence of similar infections immediately following detention is generally accepted as supportive signs of torture methods associated with cold. Therefore it is important to investigate such infections and inquire into the complaints.

INVESTIGATING MENTAL SYMPTOMS OF TORTURE

According to World Medical Association Tokyo Declaration (October 10, 1975) torture is defined as "the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession or for any other reason."

The aim of torture is not only obtaining information or extracting confession as believed mistakenly. The real objective of torture is to disrupt the integrity of the self, to destroy the personality and to terrorize the rest of society by this way.

The importance of mental examination is evident considering that among the main objectives of torture are to destroy the individual's mental integrity, personal confidence in oneself, in others and in the world in general, and inner peace. Examining only physical signs is almost never acknowledged as sufficient in investigating torture claims - neither in emigrants nor in torture cases - in the world. Mental disorders are among the most important findings emerging after torture and displaying remarkable permanence, therefore comprising one of the most important evidence categories.

Some disorders occur following severe traumata and especially traumata caused by human beings. Disorders specific to this condition comprise a special diagnostic category in the mental disorders classification of the American Psychiatric Association. Thus mental disorders consequent to traumata caused by human beings manifest specific symptom groups, therefore having more potency as evidence.

Care is spent not to leave any mark while applying torture and in long detention periods of all the signs might disappear. However the same thing (covering any signs in the detention period) is not possible for psychological symptoms. This increases the importance of mental examination in searching for signs of torture.

Besides all these, the decrees of the Ministry of Health explicitly state that describing the findings of mental examination is compulsory in forensic examination reports.

In our cases;

-In only 7 of the 47 reports there were some words related to mental examination; the rest of the reports had no information associated with mental examination. Those 7 reports were bearing the phrase that “no physical and mental pathology was detected”. However, one of those 7 individuals (M. A.) was urgently taken to emergency department of a hospital afterwards and was given anxiolytic and antiemetic following the diagnosis of “conversion”.

* Only one of the official medical reports issued for M. A. had the phrase that no physical or mental pathology was detected. There were no words in the other reports concerning the mental condition. However, when the same person was taken to hospital on December 31, 1995 she was diagnosed as having conversion and was given prescription.

* Forensic examination of H. K. was conducted on December 29, 1995, and he was issued with a report that only says “there was no signs of blows or exertion of force”. However in Manisa Mental Health Hospital where he was taken urgently on the same day, he was given prescription with the diagnosis of anxiety. Moreover, in none of the following forensic examinations of the same person mental examination was conducted despite his situation stated above.

In the official medical report of the aforesaid person dated January 2, 1996, it was only recorded that “there are no signs of blows or exertion of force”, without any note of mental examination. However, in the records of the outpatient clinic the same physician noted that “it is appropriate to refer the patient to a psychiatrist”. This request for referral and the findings that gave way to this request were important omissions in the report. (Besides, this referral put down in the records of the outpatient clinic was not even made.)

Among the complaints of a considerable number of applicants were symptoms of posttraumatic stress disorder such as sleeping problems, tension, forgetfulness, nightmares. These signs are specific to torture and were in accordance with the claims of torture. However, there were no examination findings associated with these complaints in the reports.

CONCERNING THE EXAMINATION PROCEDURE

In the aforementioned decrees it is clearly stated that:

The individual brought by security forces must be examined **completely naked** and the security personnel must be taken out of the room during medical

examination. It is clearly stated that the examination of detainees should be done in a place where security personnel can not see or hear the person examined.

According to the interviews with the lawyers of the youths and hand-written statements signed by themselves, during almost all the forensic examinations in detention:

-the physicians did not ask them to take off their clothes,

-the physicians did not examine them but written their reports after a cursory inspection,

-they were not asked about their complaints,

-and the security personnel were not taken out of the room.

Clarification of these allegations will be possible through investigations by the Turkish Medical Association taking account of the mentioned physicians.

CONCLUSION

1. None of the examinations, tests and investigations mentioned above and in the individual evaluation reports, necessary to clarify the claims of torture were conducted during the forensic examinations performed in detention.

2. The standards for routine examinations and investigations during forensic examination were disregarded and ignored.

3. The fact that they had still complaints though 20 to 30 days passed over the detention period and that no pathological findings were reported by the physicians who examined them in detention is significant.

4. In view of all the facts mentioned above, it is not possible and justifiable to prepare definite reports stating “there are no signs of blows or exertion of force” and/or “no pathological findings were detected”.

5. It is not possible to identify and clarify the claims of torture in detention through such “forensic examinations” performed during the detention period.

Member	Member	Member
Türkcan Baykal	Alp Ayan	Emre Kapkın
Practitioner	Psychiatrist	Psychiatrist

Chairperson of
the Medical Examination and Report Commission of
the İzmir Medical Chamber
Prof. Veli Lök

CONCLUSIONS OF THE TRAINING MEETING HELD ON DECEMBER 6 TO 8

Below is a brief evaluation of the three days' training meeting held in Ankara, with the participation of medical professionals from various disciplines, who carry out work within the HRFT, and their colleagues from the Swedish Red Cross Treatment Centers.

1. Workshop on the first interview and taking anamnesis, medical examination and first assessment, relations between consultant physicians and the physician who makes the first assessment.

Concerning the relations between the applicant and the staff of the Center:

Staff of the center must take care to adopt attitudes that emphasize respect for the human being, are unprejudiced, and do not reflect political preferences other than opposition to torture and defense of human rights. These relations must be based on the principle of equality and every stage of the treatment process must be shared with the applicant.

Psychiatrists are involved in the activities of the HRFT as permanent members of the treatment team rather than as consultants whose opinions will be sought. Where possible, psychological evaluation of all applicants must be made by a psychiatrist.

The treatment process should be taken up as a joint project of the applicant and the team, and the treatment team should meet as frequently as necessary to evaluate what has been done.

Creation of internal control mechanisms will contribute to the quality of treatment and will help reduce the rate of abandonment of treatment.

Importance must be attached to training of the staff of the centers and of volunteers. Systematic and continuous training must be planned.

2. Panel discussion on soft tissue injuries of upper extremities due to suspension on a hanger

In many cases suspension on a hanger results in soft tissue injuries, usually accompanied by injuries on the brachial plexus. Therefore, adaptation of special case-history and examination protocols for applicants who were hung by the arms, and hence developing a common approach across the centers of the Foundation will be useful in the identification of lesions and treatment.

For the purposes of diagnosis and treatment of those who were hung by the arms, and for the establishment of forensic evidence, specialists must be consulted and medical technologies such as magnetic resonance imaging, computerized tomography, bone scan, ultrasonography, electromyography, electronystagmography and somatosensory evoked potential must be employed in order to definitely identify lesions. Where necessary, special projects must be created for this purpose.

Common treatment protocols that should be applied in accordance with the time of formation and localization of lesions, must be adopted.

3. Panel on findings diagnosed in hunger strikes and therapeutic approaches:

The impact of hunger strikes and death fasts on health have been established in various aspects. In the light of this information:

The condition of all hunger strikers of 1996 must be determined. Particularly, those suffering from Wernicke-Korsakoff's syndrome must be identified and their treatment and follow up planned;

Considering that hunger strikes may also take place in the future, organization and coordination to address health needs associated with hunger strikes must be in place in advance (It is necessary to learn from the experience of the hunger strikes of 1996, especially from the inadequacies which were observed then).

It was emphasized that it would be useful if the HRFT dealt with this issue within the framework of a project to fulfill its responsibility.

4. Conference on care for care givers

Schemes to support and protect those dealing with traumatic-catastrophic problems must be included among the basic activities of the HRFT. To this end,

each unit must have regular supervision and case discussions with outside consultants. These activities should be provided professionally, with standard fees, rather than as volunteer or optional work.

5. Panel discussion on the difficulties faced in the treatment of mental disorders of torture survivors

A case study was presented in this panel discussion. Treatment approaches implemented in Sweden and the HRFT's experience were mentioned. In connection with the experience in both countries, the importance of the creation of a "safe" environment was emphasized as the first step of psychotherapy. It was mentioned in particular that people who forcefully migrated have a serious problem of food and shelter, the most basic problem in this country, and that a special organization was needed for this purpose. It was also emphasized that the most appropriate method of therapy in problems associated with torture was not beyond dispute and information in this area needed to be enriched.

6. Panel discussion on psychological assessment and diagnostic tools, and scales and methods in psychiatric research

Assoc. Prof. Ata Tezbaşaran from the Faculty of Education of Hacettepe University was the first speaker. He explained the process through which the validity and reliability of psychological scales was established, and the related problems. He mentioned in particular that scales and tests translated from another language would not be reliable as these were developed in a cultural context different from ours.

The second speaker was psychiatrist Paul Movschenson from the Treatment Center of the Swedish Red Cross. He provided information on the "Comprehensive Psychiatric Rating Scale" they used in Sweden.

Psychiatrist Kerstin Eiserman, a member of the same center as the third speaker, discussed the diagnosis of PTSD within the framework of Horowitz's psychological trauma theory.

Psychiatrist Rudi Firnhaber, also from the Treatment Center of the Swedish Red Cross, evaluated post-trauma rehabilitation from an anthropological- integrative perspective.

Finally, psychiatrist Doğan Şahin from the Psychiatry Department of the Faculty of Medicine of Istanbul University dwelled upon the ethical problems involved in torture-related research and general problems of scale application.

7. Conference on forensic medicine applications and issuing forensic reports

In Turkey, forensic medicine and the issuance of forensic reports are carried out by the Forensic Medicine Institute pursuant to laws and regulations. Where there are no units affiliated with the Forensic Medicine Institute, this task is carried out by general practitioners.

The conference emphasized the dependent structure of the Forensic Medicine Institute, whose members act in the capacity as official expert witnesses in torture cases to which one party is the state, and discussed the inadequacies of the diagnostic examinations conducted and reports drawn up by general practitioners who lack proper experience and training needed for this task.

It was indicated that forensic medicine reports should be issued by a committee after the completion of all necessary consultations and examinations to be conducted as part of a process involving civil organizations and universities, which would contribute to proving torture and punishing torturers.

8. Workshop on physiotherapy applications

The following five topics, which had been identified by the HRFT Izmir Representation for discussion during the workshop, were brought to the attention of the workshop:

1. Criteria of physiotherapy indication among torture survivors and establishing criteria in practice.

2. Classical physiotherapy and new approaches, conformity with cases and effectiveness.

3. Combined use of psychotherapy and physiotherapy.

4. Approach to the effectiveness of physiotherapy applications and evaluation of their usefulness.

5. The sort of physical therapy model that would suit the HRFT's needs.

It was indicated that the approaches of social and economic rehabilitation should also be included in the discussion in order to provide an integrated approach to rehabilitation.

In connection with the physiotherapy program, the approach according to which "the specialist should determine the indication" was discussed. After discussions, it was agreed that objective criteria, if any, should be used, and in the absence of these, the PTR program can be applied considering the complaints.

In the light of conventional PTR and new approaches, the speakers agreed that PTR applications aimed at alleviating pain swiftly had to receive priority over

extensive cures because of the circumstances and complaints of applicants, especially considering their time constraints when they are away from home.

The speakers also agreed that psychotherapy and PTR should be provided concurrently, and that discussion and exchange of knowledge was very important.

It was stated that the effectiveness of PTR could be checked by means of comparative evaluation of objective findings before and after the treatment, and, in the absence of objective findings, on the basis of the relief of complaints.

The participants unanimously reached the conclusion that “every case should be individually evaluated”. It was emphasized, however, that it was necessary to develop evaluation methods.

It was indicated that implementing a multi-disciplinary study model within the HRFT, combining psychological, social and economic rehabilitation activities, would be useful. It was agreed that appropriate evaluation methods were needed in order to determine the effectiveness of the work carried out.

9. Panel discussion on forensic medicine applications and issuing alternative reports

Torturers avoid creating visible traces and also employ methods that remove these traces. Furthermore, long detention periods may result in the disappearance of these traces and prevent diagnosis. Therefore, further diagnostic tests are needed to substantiate torture. These include computerized tomography, magnetic resonance imaging, bone scans (dynamic and static), electromyography, biopsies, audiometric examinations, etc. By using these methods in accordance with the needs, “Alternative Medical Reports” have been introduced recently, a process to which the HRFT contributed as well. Alternative medical reports should be prepared on the basis of anamnesis, physical and psychiatric examination, supported by one or more of the further medical tests according to the case.

Some alternative medical reports have been taken into consideration by our courts and by the European Court of Human Rights. Although the number of reports taken into consideration is few, this has produced a limited deterrent effect on torturers.

Consequently, the preparation of alternative medical reports must continue as they:

1. enable individuals to claim their rights; and

2. deter torturers.

This practice must spread nationwide, within the framework of cooperation between the Turkish Medical Association, Medical Chambers and the HRFT.

The speakers provided information on types of alternative report, difficulties encountered in preparing reports, inter-institutional relations, cases of torture in Manisa and the Baki Erdoğan case.

During the debate, it was argued that it would be more appropriate to have as broad a definition of torture as possible.

HUMAN RIGHTS FOUNDATION OF TURKEY

PROGRAM OF THE EDUCATION MEETING

(6-7-8 December 1996)

6 DECEMBER 1996

9:00-9:45:

OPENING

Yavuz Önen (HRFT President)

Rigmor Gillberg (Swedish Redcross Director)

Selim Ölçer, M.D. (HRFT Secretary General)

Lars Odefors (Swedish Redcross)

Metin Bakkalcı, M.D. (Coordinator of the HRFT Treatment and Rehabilitation Centers)

9:45-10:15:

BREAK

10:15-12:45:

A. I. WORKSHOP

First Interview and Taking Anamnesis, Medical Examination and First Assessment, Relations Between Consultant Physicians and Physician Who Makes the First Assessment.

Moderators: Tufan Köse, M.D., Ümit Erkol, M.D.

12:45-14:00:

LUNCH.

14:00-17:15:

A.II. PANEL DISCUSSION

Soft Tissue Injuries Of Upper Extremities Due To Suspension On A Hanger

Moderator: Sabri Dokuzoğuz, M.D.

Panelists

Assoc. Prof. Barış Diren

Assoc. Prof. Hilmi Uysal

Assoc. Prof. Mehmet Demirtaş

Prof. Gül Şener

Rudi Firnhaber

Tuire Toivanen

7 DECEMBER 1996

9:00-10:30:

B.I. CONFERENCE

Care for care givers

Prof. Şahika Yüksel

10:30-11:00:

BREAK

11:00-13:00:

B.II. PANEL DISCUSSION

Findings diagnosed in hunger strike and therapeutic approaches

Moderator: Hakan Gürvit

Panelists

Demet Kınay

Emel Gökmen

Hüseyin Şahin

Nermin Demirci

Tanju Elagöz

Zeki Gül

Satia Advan

13:00-14:00:

LUNCH

14:00-16:15:

B.III. PANEL DISCUSSION

Difficulties faced in the treatment of mental disorders of torture survivors.

Moderator: Prof. Şahika Yüksel

Panelists

Nuray Karali

Sezai Berber

Cristel Göranson

Tuire Toivanen

16:15-16:30:

BREAK

16:30-18:30:

B.IV. PANEL DISCUSSION

Psychological assessment and diagnostic tools.

Scales and methods in psychiatric research.

Moderator: Assoc. Prof. Cem Kaptanoğlu

Panelists

Assoc. Prof. Ata Tezbaşaran

Doğan Şahin

Kerstin Eiserman

Paul Movschenson

Rudi Firnhaber

8 DECEMBER 1996

9:00-11:00:

C.I. CONFERENCE

Forensic Medicine Applications and Issuing Forensic Reports

Önder Özkalıpcı

Assoc. Prof. Şebnem Korur Fincancı

11:00-11:30:

BREAK

11:30-13:00:

C.II. WORKSHOP

Physiotherapy applications

Moderator: Prof. Veli Lök

13:00-14:00:

LUNCH

14:00-14:45:

Discussion of the report by the workgroup

14:45-17:30:

C.III. PANEL DISCUSSION

Forensic Medicine Applications and Issuing Alternative Reports.

Moderator: Prof. Veli Lök

Panelists

Prof. Orhan Süren

Önder Özkalıpçı

Türkcan Baykal