HRFT
Human Rights Foundation of Turkey

FOLLOW UP REPORT TO THE UNITED NATIONS COMMITEE AGAINST TORTURE ON THE 3rd PERIODIC REPORT OF TURKEY

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“The contents of this document are the sole responsibility of Human Rights Foundation of Turkey and can under no circumstances be regarded as reflecting the position of the European Union.”

Introduction

This volume is a result of a long running work. The process up to this report can be summarized as follows: The United Nations Committee against Torture adopted the Second Periodic Report of Turkey in 2003 and the process of the next periodic report was expected to be in 2010. The Third Periodic Report of Turkey was considered at meetings, conducted on 3 and 4 November 2010 in Geneva.

For the first time, The Human Rights Foundation of Turkey presented a 99 paged, a kind of "a shadow report" focussing on a wide range of topics, after the submission of Governments' report to the Committee. Meanwhile, as HRFT we, actively participated in the sessions in Geneva.

UN Committee against Torture issued the Third Periodic Report on Turkey on 19 November 2010. As you can see in the appendix, the report significantly respects to the report of HRFT.

After the Third Periodic Report, there was formed a one year follow-up period under 4 titles. At the end of that period Turkish Government presented its new report of four titles on 5 March 2012.

Therefore, this follow up report to Turkey's new report was presented to relevant authorities in October 2012.

By the contribution of European Commission, 22 colleagues who are expertise on reporting, gathered in Ankara on 1 October 2011 in order to review the four titles, mentioned in the report. And again a meeting in order to finalize the report, with the participation of 22 colleagues in Diyarbakır on 23 September 2012 was held. We hope this report, which is prepared under the umbrella of HRFT by the contribution of our colleagues, fighting against the right violations from various groups of occupations shall be useful .

FOLLOW UP REPORT TO THE UNITED NATIONS COMMITEE AGAINST TORTURE ON THE 3RD PERIODIC REPORT OF TURKEY

I. INTRODUCTION

1. The Committee Against Torture, on 3 and 4 November 2010 conducted the 959. & 960. Meetings and evaluated Turkey's 3rd Periodic Report (CAT/C/TUR/3) (CAT/C/SR.959 and 956).
2. In the 975. meeting, the Committee adopted a number of final observations and recommendations.
3. The final observations are provided in paragraphs 28; while paragraphs 7, 8, 9 and 11 of the same text require the Government to follow the progress of the recommendations and provide issue on these issues within one year.
4. Turkey presented the information in a Monitoring Report to the Committee on 05.03.2012.
5. The Human Rights Foundation of Turkey (HRFT) submitted a report focussing on a wide range of topics in regards to Turkey's 3rd Periodic Report to the Committee and on 3 November 2010 began participating in sessions of the Committee, making presentations and answering questions.
6. This report, prepared as of October 2010, and the previous report submitted to the Committee reflect our observations and assessments on the issues and information as requested by the Committee. This report has been finalised in draft form as of October 2011, and has been postponed over the Government's request for extra time to provide monitoring reports. This report has been updated by taking into account Turkey's monitoring report.

II. EVALUATION OF THE PROCESS SUBSEQUENT TO THE PUBLICATION OF THE COMMITTEE'S OBSERVATIONS AND RECCOMENDATIONS

A. Implementing the Recommendations of the Committee and Problems Regarding the Sharing of Information

7. Firstly, it should be noted that regarding complaints of human rights violations, in particular torture, the criticisms and recommendations of international mechanisms, as well as taking into account the decisions of the European Court of Human Rights (ECtHR); there are serious structural problems in terms of the adjustments necessary for improvements to be made, policy creation and implementation, and the sharing of information in Turkey.
8. First of all, in spite of the recommendations of international mechanisms, ECtHR decisions, reports and correspondence, it is unclear which recommendations

and decisions the government has fulfilled and which improvements have or have not been made as information such as this is not able to be found in a government unit and/or centre, nor is this information shared with the public.

9. It is unclear which ministry follows or co-ordinates the recommendations made by international mechanisms and decisions made against Turkey, therefore which improvements have been made and under who's jurisdiction they are made is also unclear. Necessary information regarding the institutions and mechanisms used to implement improvements (parliament, ministries, administrative and judicial mechanisms) isn't provided.

10. There isn't any a plan of action showing the order in which improvements with which priority will be made, how they will be made and how quickly they will happen.

11. As is known, Turkey has ratified the European Convention on Human Rights (ECHR) and as such is committed to implement the decisions and recommendations of the control mechanisms of the convention. The state's failure to meet its obligations under the mechanisms of the Convention is the reason why Turkey has been convicted in so many ECtHR decisions. These decisions and their obligations are not known, nor are they followed by the public. The Council of Europe Committee of Ministers, with Recommendation CM/REC(2008)2 suggested that for State Parties to effectively implement ECtHR decisions there must be effective synergy between all actors associated with the process at a national level in order to take all necessary measure for development and to facilitate enabling mechanisms. As yet, Turkey has not implemented such mechanisms, and has not developed an environment creating synergy in which the relevant actors, especially human rights defenders, are involved.

12. Indeed, as the 3rd Quarterly Report presented to the Committee by the Government and the Committee's Observations and Recommendations of November 19, 2010 and such things are not translated into Turkish and provided to the public, information is not transmitted to the institutions and mechanisms required to put in place the Committee's recommendations, namely the Parliament, ministries and administrative and judicial mechanisms.

13. The Government have still not provided inclusive and integrated data about complaints, investigation, prosecution and conviction in cases of torture and ill-treatment, information regarding deportation of refugees and asylum seekers, records of arrest, trial periods, rehabilitation and compensation, human trafficking and sexual violence as referred to in paragraph 12 of the Committee's recommendations.

Accessible, current official statistics regarding torture are far from being laid out in a current table. The statistics kept include only the number of defendants in those cases proceeding under the Turkish Penal Code, and does not include the results of any research related to the victims or defendant's actions.

Only numerical information related to the number of defendants, the related investigation and the number of cases is provided. It is not permitted to obtain information about qualitative changes in the offense, differentiation in vehicles used, the profiles of the victims, treatment and rehabilitation requirements for the trauma suffered or counter charges against the victims.

The Government's approach concerning the collection of statistical data in regards to torture and ill-treatment and its results, and its continual ignoring of the obligation to provide visible data therefore indicates a concept of "ignoring and hiding". This approach creates a serious weakness in the necessary measures needed for the prevention of torture and ill-treatment.

In this respect, the studies are to be carried out under the responsibility of the State, however are done in a limited manner by NGOs. That said, the data collection and evaluation done by NGOs in an effort to contribute to solving the problem is often hampered at an early stage by the authorities failure to respond to requests for co-operation, as mentioned below.

14. HRFT are involved in a number of various activities aimed at the prevention of torture and ending impunity for torture in Turkey. While engaging in activities to prevent torture, HRFT engages with a number of other organisations working in the field, particularly the Human Rights Association, and from time to time enters into co-ordination with various government officials and bodies.

In order to start preparing for the written report of this monitoring period, HRFT communicated with government officials, learned what steps have been taken towards the implementation of the Committee's recommendations, scanned a variety of resources and applied for information from government authorities. In this respect;

- A letter was sent to the Ministry of Foreign Affairs on 23.05.2011. In this letter, information was requested regarding the monitoring report required from the Government by the Committe, including the recommendations for individual headings specifying what kind of measures and arrangements were to be made.
- Due to the issues mentioned in the letter, the unit in charge of monitoring told the Deputy Directorate General for Council of Europe and Human Rights about the letter as an example of our application.

15. A summary of the response made on behalf of the Minister by the Assistant General Manager signed by Ambassador representing the Ministry of Foreign Affairs -Assistant General Manager Kaan ESENER dates 06.06.2011 ;

    - ✔ The topics under the Committee's final observations and follow up report released 19 November 2010 will be responded to within a year,
    - ✔ Information gained from the relevant public authorities until November 2011 within the framework of the current issues will be given to the Committee,

- ✔ Questions communicated by HRFT (primarily, the Committee's recommendations) will be helpful in compiling the required information.

16. In order to receive and evaluate new data, as browsing the Directorate General for Criminal Records and Statistics of the Ministry of Justice shows the most recent data was entered in 2009, data for the year 2010 has been explained.

As of August 2011, an application was submitted to the Ministry of Justice in order to recieve information on new data, as well as data from the past 10 years.

- Part of this request involved information regarding defendants within the scope of torture and ill-treatment reflected in the number of decisions made by the judiciary since 2000 and the results of disciplinary investigations and whether there is a work carried out on the abolition of the statute of limitations.
- Other applications concerned numerical data cases of enforced disappearances and their investigation, and whether there are special procedures relating to the collection of such data. In addition, information was requested regarding the process of signing the International Convention International Convention for the Protection of All Persons from Enforced Disappearance and on work carried out on the abolition of the statute of limitations for the crime of enforced disappearances.

It was stated these applications, made due to an absence or inadequate amount of data issued by the General Directorate of Judicial Statistics on the website, and the information requested in the two written requests dated 23.08.2011 and 24.08.2011 could be obtained from the website of the Directorate General.

- In order to obtain the information specified in paragraphs (a) and (b) above, on 29.09.2011 applications were remade to the Ministry of Justice and the Ministry of Foreign Affairs.

The Ministry of Justice informed that they did not keep statistics on questions related to cases of enforced disappearances. In regards to our request for information within the scope of crimes of torture and ill-treatment and limited data was given, but many questions remain unanswered.

17. Upon requests for additional time by the Government, the process of preparing, reviewing and updating this report was lengthened, and in the research on the 2012 Ministry of Justice website, and the small amounts of published data for the years 2010 and 2011, a very small portion of the data is seen to be shared.[1] The relevant sections of this report have recorded and evaluated this data.

18. Summarising above (paragraph 16), government officials were not predisposed

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[1] The link in the official web page of the Ministry of Justice was broken as of 06.09.2012 (http://www.adlisicil.adalet.gov.tr/istatistik_2011/ist_tab.htm). It was told that "yet the booklet about the 2011 statics is not ready, it was not put on the web" when we contact with Ministry of Justice.

to cooperate with any applications made, and applications failed to get any results. The texts translating the process regarding the Third Periodic Report were not delivered to the relevant mechanisms, contrary to the requirement that all the bodies and institutions of the state hold the responsibility of dealing with torture and the prevention of torture. Reporting and following up on the recommendations of the Committee should be done by the state as a whole, not only within the information and initiative of the government. This attitude impedes the production of serious and lasting policies regarding the prevention of torture.

19. Again, the Ministry of Justice and the Ministry of Foreign Affairs are not prone to approaches involving cooperation, have failed to collect and share data and in this respect are in breach of their obligations of transparency and accountability.

20. A lack of purpose regarding the prevention of torture and ill-treatment, a denial of the problem and a reflection of a lack of understanding on implementing the recommendations of the Committee has also been found. For all the information requested by the Committee's report; composing of the titles such as "torture and impunity", "the absence of effective, prompt and independent investigation", "failure to investigate disappearances" and "restriction on fundamental legal safeguards", to date no significant steps have been taken in regards to these issues by the government.

B. General Considerations of the Nationwide rise in cases of torture and ill-treatment

21. Since November 2010, cases of torture and ill treatment in official and unofficial places of detention continue to be experienced.

22. Following the start of negotiations for Turkey's full membership into the EU, there were relative improvements in the area of fundamental rights and freedoms, this has been interrupted by the news of the decision to start accession negotiations. Particularly regarding the grounds on which security forces fight terrorism, there has been serious setbacks with the amendments made in 2005, 2006, 2006, 2007 and 2008 to the Turkish Penal Code (TPC), the Criminal Procedure Code (CPC), the Law on Combating Terrorism (LCT) and the Law on Powers and Duties of the Police (LPDP).

Adverse changes in the application of legal regulations have caused widespread increase in violation of rights including prohibition of torture and the right to life and freedom of expression, freedom of association and the freedom to assembly and protest. According to a response to a parliamentary question posed to the Minister of Justice regarding the proposals on 13.02.2012[2], the number of people

[2] Response of Minister of Justice dated 13.02.2012 610-01-62/263/569, http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=96527

prosecuted pursuant to some provisions of law[3], leading to human rights violations, increased from 16 240 in 2005 to 63 117 in 2010. Those who were convicted increased from 2.743 in 2005 to 10915 in 2010. This and similar practices caused the number of people kept in prisons increased from 55870 in 2005 to 130.617on 2012, 29th of February.

23. Indicating a serious tension between the state and its citizens, this numerical data should be added to give a more accurate expression and indication of the punitive and prohibitionist approach of the state and that the increasing intensity of law enforcement officers has become routine. In the past year and a half, as in the Committee's monitoring report of 19.11.2010, there has been a significant increase in cases of torture and ill treatment in places described as "unofficial places of detention" including police vehicles and streets.

24. Recently, torture and ill-treatment mostly has been applied in order to instill fear, intimidate, punish or establish authority but not to obtain information. Again, applying such techniques against certain groups or categories of people - for example Kurds or LGBT - is one way to practice discrimination. When applied to individuals, torture and ill-treatment can become a tool for social pressure, it has now become a tool to prevent the masses from the right to freedom of thought and expression as well as the right to organize. Whether criminal charge is encountered or not, this situation creates the risk that everyone will suffer the severity of the police. As far as there isn't any distinction based on age, gender, ethnic origin or social status everyone has the potential to be a victim.

25. The widespread and excessive use of chemical agents, water cannons and many other methods referred to as "Demonstration control agents" at demonstrations of a peaceful and democratic nature and those taken under controlled and arrested are frequently applied. In order to make concrete descriptions of new forms of torture and ill-treatment and it's appearance on the streets in Turkey, it is enough to confer only a few of the events that have occurred extensively in 2010 and 2011.

Case Studies:

1. The Intervention and Results of Police Interventions Against the Democratic Solution Tents:

26. In the Spring of 2011, at the Peace and Democracy Party and Democratic Society's Congress, in order to initiate a solution of the Kurdish problem through democratic means and acts of civil disobedience, activists and the public came together and sat in the "Democratic Solution Tents". This soon became impossible, due to the constant intervention and excessive use of force by the police.

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[3] Data based on such crimes: Breach of Law on Demonstrations and Public Meetings, Praising the offense or the offender, Provoking people not to obey the laws, Provoking people to be rancorous and hostile, propaganda. These crimes are used against individuals in order to restrict freedom of thought and expression.

According to data from Human Rights Association, between 15.03.2011 and 28.04.2011 the tents, set up in 26 different provinces, were interfered with 56 times. The occasional use of firearms in these interventions led to the loss of two people's lives, 73 injuries and 872 people subjected to torture and ill-treatment. The reports put the number of people detained at 872, and the number arrested at 36.

2. Artvin – The Experience in Hopa:

27. During the course of the general election, in Artvin's Hopa district on 31.05.2011 outgoing Prime Minister Recep Tayip Erdoğan encountered local protestors. The people of Hopa, in whose region hydroelectric power plants are to be constructed and whose basic source of livelihood is the production of tea wanted to show their reactions against the quota to be implemented and plants by opening banners, however they were faced with an intervention by the police.

Over the course of this intervention one life was lost due to the effect of gas bombs, and while people trying to go to the hospital, they were subjected to rough treatment by riot police, and had to take refuge inside shops as gas bombs were laid near the hospital emergency department, the hospital and a shcool.

On 2011, 6-7 June a report[4] was compiled by representatives from Human Rights Foundation of Turkey, Human Rights Association, Turkish Medical Association and Confederation of Public Employees' Trade Unions; due to its medical section 10 male applicants and 3 female applicants between the ages of 20-56 were examined; the complaints noted included soft tissue lesions due to beatings, alopecia due to hair pulled out, soft tissue lesions from being hit with gas cannisters, tearing and burning of the eyes, burning of the body, shortness of breath, nausea, vomiting, fainting and inability to stand up, all related to the effects of chemical gas. As a result of the psychological assessments of 13 people, 7 were found to have psychological symptoms and general symptoms manifesting in anxiety and sleep problems.

Of the 31 people taken into custody during the police intervention, 12 were arrested. In a press release by their lawyers, it was stated that there was a continued use of violence particularly during arrest and detention and against people coming and going from the hospital.

Despite not holding an investigation into those responsible for the excessive violence used by police, it is remarkable that the Director of the Hopa Security Directorate is blamed for "security weakness" and the Artvin Province Gendarma Commander was dismissed for "insufficient intervention" and permission was requested to investigate both of them.

[4] HRFT-HRA-TMA-CPETU, Hopa Report published on 09.06.2011, http://tihv.org.tr/index.php?6-7-Haziran-2011-Tarihlerinde-HopaaEya-Giden-Sivil-Toplum-ArgAtleri-Heyetinin-Durum-DeAEYerlendirme-Raporu

3. Law Enforcement Officers Violence and The Attitude of the Government Against University Students:

28. University students were one of the objects of increasing political repression and police violence in 2011. The cornerstone of freedom of thought and expression, freedom of knowledge and research was severely restricted as a result of law enforcement officer's violence, criminal proceedings and disciplinary sanctions and even negligence proceedings against students. In the academic year of 2010-2011 on the basis of these experiences, it has been recorded in a report prepared by of a group of academics, doctors and lawyers that; university students in a number of different cities were subject to the intervention of security forces because they participated in activities such as press releases, protests, shouting slogans and carrying banners[5].

The methods of torture and ill-treatment used, according to the written descriptions and statements of students in the report include; "hitting with batons and kicking of the face, hands, backs, stomachs, heads; hitting a woman who shouted 'I am pregnant' in the groin, intense amounts of gas sprayed at close range, continual spraying of gas at students attempting to escape, spraying gas in closed areas, especially in buses, after being taken into custody, closing the doors, windows and air conditioning of buses in order to increase the effect of the gas, using high pressure water cannons, forcing them to wait in cold weather while wet, handcuffing, forcing them to stay on a bus, verbal and physical harassment, trying to frisk them and force them to remove their underwear while in custody, swearing, insults and threats."

In the face of this violence the Prime Minister made statements targeting the students and presenting them as similar to terrorists, stating "I won't allow you to crush my police", revealing that that the mentality that prevents the prevention and punishment of torture in violation of obligations continues to exist. Further, the Minister of Interior, in images reflected in the media, characterised the denial of torture by stating "the students place themselves there in order to get images on camera".

The attitude from the very top of the state to "ignore" or even "ownership and protection" results in the failure to start judicial or administrative proceedings against those responsible.

4. The Use of Violence against Trade Union Movements:

29. In 2011, contrary to the claims of the Monitoring Report, the Government has not made legal arrangements that limit the use of force by those personnel responsible for control. In the examples summarised in the incidences above, the excessive and arbitrary use of force has continued in 2012.

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[5] "The Collective Usage of Freedom of Expression by University Students", 21.09.2011, http://tihv.org.tr/index.php?ozelrapor20110921

With the discussion of a bill in Parliament that involved significant changes to the education system, the CPETU decided to hold a rally protesting the changes in central Ankara on 28-29 March 2012. In many provinces of Turkey, CPETU members wishing to go to Ankara were prevented from doing so by the police, resulting in a small number of demonstrators reaching Ankara. On 29.03.2012 the police held an intervention against those demonstrators who wanted to make their voices heard through peaceful means. During the intervention tear gas and water cannon were used extensively, and several demonstrators were injured.

Union members in Izmir who were prevented from going to Ankara were subjected to a police intervention involving pressurised water and gas bomb that put a large number of people in hospital. Examination made by HRFT at the request of four wounded people identified serious bone fractures caused by pressurised water and organ injuries and respiratory tract diseases caused by chemical gases.

5. Violence During the 2012 Newroz Celebrations:

30. The Ministry of Interior's prohibition of Newroz holiday, celebrated every year between 17-25 March[6], has created a situation where security forces use excessive violence against those who wish to celebrate. During the celebration law enforcement officers, who besieged areas where Newroz events were being held, used dense gas grenades and water cannons against those wanting to distribute press statements, celebrate or just walk.

According to a report prepared by the HRA[7], during the interventions across the country one police officer and the BDP Arnavutkoy District Administrator lost their lives. The BDP District Administrator's death was caused by being struck on the head by a gas canister. Nevertheless, 178 people across the country were injured.

Uncontrolled and Excessive Use of Chemical Agents

31. Commonly known as tear gas, chemical agents used by security forces in an uncontrolled and excessive manner have resulted in injuries and deaths. On 27.05.2012 a fight broke out between two groups, and a young man named Çayan Birben attempted to break it up. Despite telling the police he suffered from asthma, they sprayed pepper gas at him, and as a direct result of this action he ultimately lost his life.[8] According to HRFT's Documentation Centre, since the amendment to the LPDP on 14 June 2007, within 5 years close to 12 people have lost their lives either as a direct result of the intensive chemical effects of "gas capsules" or as a result of the capsules hitting their bodies – 1 in 2008, 4 in 2009, 5 in 2011 and 2 in the first 5 months of 2012.

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6 Ministry of Interior order, dated 15.03.2012 , 337-2162/62258, http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=108561

7 HRA, Report on right violations in 2012 Newroz (16-22 March), http://www.ihd.org.tr/index.php?option=com_content&view=article&id=2524:2012-newrozunda-yasanan-hak-ihlalleri-raporu-16-22-mart&catid=67:genel-merkez-aciklamalari&Itemid=213

8 http://bianet.org/bianet/diger/138738-cayan-birben-biber-gazindan-oldu

32. The wide use of violence by law enforcement agencies against individuals or the masses, as well as torture and ill treatment conducted by private security officers and village guards, is increasing.[9] Although there is no clear regulation in the Law on Private Security Services[10], the related regulation states, "the Private Security Commission may allow the use of chemicals that do not have a permanent effect on living things"[11]. Within the scope of the permission granted by the Commission, it can be seen that the use of tear and chemical gas by private security guards in particular has increased as of 2011.[12]

33. ECtHR, in a judgment handed down 10.04.2012[13], evaluated for the first time the use of tear gas on people under control in regards to Article 3 of the European Convention on Human Rights, which prohibits torture and other ill treatment. Upon examination, it was decided that Turkey was in violation of the Article.

34. Again, due to non-compliance with a warning to stop interventions or demonstrations; the changes in the LPDP meant that in the period up to September 2012, 116 people lost their lives as a result of firearms used by the police.

35. Information on the agents used in controlling demonstrations such as pressurised water, batons and chemical gas, as well as the so-called "Silent Guardian", which emits microwave energy at a frequency of 95GHz, began to be examined in the media in 2012. [14] In regards to a parliamentary questions posed to the Minister of Interior regarding this matter[15], he responded that the "silent guard protect system" was demonstrated to staff at the General Security Directorate, but that the purchase was not completed. The efforts made regarding the use of the device must be displayed. Considering that the effects of the application on human health and life are as yet unknown, the utilization of this control agent and its consequences for individuals are of great concern.

36. It is very important to underline the difficulties that prevents the prevention and punishment of torture against masses mostly in the public spheres'. The public officials who intervene in social events wear specially produced helmets and protective clothing, therefore making it difficult to detect their appearance and identity. This creates a situation where the perpetrator is able to be hidden and remain anonymous.

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9 http://bianet.org/bianet/genclik/133159-siddete-hayir-diyen-ogrencilere-ozel-guvenlik-dayagi_

10 Law on Private Security Services, No. 5188, dated 26/06/2004

11 Regulation related with the application of the Law on Private Security Services , Official Gazette: 07.10.2004, No. 25606

12 http://haber.sol.org.tr/devlet-ve-siyaset/universitede-ozel-guvenlik-gorevlilerine-biber-gazi-egitimi-haberi-43886

13 ECtHR, Ali Güneş vs. Turkey, 9829/07 dated 10.04.2012

14 http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1089066&CategoryID=77

15 Minister of Interior response dated 17.07.2012 and 4047-5421/140479

37. Following interventions by law enforcement officers and the detention of demonstrators with membership of organisations, extreme pressure is on victims who are accused with resisting a public official at the slightest word. For those taken into custody, it is difficult to access the complaint mechanisms against public officials. Even for those not taken into custody, due to anxiety of being taken into custody, they feel hesitant about making an application regarding their treatment and even shy from applying to health institutions. For instance, images reflected in the media following the events in Artvin-Hopa and interviews between the province's people and representatives of HRFT, HRA, TMA and CPETU, despite the establishment of hundreds of people's exposure to chemicals gases, pressurised water and assault, only 13 people applied to HRFT's Mobile Treatment Team for check-up's, displaying the high levels of anxiety resulting from the tactics used.

38. Despite quick investigation into demonstrators at the end of capture/detention operations beginning with law enforcement interventions, criminal investigation procedures are rarely or never opened against public officials, and if opened, take a long time to come to a close.

All these difficulties and lack of tolerance of dissenting voices support a position in which political power, security forces, in particular the police, have become "untouchable political apparatus".

C. Confronting the Past as a part of the illumination of the "September 12 Coup" Era and crimes of torture and deaths as a result of torture.

39. Turkish people today, while on the one hand trying to cope with torture and ill-treatment that is "on the streets" are still on the other hand struggling with the on-going trauma of the attempt to punish the perpetrators of torture and ill-treatment that took place during the "September 12 Coup".

40. The victims and relatives of those who suffered from many crimes such as the death penalty, disappearance while in detention, death in custody and prison, death due to torture, widespread and systematic torture and redundancies in the September 12 coup period (September 1980 - November 1983) are still searching for justice.

41. 386 applications regarding victims and their relatives made by HRA, 78'ers Initiative Foundation, the Revolutionary 78'ers Association, and the Diyarbakir Prison Facts Research and Truth Commission provides important evidence of how human rights were violated during the time of the coup. For instance;

    - Ibrahim Erdogan, stated that he was a victim of 12 September and was subjected to torture during this period, as a result of Palestinian suspension his shoulder popped out, his ear exploded and his jaw was broken,

    - Hamit Kapan stated that over the course of exactly 200 days he was subjected to torture, and during his detention Fehmi Özarslan and Mehmet Ceren were killed under torture,

- Ali Ekber Yürek's brother Mehmet Yurek also stated that his brother was killed under torture but witness statements were not requested.

42. The investigation opened after the aforementioned 386 applications expanded as other complaints reached the prosecutor, but the investigation period was extended due to a lack of jurisdiction. As a result, a case was opened against the surviving commanders of the coup, Kenan Evren and Tahsin Sahinkaya according to old TPC Number 756 article 146 and 147 accusing them of undermining the Constitution, preventing the Parliament from working and overthrowing the government, in short charging them with the coup. Although it is stated at the beginning of the indictment that a separate criminal case would be opened in regards to torture and ill-treatment during the coup period, a case has not been opened so far.

III. PRIORITY ISSUES

43. Examples and reviews of what public officers call "use of power", which, in fact, is torture and ill-treatment in a different form and place, with a different target and purpose, are shown above. Passive and even supportive attitude and declarations of members of the Government and managers about torture and ill-treatment becoming widespread and even down to the streets were reviewed. Torture and ill-treatment, along with violence against crowds exercising their democratic rights in Turkey have been going on; there was no progress whatsoever on issues mentioned in Turkey's 3. Periodic Report, including issues demanded by the Committee in follow up report, and no solid steps towards solving problems in the future were taken.

This monitoring report aims to provide information on four titles decided by the Committee to be monitored, along with sharing information, in a broader perspective, about certain practices causing torture, ill-treatment and violations of the right to live, and problems caused in this concept.

A. TORTURE AND IMPUNITY (Paragraph 7)[16]

44. In paragraph 7 of the Committee's Observation Report, it is mentioned that there are concerns about:

    - *Comprehensive claims about continuing torture in unofficial places of detention,*
    - *Failure to run an effective, promptly, impartially and independent investigation on torture claims,*
    - *Cementing impunity atmosphere by delaying the execution of sentences for public officers found guilty on ill-treatment,*
    - *Proceedings on torture claims are ran on TPC articles 256 and 86, which suggest less punishment.*

45. In the same paragraph, the report suggests the Government should;

    - *Take urgent precautions to stop torture activities,*
    - *Secure that investigations are prompt, effective and impartial, and establish effective and impartial mechanisms for this purpose,*
    - *Make sure that torture offenders are relieved of duty or moved to another position until the investigation is over,*
    - *Prepare a guide to prevent torture offenders being prosecuted on articles suggesting less punishment (TPC art.256 and art.86).*

46. Our reviews about liability to run an effective, fast and unbiased investigation are below, in the section about the 8. Paragraph of the Committee's Observation Report.

1. Reviews on Current Situation of Torture, Ill-Treatment and Impunity Problem, and Pursuance Report Submitted by the Government

47. In unofficial places of detention along with aforementioned ill-treatment "applied to masses", practices regarded as ill-treatment "towards individuals" are still on-going. Torture and ill-treatment subsists in 2012 Turkey, in official custody and other locations of detention.

a. Numeric Data

a.a. Reviewing Data from Ministry of Justice[17]

48. Despite the impossibility of acquiring detailed and reliable data from statistics of Ministry of Justice, reviewing the information published on their website

[16] See Appendix, page. 72

[17] www.adlisicil.adalet.gov.tr

might be useful. 2011 data on processes ran by Public Prosecutors has not been published yet. When we look at 2010 data, we see crimes in TPC are grouped together and results of more than one article of law are shown in same entry.

49. It is well known that, when investigating and prosecuting torture claims, judicial authorities tend to rest their cases on exceeding the limits of authorization for use of force, which is regulated by TPC art. 256 and suggests less of a punishment. In public prosecution part of ministry statistics, the data on TPC art. 256 is mixed with 18 different crimes. Because of this, acquiring reliable information on "exceeding the limits of authorization for use of force" has not been possible.

50. On the ministry's website, TPC. art. 94 and 95, which regulate torture crime, and art. 96, which regulates torment crime, are reviewed together. The feature that separates torment from torture is that the offender is not a public officer. But in investigations ran on torture claims on public officers, it is very common to demand a punishment for torment, which suggests a minor sentence, is a common practice. **According to data from Ministry of Justice, concluded files on TPK articles 94, 95 and 96 only for year 2010, the total number of offenders is 2443. While for 949 of the offenders cases were found dismissal and against 984 a criminal case had been filed, 510 had "other verdicts" such as lack of venue, lack of jurisdiction, adjournment of the trial etc.** In ratios, the offenders against whom a criminal case had been filed constitute only 40,3% of the total, dismissal of the case (38,8%) and other verdicts (20,9%) add up to 59,7% of total.

51. The data for 2011 published in Ministry of Justice official website is only about "crime types and number of defendants for cases presented and resolved in criminal courts in 2011". Same data for 2010 is also available. All the information on cases in criminal courts had to be analysed to evaluate last two years' officially published data and had to be confirmed the aforementioned prosecutorial judgements.

52. As shown in the table below, while some 800 public cases were filed concerning exceeding the limits of authorization for use of force, regulated under TPC art. 256; in the old TPC art. 245, law no. 765, which corresponds to the same crime, 97 offenders were filed against. 9 offenders were sued under TPC art. 86/3-d, regulating public officials' abuse of their influence and causing injuries, which brings the total public officials under prosecution for ill-treatment is 906.

We mentioned that the number of offenders, for whom the verdict was dismissal of the case or "other verdicts" under TPC art. 256 wasn't specified in 2010 statistics. In ministry resources it says for the offenders of the crime group under TPC art. 256, the prosecuted are a mere 38,8% of the total. When we apply the ratio to "the number of offenders against whom a criminal case have been filed (800)", the number of total offenders could be guessed as 2062.

Table 1			
REGARDING PUBLIC OFFICIALS: **NUMBER OF DEFENDANTS IN LAWSUITS FILED UNDER THE OLD AND NEW PENAL CODE IN 2010 AND 2011**			
CRIME	**APPLICABLE LAW AND ARTICLE**	**2010**	**2011**
		NUMBER OF DEFENDANTS	
Exceeding the limits of authorization for use of force	TPC art.256	**800**	**729**
Public officials' abusing influence to cause harm/injury	TPC art.86/3-d	**9**	**3**
Simple form of torture crime	TPC art.94/1	**165**	**135**
Torture getting heavier due to victim's character and attribute	TPC art.94/2	**11**	**9**
Torture by sexual harassment	TPC art.94/3	**10**	**9**
Torture causing broken bones	TPC art.95/3	**24**	**4**
Torture causing death	TPC art.95/4	**7**	**4**
Torture	Former TPC art.243/1	**42**	**52**
Death caused by torture	Former TPC art.243/2	**0**	**2**
Ill treatment	Former TPC art.245	**97**	**55**
TOTAL		**1165**	**1002**

53. An investigation in terms of torture crime shows that 259 offenders were filed under TPC art. 94 and art. 95 in 2010, and 215 more in 2011. When we check the previous two years' data we see this number was 184 in 2008 and 253 in 2009.

54. Due to inaptitude of official entities about documentation, precise and clear data to picture the torture and ill-treatment situation in Turkey cannot be acquired. HRFT 2011 data provides more information than that of official resources on various accounts, e.g. types of conduct, number of victims, location of crime, title of the public official. Unfortunately, due to the hardship of reaching our foundation, which has offices in only five provinces, makes it impossible to collect country-wide data.

a.b. Evaluating HRFT Data[18]

55. The number of applications to our offices in five provinces in 2011 is 519. 485 of these were by torture victims and 34 were by relatives of torture victims. One applicant was left out of evaluation, who had psychotic disorder and had no

[18] HRFT Treatment and Rehabilitation Centres Report, HRFT Publications, No.79, Ankara

relatives. **Out of the 484 applicants 224 state that "they had been tortured in custody, in 2011". In a comparison of last five years' numbers of applicants; 310 in 2007, 258 in 2008, 264 in 2009, we see adrop to 160 in 2010, but a serious raise in 2011.**

56. Of course, the violence in "unofficial places of detention" underlined in Committee's Observation Report has an impact on the raise in last year's torture and ill-treatment cases. When general data including torture stories from before 2011 is reviewed together with those that say they have been tortured in 2011, we see that the numbers of torture victims in "the street and open air", "in a vehicle" and "at home or work" have increased.

Table 2

	Applicants in 2011		**Applicants who experienced torture in 2011**	
Place where torture was experienced in detention	**Number of Applicants**	**%**	**Number of Applicants**	**%**
Security Directorate	226	46,7	79	35,3
On the street or in public	71	14,7	60	26,8
Police Station	58	12,0	34	15,2
Inside a vehicle	31	6,4	28	12,5
At home/work	9	1,8	7	3,1
Gendarmerie Station	8	1,7	2	0,9
Gendarmerie Command	7	1,4	-	-
Other	24	5,0	11	4,9
Don't know/ can't remember	7	1,4	3	1,3
Empty	43	8,9	-	-
Total	**484**	**100**	**224**	**100**

57. **111 of the 484 people who have been tortured in or before 2011, 95 of the people who have been tortured in 2011 claim they have been tortured in unofficial detention centres. (Table 2) In ratios these numbers show 22,9% of 484 applicants and 42,4% of 224 applicants respectively.** These numbers verify our previous deduction, that police brutality to intimidate contrarians trying to express their views in a democratic way is becoming more and more common.

58. The number of people tortured in official detention places is 115 (51,4%) for claimants that say they have been tortured in 2011, while the same number is

342 (70,7%) in total. The data on "Empty" column in Table 2 has been taken into consideration in calculating this category. This column consists of applicants who haven't been tortured in their last custody, but have been tortured during previous custody or prison time period and still suffering from physical and emotional trauma.

Torture ratios in official custody or detention locations ranging over 50% shows that torture and ill treatment has not "only moved to public space", but it has been going on in both public spaces and detention centres.

a.c. Reviewing HRA Data[19]

59. Well organised with country-wide branches, HRA prepares its reports considering personal applications to its branches, reports by investigation and research commissions established within, news articles in press and other media organs, other NGO's reports and public enterprices data.

60. According to HRA Head Quarters 2011 data report, number of determined torture and ill-treatment cases is 3252. 517 cases are "outside of detention places" and 1425 are "during mass demonstrations" add up to 1942, and are an important percentage of the total.

61. HRA data also shows the offenders for torture and ill treatment are village guards in 15 cases and private security officers in 58 cases. Also, some 119 cases of violence were confirmed to take place in "schools".

62. Despite the claims to have bettered the situation in preventing torture and punishing offenders in the 3rd Periodic Report presented to the Committee in 2010 by Government and the Follow Up report in 2012, we can see in the data above that torture and ill treatment continues.

b. Fields Where Torture and Ill-Treatment are Common, and Examples of Solid Cases

63. In this context, it would be helpful to study the on-going torture, ill-treatment and impunity problem in Turkey over actual solid cases since November 2010. Also, torture and other forms of right violations in Northern Cyprus, which, by ECtHR judicial opinion[20], is considered in Turkey's reign with its "efficient and prevalent authority" over the territory.

b. a. Torture and Ill-Treatment in Detention Centres

64. The claims of 224 people who applied to HRFT for **being tortured "in police custody"** in 2011 are as follows:

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[19] Human Rights Association, 2011 Turkey Human Rights Violations Report, http://www.ihd.org.tr/images/pdf/2012/rapor/ihd_2011_ihlal_rapor.pdf

[20] ECtHR, Louizidou vs.Turkey, 15318/89 dated 18.12.1996; Cyprus vs.Turkey, 25781/94 dated 10.05.2001

Table 3		
Torture Method	**Number of Applicants**	**%**
Beating	183	81,7
Insulting	166	74,1
Humiliation	154	68,8
Other threats against the person	83	37,1
Death threats	61	27,2
Forced to obey arbitrary commands	60	26,8
Exposure to chemicals	53	23,7
Sexual Harrassment	40	17,9
Verbal sexual harrassment	35	15,6
Restriction of access to food and water	29	12,9
Forced audio/visual witnessing to torture	28	12,5
Threats made against relatives or friends	27	12,1
Plucking beard/moustache/hair	26	11,6
Continually hitting one spot on the body	24	10,7
Restricting urination/defecation	24	10,7
Restricting sleep	20	8,9
Physical sexual harrassment	15	6,7
Stripping of clothes	12	5,4
Left in place with no ventilation	12	5,4
Offers to be an informant	12	5,4
Solitary confinement	11	4,9
Torturing relatives or friends	10	4,5
Forced to wait in the cold	10	4,5
Forced to listen to loud music or marches	9	4,0
Other methods of torture	8	3,6
False execution	7	3,1
Exposed to cold or high pressure water	6	2,7
Blindfolded	5	2,2
Electricity	4	1,8
Forced to do excessive physical exercise	3	1,3
Squeezing testicles	3	1,3
Rape	1	0,4
Suspended by the shoudlers	1	0,4
Placed in straight strap or crucifixion	1	0,4
Burning	1	0,4
Other	15	6,7
Total	**1159**	**5,1**

As we can see in Table 3, beating and humiliation are among most common methods of torture; while torture methods involving heavy pain, such as electricity, suspension by shoulders, testicle squeezing, sexual harassment/rape, burning and plucking hair are on a decline compared to previous years, they still go on.

65. This information based on what applicants tell also show that more than one method is performed on the same person. As you can see in the table, 1159 different procedures were performed on 224 applicants, meaning each applicant were subject to approximately 5 different procedures.

A.B. CASE

A.B., who was working as the private security officer for a general store, was on his way to deposit the store's money to the bank on 04.02.2011 when someone pressed an anaesthetic substance to his nose. He has passed out. After coming back to his senses in a hospital, he was taken to İzmir Provincial Security Directorate's Usurp Bureau. During the entire custody process, which started at 05:00 pm, he was forced to confess he stole the money.

Applicant declared that he was blindfolded from time to time, he was stripped naked down to his underwear, and later even that was removed and the cops made moves as if they would "rape" him, kicked and punched him in his neck/face/head/back/torso and guts, he had more hits to his right leg, where he had an operation, and they gave him more pain by sitting and stepping on him. He also says he was power washed with cold and pressurised water, kept in a cold place, and threatened to be electrified and that his wife would be brought and stripped naked. He mentioned that some of these procedures were performed while he was blindfolded and handcuffed. The police were guiding him with phrases such as "bend your head, wall in front, there is a door, you'll run into it", and despite following all commands he continuously hit doors and walls. When A.B. has a nervous breakdown and deliriously starts saying "enough, kill me" they stop torturing. Interrogation continued until 02:00 a.m. and applicant left in front of his house without seeing a prosecutor.

After an application to prosecutor, a case has been filed for those six police officers present in interrogation for torture crime (TPC art. 94/1) and is still going on[21]. A.B. is still getting medical and legal support from HRFT.

As you can see from the example above, more than one method practiced on same victim, not only multiplies the emotional and physical pain, but also enhances despair to the level of "willing to die".

[21] Izmir 2nd Aggravated Felony Court, No. 2011/247

b.b. Torture and Ill Treatment Towards LGBT Individuals

66. Along with the social pressures, LGBT individuals are exposed to discrimination when facing public authorities for any problem, all because of their sexual orientation. The violence they face is not only humiliation and exclusion, but also invasion of their physical integrity and many times it ends with violation of the right to live. Torture, humiliation and ill-treatment of security officials faced by LGBT individuals, who could never avoid being targeted by hate speech, constitutes a serious percentage of all hate crimes they face.

67. Amnesty International's report[22] in 2011 refers to Lambdaİstanbul Association's 2010 report and mention that especially trans women face violence under police custody. 89% of 104 trans women stated that they had been victim of "physical violence" while under custody. When insults and humiliating procedures are included, this rate goes up to 97%. 77% of trans women complain that they had been harassed and faced sexual violence. Research also shows that trans women are deprived of procedural securitas. 86% of 104 participants state that no record of their custody was kept.

68. According to Amnesty International's 2011 report, trans women interviewed in 2011 confirmed this information regarding the past. Also, it is mentioned in the report that LGBT organisations' campaigns against violence provided a decrease, but a lot of cases persist.

b.c. Torture and Ill Treatment in Prisons

69. Prisons are among the places where torture and ill treatment is most common. To maintain authority or discipline, or punish, or as a method of discrimination, physical and psychological abuse has been in practice.

70. It is observed that, along with physical or psychological violence against detainees and inmates, physical conditions of prisons, limited access to health care facilities, hygiene and nutritional issues, and solitary confinement and small group isolation (especially in type F prisons) causes physical and psychological integrity of detainees and inmates to get severely damaged. As mentioned above, increasing population of prisons and placing detainees and inmates at levels exceeding the capacity of prisons cause worsening of physical conditions and increases deprival of rights. This causes protests and actions in many prisons. The actions and protests of detainees and inmates to be taken seriously, get their voices heard and demand better conditions often ends in deaths or serious injuries.

71. In the fire outbreak at Type E Closed Prison, Şanlıurfa on 16.06.2012, 13 inmates died and 5 were injured. In the joint report[23] prepared by HRFT, HRA, CPETU,

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[22] Amnesty International, "NOT AN ILLNESS NOR A CRIME', Lesbian, gay, bisexual and transgender people in Turkey demand equality, 2011, http://www.amnesty.org.tr/ai/system/files/LGBT%20raporu%20ingilizce.pdf

[23] Preliminary Examination Report on Fires Which Happened in Şanlıurfa Type E Prison on 16-18 June 2012, 22.06.2012, http://www.kesk.org.tr/content/urfa-cezaevi-raporu

TMA, Progressive Lawyers Association (PLA), Confederation of Progressive Trade Unions (CPTU), Diyarbakır Bar Association (DBA) and The Association of Human Rights and Solidarity for Oppressed People (AOP), it was stated that 1057 detainees and inmates were put in a 375 person capacity jail, the building was old, health conditions were very bad, humane needs like food and sleep weren't fulfilled in dignity, and wards were extremely crowded and hot. Another claim is that detainees, inmates and NGOs have long been attempting to solve these problems, but no steps for betterment were taken. Other issues underlined in the report include: those in the prison set their beds on fire to protest these conditions, but fire-fighter intervention was allowed only when it was too late and efforts were insufficient, medics also weren't allowed in until it was too late and thus deaths and injuries happened.

72. Another striking example of systematic torture and ill treatment in prisons is the torturing, rape and sexual harassment performed on kids in Type M Juvenile Closed Prison, Pozantı, Adana, by deputy warden, guardians and other kids in prison. Complaints filed to HRA Mersin Branch reached on 25 April, 2011, and after press coverage[24] in June 2011, a huge public reaction followed. The children tortured and raped in Pozantı Prison are those arrested under Law on Combating Terrorism and known to public as "stone throwing kids". These kids complain that they have been labelled "terrorist" from the moment they were put in prison, were discriminated, and were tortured and raped/sexually harassed by both public officials and other kids in prison (who are in for ordinary crimes) within officials' knowledge.

Determined violations are listed in two categories in main opposition party Republican People's Party's (Cumhuriyet Halk Partisi) report[25] on the issue.

Violations committed by public officals;

- Initial and continual beatings upon entering prison
- Kids arrested for political crimes are blamed to be "terrorists" and get beaten for this
- Rights to visit infirmary were denied
- Practice of ill-treatment by infirmary doctors
- Being handcuffed when taken to forensic medicine institution, courthouse and hospital

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24 http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1079884&CategoryID=77

25 http://www.hurriyet.com.tr/gundem/20041465.asp

Violations committed by detainees that were either consented to or condoned by public officials;

- Rape
- Sexual Assault
- Hitting the sole of the foot with a stick
- Hanging their heads from a basketball hoop to the point of suffocation
- Disposing beatings with a mop handle
- Forced to perform specific tasks, such as doing laundry, giving massages and washing feet
- Forced to wake up early and clean the ward

Also, promoting the deputy warden, who was the person most complained about by children, as warden to Erciş Prison, Van, and Pozantı Prison warden being promoted to warden of Sincan Prison was criticised in the report.

After the torture and harassment case taking place in press, Pozantı Juvenile Prison was closed and 218 children were moved to Sincan Juvenile Prison. But there are serious claims that torture and ill treatment continues in Sincan Juvenile Prison.[26]

73. Those kept in prison can only reach treatment and rehabilitation services provided by HRFT after they are released. 247 people who applied to HRFT in 2011 state that they were in prison for some reason, and 138 of them say they have experienced torture and ill treatment in prison.

74. In 2010 Prison Report published by HRA HQ, it was mentioned that there were 512 violations about torture and ill treatment, while 2011 report states this number increased to 724.

b.d. Administrative Monitoring Centres

75. There are also serious problems in detention places for immigrants whose freedom are taken away and are temporarily kept until they will be sent back to their countries. Along with torture and ill treatment in these repatriation centres[27], bad physical conditions and long and indefinite detention periods also cause physical and psychological trauma to these people. While detention is not for punishment but preventing chaotic migration, long term detentions turn into punishment.

76. There is still no law governing legal status for these repatriation centres. On any and every level of practice in these centres, police has the only authority. Immigrants are reported to be "kept in inhumane and humiliating conditions"

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[26] http://bianet.org/bianet/insan-haklari/136799-sincannin-pozantidan-farki-ne

[27] Formerly called "foreigner guesthouse"

in reports[28] by human rights associations such as Helsinki Citizens Assembly, Human Rights Watch, Amnesty International.

77. Repatriation centres and "immigrant camps" established close to Turkey's Syria border in 2011 are not subject to independent audition by human rights associations and independent observers. Government officials run these places in this non-transparent method refusing every single insistent application by these associations.

78. In a 2010 report by TBMM Human Rights Commission, 42 people interviewed in 3 different repatriation centres (guesthouse) were asked to evaluate the statement *"Officials are generally indifferent and sometimes unfairly violent to illegal immigrants"*. 36% of those interviewed said the statement was *"true"*, 34% said *"false"* and 30% didn't want to comment. ***"I have witnessed or was subject to physical ill treatment"*** *statement was confirmed true by 34%, and 50% said it was "false". 11% of the interviewees didn't comment*.

Evaluations of physical conditions in repatriation centres expose that vital and humane needs aren't met. According to interviewee's statements; 43% **"cannot access clean water and food"**, 41 % **"can access"**, and 11% has no comment. 64% say **"there isn't enough natural and artificial light, clean air and ventilation"**, 30 % state the opposite, and 5% has no comment. Until today, no serious betterment is done to solve the problems mentioned in NGO's or official observation reports.

b.e. Torture and Ill Treatment to Soldiers – Soldier Deaths

79. In Turkey, people serving their mandatory military service often and commonly face violence.[29] Torture and other ill treatment cases, known in previous years but couldn't use the right tools to reach public, have started to be presented to public via this new www.askerhaklari.org website. According to the report prepared based on applications to this website and presented to TBMM Human Rights Commission on 12.09.2011 by Soldier Rights Initiative, 138 of the 150 applications were taken into consideration as rights violations between 25 April – 14 September 2011, and classified picture looks like this:

- 66 involve insult (%48)
- 41 involve beating (%30)
- 28 involve excessive forced physical activity (%20)
- 24 involve battery (%17)
- 20 involve humiliation (%14)
- 20 involve threat (%14)

[28] Amnesty International, 'Between the Devil and Deep Sea' No Protection Provided for Immigrants in Turkey, 2009, http://www.amnesty.org.tr/ai/system/files/multeciraporu.pdf

[29] http://www.izledost.com/iskence/turk-askerlere-torture-in-the-turkish-army-barracks-video_8c1695d6b.html

- 19 involve mobbing (%14)
- 18 involve not getting enough health services (%13)
- 16 involve attributing false crimes (%12)
- 9 involve letting no sleep (%7)
- 9 involve superiors forcing personal duties performed (%7)
- Also, it is mentioned in the report that, while the situation about this is not clear, those that seek to apply for law process for violations of their rights experience mobbing.

80. 22 complaint petitions, which include witness narrations, compiled by www.askerhaklari.org website, were presented to TBMM Human Rights Investigation Commission on 18.01.2012. 6 of these petitions are about claims of torture and ill treatment in disciplinary ward, 3 in military prison and 13 are in other military areas. Applicants complained about procedures like "humiliation, swearing, beating, letting no sleep, dressing in dirty clothes, making them sit in wet areas, bowing their heads for long periods and forced heavy duty jobs for long time", and they also mentioned these procedures are more often and heavier in disciplinary wards.

81. The similarities in various applications from different regions of Turkey is remarkable, and also these are quite similar to torture and ill treatment procedures which came to light during the investigation of Uğur Kantar, who died due to torture during his military service.

UĞUR KANTAR CASE

Uğur Kantar, was put to disciplinary ward for 7 days, while he was serving in Cyprus as a Turkish citizen. On 25.07.2011, he was hospitalised due to torture and he passed away on 13.10.2011.

According to narrations of other prisoner soldiers who witnessed the crime, and some privates assigned to duties in disciplinary ward; all soldiers were kept waiting in the garden after morning line up and they weren't let in the building. When Uğur Kantar wanted to go in the building to drink water, he was beaten by two guardians; first in the garden, and then in bathroom. He was taken to garden unconscious, ans was sit on a chair while his hands were cuffed behind his back. Since he was still unconscious he was fastened to the chair with another pair of cuffs, and he was kept like this for some 25-30 minutes. When he didn't regain unconsciousness he was hospitalised and passed away due to "dehydration".

Witnesses listened during the investigation said prisoners were often subject to violence in prison, especially during the registry, it was common to beat

them and they used methods like making them stand for long periods, humiliation, letting them no sleep. Nineteen of the witnesses stated that they had been subject to violence themselves.

At the end of investigation[30], two guardian privates were sued on accounts of murder by torture (TCK. art. 95/4), and 3 guardian privates were sued on accounts of "causing injury by abusing power of public officials" crime (TCK art.86/2-d) commited on 19 prisoners who stated they were subject to violence[31]. The court ruled lack of jurisdiction, stating that torture is not a crime regulated in Military Criminal Code and passed the case to Elazığ Heavy Penal Court; the case is still ongoing.

82. As you can see from the solid grievances and filing information torture and ill treatment has become common and systematic in the army. But because violence is from superior to inferior in hierarchy, the right to complain cannot be used and many cases stay in darkness. When you consider 15 of the 22 petition owners above have been discharged and 7 are still serving in military, concerns about additional sanctions can be understood more clearly.

83. Also, just as military practices are not subject to civil audition, military prisons' civil audition is limited. Boards of monitoring prisons, established by Law no. 4681 with the purpose of monitoring and auditing prisons, cannot perform monitoring and audition in military prisons because of legal limits.[32]

84. Soldier suicides are very common in Turkey. According to official numbers declared in May 2012, 2221 soldiers committed suicide in 22 years.[33] Only in the first 8 months of 2012 soldier suicides reached 31.[34] A research has to be done to determine whether the psychological situation and despair caused by intensity of torture and ill treatment, difficulties in reaching complaint mechanisms and lack of audition has something to do with these suicides.

b.f. Conscientious Objection

85. The verdict[35] given by ECtHR in 2006, after the application by conscientious objector Osman Murat Ülke, which states the legal process the applicant had to go through, and the procedures he had faced along with its consequences means "civil death" and violates ECHR article 3, still could not be put into practice as a whole.

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30 Land Forces Command Cyprus Turkish Peace Corps Command Military Prosecution, 2011/251

31 Land Forces Command Cyprus Turkish Peace Corps Command Military Court, 2011/376

32 Law on Prison Monitoring Boards, No. 4681, art.1/2

33 http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1088073&CategoryID=77

34 http://askerhaklari.com/intihar/2012-zorunlu-asker-intiharlari

35 ECtHR, Ulke vs. Turkey, 39437/98, dated 24.01.2006

86. Three other violation verdicts were reached against Turkey, in 2011 and 2012. These verdicts are; Yunus Erçep on 22.11.2011, Halil Savda on 12.06.2012, and Mehmet Tarhan on 17.07.2012. ECHR, having changed the jurisprudence with Bayatyan-Armenia verdict on 07.07.2011, defines conscientious objection, a right within article 9 of the Convention.

87. Monitoring the implementation of the verdict, Committee of Ministers of the Council of Europe take the verdict on their agenda quarterly and insistently demand that both "individual precautions" to be taken to provide relief to Osman Murat Ülke and have no more victims, and "general precautions" to protect other objectors in the same condition with Ülke from similar violations, to be taken. Two interim regulations have been released on this issue, in 2007 and 2009. Committee of Ministers' latest request from Turkey was on September 2011 to take solid steps and demanded an action plan to be presented about these steps before their meeting on December 2011.

But the only progress on this subject was the repealing of the arrest warrant on Osman Murat Ülke for desertion by Eskişehir Military Court. Repealing of the warrant does not change the soldier status of Ülke or give him the same rights as any other citizen.

88. Thus, despite continuing violations about conscientious objection, Turkey puts conscientious objectors through heavy procedures as bad as "civil death", but takes no steps towards changing this practice which causes torture and ill treatment forms. This irremediable attitude towards conscientious objectors actually shows the lack of intent to prevent torture and other forms of ill treament.

b.g. Incidents of mass torture and ill-treatment

89. Law enforcers', especially police's mass violence against demonstrators in interference to mass rallies, under the code "obligatory use of force" was mentioned above. But in reality, it is not possible to say this use of force is obligatory. In this context, with what kind of tools and methods they interfere with a completely peaceful and democratic declaration of views doesn't matter anymore. Even in cases that an interference is necessary, it cannot be said that the force used was proportional. Because as often seen in press, in demonstrations interfered, claiming they are illegal, demonstrators are beaten by many public officials by batons, kicks and punches, and are released without any arrest or custody process. Or after these people are caught, beating and close range pepper gas usage continues. It has to be admitted that this attitude of law enforcers is torture, or at least after a certain level it turns into torture from "exceeding the limits of authorization to use force".

90. Common and intense use of demonstration control agents such as gas bombs and pressure water has brought a serious issue of disproportion. Minister

of Interior response[36] to Member of Parliament Mülkiye Birtane's written parliamentary question; it was mentioned that no one died in any interference in any demonstration between 2002 – 2012, and reasonable and sufficient amounts of material and chemicals like gas bomb and gas rockets were used. Government members do not clarify the information and data to verify the proportionality of these control agents. This causes a serious lack of audition and evaluation for cases in judicial authorities' hands.

Ş.U. CASE

Ş.U. was a member of CPETU and following a call from CPETU, he wanted to attend a demonstration which would take place in Ankara on 28.03.2012, the date that a law draft to implement major changes in Turkey's education system would be discussed in Parliament. After the police prevented them from going to Ankara, union members protested in İzmir and wanted to make a press statement in front of the Governor's Office. But the police didn't let this either and used control agents like gas bomb, pepper gas and pressure water intensely. Tens of people got effected by chemical gases and were hospitalised. Some demonstrators were injured by falls and crushes caused by pressure water.

Following his application to HRFT, Ş. U. was physically examined; his left leg was broken and this wasn't due to a crash or fall, but "directly caused by pressure water". Besides he was diagnosed with asthma, which was caused by chemical gases.

After a filed complaint, an investigation[37] was started on police officers who used extreme amounts of control agents and their commanding superiors, but since that time nothing has been done to determine the offenders.

91. In the follow up report presented, Government mentioned that Ministry of Interior prepared a Guide for Riot Control Officers in November 2011. All the resources open to public, including Ministry of Interior website and governorship websites, were scanned to determine whether such a regulation exists and if so what it contains, but no information whatsoever can be found on the subject in any official or unofficial resources. So an application for information was made to Ministry of Interior. In the response from General Directorate of Security Affairs' General Directorate of Education it said "since there was no effort on the subject papers are put back in files". In the second response they said this issue concerns Security Executive Management and papers were diverted to this unit. Until today, it has not been possible to get any information from neither ministry nor any other official authority.

[36] Minister of Interior response dated 25.04.2012, 2582-3259/88347

[37] İzmir Chief Public Prosecutor's Office, 2012/53048

h. Torture and Ill Treatment in the Context of Identity Checks

92. On June 2007 revisions to the Law on Powers and Duties of the Police extend the scope of police officers' authority[38]. These extensions include "police to stop any person and request to see his/her identification card" and "use of force and firearms". Authorizing the police to stop and check identity on the conditions upon to "reasonable grounds based on the experience of the police officer and the impression he gets from the prevailing circumstances" leads to arbitrary actions. Also it is provided in the revisions that police can exercise the authority to a body search and ab extra search of the vehicles of the stopped one also leads to arbitrary actions. The individuals occasionally asked for police officer to inform them of the reason for being stopped, requested identification card and searched, or asked officers' own police ID. Questions lodged against the police often result in retaliation in the form of counter-charges of resisting the police, and police resort to force against them.

L.K.–S.T. CASE

On 12.01.2011 applicants were chatting with their friend B.C who parked nearby their parking vehicle on seafront when approached by a police squad from the Department of Public Order of Balçova Directorates of Provincial Police who then request their identification cards and made a body search. Due to their rude and harassing attitudes while making body search one of the applicants urged them not to behave in this way. Hereupon, when police officers told them that they were going to search the car, one of the applicants asked for a search warrant. Afterwards police officers got mad at this question and started beating while spraying pepper gas towards them. Reinforcement police officers who were called up also beat them.

When the applicants were taken to police station they were still subjected to punches', slaps, kicks and assaults at the station's garden. Criminal investigation procedure started against all of them, including B.C who was requested by police officers to bring the car to the police station, on grounds of resisting to police officers.

Moreover, just a while after applicants were brought to police station they set up another investigation on grounds of exciting hashish for use which was allegedly found in L.K' car.

Following complaint against police officers[39] they were charged with exceeding the limits of authorization for use of force on 04.05.20012[40] Criminal prosecution is still going on.

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[38] Law on Amendment to Law on Powers and Duties of th Police, number 5681, dated 02.06.2007

[39] İzmir Chief Public Prosecutar, 2011/9877

[40] İzmir 21.Criminal Court of Peace , 2012/601

3 people who were arrested due to identity check procedure are still subject to criminal prosecution with accusations of using violence or threats against a public official to prevent them from carrying out their duty (TPC art. 265), defaming the police(TPC art. 125/1,3,a) [41]*. 3 people were acquitted for exciting drugs for use*[42]*. The acquisition verdict was given due to conflicts and unrealistic claims in the police records.*

93. Before entered into force the revisions' to the extension of the police power, it was criticised toughly and there were lots of negative responses to it. It was drawn attention to the right violations which are going to arise. Although seven years' experience states that all critics are right, still no steps have been taken for betterment of preventing arbitrary actions and condensing power of police.

b.ı. Torture and Ill Treatment Cases Taken Place in Northern Cyprus

94. Despite the fact that The Turkish Republic of Northern Cyprus (TRNC) gained its dependence in November 1983 it has not been and is still not recognized by the international community. Although Constitution of TRNC has entered into force and announced a structure of an independent state on 7 May, 1985 as mentioned above Turkey is still responsible from the right violations in Northern Cyprus.

95. NGO's reports working on human rights field[43] and news taken place in press indicate the fact that there are lots of serious violations and also torture cases in Cyprus. In the Criminal Law, there is no provision referring to torture which results torture actions can be considered as "assault". This situation is against international law which provides torture actions to be punished heavily, dissuasively and executable.

96. Due to the facts that there isn't any effective mechanism for applicants and any law related to medical reports drafted in accordance with Istanbul Protocol, survivors sometimes apply to HRFT. In 2012 an application to HRFT is noteworthy that indicates not only the gravity of torture methods but there is a lack of fundamental legal safeguards (like duration of police custody, vulnerability of police custody). It is reported that lawyers of the suspect are prevented from being present during the interrogation and suspects are being examined under the supervision of the police[44].

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41 İzmir 8. Criminal Court of First Instance, 2011/ 348

42 İzmir 11. Criminal Court of First Instance, 2011/179

43 Turkish Cypriot Human Rights Foundation, Report on Torture, http://www.ktihv.org/raporlar/Iskence_Raporu.pdf

44 Turkish Cypriot Human Rights Foundation, Human Rights Review, 2009, http://www.ktihv.org/index_ENG.htm

D. K. R. CASE

On 17 May, 2011 in Girne the applicant got arrested, taken from his house and was carried away to a picnic field. He declares that he was hanged to a tree branch, beaten for 45 minutes and his testicles were squeezed. When he didn't admit the accusations he was taken to another picnic field where he was kicked, punched and slapped while he was handcuffed from his back. On the third day he was again taken to picnic field and again beaten hanged to a tree with hood over his head. He was electrified with two cables stringed out of the car and he admitted the accusations when he was threatened his genitalia to be electrified. When he turned back to police station he was kept in an ice filled tub for a long time.

On the fourth day he got arrested again on behalf of insulting the reporters at the end of trial. He was released by the courtesy of his sister who lives in USA and also USA citizen at the end of the 20th day. The applicant states that during police custody he was also subjected to insult, humiliation, death threats', force to obey arbitrary commands, stripping of cloths, verbal and physical sexual harassment, restriction to sleep, left in place with no ventilation, restriction to urination and defecation, restriction of access to food and water, force to wait in the cold.

c. Preventing Torture and Ill Treatment- Establishing Impartial Preventing Mechanisms

97. When OPCAT was ratified it was a sign of a hope to look forward to establishment of a national prevention mechanism by way of ¨monitoring visits¨. But contrary to Government's follow up report it is disappointing that the legislation process ended up with establishment of Human Rights Institution of Turkey.

98. Law on ratification of OPCAT, which was signed on 2005, entered into force on March 12, 2011 by publishing on Official Gazette with a number 6167. The relevant procedure with UN ended on 27 September 2011. So, Turkey is under obligation of recognising the subcommittee of CAT's authorization to regular and spontaneous monitor visits in detention places and establishing National Prevention Mechanism in a year.

99. However, Turkey didn't establish a new National Prevention Mechanism. As mentioned in the preamble of Law no. 6167[45], Turkey preferred to design Human Rights Institution of Turkey to mandate as national prevention mechanism. Law on Human Rights Institution of Turkey was published on Official Gazette and entered into force on 30 June, 2012 with number 6332.

[45] http://www.tbmm.gov.tr/sirasayi/donem23/yil01/ss522.pdf

100. Law no 6332[46], designates two branched structure which are Human Rights Board and Presidency.

Board is the decision making body of the Institution is composed of eleven members, including one President and one Vice-President. Two members by the President of the Republic, seven members by the Council of Ministers, one member by the Board of Higher Education, one member by the presidents of the bar associations shall be elected. In order to be elected as a member of Board one shall be a citizen of the Republic of Turkey, not be deprived of public rights; not be have been sentenced with imprisonment for a year or longer for deliberate crimes or for crimes against the state security even if these are pardoned, not have any conditions to prevent the continuous performance of his/her duty, reserving the provisions of the Law on Public Servants with No: 657, not have assumed any position in the management and inspection organs of any political party as of the date of application for membership, have at least a bachelor's degree.

The presidency is composed of vice president, nine service units and working groups. Presidency is authorized to notify decisions of Board and to assist President and Board about the other issues.

101. Due to Law, Unit for Combating Torture and Ill-treatment linked to Presidency is expected to assume the NPM mandate taking into account the OPCAT requirements on purpose.

102. The establishment of Human Rights Institute of Turkey is a process with lack of publicity in the manner of fait accompli and HRIT can't mandate NPM to be up to OPCAT requirements on the grounds detailed below.

103. First of all, the process of establishment of HRIT has been carried out in a manner which is contrary to transparency, participative manner and democracy which render to the spirit of OPCAT and Paris Principles such as. The establishment process wasn't open to the pluralist representation and participation of social forces of civil society that are active in strengthening and protection of human rights in the country. These concerns were expressed in lots of reports and reviews held by national and international bodies. One of them is a report prepared by European Union experts. It is underlined in this report that there has been an inconsistency in the involvement of Civil Society and NGOs in the development of the process, which has resulted in mistrust and scepticism on the part of NGOs as to the future independence, and functioning of the NHRI.[47]

104. During Draft law discussions at the Assembly some representatives of Bars, Universities, human rights based NGO's and the other experts were invited

46 http://www.tbmm.gov.tr/kanunlar/k6332.html

47 Bkz. Kirsten Roberts, Bruce Adamson- Chapter 23 Peer- Review Mission: Human Rights Institutions. 17-21 January 2011, Ankara, Turkey http://www.avrupa.info.tr/Files//2011%20Peer%20Review%20Report%20on%20the%20National%20Human%20Rights%20institutions.pdf

to submit their opinions to the Commissions. Nevertheless, these objections, critics and written or oral contributions were not taken in account.

105. Levent Gök, deputy of CHP and also member of the subcommittee of the Human Rights Inquiry Committee in Turkish General Assembly clearly lodges this issue in his statement of objections to the report on the evaluation of draft law :

"The process of development of the Draft Bars, Universities, human rights based NGO's and the other experts were not asked for their opinions. Indeed, it was impossible to reach out the draft until it was referred to Assembly. Because of that the draft must immediately had to be withdrawn. It had to be reconstituted with the corporation of experts, universities and bars. Turkish Bars Association and some Bars, universities, rights based civil society organizations such as HRA, HRFT, human rights experts and academicians were invited to our subcommittee. These people, most of them working in this field for long years, were listened by the Commission. But none of these people's contribution was taken into account"[48].

106. Law on HRIT doesn't have perspective of preventing torture. The authorization of Unit for Combating Torture and Ill-treatment is very generalized. Wholly, the concept, language and preamble of the Law don't have any perspective of prevention of and combating against torture effectively.

107. As a matter of fact, on 8 October, 2012 the mentioned above subcommittee's president, AKP deputy Hamza Dağ reaffirmed that ¨*HRIT wasn't established as to mandate national prevention mechanism*¨ in a co-sponsored meeting held by Association for the Prevention of Torture, HRFT and Ankara University Human Rights Centre in Ankara with a title ¨Effective Realization of Establishment of National Preventing Mechanism as per OPCAT¨.

108. As in terms of Paris Principles and OPCAT, HRIT is not independent. The decision making body of HRIT, the Human Rights Board's %80 of members are selected by President of the Republic, Council of Ministers shortly by government which damages independency. Also, the election process doesn't provide transparency and doesn't allow for a wide range of counselling. Besides no objective election or appointment criteria were defined that secure members' independency. In other words HRIT is designed similar to other ordinary state bodies. In addition There are no provisions requiring gender balance or representation of ethnic and ethnic/religious/cultural minority groups. There is also a lack of clear provision that secures the representation of civil society and civil society bodies.

109. HRIT is designed as a president centred institution. All power and initiative about the Institutuion's services like determining the agenda, date and time of the Board meetings and to chair these meetings, identifying the strategic plan, performance programme, goals and objectives and service quality standards

[48] http://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss279.pdf

of the Institution and to develop its policies on human resources and operation are given to President. There is almost no option for the service unit and working commissions to work against the will of its president. When the way of election/appointment of Board members is considered with the incredible power given to President it is like to makeup Human Rights Presidency linked to Prime Minister by expanding the authority, but nothing else.

110. The provisions related to immunity of the HRIT members and staffs are insufficient. Although there ise a provision which ¨guarantees the membership¨ of President, Vice President and members of the Board, it is very far from providing guarantee as it should be.

First of all the Law provides a guarantee of not to be subject of ¨arresting, body searching, house searching and interrogation¨ but doesn't preserve the independence of members by protecting them from legal liability for actions taken in their official capacity while carrying out the work of the HRIT. So board of members can be tried and even convicted during his/her tenure. Actually as per to the provision ¨the membership of President, Vice President or members who have been sentenced to imprisonment for crimes regarding their duties shall be ceased[49].

Moreover, it is stated that ¨the membership of the President and members who do not sign the Board decisions within given periods or do not submit in writing the reasoning for counter vote shall be terminated¨ which is open to misuse.

Also there isn't any guarantee for experts who are going to practice in reporting and monitoring fields.

111. It is unclear from the law the level of financial autonomy that the institution will have. Most of its budget should be allocated from the general budget with the approval of the Parliament, the other proceeds are donations and charities, bequeathing to the Institution, revenues generated by the proceeds of the Institution. These general statements are not sufficiently clear and may not ensure the institution has adequate and independent funding in practice.

Above all, this insecure funding becomes apparent when it is considered with the specialized authorization given to President. President is authorized not just to prepare the annual budget and financial tables of the Institution but also has power to use it exclusively. To authorize just a person to prepare and to use the budget is contrary to pluralism and participative manner.

Financial autonomy becomes more important due to the fact that as far as existing boards like "Prison Monitoring Boards" and "Province and District Human Rights Boards "aren't entitled independent budget, they become non-functional and dependent on Government.

112. Provisions for staffing of the institution isn't proper to make preventive visits as per OPCAT. Law provides 75 staffed cadre composing of 35 human rights

49 Law no 6332, art. 6/2

experts, 25 assistant human rights expert, a vice president, a translator, a psychologist, a social worker, a financial service expert, a librarian, 10 administrative affairs personnel.

There is a lack of clear provision about how many members of the Board are taking the duty and responsibility of the Unit for Combating Torture and Ill Treatment, which means there isn't any provision related to the number of experts and assistant experts who will be staffed in the unit. Under the section of Board's duty and power, it ensures that there will be visits to places where persons deprived of their liberty or persons under protection are being kept, when necessary, with delegations composed of three members. If we assume the experts and assistant experts will be distributed equally to 9 service units then we mat say 6 or 7 expert/assistant expert will be staffed in the unit.

In Turkey approximately 75 million people are living in 81 provinces, 957 districts, and 34.395 villages. By the end of 2011, there are 3,220 service units under the General Directorate of Security. Also, there are 31.623 vehicles that are used by General Directorate Security which has the potential for the transfer of detainees[50]. There are about 5000 gendarmerie stations which carry out the same duties[51]. 63.009 firms are asked to permission to serve as a private security force[52]. And civil prison number is 377 due to 2011 data[53].

If we add up the places where people are kept with or without their consent but they cannot leave with their own will, like military prisons, military discipline wings, security units in military bases, detention centres for refugees, closed treatment units of the hospitals, boarding schools and reformatories to the mentioned above 70. 000 places, serious number comes up.

Shortly, it is actually impossible that the National Human Rights Institution with its limited number of staff as defined by the Law can effectively preventive visits in a geographically wide country like Turkey where places and varieties of detention are plentiful, where torture and ill treatment is prevalent and common.

d. The problems concerning the qualification of the action

113. There isn't any information about the process of preparing a guide on whether to prosecute torture offenders on articles 94 or 256. The applications' were not responded by the official authorities'.

114. In the course of time, it can be evaluated from 37 cases, conducted and given legal support by HRFT, that there hasn't been taken precautions concerning the qualification of the torture offense. It is still a serious and continuous problem. 37 cases monitored during 2009, 2010 and 2011 period were

50 http://www.egm.gov.tr/indirilendosyalar/PERFORMANS2012.pdf

51 http://www.radikal.com.tr/Radikal.aspx?aType=HaberYazdir&ArticleID=1079236

52 http://www.sabah.com.tr/Gundem/2012/02/21/polis-kadar-ozel-gu venligimiz-var

53 http://www.cte.adalet.gov.tr/

examined on the issue of qualification of offences and 31 of them found in the context. Only seven were launched against public officials on charges of "torturing". This number rise up to eight when a case is justified that the action is not in a form of exceeding the limits of authorization for use of force, but torture. The Aggravated Felony Court hasn't started its judgement yet so it is not clear whether the Court will agree with the former decision.

The qualifications of the actions of public officials in the other cases are "exceeding the limits of authorization for use of force", "intentionally wounding", "simple wounding", "intentionally

wounding by misconduct of the authority of public official", "insulting", and "ill-treatment to

inferiors".

115. It is possible to compare the data of torture offences and "exceeding the limits of authorization for use of force" and 'intentionally wounding by misconduct of the authority of public official", instead of torturing and with the data of the number of defendants for cases presented and resolved in criminal courts in 2010 and 2011 shown in Table 1 below. But it isn't possible to use the data of other crimes such as insulting, intentionally wounding or simple wounding as far as they can't be committed solely by public officials.

In 2010, totally 906 perpetrators, in 2011 787 perpetrators were charged on TPC art.256, TPC art. 86/3-d and former TPC art.245. In 2010, 259; in 2011, 215 perpetrators were charged on torture, TPC art. 94 and 95.

116. The data published in Ministry of Justice official website about "the number of defendants for cases presented and resolved in criminal courts and types of verdicts in 2010" is below. But 2011 data haven't been published yet.

Table 4

REGARDING PUBLİC OFFICALS: THE NUMBER OF DEFENDANTS FOR CASES PRESENTED AND RESOLVED IN CRIMINAL COURTS AND TYPES OF VERDICTS IN 2010

CRIME	APPLICABLE LAW AND ARTICLE	NUMBER OF CRİME	TYPES of VERDICTS			
			CONVINCTION	ACQUITTANCE	OTHER	TOTAL DEFENDANTS
Exceeding the limits of authorization for use of force	TPC art.256	630	25	308	309	642
Intentionally wounding by misconduct of the authority of public official	TPC art. 86/3-d	17	0	0	17	17
Simple form of torture crime	TPC art. 94/1	139	40	90	31	161
Torture by sexual harassment	TPC art. 94/3	11	3	1	8	12
Complicating in torture- the other than public offical	TPC art. 94/4	1	0	0	1	1
Torture causing death	TPC art. 95/4	4	8	0	0	8
Torture	fTPC art. 243/1	46	2	14	30	46
Ill treatment	fTPC art245	280	27	81	178	286
TOTAL		**1128**	**105**	**494**	**574**	**1173**

117. According to Table 4; cases on 910 crimes and concerning 928 perpetrators within the scope of exceeding the limits of authorization to use force (TPC art. 256 and former TPC art. 245) are concluded in total in 2010. 52 of these perpetrators are convicted, 389 of them are acquitted and "other verdicts" are reached concerning 487 of them. The perpetrators convicted are only 5,6% of the total number.

There are not any convictions or acquittals in cases on 17 crimes and concerning 17 perpetrators, that are concluded in the context of causing injury by abusing power of public officials (TPC article 86/3-d). All verdicts within this crime fall into the category of "other verdicts".

Verdicts were given about 228 perpetrators in total in the consequence of the judgments of 201 crimes within torture crime. 53 public officers are convicted for torture while 105 public officers are acquitted. 70 public officers are in the category of "other verdicts". The perpetrators convicted are 23,2% of all perpetrators.

It is not known what kind of scene will appear in the end of the appeals process since the data of The Ministry of Justice are prepared considering the cases concluded in 2010. However, it is known that the judgments of The Court of Cassation are concluded in favor of public officers, and especially the verdicts of convictions are disapproved due to statute of limitation regarding the fact that appeal process takes a long time.

118. Subsequent to this determination, it is availed to evaluate Engin Çeber file which is presented as "good practice" in the follow-up report of the Government in terms of both the problems in the qualification of the crime and the changes after the decision of reversal of The Court of Cassation.

ENGİN ÇEBER FILE

On 28.09.2008 the police intervened in a group that sold magazine after the press statement, Engin Çeber and his 3 friends were taken into custody on the charge of resisting police officers. Force was used during the arrest and it continued throughout the two-day police custody. This 4 people who were exposed to beating (including beating with belt and baton), dragging on the ground while handcuffed to each other, intimidation, sexual harassment and hair pulling at the police station including the police car and at the district police department where they were taken in order to take fingerprints were detained on 30.09.2008 on the charge of resisting police officers. The detainees claimed that they had objected to the procedures of the police such as searching and taking fingerprints because of the ill treatment they were exposed to, whereas the police officers claimed that they had used force within the legal boundaries against the individuals who resisted them.

When Engin Çeber and his friends were taken to the prison, they were asked to remove all of their clothing for the acceptance search. They were beaten with wood baton, kicked and slapped because they refused this search which they found defamatory.

On 01.10.2008, they were beaten by guards with an iron tool used to open doors and tools such as plastic chair, water stoup, wood baton on the grounds that they did not stand up and line up during the morning and evening counts. On 02.10.2008 after their bodies were drenched, they were beaten with similar tools with the same reasons after the morning count and were sent to different cells.

> *Engin Çeber was beaten similarly on 06.10.2008 and 07.10.2008 on the grounds that he did not stand up during the count in the new cell he was sent. On 07.10.2008, he had a brain hemorrhage due to the blows to his head and neck during the morning count, his head striking to the iron door and continuing beating although he was comatose and he passed away in the hospital he was taken to on 10.10.2008.*

119. The investigation on Engin Çeber's death was carried out promptly that we are not used to considering the judicial practices in Turkey and it was not only limited with the death incident, instead, it was widen enough to include all the claims beginning with the arrestment of Engin Çeber and his friends and about the torture and ill treatments at police station, district police department and during the registration process in the prison and counts.

At the end of the investigation, indictment was prepared about 60 people consist of police officers, the warden, deputy wardens, guards and prison doctor. But, the problem on the qualification of the crime also exists in this file.

It is discussed in the indictment that the treatment of 13 police officers who started the proceedings of arrestment and detention "cannot be the exceeding the limits of authorization to use force", but it was accepted that the crime was torment (TPC art. 96).

The actions of 4 gendarmeries that were set to strip the people naked during the acceptance search in the prison and beat the people in the search cabin with wood sticks are evaluated as exceeding the limits of authorization to use force (TPC art. 256).

In the indictment the beating with wood baton, kicks and fists that Engin Çeber and his friends were exposed to while they were drenched during the count on 01.10.2010 that lasted 14 minutes and 37 seconds on the grounds that they did not stand up (according to the camera records) is evaluated in the scope of torment, not torture.

The beating including slap, fist and kick that Engin Çeber was exposed to on the grounds that he did not stand up during the count that lasted 7 minutes and 43 seconds on 06.10.2007 is accepted as exceeding the limits of authorization to use force.

The treatment that caused Engin Çeber's death during the count on 07.10.2010 is asked to be sentenced as aggravated torture on account of the result (TPC art. 95/4) in the indictment.

Certain mistakes made by prosecution were corrected in adjudication. For instance, since torment cannot be performed by public officials, the judgments concerning the police officers proceeded on the grounds of torture and 3 police officers were

sentenced in the context of TPC art 94/1 while 10 police officers acquitted on the grounds of lack of evidence.

However, there are serious mistakes and conflicts in the verdict. The court states that the action must be systematic in order to form the torture crime which makes court spells backward of the Code. Besides, the court that decides it is not possible to use force against the people who don't stand up during the counts instead of taking the statements down and inflicting disciplinary punishments; admits that it is torture to beat the people who do not stand up during the counts while their bodies are drenched, whereas it is evaluated as exceeding the limit of authorization to use force to be exposed to only beating (with kicks and slaps).

At the end of the proceeding, 20 perpetrators were sentenced to penalties that vary from life imprisonment to five-month prison sentence while 40 perpetrators acquitted. The judgment considered to be a relief for the public conscience in spite of the mistakes and conflicts mentioned above was reversed by The Court of Cassation.

In the remittitur, it is announced that the judgment is reversed based on the rules of procedure due to the facts that the defendants who have conflict of interest are represented by the same lawyer and lack of the signature of the judge in one of the trial records.

Although the judgment was reversed based on the rules of procedure, the lower court that retried made decisions apart from the reasons of reversion upon the demand of the defense lawyers. In this regard, the view of premises process was repeated and camera records were re-analyzed, Engin Çeber's forensic reports were re-sent to Forensic Medicine Institute.

The proceeding elongated because the court received opinion on the decision of reversal from the parties and recollected the evidences that already exist in the case document. There is still a possibility of reversal considering that there had not been an appellate review of discovery yet.

In the public prosecutor statement given on 6 August 2012, it is demanded that the deputy warden Fuat Karaosmanoğlu and the head guard Nihat Kızılkaya to be sentenced in the context of TPC art. 257 owing to the fact that their actions constitute misconduct in office, not causing death from torture.

The court evaluated the actions of Nihat Kızılkaya as torture and imposed penalty of imprisonment for 2 years and 6 months in the decision made on 1 October 2012 whereas he had been convicted for causing death from torture and sentenced aggravated life imprisonment previously. The police officer Aliye Uçak who had been sentenced for torture, is imposed penalty of imprisonment for 5 months based on exceeding the limits of authorization to use force.

Both the indictment and the differences between the decisions of the court are indications of the confusion of judicial authorities on the characterization of offenses.

120. The offense of causing injury by abusing power of public officials (TPC art. 86/3-d) is defined as an offense for the first time in TPC entered force in 2005. The regulation of this offence that has no difference from the elements of torture considering aim, motivation, and form of committing leads to serious confusion in practice. In addition, TPC art. 256 refers to article 86/3-d in order to determine the amount of penalty for the injuries caused as a result of exceeding the limits of authorization to use force while the penalty was regulated in the same article in former TPC art 245. The first concrete step the government needs to take in order to prevent the mistakes in the characterization of offenses should be making the legal amendment that repeal TPC art.86/3-d and re-regulate TPC art. 256 in a way to include the amount of penalty.

There have been 12 amendments in the new TPC since it entered in force in 2005.[54] Three of these amendments take place after November 2010 when the Observation Report of the Committee is published. Unfortunately, TPC article 86 and 256 are not included in the articles amended by the laws entered in force on 19.12.2010, 14.04.2010 and 05.07.2012. There is not any law draft prepared by the government and provides amendment on the mentioned articles.

121. The discussion on "systematicity" is one of the most important issues on the implementation of TPC art. 94 and 95 regarding torture. In Turkish penal system, the condition of "the act to be systematic" was not sought while torture was redefined in 2005. However, prosecutors and judges seek this condition when they make decisions and many acts that hold qualifications of torture are processed in the scope of different articles on the grounds that they are not systematic, since "the systematicty of torture" is mentioned in the preamble of article 94. The government avoids making the necessary amendment in spite of the concrete problems experienced since 2005 and all the criticisms although this problem can easily be solved by adding " it is not necessary for the act to be systematic" to the provision.

122. The government indicates that The Ministry of Justice issued an order on the subject that the inquiries are carried out directly by prosecutors, not by law-enforcement officers in the answers regarding the 8th paragraph on the qualification of the inquisitions. Although this issue will be addressed below, we would like to state that these kinds of orders are not enough to provide the whole inquisition to be carried out by prosecutors. Law-enforcement officers determine the general framework of the inquisition by making unrealistic official reports before the survivors communicate with prosecution office about the claims on torture or ill treatment and these official reports are accepted as evidence in torture inquisitions conducted later on. Most of the

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[54] The amendments can be followed from the chart at the end of the TPC text (http://www.mevzuat.gov.tr/Kanunlar.aspx) on the official website of Prime Ministry (http://mevzuat.basbakanlik.gov.tr/).

official reports made by law-enforcement officials apply that they encounter resistance during their public duty and they use force within legal limits. The prosecutors, who carry out the inquisitions on torture, characterize the offense as exceeding the limits of authorization to use force without investigating the accuracy of the official reports.

e. Assessments on the Measures to Ensure the Perpetrator's Relief of Duty

123. In cases that can be evaluated as torture and ill treatment, there is not any amendment made to eliminate the risk of the offender to intervene in the investigation such as ensuring that offenders are relieved of duty or moved to another position until the investigation is over and also, there is not any information on any measures taken administratively.

124. Warrant of arrest which is provided to serve a similar purpose is a measure taken very rarely in crimes of torture and ill treatment. It is observed in the files followed or provided legal support by HRFT that arrest warrant is only issued in the files on death by torture. Arrest is a measure against "spoliation and changing of evidence" or "suppressing the parties to the investigation". The scale of impact that can be created by the perpetrators of torture who fulfill judicial and administrative duties on evidence and parties is higher in comparison to other offenders. Hence, it is seen in many claims of torture and ill treatment that the evidence is destroyed or damaged, the witnesses are suppressed and the survivor is threatened in order to make him/her withdraw the appeal.

125. F.C. case which can be a negative example to many subjects assessed in the report so far, is also a good example for the effects of not taking the measures arrest and relief of duty on the survivor and the investigation.

F.C. FILE

F.C., who was taken to the police station for not carrying identity card during the control in an entertainment venue she went with her family on 16.07.2011 was battered both in the entertainment venue, in the car and also in the police station. She was beaten, exposed to sexual abuse and insults in the interrogation room by two of the police officers who brought her to the police station. She was threatened about not pressing any charges and even not telling anything to her relatives. These actions of the perpetrators can be clearly seen from the camera records. It is also understood from the record that the chief of the police station closed the curtains in order to prevent being seen from outside.

The applicant declares that police officers were standing next to the door and watching inside during the medical examination in the hospital where she was taken for forensic examination, that she told the doctor that "police

officers beat him" but the doctor answered "it is none of my business" loudly so she had to keep silent, that her examination was not elaborated and her complaints were not received.

F.C. was accused of resisting and insulting officers, but she was released from the police station without being sent to prosecution office. The applicant and her family who made a complaint to prosecution the next day and applied to institutions such as HRFT and the Bar Association were exposed to threats and arbitrary procedures. For instance, the applicant's husband's grocery was searched several times on charges of "selling smuggled cigarettes" and every time, the informing (?) turned out to be fake. They were made to live in fear and anxiety by monitoring their houses and working places continuously. They were invited to "a meeting" on the phone by the police officers assigned in the police station and in the security directorate and asked to withdraw their complaint by pulling some strings when they did not show up.

The applicant and her family could not leave the house, open their grocery for a long time and they even removed their daughter from school because they were living in fear and anxiety.

126. F.C. filed a petition to İzmir Provincial Security Directorate, mentioned the pressure she was exposed to and asked for the the perpetrators and the police officers relief of duty who were acting together while the investigation continued. However, there has not been any legal action taken on this demand.

In the ongoing process, F.C. was sued for "resisting and insulting police officers". The case is still going[55].

At the end of the investigation launched into the claim of torture, the prosecutor filed an indictment against 3 police officers who took action in the arrest, in the context of "exceeding the limits of authorization to use force"[56]. Prosecutor's office identified the crime based on the report prepared by 3 police officers who examined the camera recording with a title of expert. However, it was understood that the prosecutor had not watched the recordings at all and the expert police officers had changed the contents of the recording in favor of the defendants when the recording was reflected in the press. After the recording had been reflected in the press, a serious public reaction raised and the pressure put on the applicant to make her withdraw her appeal remained on the agenda for days. Thereupon, an administrative investigation was launched by The Ministry of Interior, but the research made by the assigned inspectors concluded negatively. The police officers who harassed and forced F.C. and her family to withdraw the appeal were not identified and also, the perpetrators of torture were not relieved of duty.

55 İzmir 15. Criminal Court of Peace, 2011/869

56 İzmir 17. Criminal Court of Peace, 2011/871

Due to the reaction of public and media, the police officers who prepared the expert report were sued for "concealing and changing the evidence".[57] This investigation was also carried out by the prosecutor who had carried out the investigation on the perpetrators of torture who were police officers and he clearly mentioned in the second indictment he prepared that he was misled about qualification of the crime by the police officers who were assigned as experts.

At the first hearing of the trial which was held against police officers who were sued for exceeding limits of authorization to use force, Court made the decision of lack of jurisdiction based on the supplemental indictment. The supplemental indictment was issued on F.C.'s objection and the chief of the police station became the defendant. In addition, the police officers whose names were in the first indictment were also asked to be sentenced due to the crimes insult and threat. Criminal court of peace accepted the acts as separate crimes instead of evaluating them as a whole and decided to the committal of the case to criminal court of first instance that is assigned to rule the cases on offense of threat. Criminal court of first instance evaluated the acts of the police officers as a whole, identified the crime as torture and decided to the committal of the case to Aggravated Felony Court. Aggravated Felony Court has not begun to rule the case yet and due to the mistakes of the prosecutor and judge of criminal court of peace on the qualification of crime, no progress has been made in the proceedings despite that the event took place 14 months ago.

127. In cases of misevaluation of crime as in the example above, even if the mistake is noticed afterwards and decision of committal to Aggravated Felony Court which is assigned to rule the cases on offense of threat is made (which, in practice the decision of lack of jurisdiction is very rarely encountered), elongations arise in the judgment process. In addition, this example shows that it is not possible to carry out independent and impartial investigations on torture in view of the circulars sent to prosecutors, that the police continues to influence the investigations with the written proceedings and reports and the survivors are tried to be intimidated by oppression and threats.

f. Assessments on the Issue of Impunity

128. It is seen that only 52 of 945 perpetrators are convicted in the context of exceeding the limits of authorization to use force (TPC article 256, former TPC article 245) and the offense of causing injury by abusing power of public officials (TPC article 86/3-d) when the information is evaluated based on the data relating to the cases that reached conclusions given by The Ministry of Justice on Table 4 above. "Other verdicts" are reached relating to 504 perpetrators while 39 perpetrators are acquitted. The number of the convicted perpetrators is 5,5 % while the number of the acquitted perpetrators is 41,2 % and the number of the perpetrators that "other verdicts" are rendered as regards is 53,3 % of the total number.

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[57] İzmir 9. Criminal Court of First Instance, 2012/220

129. 53 of 228 perpetrators are convicted, 105 of them are acquitted and "other verdicts" are rendered regarding 70 of them in the context of the crime of torture. The number of the convicted perpetrators is 23,2 %, the number of the acquitted perpetrators is 46,1 % and the number of the perpetrators that "other verdicts" are rendered regarding is 30,7 % of the total number.

130. The number of the enforceable judgments is much lower than the number of the convictions since the verdicts of conviction include the verdicts of the suspension of punishment and commute to fine**.** Moreover, the picture that will emerge after the appeal processes of the verdicts is not known yet since the data of The Ministry of Justice is prepared by taking the cases that are concluded in 2010 into account. However, it is known from the cases that are pursued by HRFT that the appellate review results in favor of public officials and the judgments of conviction are reversed due to statute of limitations regarding especially the fact that the appeals process takes a long time.

131. The decision of the deferment of the announcement of the verdict that is included in "other verdicts" prevents convictions and execution of punishment from being put into practice. Deferment of the announcement of the verdict is regulated for the first time in The Code of Criminal Procedure enacted in 2005 and results in similar to stay of execution. Stay of execution results in enforceable judgment on condition that the offender does not commit any other crime within 5 years whereas deferment of the announcement of the verdict results in the elimination of the judgment that is not announced on condition that the offender does not commit any other crime within the same period of time, so it is assumed that the verdict has never been rendered and the law suit has never been existed. In the table included in the response of The Ministry of Justice to our written question, it is seen that the decision of deferment of the announcement of the verdict was made regarding 165 perpetrators in 2009. 144 of them were on the acts of ill treatment (TPC art. 256 and former TPC art 245) and 21 of them were on the act of torture. This number constitutes 22% of 749 verdicts under the title of "other verdicts". The reason for the majority of the decisions of deferment of the announcement of the verdict on the crime of ill treatment is that this decision can only be made on condition that the sentence is 2 years or less. Since the sentence for the crime of ill treatment is 2 years, it enables the decision of deferment of the announcement of the verdict. Unlike the decision of stay of execution, the decision of deferment of the announcement of the verdict cannot be appealed. The pleas made to higher court can only be examined in form, so it is examined whether the conditions required by law for deferment of the announcement of the verdict are constituted or not. Thus it becomes very tough for survivors to seek for their rights and the legal path is closed down to appellate review of discovery.

132. The decision of dismissal of case due to the statute of limitations is the primary decisions in the category of "other verdicts". Most of the cases for torture and

ill treatment are dismissed due to the statute of limitations because of the long investigations and proceedings. During the preparation of this report, information on the cases that contain decisions of dismissal due to the statute of limitation, postponement, and commute to fine, amnesty and the number of the defendants was asked for, in the second application to The Ministry of Justice in order to collect data. In the response it is indicated that the data on the information asked for had started to be collected since 2009 but the decisions of encashment were still evaluated separately. Although the response was prepared in 2011, only the data for the year 2009 was sent and the data for the year 2010 was not. Contrary to the response of the Ministry, it was seen in the data put on the website later that the details such as the decisions of dismissal, stay of execution, amnesty and deferment of the announcement of the verdict did not take place and all the verdicts were gathered under the title of "other verdicts". It is not possible to understand why the Ministry of Justice decided to give up the responsibility of collecting this data or at least sharing them.

133. No concrete step has been taken by the government to repeal the statute of limitation that are applied to the acts of torture, murder and enforced disappearances' committed by public officials. On the contrary, the law proposal of the main opposition party CHP on repealing the statute of limitation for the crimes of torture and murder was discussed and rejected in the congress on 06.03.2012. The majority of disapproval votes belonged to the deputies of the ruling party. This situation shows that not only the government, even the deputies' of the ruling party that is in power alone, do not have the will and desire to solve the problem of the statute of limitation.

134. The perpetrators of torture and ill treatment go unpunished with the statute of limitations and the decisions of postponement, commute to fine, amnesty, and the deferment of the announcement of the verdict and this also means they don't have any criminal records. Thus, it is possible for them to be rewarded by promotions.

135. Appointment of Sedat Selim Ay to Assistant Branch Manager of İstanbul Anti-Terror Branch in July 2012 is an indication of how the perpetrators of torture are still rewarded with promotions in Turkey. Sedat Selim Ay who was deputy inspector in İstanbul Anti-Terror Branch in 1997 was tried on court for torturing 16 people and sentenced to prison for 11 months and 20 days for torturing 15 survivors, and the punishment was suspended. The Court of Cassation reversed the judgment to the detriment of the offender and asked the court to sentence to impose separate penalties for each crime. Instead of imposing a heavier penalty, the court decided to dismiss the case on the grounds that the statute of limitations which was 7, 5 years ran out. ECtHR considered the fact that the perpetrators were not convicted on the grounds that the statute of limitations ran out although torture was accepted in the verdict as a violation of Article 3 of ECtHR.

The Prime Minister defended the chief of police by saying "there is not any verdict of guilty for him" against the public reaction and the demands on revoking the decision formed after the news of the promotion had been learned and responded to those who reacted against the decision of promotion with the following words: "We will not let them idle away our friend who fights against terrorism"[58]. Apart from the Prime Minister, the Governor of Istanbul[59] and General Directorate of Security[60] laid claims to Sedat Selim Ay and emphasized that there was not any verdict of guilty in torture and rape for the new assistant branch manager and even, he was deemed worthy of this task because he had a "good" personal record in their statements.

136. Decisions of acquittal are still nourishing the fact of impunity. Unfortunately,two files which took place as good practices in terms of effectiveness and promptness of the investigation in our report which we submitted to Comitee for its consideration of the 3rd Periodic Report of Turkey, has entered into an adverse process. One of these case is the Engin Çeber case and information on the adverse course of the case in given above. The other example is the case which is elucidated in footnote 147 of our previous report. 3 police officers, who were tried in a court with the claim of torturing 8 people in İdil, were acquitted on the grounds that their acts were "within the scope of right to use force". The evaluation of the acts of police officers as "within the scope of right to use force" has no other meaning than protecting the offenders from punishment considering the claims that people were beaten with batons and kicked while they were taken to hospital in the police corridor with their hands tied behind, the beating continued in the hospital and the police station and two people were beaten while they were tied to a tree in the garden of police station and the use of force were accepted. The verdict has been appealed by the survivors and the appellate review proceeds.

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58 http://www.agos.com.tr/basbakan-erdogandan-iskenceci-polis-aciklamasi-2221.html

59 http://www.marksist.org/haberler/8088-istanbul-valisinden-sedat-selim-aya-destek

60 http://www.muhalifgazete.com/43967-Emniyet-o-polisi-korudu-.htm

B. EFFECTİVE, PROMPT AND INDEPENDENT INVESTIGATION (Paragraph 8)[61]

137. Under the title of "The absence of effective, prompt and independent investigation on claims" of The Committee's Observation Report it is stated that The Committee is concerned;

- *at the continuing failure of authorities to conduct investigations into allegations of torture and ill-treatment,*
- *any such investigations pursued are commonly conducted by law enforcement officers themselves*
- *at the lack of clarity surrounding the current system of administrative investigation*
- *that prior authorization for investigating the highest level law enforcement officers is still permitted,*
- *by reports that independent medical documentation of torture are not entered into evidence in court rooms and that judges and prosecutors only accept reports by the Ministry of Justice's Forensic Medicine Institute.*
- *that no independent police complaints mechanism is yet in place The delays and quietude in the investigations on crimes of torture and ill treatment are ominous and*
- *about a pattern of delays, inaction and otherwise unsatisfactorily handling by authorities of the State party of investigations, prosecutions and conviction*

138. The Committee advises State party to;

- *strengthen the efficiency and independence of public prosecution by increasing the number, authority and training of investigating prosecutors and judicial police;*
- *ensure preservation of evidence and instruct courts to consider the possibility of tampered or missing evidence as central factors in trial proceedings;*
- *ensure that all medical reports documenting torture and ill-treatment from medical personnel and forensic doctors, irrespective of institutional affiliation, who are competent and have specialized training on the Istanbul Protocol are evaluated*
- *establish an independent police complaint mechanism, as planned for by the Ministry of Interior*
- *ensure that special permission is not needed to prosecute high level officials accused of torture or ill-treatment*

[61] See Appendix, page. 72

1. The effect of unstructured judicial law enforcement system on investigations, the issue of the reliability of evidence

139. A judicial law enforcement unit is not structured after the publication of Committee's Observation Report. A law draft or a law proposal on the establishment of judicial law enforcement is not found in the research made on the official website of The Parliament.

140. Because of the absence of separate judicial law enforcement in Turkey, the police and gendarmerie carry out judicial proceedings with the orders and instructions of prosecutors and judges, as well as their administrative duties. This situation affects both the transparency and impartiality of the investigations and the independency and impartiality of prosecutors and judges negatively. Judicial authorities are concerned that judging and punishing law enforcement officers will discourage them and they will not do their duties. The "business relation" between the Law Enforcement Agency which an important part of administration and judiciary which should be independent and impartial, that is established to sustain the judicial system, draws judiciary closer to administration. In addition, prosecutors have the task of inspection of law enforcement because of their judicial duties as well as their administrative task of inspection of custodial prisons and prisons in accordance with the legislation. These tasks cause serious deviation of perception on prosecutors and bring the impartiality of prosecutors into question.

141. As we mentioned on the subject of the problems concerning the qualification of the crime, law enforcement officers prepare various reports in order to "take measures against a complaint", "find a pretext for traces of beating on survivor" or with other reasons. In these reports, it is written that "force is used within legal limits" against the survivor who resisted public officials. Prosecutors start proceedings against the survivors within the scope of "resisting a police officer", "insult", and "duress" based on these reports that are included in the files sent by law enforcement and qualify the investigations of public officials as "exceeding the limit of right to use force" based on the same reports again. In fact, the investigations on torture and ill treatment are confined to a narrow frame by law enforcement officers who have both judicial and administrative duties in the beginning, thus prosecutors are influenced. This implementation which has become an administrative practice also causes the survivor of torture to be tried in a court in the context of crimes such as "resisting a police officer", "insult", "duress" and exposed to additional sanction.

142. As far as, no steps are taken in order to eliminate this routine practice, the problem still continues after the adoption of Observation Report of Committee. The applications held by HFRFT and the mews about torture and ill treatment cases derived from press indicate this situation. The video images published in media about Ahmet Koca who was beaten by 7-8 police officers by dropping forcefully from his car while trying to take his pregnant relative

to the hospital, had an argument with oncoming police car in order to pass it on June 2012, followed public reaction[62]. Survivor alleged that he was forced to get in police vehicle, away from his relatives and in the police vehicle the police officers were still beating him and then he was dropped out the car in an isolated place. After the press coverage and his complaint, an investigation was launched. He was prosecuted of "resisting to police" and, "defaming the police" based on post-prepared records of police.[63] This situation indicates that both administrative authorities don't take measures and prosecutors allow the continuity of this law enforcement officer's practice.

143. In lots of counter – charge cases it is examined that witness's testimony are not reliable. For instance in a case which is legally supported by HRFT, an applicant was beaten by police officers and after got arrested; he was subjected to pepper gas. An investigation on rounds of resisting and defaming the police was launched. The testimonies gathered from witnesses were the same with the police records. It is stated both in the police records and statements that in order to prevent him to throw himself on the floor and damaged himself, police had to use probable force on him. Applicant filled a complaint of torture in his police statement. Prosecutor, accepted pre-prepared records and statements' as evidence and without listening to witnesses and gave dismissal of case about police officers. Applicant was prosecuted of resisting officers and defaming police. During the hearing the witnesses were heard and one of them told the judge that he couldn't see the whole incident; he was invited to police station and in the garden was made to sign a paper which he didn't read. The other one stated that he didn't have detailed information as written on the statement. Due to witness's testimonies Court grace an acquisition verdict to applicant[64].

144. This sample below shows the importance of recommendation to instruct courts to consider the possibility of tampered or missing evidence as central factors in trial proceedings, however there isn't any knowledge about a Circular posted to the prosecutors or judges.

145. We would like to clarify an issue defined in the Government follow up report. Government, states in its observations on 8. Paragraph that it published an order that ensures "torture and ill treatment complaints shall be investigated solely by prosecutors". But Law no 5982 amending the constitution rules that the authority for surveillance on whether the judicial duties of prosecutors and administrative duties of judges are carried out in compliance with laws, regulations and ordinances is withdrawn from Ministry of Justice and it is given to High Council of Judges and Prosecutors. This amendment on Constitution

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62 http://www.frequency.com/video/polisten-babaya-ocuklarinin-gz-nnde/51593883

63 http://ns2.ntvturk.com/ntv-teknoloji/9698-polis-devleti-gururla-sunar.html

64 İzmir 17. Criminal Court of First Instance dated 29.06.2011, 2010/529 - 2011/402

passed into the related law[65] in 11th of December 2010 and High Council of Judges and Prosecutors decided on that the Circular no 4 and 8 of Ministry of Justice were combined and updated in 30th of June 2011. The Circular no 8 prepared in terms of this decision was published in 18th of October 2011[66], therewith, Ministry of Justice annulled mentioned Circulars no 4 and 8 by issuing the notice no 148 dated 21 October 2011. Therefore, it indicates a serious negligence that the Government represents the Circular of Ministry of Justice in 2006 and then which was annulled in 2011 to the Committee as if it is a step taken forward.

146. We would like to emphasize that; High Council of Judges and Prosecutors' Circular no 8 doesn't have any provision that urges prosecutors or judges about the reliability of evidences and, Committee's precautions aren't regulated in any Circulars.

147. Almost six pages of the six and a half paged Circular consists of provisions of Constitution, domestic law, international law and ECtHR decisions in its first 6 page. The half page is reserved for the practitioners. It consists of common advices; there aren't any applicable solutions and precautions in this part. For this reason, it will not be possible to consider whether this circular is practiced or not.

2. "Counter-charge" Issue

148. It is important to mention the situation of usage of counter-charge issue in order to hide torture and ill treatment. No steps were taken in order to prevent counter charges.

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[65] Law on High Council of Judges and Prosecutors, no.6087, art. 4

[66] Circular no. 8 of High Council of Judegs and Prosecutors, Circular on Allegations of human rights violations, torture and ill treatment into Investigations , dated 18.10.2011, no. B.03.1.H SK.0.70.12.04-010.06.02-136-2011

Table 5							
COMMITTED AGAINST PUBLIC OFFICILAS: THE NUMBER OF DEFENDANTS FOR CASES PRESENTED AND RESOLVED IN CRIMINAL COURTS AND TYPES OF VERDICTS IN 2010							
			TYPES OF VERDICTS				
CRİME	**APPLICABLE ARTICLE (TPC)**	**NUMBER OF CRİME**	**CONVICTION**	**ACQAITANCE**	**OTHER**	**TOTAL NUMBER OF DEFENDANTS**
To prevent from performing duty	265/1	21759	8006	6491	9809	24306
To prevent judicial authorities from performing duty	265/2	648	225	208	293	726
Aggravated form as per defendants	265/3	41	10	15	21	46
by use of a weapon or taking advantage of a terror activities of organized criminal groups	265/4	19	11	3	8	22
Aggravated form of felonious injury	265/5	20	5	2	13	20
GENEL TOPLAM		**22487**	**8257**	**6719**	**10144**	**25174**

149. Due to Ministry of Justice's data (table 5), total number of people who was prosecuted for resisting public officials' is 25.174. When we give attention to the verdicts, the small slice is acquaintance, which refers to %26.7 of total number of defendants. Proportion of conviction verdict is %32.8. The ¨other verdicts¨, which also involves decision of deferment of the announcement of the verdict, is %40.5 of total number.

150. Again, 778 people are convicted for defaming the public officer. 73 of them are acquitted, 201 were convicted and 489 of them are given ¨the other¨ verdict. It isn't possible to define the total number of counter-charge victims as far as offences like threat that solely public officials' can't commit. But, if we remember that the total number of public officials' who were prosecuted is 1173 and just 105 of them were convicted (table 4) we can see how huge this gap is formed by law enforcement officers while preparing evidences.

3. The issue of the prompt investigations

151. Decisive steps in the direction of acceleration the investigations on torture and ill treatment have not been taken. The information that 248 lawsuits were filed in the scope of the previous TCC (Law no. 765) Articles 245 and 243 takes place in the data (Table 1) of the Ministry of Justice on the lawsuits filed in 2010 and 2011. Although the previous TCC was abolished on 01.06.2005, the favorable provisions are continued to be implemented for the crimes committed before this date. Therefore, the fact that the investigations of 248 crimes committed before 1 June 2005 were completed in 2010 and 2011 gives important information about the dimensions of the long standing investigations.

152. Although they do not last this long, the elongation of the investigation processes of the lawsuits followed by HRFT are frequently encountered. In L.K.-S.T. file mentioned above under the title "Torture and Ill Treatment Faced during Identification Controls", the indictment was prepared on 04.05.2012 although the date of the crime was 12.01.2011 and the investigation stage lasted 15 months. Yet, the investigation about complainant named F.Ş. who was beaten in Kuşadası Police Headquarters on 04.07.2010 lasted more than 23 months and was completed on 25.06.2012.

153. Likewise, the problem of the judgments that last long continues. According to the data of the Ministry of Justice, "the average judgment duration" in high criminal courts is 278 days, while "the average judgment duration" for the acts of torture and torment tried in these courts is 621 days. It is seen that the crimes of torture and torment have the longest judgment duration after the offenses against national security (1074 days) and the offenses against the relations with the foreign countries (793).

4. The Evidential Value of the Reports Prepared by Independent Medical Doctors and the Position of the Forensic Medicine Institution in Torture Cases

154. The Committee recommends that the reports evaluated in the investigations of torture and ill treatment should be prepared by competent medical doctors who received the training of Istanbul protocol, whether they are assigned in government agencies or independent.

155. As a result of this requirement, HRFT took an active part in providing training of Istanbul Protocol for approximately 3500 medical doctors in cooperation with the Ministries of Justice and Health in the years 2007-2009, in order to ensure compliance between medical examination of torture survivors and their reports and international standards. Subsequent to Istanbul Protocol training, HRFT has developed support and follow-up systems for the medical doctors who were trained. In this context, a phone line has been established to provide support service for 24 hours in case of any kinds of oppression, ethics violation, problem in functioning and in need of legal or scientific aid during the medical examinations of detainees in the professional work lives of medical doctors and service has been rendered.

156. In addition, complementary distance learning (e-learning) module for trained medical doctors has been prepared and implemented. Presently, 60 medical doctors continue the distance learning program. However, the Government has not developed studies for the betterment of the (functioning, administrative, legal) problems determined after the trainings.

157. Despite the training of Istanbul Protocol, investigations are launched against medical doctors who show attitude in accordance with the Protocol and the ethical principles of the profession of medicine. Dr. Sadık Çayan and Dr. Naki Bulut are the most striking examples that have widespread media coverage. These investigations and law suits cause pressure on medical doctors and prevent the forensic examinations of detainees from being in accordance with the standards.

Dr. Sadık Çayan rejected the forensic examination of a convict and justified this with the violation of patient confidentiality in December 2010 while he was working in Mardin Midyat because the gendarmerie did not leave the examination room and justified this with the "Tripartite Protocol" (abolished). A law suit was brought against Dr. Sadık Çayan on the charge of "malpractice" with the statement taken down by gendarmerie. Dr. Çayan was acquitted on 2 November 2011. Dr. Naki Bulut rejected the forensic examination for the same reason in Muğla State Hospital. An investigation was launched against Dr. Bulut on "damnifying the public for 19 liras piasters"

158. The Forensic Medicine Institute still maintains its monopoly status in forensic medical expert system in Turkey. Although all public health institutions and medical schools have the authority to issue a forensic report in Turkey, prosecutors and courts acknowledge the Forensic Medicine Institute as the only official expert. This situation increases the work load of the Forensic Medicine Institution and it also leads to doubts regarding the reports being scientific.

5. Impartial and Independent Mechanisms

159. "Law on Ombudsman"[67] was enacted in the following process after the Government had processed the follow-up report. This development should be evaluated from the point of the obligation to establish an efficient and independent complaint mechanism. The law in question passed into law in 2006 by the same name[68] however, it was abrogated by the Constitutional

[67] Law on Ombudsman (Law no. 6328), 14.06.2012

[68] Law on Ombudsman (Law no. 5548), 28.04.2006

Court as a result of the law suit brought by the President of the Republic for the annulment of the entire law[69]. The law text annulled, became a law with its content very much unchanged and without covering the justifications in the annulment decision of the Constitutional Court. The main opposition party applied the Constitutional Court and demanded the annulment of the law enacted in 2012 regarding to 15 articles of the law. The annulment of the new form of the law is presumptive, considering the previous annulment decision of the Constitutional Court.

In addition to these determinations regarding the future of the law; it needs to be indicated that the law enacted is far from establishing an "effective complaint and inspection" mechanism in order to meet the expectations of the Committee. First of all, the terms of reference of the institution established is not devoted to fundamental rights and freedoms, a special task in the direction of preventing or punishing torture and ill treatment is not defined. It is possible to apply to the institution in relation to "all kinds of actions, customs, attitude and behaviours of the administration" apart from the 4 exceptions listed in the law. In this wide area of assignment, what institution can do is restricted to make "examinations", "researches", "recommendations". A centralized structure and 1 chief auditor, 5 auditors and 1 general secretary are provided in the institution. If the institution finds it necessary, "offices" may be opened in different provinces, however the task and authority of the employees who work in these offices are not defined. It appears that it is not possible for The Ombudsman Institute to meet the expectations from an efficient complaint mechanism considering the structuring form of the institution and the number of the auditors in relation to the wideness of the terms of reference of the institution. The institution does not have the authority to investigate a subject ex officio. In addition, requirement of written from and certain requirements as to form for complaints are other negations.

160. The Law Draft on the Establishment of Commission on monitoring of Law Enforcement Officers prepared regarding the establishment of an independent system of police complaints planned by the Ministry of Internal Affairs, was presented to the Speakership of the Parliament on 22.07.2010, but it became obsolete due to the expiration of the Parliament's task. The draft was presented to the Parliament again on 05.03.2012[70] after the general elections in 2011 and the sub-committees are expected to prepare reports. However, the opinions of NGOs are not taken during the reawakening of the draft and also, there is not any amendment made in accordance with the opinions and criticism mentioned during the previous legislative process.

161. The examples that shows the impartiality of the investigating authorities can be both related to the tolerance shown in crimes of torture and ill treatment

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69 Constitutional Court Decision, 2006/410 E. – 2008/185 K., 25.12.2008

70 http://www.tbmm.gov.tr/develop/owa/tasari_teklif_sd.onerge_bilgileri?kanunlar_sira_no=102780

committed by public officials and the discrimination against a specific minority group. Such example has come up in the investigation on the murder of Armenian Sevag Balıkçı who was murdered by another soldier on 24 April 2011 during compulsory military service. Some indications such as that the murder took place on the day which is not only "Armenian Genocide Remembrance Day", but also the first day of the Easter suggests that the offence is a hate crime. During the law suit, it has been revealed that the evidence was changed and there were conflicts between the clothing in judicial depositary and the reports prepared[71]. The delays in taking witness testimonies, the efforts to change the statement of the eyewitnesses made by firstly by the commanders and then the relatives of the perpetrator and the changes made in the places of evidence in the crime scene has been revealed. All this data show not only the fact that the investigation stage is not carried out impartially and efficiently, but also the general reluctance in prevention and punishment of hate crimes.

162. The inadequacy of the complaint mechanisms in general justice system and not paying attention to the efficiency of the new mechanisms during their establishment continues to be a problem. "Extraordinary mechanisms" are needed in Turkey where Dersim masscare in 1938, intensive and widespread violation of rights across the country and against the Kurds in 1990s that can be described as "extraordinary periods", took place, in order to reveal and punish these violations. As a state policy; it is clear that ordinary justice mechanisms do not work in such times when human rights are suspended de facto or shelved arbitrarily. A special method needs to be implemented in order to investigate violations of rights such as torture, murder, unsolved murders, enforced disappearance or forced migration that take place in such periods.

163. The establishment of "truth commissions" as in Latin America countries or the Republic of South Africa and the regulations made to guarantee the impartiality and independency of these commissions and to create opportunities for these commissions to work without any obstacles or restrictions appear to be an urgent need. In addition, a mechanism needs to be established in order to impose sanctions for the violations revealed as a result of the investigations and for the compensation of the victim's losses. Unfortunately; despite the insistent demands of civil society organizations, the establishment of commissions with such qualifications is not on the agenda of the Government.

164. The failure in constitution of an independent and impartial mechanism against the crimes committed by law enforcement and the increase in the acts of torture and ill treatment has led to different approaches and initiatives. The task of constituting a complaint mechanism is tried to be performed by non-governmental institutions due to the fact that it has been neglected by the Government. "S.O.S. The Police!" Line constituted by the cooperation of

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[71] http://bianet.org/bianet/insan-haklari/137473-sevag-icin-kesif-yapilacak

Istanbul Bar Association and Progressive Lawyers Association Istanbul Branch provide service by volunteer lawyers who came together to put an end to torture of people who are exposed to torture and ill treatment and to follow the legal processes later on.[72] Shortly after the line had started to serve, it was reported that the police had intervened the workers who hold a demonstration and two lawyers went to the scene. These two lawyers were also exposed to police violation and the hand of one of the lawyers was broken as a result of the treatment they were exposed to.[73]

165. The system of obtaining authorization from administrative authorities in order to accuse senior public officers for the acts of torture and ill treatment is still implemented. There is not any law draft or law proposal presented to the Parliament to abrogate the system.

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[72] http://bianet.org/bianet/insan-haklari/140379-iskenceye-karsi-imdat-polis-hatti

[73] http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1098994&CategoryID=77&Rdkref=6

C. THE DISAPPEARANCES (Paragraph 9)[74]

166. In the follow-up report on Turkey, the Committee *mentions the concerns*;

- *about not having any information about the investigations on missing persons, initially on the persons who are determined to be missing by the UN Working Group on Enforced or Involuntary Disappearances and ECHR,*
- *that these investigations are not efficient, independent, transparent and the relatives of missing persons are not informed about the developments*
- *and recommends the Government to solve these shortcomings and sing the United Nations International Convention for the Protection of All Persons from Enforced Disappearance*.

167. As the Committee mentions, the data on the number of enforced disappearances' in Turkey is faulty, insufficient and contradictory. The main reason for this is that a state unit which tracks and records the enforced disappearances in custody is not provided. A healthy data and information flow on "enforced disappearances" from the Ministry of Justice and the Ministry of Interior that needs to be related to the subject in terms of jurisdiction and appointment cannot be provided.

HRFT made an application of information to the Ministry of Justice on 12.08.2011 and demanded the data on recorded enforced disappearances in Turkey from 1980 up to this day considering the year and place of the incident. The Ministry's reply dated 23.08.2011 was "the information demanded can be provided from the website of the Directorate General". A second application with the same content was made on 03.10.2011 due to the lack of information in this direction on the aforementioned website and this time, the Ministry of Justice was contented with replying that "there is not any statistical data collected and information" on disappearances in custody.

168. In Turkey, the number of the cases of enforced disappearances in custody is based on the data of human rights organizations. The source of the data of human rights organization is mostly the news on disappearances reflected in the press, the applications and complaints made by the relatives of missing persons. Unfortunately in our country, the press does not give enough space for the claims of disappearances as well as other human rights violations. On the other hand, the relatives of missing persons may avoid giving voice to disappearances' and making complaints with the fear that something bad might happen to their relatives due to the fact that their hopes on the fate of their relatives are not exhausted. For these reasons, the number of the enforced disappearances in custody is believed to be much higher than the determination of human rights organizations.

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[74] See Appendix, page. 73

169. According to the data of HRFT Documentation Center, the number of the enforced disappearances in custody between the years 1990 and 2010 is 230.

According to the updated data of HRA the number of enforced disappearances between the years 1990 and 2012 (March) is 450.

The difference between the data is caused by the different sources of information. HRFT bases the documentation studies on mostly the news reflected in the press and record the data obtained according as the confirmation**.** In addition, the missing persons whose remains are found afterwards are recorded under the category of "unsolved murders". HRA has the opportunity to receive direct applications of the relatives of missing persons as a source due to its wide branch organization as well as the news reflected in the press.

170. The United Nations Working Group on Enforced or Involuntary Disappearances has determined 182 missing cases in Turkey for the same period.

171. In the report[75] dated 6 February 2012 and presented to the UN General Assembly, the Working Group indicates that the data is obtained directly from the source in 49 of these cases, the data is obtained from the Government in 72 of them, so in total, the fate of 120 cases is clarified and information on 60 cases has not been obtained from the Government yet. This number is 61 in the Working Group's report dated 26 December 2011. Although the Government has given information on six cases after the first four cases in the last one-year period, the Working Group decided that the information on only one case is clarifying.

172. The sit-ins staged in front of Galatasaray Highschool on Istiklal Avenue, Istanbul on every Saturday for almost 200 weeks launched on 27.05.1995 by HRA Istanbul Branch the Commission of Enforced Disappearances in Custody with the relatives of missing persons, were suspended in the beginning of 1999 as a result of oppression and obstructions. The sit-ins that were relaunched on 7 February 2009 after 10 years are still staged on every Saturday in cities such as Istanbul, Izmir, Ankara, Diyarbakır, Şanlıurfa, Van as an HRA activity.

The Commission staged the 400. sit-in on 24 November 2012. In these protests, the Commission has always insistently demanded efficient, transparent, independent investigations of disappearances, the missing persons to be found, the perpetrators to be punished, legal regulations to be made with these aims and the United Nations International Convention for the Protection of All Persons from Enforced Disappearance to be signed without any reservations.

173. Although the applications and complaints of the relatives of missing persons made to the authorities, the data of the national and international human rights organizations and other organizations, the applications made to national and international courts, the decisions of these courts and the activities and events

[75] United Nations Working Group on Enforced or Involuntary Disappearances, 6 February 2012, A/HR/C/19/58, http://daccess-dds-y.un.org/doc/UNDOC/GEN/G12/103/11/PDF/G1210311.pdf?OpenElement

organized by the human rights organizations reveal that missing persons are an undeniable reality of Turkey, there is not any definition of crime on enforced disappearances in custody in Turkish Penal Code.

174. Likewise, the International Convention for the Protection of All Persons from Enforced Disappearance has not been signed yet. In addition, there is not any concrete work of the Government reflected in the public on signing and ratifying the Convention.

175. The stage of the studies on signing and ratifying the Convention was asked in two applications for information to the Ministry of Justice by HRFT. There are not concrete information on the subject in both responses of the Ministry of Justice.

It is widely believed in public that the concerns of the Government on the missing persons in Cyprus are effective on not signing the Convention.

176. The claims on missing persons are not investigated effectively, transparently, independently and the relatives of missing persons are not informed on the stages and the results of the investigations apart from the investigations on two cases carried out by The Human Right Inquiry Committee of the Parliament before the general elections on 12 June 2011.

177. As HRFT, we asked "What are the special investigative procedures needed to be followed during the investigations on missing persons?" in two applications for information mentioned above to the Ministry of Justice. However, there are not any concrete and detailed information that can enlighten our question in the responses given.

178. On the other hand, the human rights defenders who try to carry out investigations on missing persons which the Government does not, by their own means are investigated arrested or the lawsuits against them result in conviction.

One of the reasons of the arrest of the former president of the Turkish Human Rights Association Diyarbakır Branch Att. Muharrem Erbey was that he had carried out works to find missing persons. Likewise, the only question asked to the president of the Turkish Human Rights Association Urfa Branch who was taken into custody was "Why do you spend so much effort on missing persons?". The president of YAKAY-DER (The Association of Solidarity and Assistance for the Families of Missing Persons) Cemal Bektaş who is also a relative of a missing person has been condemned to a year in prison. In addition, carrying out works to find missing persons was one the reasons of the arrests of The Euro-Mediterranean Federation Against Enforced Disappearances (FEMED) spokesman Kemal Aydın, board member Selahattin Tekin and peace mother Nahide Ormancı.

179. By including the human rights defenders and relatives of missing persons mentioned above in its report no. A/HR/C/19/58 dated 6 February 2012, United Nations Working Group on Enforced or Involuntary Disappearances reminded

the UN Human Rights Council resolution no. 7/12 that invites the Governments to take steps in order to provide efficient protection for the human rights defenders who fight against enforced disappearances in custody, the lawyers and families of missing persons and witnesses against intimidation and il treatment they might be exposed to.

180. Apart from the law enforcement officers, prosecution offices and the judiciary, the first legal and comprehensive investigation on missing persons was conducted in 2011 by the Parliament.

The Human Rights Inquiry Committee of the Parliament established a Sub-Committee in order to investigate the fate of those who allegedly disappeared while in custody upon Tolga Baykal Ceylan's disappearance.[76]

The Sub-Committee decided to investigate the fate of Tolga Baykal Ceylan who allegedly disappeared after he had been taken into custody by gendarmerie near the village of İğneada-Beğendik on 08.08.2004, without any appeal.

The Sub-Committee indicated in the report based on the data obtained during the investigation, that Tolga Baykan Ceylan had not disappeared while he had been remanded in custody and this case should have been evaluated as a normal law and order issue considering the fact that he had not got in contact with his family or relatives since the day of his disappearance.[77]

However, the Sub-Committee determined some issues that needed to be investigated in the file of the investigation related to the incident launched in 2004 and resulted in dismissal of case on 10.10.2006 by Demirköy Prosecutor's Office and conveyed them to the prosecutor's office.[78]

The Sub-Committee considered the delivery of Tolga Baykal Ceylan's belongings to his mother Kadriye Ceylan who was invited by gendarmerie for identification, without any forensic examination although the mother indicated that the belongings should have been delivered to the prosecutor as inadequacy**.**

181. "The Sub-Committee for investigation of the fate of those who allegedly disappeared while in custody upon Tolga Baykal Ceylan's disappearance" of the Human Right Inquiry Committee of the Parliament also decided to investigate the fate of Cemil Kırbayır who has not been heard from since he was taken into custody on 13.09.1980 in Kars ex-officio.

As a result of the investigation, the Sub-Committee concluded that Cemil Kırbayır was tortured to death in custody and his remains were destroyed by the public officials who interrogated him and caused his death.[79]

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76 The Human Rights Inquiry Committee of the Parliament, 23th Legislative Session 5th Legislative Year, the session dated 9 February 2011

77 See also http://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2011/tolga_baykal_raporu%20.pdf

78 See also previous report p.128, § VII./2

79 See also http://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2011/cemil_kirbayir_raporu.pdf

The Sub-Committee points out the issue of impunity by stating "*(…) the elements that constitute systematic violence of rights was an official tolerance for repetition of the acts of torture*. By repetition of the acts, it is meant that *there were numerous acts of torture and ill treatment which were the expressions of the general situation. What is meant by the official tolerance is that although the acts were clearly illegal, they were tolerated by administrators and an efficient investigation* mechanism could not be worked *against the perpetrators."* in the report on Cemil Kırbayır. Yet this situation is evaluated as the fault of the administrators of the period that the disappearance (1980 Military Coup) took place.

182. This effort of the Human Rights Inquiry Committee of the Parliament to reveal missing persons cases is a positive development. However, the Sub-Commission did not launched these investigations ex officio as it is indicated in their reports. A journalist persuaded the consultants of Prime Minister Tayyip Erdoğan and a result of this, he agreed to meet HRA Istanbul Branch The Commission of Enforced Disappearances in Custody and a group of relatives of missing persons in the Office of Prime Ministry in Dolmabahçe Palace on 05.02.2011. Among the relatives of missing persons, there were Tolga Baykal Ceylan's mother Kadriye Ceylan and Cemil Kırbayır's mother Bergo Kırbayır who was 103 years old and has become the symbol of the relatives of missing persons. Prime Minister who indicated that he was impressed by the statements of the relatives and by especially the struggle Berfo Kırbayır put up for 30 years to find out her son's fate, gave instructions himself and provided the establishment of the Sub-Commission by Human Rights Investigation Commission of Parliament in order to investigate into the allegations of missing persons.

183. However, the investigations of the Sub-Commission have been limited to two well known missing cases explained above.

184. The timing of the establishment of a commission to investigate into the allegations of missing persons and the fact that the investigations of this commission is limited to two cases leads to the impression that this initiative is an election tactic. In fact, President of the Human Rights Inquiry Committee Zafer Üskül indicated that the disappearance of Tolga Baykal Ceylan would be addressed and later if possible, the other cases on missing persons would be addressed and the sub-commission would do its best to investigate as much cases as possible until the elections in his statement[80]. This statement and the claims of the members of the opposition parties who are in the Human Rights Inquiry Committee of the Parliament on establishing the sub-commission with instructions and assignments strengthen this impression.

185. Nevertheless, there are several investigations on missing persons cases such as the law suit brought in Mardin 1st Aggravated Felony Court against Brigadier

[80] See also Bianet news dated 10 February 2011 : http://bianet.org/bianet/bianet/127813-kayiplar-icin-mecliste-alt-komisyon

General Musa Çitil on the grounds that he was responsible for the unsolved murders and missing persons in Mardin Derik between 1993 and 1994. The remains of Vedjin Avcıl who went missing after he had been taken into custody 18 years ago, were found in Derik Semetery as a result of the investigation launched within the scope of the law suit in question. Brigadier General Musa Çitil who currently serves as Ankara Gendarmerie Regional Commander is stands trial for being responsible for 13 similar unsolved murders and missing person's case that took place when he served as Derik District Gendarmerie Commander.

186. Another indicator that what has been done was an election tactic is the gears of reopening mass graves that intensified in months before the election. These efforts were also limited with several graves and terminated suddenly after the election. The efforts to reopen mass graves in order to reveal missing persons cases and unsolved murders were not made in accordance with the guideline entitled "Operational best practices regarding the management of human remains and information on the dead by non-specialists" despite the circular [81] of The Supreme Board of Judges and Prosecutors dated 18.10.2011 on acting in accordance with the Minnesota Protocol. Therefore, data and evidence that would enable the revelation numerous missing people's case has been damaged. The processes such as reopening mass graves, collecting evidence and identification are not under the supervision of relevant persons and institutions especially the relatives of the missing persons and human rights organizations. The data and information on the missing persons and their relatives are not collected in accordance with the international standards and not kept in reliable and independent bodies/units

187. The issue of the statute of limitations is the biggest obstacle in front of investigating and finding missing persons, punishing the perpetrators and the reparation of the relatives of the missing persons.

188. The cases on enforced disappearances which took place in the early 90s, are faced with the risk of being time barred due to the fact that the period limitation was 20 years in the previous Turkish Criminal Code.

Ayhan Efeoğlu File

Former special operations officer Ayhan Çarkın who has been included in numerous unsolved murders, indicated that Ayhan Efeoğlu who was a student in Yıldız Technical University and disappeared after being detained in October 1992 was tortured to death and the body was carried by himself personally[82] *in his statement in September 2011.*

81 See also http://www.hsyk.gov.tr/Mevzuat/Genelgeler/GENELGELER/9.pdf

82 See also http://gundem.milliyet.com.tr/-cesedi-ben-tasidim-/gundem/gundemdetay/13.09.2011 /1437947/default.htm

Istanbul Prosecutor's Office launched an investigation upon the application of the family[83]. The prosecutor demanded information from police department on whether Ayhan Efeoğlu had been taken into custody or not, but no further investigations made due to the reply of the department which stated that there was not any information on the detention. Although there were witnesses for the detention of Ayhan Efeoğlu, they were not heard.

In 2008, while the investigation was thought to proceed, former special operations officer Ayhan Çarkın started to provide information to the press on numerous crimes committed by special operations officers including him and this time, Istanbul Special Authority Prosecutor launched an investigation[84]. However, he made the decision of lack of jurisdiction subsequently on the grounds that the crime "was not within the scope of organized crime" and referred the file to the prosecution office for judicial cases. The file has gone between prosecution offices due to the decisions of lack of jurisdiction and no progress has been made until 2012.

According to the news reflected in the press, Istanbul Special Authority Prosecutor took statements of nine retired police officers on 01.03.2012 but did not arrest them. In addition, the family and their attorneys cannot reach the file which is confidential. *It is learned that the prosecutor dismissed the case launched in 1992 on 21.01.2008 due to the statute of limitations[85] while the developments summarized above took place upon the statements of formet police officer Ayhan Çarkın.*

The prosecutor accepted that Ayhan Efeoğlu was tortured to death, however the crime was qualified as "involuntary manslaughter" which was regulated in the previous TCC with the idea that the police officers had not had the intention to kil during torture. The period of limitation was calculated as 15 instead of 20 regarding the penalty for this crime is less than the penalty for "voluntary manslaughter" and the prosecutor nolprosed the indictment due to the statute of limitations.

189. The relatives of missing people are not informed healthily about both the stages and the results of the investigations launched both ex officio and upon the application of the relatives on the claims of "going missing".

190. In the case of Ayhan Efeoğlu, the prosecutor's declaration to proceed no further has not been garnished to the complainant family. This information has been obtained by the attorneys of the family after the family had reached the information on their son's death in İstanbul Security Directorate from police officer Ayhan Çarkın's statements.

[83] İstanbul C. Başsavcılığı, 992/41786 Haz. sayılı dosya

[84] İstanbul Özel Yetkili C. Başsavcılığı, 2011/647 Sor.

[85] İstanbul C. Başsavcılığı,21.01.2008, 1992/ 41786 Haz. - 2008/ 823-20 K.

191. Kadriye Ceylan, mother of Tolga Baykal Ceylan whose fate is investigated by the Sub-Commission of the Parliament, indicates that she has not been informed about the ongoing investigation in any stage of the process and that she learned that the indictment of the investigation launched in the result of her application to the Prosecutor's office in Demirköy in 2004 had been nolprosed in 2006 when she went to testify to the Sub-Commission. Likewise, after completing the report on her son, the Sub-Commission did not send her a copy of it. Kadriye Ceylan who found out that the report had been published from the newspapers, had information about the content by downloading the report online and criticized the content of it and the fact that it was not sent to her. Only then the Sub-Commission sent a copy of the report to the attorney of Kadriye Ceylan on the grounds that the number of the copies of the report was limited.

192. In addition, the fact that any information on the details of 182 cases mentioned in the reports of The UN Working Group on Enforced or Involuntary Disappearances and 71 cases revealed by the Government itself has not been released to the public is an indication of the level of sensitivity of the Government on missing persons.

193. Waiting in uncertainty for years due to the official denial of the claims on missing persons, the fact that these claims are not investigated in a efficient, transparent and independent way and even if they are, the information on the stages and results of the investigations are not released or the decisions of dismissal because of the statute of limitations, means the violation of "the prevention of torture and inhuman or degrading treatment or punishment" from the point of the relatives of the missing persons .[86]

[86] ECtHR characterized the suffering of the relatives of the missing persons as inhuman treatment and convicted Turkey for violation of Article 3 of ECHR that regulates the prohibition on torture in the case of Timurtaş v.Turkey.

D. LIMITATION OF THE FUNDAMENTAL LEGAL GUARANTEES (Paragraph 11)[87]

194. About the procedural guarantees that serve to prevent torture and ill treatment, to terminate the ongoing torture and to prove torture with medical documents and to provide indirect supervision for law enforcement, the Committee;

- *Indicates that it is ominous that the access to lawyers can be restricted for 24 hours for the crimes within the scope of Anti-Terror Law,*
- *the restriction of the right to access a lawyer for the crimes which are punished for less than 5 years,*
- *the violation of the right of the detainees and prisoners to access a medical doctor and doctor-patient confidentiality,*
- *recommends to secure the right to access family members and a medical doctor both legaly and practically, and especially to provide doctor-patient confidentiality.*

195. We can say that the issues amended are under this title among the four titles that the Committee demanded the Government to make a follow-up report. However the amendments made are far from meeting the concerns and the recommendations of the Committee.

1. Evaluation the Amendments Made on the Right to Access a Lawyer

196. We presented detailed information on the restrictions derive from the Code of Criminal Procedure, Law on Combating Terrorism and the Law on the Execution of Penalties and Security Measures and the violence caused by law enforcement officers in our report dated 15 October 2010 presented to the Committee. A part of our criticism and evaluations was on the restrictions regulated in Article 10 of Law on Combating Terrorism.

197. In accordance with the law no. 6352 that was published in the Official Gazette and became effective on 05.07.2012, Article 10 of Law is abrogated completely and reconstituted. The statement that the detainee's right to access a lawyer can be restricted for 24 hours by the demand of prosecutor and the decision of judge in "terror crimes and crimes committed with the purpose of terror" and "crimes with the purpose of generating monetary profit within the scope of criminal enterprise activities" takes place identically in the new form of the article[88]. It is regulated that it is not possible to take statement during this period in the new form of the article just like the previous form. However, no reason is provided for the restriction of the right to access a lawyer.

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[87] See Appendix, page. 73

[88] Law on Combating Terrorism, art. 10/3-e

198. The regulation that the right of the lawyer to examine the file and take copies of the documents can be restricted if it may jeopardize the purpose of the investigation in the previous form of the Article 10 of Law on Combating Terrorism is abrogated. However, a similar regulation takes place in the Code of Criminal Procedure Article 153/3. No amendments made in the Article 153/3, although there are some amendments made in the Code of Criminal Procedure in accordance with the law no. 6352. From now on, the restrictions in the Code of Criminal Procedure will be applied to all crimes since the Code of Criminal procedure is general and also applied when there is not any regulation in Law on Combating Terrorism. So, if the judge gives the verdict of confidentiality, all documents except "the records of statement of the person caught or the suspect", "the records of the proceedings which he or she has right to attend" and "the expert reports" cannot be examined and their copies cannot be taken by the lawyer of the suspect until the acceptance of the indictment by the court.

There has not been any positive development since the publication of the recommendations of the Committee on the implementation of the Article. In fact on the contrary, the increase in the number of the people that are tried before court caused the prolongation of the proceedings, thus the processes of the preparation and acceptance of the indictments elongate. The durations for the suspects, defendants and their lawyers to reach the documents increase day by day and may exceed a year from time to time, especially for offenses within the scope of Law on Combating Terrorism.

199. The only positive development in the amendment made with the law no. 6352 is that it abrogated the restrictions that " the suspect can only access one lawyer during detention" and "only one lawyer can attend while the suspect is question by law enforcement officers" for crimes within the scope of Anti-Terror Law. However, the restriction that " only three lawyers can attend the statement taking process during the investigation" which is regulated in the Code of Criminal Procedure Article 149/2 is still in effect.

200. Although the Government states that there are not any restrictions on the right to access a lawyer in contrast to the Committee's designations, other than the ones mentioned above, the legal restrictions and practical issues indicated in our report dated 15.10.2010 also remain.

For instance, the article that regulates assignment of a lawyer for the suspect or the defendant without a demand "for crimes which has 5 years of lower limit of punishment"[89] is not amended. Before the amendment made in 2006, this article had included **"**crimes which has 5 years of limit up" so the field of application had been much wider. In addition, the implementations such as not informing the individuals about their right to access a lawyer or taking no notice of their demands, consequently depriving the individuals of this right de facto are encountered frequently.

[89] Code of Criminal Procedure art. 150/3

201. A new problem encountered in practice is that access a lawyer becomes restricted as a whole in the beginning of the investigation. In previous years, the rights to access a lawyer examine the documents and take copies of them have been restricted by separate decisions and in different stages. However in 2011; only one decision is made on search, caption, the prohibiton of deliberation and confidentiality, so the right to get legal support of the individual is restricted before the caption and without a search made in order to obtain evidence.

202. According to HRFT's data of 2011; 132 (58,9%) of the applicants who were exposed to torture in 2011 stated that they had been able to access a lawyer whereas 92 (41,1%) of them stated that they had not been able to take advantage of this.

2. The Right of Suspect and Defendant to Contact Family

203. The restrictions on "right to contact family" regulated in Anti-Terror Law Article 10 that is reconstituted with the law no. 6352. "Only a relative" of the detainee will be informed about the decisions of caption, detain and renewal of detain if the purpose of the investigation is jeopardized. In practice, it is known that the restriction of "informing one relative" become a routine and decisions in this direction are made without a concrete reason that jeopardize the purpose of the investigation.

3. The Right to Access a Medical Doctor and the Violation of Doctor-Patient Confientiality

204. The problems encountered in both the forensic and normal medical examinations and treatments of detainees and prisoners/convicts continue. Among the issues regulated under the title of the right to access a medical doctor, only the inter-ministreal agreement referred as "tripartite protocol" has been amended since 2010. However, this development is not positive as stated in the follow-up report of the Government.

a. Evaluation of the "Tripartite Protocol" with its new from

205. The Committee finds the reports ominous because they are prepared due to the medical examination of the detainees hold in the presence of public officials although it is illegal unless the demand of the medical staff on the grounds of personal security. The regulation which is the basis of the Committee's concerns is the "Tripartite Protocol" that was signed between the Ministry of Justice, the Ministry of Health and the Ministry of Internal Affairs in 2000 and amended in 2003.

206. The Protocol is seriously criticized by people and institutions that work in the field of human rights and fight especially against torture, formed the basis of the implementations that caused the victimization of particularly the prisoners/convicts, medical doctors, lawyers and visitors owing to the fact that

it causes the constant violation of "confidentiality of the medical examination of prisoners/convicts".

207. The new form of the Protocol is far from meeting the critics that have been mentioned so far, although it was amended on 22.08.2011 and reissued. In addition, it appears that it still causes violation of rights in practice.

208. There are two separate regulations on "doctor-patient confidentiality" in the fifth chapter of the Protocol entitled "Examination and Treatment of Convicts and Prisoners". Provisions on examination of convicts and prisoners are regulated in Article 38 and provisions on treatment and rehabilitation services are regulated in Article 32.

a.a. Examination of Convicts and Prisoners

209. The Protocol regulates that the medical examination services are held in **"**secure examination rooms" without the presence of "gendarmerie". The article introduces an exception to this rule. The doctor shall be accompanied by gendarmerie during the examination on the demand of the doctor, but the demand of the doctor does not need to provide any justification, especially security risk. In the new form of the "Tripartite Protocol", the doctor may request to be accompanied by gendarmerie during the examination "without any reason".

210. There has been many incidents in the implementation of the Protocol so far, where the doctors exposed to oppression and insults when they asked the public officials to leave the examination room or refused to examine handcuffed prisoners or convicts due to international conventions and medical ethics. Such examples take place under the title "The Quality of Medical Evidence, Evidential Value of the Reports Prepared by Independent Medical Doctors and The Position of the Forensic Medicine Institute in Torture Cases" of this report. The risk of putting pressure on doctors to make written requests is great in future implementations of the Protocol.

211. Although the Protocol regulates the presence of gendarmerie in the examination room; there is not any regulation on correction officers. For this reason, it seems that the claim that correction officers' presence in the examination room is not prohibited is possible to be encountered.

212. In the new form of the Protocol, the same article states that the examinations shall be hold in the presence of gendarmerie until "secure rooms" are built, but gendarmerie shall wait distant enough so the conversations shall not be heard. It is clear that the purpose of this article is to hoodwink NGOs that are against "examination in the presence of security forces" and it is regulated upon the objection of human rights organizations. It is not possible for the conversations not to be heard due to the physical conditions and also this regulation does not prevent the violation of patient confidentiality with its effect of breaking the confidence in the relation between patient and medical doctor. Istanbul

Protocol emphasizes the principle of examining the patient/survivor exposed to torture or ill treatment in a way to ensure the determination of all traces on the body of the patient/survivor, by removing the clothing and paying attention to patient confidentiality in every step of the examination. Medical ethics prioritize the interest and confidentiality of patient in all circumstances. Even if the conversation cannot be heard, being monitored during such examination shall restrict the survivor and become degrading.

213. **The European Convention on Biomedicine** was approved by Parliament and qualified as provision of law in 2003.[90] It is certain that juridical, this Convention is a higher norm than the "Tripartite Protocol". The Articles 2, 4, 5, and 10 of this Convention that is qualified as statute law in national law, regulate principles which aim to protect human dignity and fundamental rights and freedoms of individuals.[91] The new form the "Tripartite Protocol" violates the above-mentioned articles.

214. The aforementioned article of the "Tripartite Protocol" violates the principles of confidentiality and privacy in terms of not only medical ethics but also national and international regulations regarding the implementation of the profession of medicine**,** and therefore Turkish Medical Association **Code of Medical Ethics,** The Turkish Medical Association Disciplinary Regulations, Medical Deontology Regulation, The Patient Rights Guidelines, The Regulations of Inpatient Treatment Institutions, World Medical Association Declarations of Geneva, Lisbon, Amsterdam and Helsinki, The European Convention on Biomedicine and The Istanbul Protocol.

215. The statement <u>"until secure rooms are built" </u>in the related article causes serious problems. The number of hospitals with examination rooms where "forensic examinations" can take place is very small in Turkey. Based on this fact, a temporary article has been added to the Protocol and the determination of the hospitals without secure rooms and convict wards/services or with

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90 The Convention For the Protection Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine numbered 5013: The Law on the Approval of the Convention on Human Rights and Biomedicine, 09.12.2003

91 Article 2 – Primacy of the Human Being;
The interest and welfare of the human being shall prevail over the sole interest of society or science.
Article 4 – Professional Standards;
Any intervention in the health field, including research, must be carried out in accordance with relevant professional obligations and standards.
Article 5 – General Rule
An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.
Article 10 – Private Life and Right to Information
1. Everyone has the right to respect for private life in relation to information about his or her health.
2. Everyone is entitled to know any information collected about his or her health. However, the wishes of individuals not to be so informed shall be observed.
3. In exceptional cases, restrictions may be placed by law on the exercise of the rights contained in paragraph 2 in the interests of the patient.

capacity issues by establishing commission in provinces and districts in three months has been regulated. It is clear that the necessary determinations and modifications will take months, or even years. The problem of the presence of gendarmerie in every examination will take place in this ambiguous period.

a.b. Therapy and Rehabilitation Services

216. The regulation of building escape-proof secure convict wards and services for therapy and rehabilitation services in hospitals takes place in Article 32 of the Tripartite Protocol. According to the Protocol, these sections are in the status of prison. However, there are not any regulations on the presence of gendarmerie or correction officers during the conversations between the patient and the medical doctor, examination or inspections in the course of therapy and rehabilitation services provided in these places. Also, the doctor-patient confidentiality is not guaranteed.

217. It is prerequisite to provide medical examinations, medical inspections with diagnostic/therapeutic purposes and confidentiality during the examinations with the purpose of medical assessment and secure and comfortable environment to prisoners and convicts. Medical doctors should carry out the examinations in a private, secure and comfortable environment as far as possible where prisoners/convicts feel comfortable, safe and evaluate all conditions for this.

218. According to the standards of Republic of Turkey The Ministry of Health General Directorate of Curative Services [92] secure rooms are defined as organizing a room with at least 11 m^2 of empty floor and 100 cm of free space on three sides of table-chair with barred windows and door which can only be opened from the inside, that has ventilation, acoustic insulation, at least two seats and a center table apart form table-chair and computer as examination room. The convenient physical conditions for the examinations of prisoners and convicts and units where patient confidentiality provided should be implemented by the hospital administration immediately. Otherwise, there will be serious inequalities in receiving heath care for prisones and convicts. However, there has not been official information shared with public or relevant NGOs on the built of the secure rooms mentioned in the Protocol and their conformity to standards.

219. As we mentioned in our previous report; the "Tripartite Protocol" is an inter-ministreal agreement on co-operation and its content should be limited to technical issues. The arrangement that means the violation of a fundamental right such as doctor-patient confidentiality from the point of prisoners/ convicts should be made by enactment of a law, not by an administrative protocol and it should be legally secured from the inconsistent attitude of the administration.

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[92] Republic of Turkey Ministry of Health General Directorate of Curative Services, The 2008 Manual of Minimum Design Standards for Health Care Facilities in Turkey, Article 7.2.0.3

220. There has not been an improvement reflected in practice since the amendment in the "Tripartite Protocol". In fact, deportations started from all over Turkey to İzmir Aliağa (Yenişakran) Closed Prison opened on 10.02.2012. The women prisoners deported from Bergama Prison where the first deportation took place, propounded that the acceptance search was made by removing all their clothing, their body cavities were searched, they were exposed to derogatory treatment and those who objected were exposed to violence. Upon these complaints, various NGOs, İzmir Bar Association and political parties visited the prison and determined that it was a routine practice to make prison searches while the prisoners were naked and women prisoners deported from other cities were also exposed to same treatment. There are claims that the prison doctor did not report "the traces of battery" during the medical examinations of the women exposed to violence in the acceptance search.

The presence of gendarmerie and the fact that the handcuffs are not opened during the medical examinations of prisoners and convicts in hospitals where they are sent related to their illnesses are among the most frequently voiced complaints. Another complaint is that gendarmerie influence the doctors by telling them that the prisoners/convicts are "dangerous and terrorists", the doctors remain silent in the face of this situation and make the examination in the presence of gendarmerie while the prisoners/convicts are handcuffed[93].

[93] HRA, Şakran - Izmir Prison Monitoring Report dated 22.05.2012

APPENDIX

TORTURE AND IMPUNITY (Paragraph 7)

The State party should take immediate measures to end impunity for acts of torture. In particular, the State party should ensure that all allegations of torture are investigated promptly, effectively and impartially. In connection with prima facie cases of torture and ill-treatment, the State party should ensure that the alleged suspect is subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation or continue any impermissible actions in breach of the Convention. The State party should also ensure that guidelines are in place to determine when articles 256 and 86 of the Penal Code will be required to prosecute ill-treatment instead of article 94. Further, the State party should immediately establish effective and impartial mechanisms to conduct effective, prompt and independent investigations into all allegations of torture and ill-treatment, and ensure that perpetrators of torture are prosecuted under article 94 (“torture”) and 95 (“aggravated torture”) so as to ensure that torture is punished by appropriate penalties as required by article 4 of the Convention.

EFFECTİVE, PROMPT AND INDEPENDENT INVESTIGATION (Paragraph 8)

The Committee calls on the State party to strengthen ongoing efforts to establish impartial and independent mechanisms to ensure effective, prompt, and independent investigations into all allegations of torture and ill-treatment. As a matter of priority, the State party should:

a) Strengthen the efficiency and independence of public prosecution by increasing the number, authority and training of investigating prosecutors and judicial police;

b) Ensure preservation of evidence until the arrival of the prosecutor and instruct courts to consider the possibility of tampered or missing evidence as central factors in trial proceedings;

c) Ensure that prosecutors and judicial officers read and evaluate all medical reports documenting torture and ill-treatment from medical personnel and forensic doctors, irrespective of institutional affiliation, who are competent and have specialized training on the Istanbul Protocol;

d) Establish an independent police complaint mechanism, as planned for by the Ministry of Interior;

e) Repeal article 24 of the Criminal Procedure Code to ensure that special permission is not needed to prosecute high level officials accused of breaches of the Convention.

THE DISAPPEARANCES (Paragraph 9)

The State party should take prompt measures to ensure effective, transparent and independent investigations into all outstanding cases of alleged disappearances, including those cited by the European Court of Human Rights (Cyprus v. Turkey and Timurtas v. Turkey) as well as those identified by the United Nations Working Group on Enforced and Involuntary Disappearances. As appropriate, the State party should conduct prosecutions. The State party should notify relatives of the victims of the outcomes of such investigations and prosecutions. The Committee furthermore calls upon the State party to consider signing and ratifying the International Convention for the Protection of All Persons from Enforced Disappearances.

LIMITATION OF THE FUNDAMENTAL LEGAL GUARANTEES (Paragraph 11)

The State party should ensure by law and in practice that all detainees are guaranteed the right to have prompt access to a lawyer, to notify a family member and to an independent medical examination from the very outset of their detention. The State party should ensure that it upholds patient-doctor confidentiality during such medical examinations.