

## TABLE OF CONTENTS

### TURKEY:

#### An end to torture and impunity is overdue!

“Tea instead of Torture” .....	2
The extent of torture in Turkey .....	3

#### **Chapter 1: Turkish law, its implementation and international standards**

Definition of torture in Turkish law .....	6
Prosecutors should control interrogations by police and gendarmerie officers .....	7
Prolonged police custody .....	7
Incommunicado detention .....	9
Unacknowledged detention .....	11
Torture and the extraction of "confessions" .....	12

#### **Chapter 2: Patterns of torture**

Nearly anybody is at risk of torture .....	14
Sexual torture of women and girls .....	15
Torture on the basis of sexual orientation .....	17
Foreign nationals held in Istanbul .....	18
Suspected Hizbullah members in Diyarbakır .....	19
Torture and ill-treatment in prisons .....	20
<i>Isolation in prison can amount to ill-treatment</i> .....	20
Excessive force during searches and arrests .....	21

#### **Chapter 3: The climate of impunity for torturers** ..... 22 |

The law on the prosecution of civil servants .....	23
Pressure on torture victims to deter them from filing complaints .....	25
Prosecutors' failure to investigate .....	26
Routine blindfolding makes identification of torturers difficult .....	28
The role of doctors .....	28
<i>Attempts by security officers to avoid proper medical reports</i> .....	28
<i>Intimidation of doctors and patients by police officers</i> .....	29
<i>Complicity of some health professionals</i> .....	30
<i>Shortcomings of the Forensic Institute</i> .....	31
<i>Harassment of medical personnel for working against torture</i> .....	33
Sentences for torture and ill-treatment in Turkish law .....	34
<i>Narrow definition of rape</i> .....	35
Trials for torture rarely end with conviction .....	35
Pressure on lawyers and human rights defenders .....	38

#### **Chapter 4: Recommendations against torture** ..... 40 |



## GLOSSARY

AI	-	Amnesty International
Convention against Torture	-	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	-	UN Convention on the Elimination of all Forms of Discrimination against Women
CPT	-	(European) Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	-	UN Convention on the Rights of the Child
EU	-	European Union
"F-Type" prison	-	New type of high-security prison in Turkey
gendarmerie	-	Soldiers that operate as police in rural areas
HADEP	-	<i>Halkın Demokrasi Partisi</i> - People's Democracy Party (legal pro-Kurdish political party)
<i>Hizbullah</i>	-	Islamic armed group
IHD	-	<i>İnsan Hakları Derneği</i> - Human Rights Association
MIT	-	<i>Millî İstihbarat Teşkilatı</i> - National Intelligence Agency)
PKK	-	<i>Partiya Karkerên Kurdistan</i> - Kurdistan Workers' Party (Kurdish armed opposition group)
TIHV	-	<i>Türkiye İnsan Hakları Vakfı</i> - Human Rights Foundation of Turkey
TCPC	-	Turkish Criminal Procedure Code
TPC	-	Turkish Penal Code

## TURKEY: An end to torture and impunity is overdue!

### “Tea instead of Torture!”

When Hasan Yücesan was appointed head of police for Turkey’s capital Ankara, he suggested that police stations should become a meeting point for citizens where they would be greeted by smiling police officers. “A police officer who offers tea to the citizens will not think of slapping, let alone torturing them,” he said.<sup>1</sup> Former Minister of the Interior Saadettin Tanttan was less optimistic. He was quoted by the press saying “Torture is a question of education. We will need 10 to 15 years to bring it to an end”.<sup>2</sup>

Unfortunately, police stations are still places of horror for many Turkish people. Relatives and friends frequently contact human rights organizations because they believe their loved ones have been arrested and are at risk of torture and ill-treatment, death or “disappearance”.

On visits to Turkey in November 1999, April and November 2000 and June 2001, AI delegates interviewed torture victims and their lawyers throughout the country and obtained numerous reports and documents on torture and ill-treatment. The victims included people suspected of pro-Kurdish, Islamist or leftist activities. Others were suspected of involvement in protests against new "F-Type" prisons, corruption or criminal offences like theft. Among them were women and children.

In Turkey, torture mainly occurs in the first days of police or gendarmerie custody, when detainees are held without any contact with the outside world. Detainees are routinely blindfolded during interrogations and some are held blindfolded throughout police detention. Other methods of torture and ill-treatment regularly reported include heavy beating, being stripped naked, sexual abuse, death and rape threats, other psychological torture, and deprivation of sleep, food, drink and use of the toilet. Some detainees are also exposed to electric shocks, hanging by the arms, spraying with cold pressurized water and *falaka* (beating of the soles of the feet). Local human rights defenders stated that security officers mainly use rough methods when they expect the detainees to be remanded to prison and therefore would have little chance of a comprehensive medical examination which would secure medical evidence. Gendarmes - soldiers carrying out police functions in rural areas - are also more likely to use severe forms of torture, because the victims have no easy access to human rights defenders in their vicinity. Where police officers expected a detainee

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<sup>1</sup> *Cumhuriyet*, 28 July 2001.

<sup>2</sup> *Ak\_am*, 2 May 2001.

to be released after police detention and therefore to have a greater chance of obtaining an independent medical report, human rights defenders observed the use of torture and ill-treatment techniques that do not normally leave marks. For example, detainees have been stripped naked and blindfolded and then handcuffed to a cell door, exposed to passers-by. Being prevented from drinking and using the toilet can also cause severe distress, especially when this happens over a long time or in hot climate.

Newly appearing patterns of human rights violations include reports of ill-treatment in "F-Type" prisons. Because of the restricted access to these prisons, these are difficult to investigate. In addition, AI has increasingly received reports about excessive use of force during mass arrests, torture with the aim of recruiting informers, and, in the case of suspected members of the Islamist armed group Hizbullah, prolonged police detention for several weeks or months. Information collected by AI in June 2001 in Izmir for example, appears to show that criminal suspects are often tortured by mobile teams who interrogate them in the local police stations where they are held in custody.

#### **The extent of torture in Turkey**

The UN Committee against Torture "*considers that torture is practised systematically when it is apparent that torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question.*"<sup>3</sup> After his visit to Turkey in November 1998 the UN Special Rapporteur on torture noted that the word "systematic" was "*used in at least three meanings: first, to indicate that the practice was approved of and tolerated, if not expected, at the highest political level; second, in the sense that it was a pervasive technique of law enforcement agencies for the purpose of investigation, securing confessions and intimidation, regardless of approval or disapproval at the higher levels of the public service or by the Government's political leadership; [in this respect the Special Rapporteur noted and endorsed the above definition of the Committee against Torture] and, third, to indicate that it consisted of techniques applied, in any individual case, in a deliberate manner to break the will of detainees.*"<sup>4</sup> He continued that he had no doubt that torture was practised systematically in all senses in Turkey up to and including the first half of the 1990s, but witnessed notable improvements in 1997 and 1998. "*The improvements here described are sufficiently significant to lead the Special Rapporteur to conclude that the continuing problems cannot be attributed to a formal policy of the Government. Indeed, he is disposed to consider the frequently reiterated official commitment to attaining European and international standards in law enforcement*

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<sup>3</sup> A/48/44/Add.1, para. 39.

<sup>4</sup> E/CN.4/1999/61/Add.1, para. 102.

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*and the administration of justice as a reflection of an authentic political preference. [...] In other words, he does not view the practices as systematic in the first of the three senses described above. They may well, nevertheless, deserve that categorization in its second sense in numerous places around the country, especially if the less extreme, but still serious forms of torture or ill-treatment referred to in the previous paragraph are taken into consideration. As far as the third use of "systematic" is concerned, the Special Rapporteur considers this use too conducive to misunderstanding to apply it, since any incident involving sustained infliction of ill-treatment could fall within its scope.”<sup>5</sup>*

In view of the geographic spread of torture allegations, the range of potential victims and the number of testimonies received by AI on and between missions to Turkey from November 1999 to June 2001, the organization concludes that in spite of all declarations of intention by the Turkish government, torture continues to be practised systematically at least in the sense of the definition from the Committee against Torture cited above. This is the sense in which AI uses the term.

Furthermore, this report will show that although some steps against torture have been taken by the Turkish authorities, AI still has not seen signs of serious and effective measures to combat torture and impunity. In March 2000, AI submitted detailed recommendations to the Turkish government. These referred to international standards and recommendations which have been known to the authorities for years. Almost none of them have been implemented. In November 2000, the European Union (EU) identified the strengthening of legal provisions and the undertaking of all necessary measures to reinforce the fight against torture practices as a short-term priority for Turkey. Although some legal changes were initiated, no actual measures were taken in the first half of 2001 to reinforce the fight against torture. A major legal change required for an effective fight against torture, namely the abolition of incommunicado detention, is not among the short-term measures promised by Turkey in its National Program for the Adoption of the Acquis [of the EU]<sup>6</sup>, but might be implied in the mid-term measures which are formulated in very general terms.

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<sup>5</sup> E/CN.4/1999/61/Add.1, para. 107.

<sup>6</sup> *The acquis communautaire or Community patrimony is the body of common rights and obligations which bind all the Member States together within the European Union.*

Further doubt is cast on the Turkish authorities' declared disapproval of torture by the reported existence of sound-proofed interrogation rooms specially prepared and equipped for torture. In June 2001 a woman, whose blindfold slid for a while, reported that the walls of her interrogation room at Diyarbakır Police Headquarters were covered with brown sponge. The Parliamentary Human Rights Commission found similar rooms. They published a total of 10 reports on their investigations into torture and ill-treatment. The reports, which contain pictures of detention places, interrogation rooms and torture equipment, as well as the transcripts of interviews, represent an extraordinary step forward in official circles in documenting and acknowledging torture and might be very helpful in raising awareness in Turkey of the urgent need for change. The Commission interviewed more than 8,500 inmates of prisons in different provinces of the country and subsequently carried out unannounced on-the-spot visits to detention centres mentioned frequently in relation to torture and ill-treatment.

For example, on 29 February 2000 in Küçükköy police station in Istanbul, the Commission found a "hanger" used for suspending detainees by the arms as well as other equipment which corroborated allegations of torture and ill-treatment they had received from juvenile detainees. However, no serious investigation has been initiated since the Commission presented its shocking findings. After the Commission forwarded the hanger to the Prosecutor's Office it was decided that there was no need for prosecution, since "there were no victims to question". Yet, according to newspaper reports there are at least two trials concerned with torture in Küçükköy Police Station. In both trials the victims reportedly described the torture in detail.<sup>7</sup>

The head of the Parliamentary Human Rights Commission, Sema Pişkin, was replaced by a right-wing politician in October 2000. In July 2001 an indictment was prepared in which Sema Pişkin was charged with "concealing evidence for torture", because she refused to disclose the names of alleged torture victims mentioned in the Commission's reports. The prisoners had been promised anonymity when reporting to the Commission.

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<sup>7</sup> In one of these trials at Eyüp Criminal Court No. 1, four police officers are accused of having tortured three suspected thieves, two of them under the age of 18, over six days in July 1998. According to information received by AI, the three victims reported torture methods including suspension from a hanger and electric shocks, and their description of the interrogation room corroborates the findings of the Parliamentary Human Rights Commission. See also Human Rights Foundation of Turkey, 30 January 2001.

Another blatant example of how the authorities intervene against those who work against torture, instead of bringing the suspected perpetrators to justice, is the recent raid on the Diyarbakır office of the Human Rights Foundation of Turkey (TIHV) - one of five treatment and rehabilitation centres in different parts of the country (the others are in Istanbul, Ankara, Izmir and Adana). When the office was raided on 7 September 2001, all patient files, computers and details of doctors who support them were confiscated and kept for a month, in violation of long-standing medical ethics, including patient-doctor confidentiality. In the search warrant the treatment of torture victims is labelled as an “illegal activity”.

Among the apparent reasons for this unacceptable assault on human rights activities are the reports prepared by TIHV which document the extent of torture in the country. These include indications of training for torture: TIHV has established that people independently report the same torture techniques being used at the different places in which they were detained. Detainees normally do not die from electro-shocks because the torturers obviously know how to apply shocks without killing.

AI concludes that torture is still widespread and practised systematically. The organization also concludes that the Turkish authorities will have to take effective steps against torture immediately in order to dispel the belief that they tolerate the persistence of torture.

## **Chapter 1: Turkish law, its implementation and international standards**

**Definition of torture in Turkish law**

Turkey's international obligations to prohibit torture are incorporated in the Constitution.<sup>8</sup> However, the Turkish Penal Code (TPC) - which punishes some acts of torture - used to have a very narrow definition of torture which was limited to acts committed with the aim of making the victim confess to an offence. On 26 August 1999 the definition of torture was broadened, making acts committed by a civil servant or public employee for any purpose punishable.<sup>9</sup> However, in meetings with local prosecutors in June 2001 it appeared that some of them were still not aware of the legal change and still acted on the basis of the previous, narrow definition of torture.

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<sup>8</sup> Article 17 of the Turkish Constitution provides that "no one shall be subjected to torture or ill-treatment incompatible with human dignity." Article 90 provides that "International agreements duly put into effect carry the force of law." Turkey is a state party to most of the important instruments for the prohibition of torture including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) and the European Convention for the Prevention of Torture.

<sup>9</sup> The old version of Article 243 TPC read: "Any president of a court or assembly, or any other public servant who tortures a suspect in order to elicit a confession or resorts to cruel, inhuman or degrading treatment shall be sentenced to up to five years' imprisonment and temporary or permanent disqualification from service." In 1999 this was amended to: "A civil servant or other public employee who resorts to torture or cruel, inhuman or degrading treatment in order to make a person confess a crime, to prevent a victim, plaintiff, somebody participating in a trial or a witness from reporting incidents, to prevent them from filing a formal complaint or because they filed a formal complaint or for any other reason, shall be sentenced to a heavy prison penalty of up to eight years and permanent or temporary disqualification from service."

The Turkish Parliament has been working on a new Penal Code. According to information given by the Justice Minister the current draft differentiates between “simple, qualified and severe torture”, but leaves the definition of torture to the interpretation of the judiciary. However, the Convention against Torture, to which Turkey is a state party, defines torture by three elements: severity of the harm, intention and state responsibility.<sup>10</sup> Referring to these three elements, the Justice Minister states that in the draft TPC torture will be treated as a general offence (not limited to state representatives), while foreseeing five to 10 years’ heavy imprisonment for “qualified torture” committed by state officials executing their duty.<sup>11</sup> AI recommends that the amendment of the TPC should at a minimum incorporate the definition in the Convention against Torture and its established interpretation.

### **Prosecutors should control interrogations by police and gendarmerie officers**

Torture mainly occurs in police or gendarmerie custody in the days following arrest when detainees are held in prolonged custody. Although prosecutors are legally in charge of the investigation, they lack effective control over the interrogation.<sup>12</sup> In meetings with AI, prosecutors stressed regretfully that they have no judicial officers under their direct control (*adli kolluk*) and interrogation and investigation is effectively in the hands of the police or the gendarmerie.

### **Prolonged police custody**

One of the major factors contributing to the persistence of torture in Turkey is the length of police detention. In March 1997 the maximum period allowed for police custody was reduced, but for most political offences it still does not comply with international standards: Article 5 (3) of the European Convention provides the right to be brought promptly before a judge. The European Court of Human Rights has ruled that detaining a person for four

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<sup>10</sup> Article 1 of the Convention against Torture reads: “For the purpose of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

<sup>11</sup> Undated statement of Justice Minister Prof. Hikmet Sami Türk to the press and the public on the Draft Turkish Penal Code, obtained from [www.adalet.gov.tr/basin/b35.htm](http://www.adalet.gov.tr/basin/b35.htm) on 18 July 2001.

<sup>12</sup> Under Article 154 of the Turkish Criminal Procedure Code (TCPC) prosecutors are authorized to make investigations directly or through police officers. Police officers are obliged to execute orders of the prosecutor concerning the legal procedure.

days and six hours constitutes a failure to allow prompt presentation to a judge.<sup>13</sup> The UN Special Rapporteur on torture has urged the Turkish government that “(a) The legislation should be amended to ensure that no one is held without prompt access to a lawyer of his or her choice as required under the law applicable to ordinary crimes or, when compelling reasons dictate, access to another independent lawyer. (b) The legislation should be amended to ensure that any extensions of police custody are ordered by a judge, before whom the detainee should be brought in person; such extensions should not exceed a total of four days from the moment of arrest or, in a genuine emergency, seven days, provided that the safeguards referred to in the previous recommendation are in place.”<sup>14</sup> These rights are frequently violated in Turkey for people detained on suspicion of crimes which fall within the jurisdiction of State Security Courts. For these detainees, police detention - before being presented to a judge - may be increased to seven days - or to 10 days in the four provinces under a State of Emergency (Diyarbakır, Hakkari, Erzurum and Tunceli). They are normally not seen by a prosecutor before the end of the custody period.<sup>15</sup>

According to Article 128/4 of the Turkish Criminal Procedure Code (TCPC), detainees, their lawyers or close relatives can apply to a Justice of the Peace against the written order of a prosecutor authorizing extension of custody. Article 15 of the Regulation on Apprehension, Police Custody and Interrogation (adopted on 1 October 1998) explicitly provides the right to appeal for detainees in the scope of State Security Courts. Yet in the southeastern province of Erzurum, which human rights defenders have described as a “black box” and “a republic of its own”, the local court reportedly rejects lawyers’ appeals against the extension of custody, stating that the related provision in the TCPC does not apply to cases in the jurisdiction of State Security Courts.<sup>16</sup>

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<sup>13</sup> *Brogan et al. v. United Kingdom*, 1988.

<sup>14</sup> UN Doc. E/CN.4/1999/61/Add.1, para. 113, 27 January 1999.

<sup>15</sup> The 1997 amendment provides that if a person apprehended for crimes committed by one or two persons is not released, he/she must be arraigned before the competent judge within 24 hours. If the crime falls under the scope of the State Security Courts, this period is 48 hours. This period may be extended by written order of the public prosecutor to a total of four days in the case of collective crimes, including crimes falling under the jurisdiction of the State Security Courts. Further, if the investigation is still not completed after the four days, the prosecutor may request the judge to extend the custody to seven days before the suspect is arraigned before the judge. For such crimes committed in regions under state of emergency and falling under the scope of the State Security Courts, the seven-day period may be extended to 10 days upon request of the prosecutor and the decision of the judge.

<sup>16</sup> In Erzurum, the province head of the gendarmerie is reported to be married to a judge at the Court of First Instance and to threaten villagers by saying “I will have you arrested and send you to my wife”. Through strict controls at gendarmerie and police checkpoints there is only restricted access to and from the province. There are no human rights organizations or any other civil organizations in this province and members of the legal pro-Kurdish party HADEP are under immense pressure and at risk of arbitrary detention and torture. Two

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HADEP representatives “disappeared” on 25 January 2001 (see below).

In July 2001, the Minister of the Interior issued a circular in which he stated that prosecutors, who order the prolongation to four days' custody, and judges, who order additional time in custody for up to seven days, should see the suspect in person when taking a decision.<sup>17</sup> On 3 October 2001 in a constitutional amendment the maximum period for police and gendarmerie custody was reduced to four days. In the region under state of emergency, however, this period can still be extended. The wording of the amended paragraph appeared to allow different interpretations.<sup>18</sup> This amendment will have to be translated into law. AI will monitor its implementation.

### **Incommunicado detention**

Incommunicado detention occurs when detainees are deprived of access to lawyers, family and friends, and doctors. The UN Special Rapporteur on torture has stated quite categorically that incommunicado detention should be abolished: *"Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal and persons held incommunicado should be released without delay. Legal provisions should ensure that detainees should be given access to legal counsel within 24 hours of detention."*<sup>19</sup>

Following the amendment of Article 136 of the TCPC in 1992, detainees may benefit from the assistance of legal counsel at any stage and level of the investigation. One lawyer can be present during the interrogation by police officers and up to three lawyers during the prosecutor's questioning. However, people suspected of offences under the jurisdiction of State Security Courts can still be held in police custody in incommunicado detention for up to four days. Only during the extended detention period do detainees have

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<sup>17</sup> *Radikal*, 25 July 2001. *Milliyet*, 19 August 2001, reported that the Turkish Government planned to amend the related Article 14 of the Regulation on Apprehension accordingly.

<sup>18</sup> Article 19/5 of the constitution now reads: "The person arrested or remanded to prison shall be brought before a judge within 48 hours and in cases of offences committed collectively within **four days**, excluding the time it takes to send them to the court nearest to the place of detention. No one can be deprived of their liberty without the decision of a judge after the expiry of these periods. These periods may be extended under state of emergency, martial law or in times of war." Emphasis on change added.

<sup>19</sup> Report of the UN Special Rapporteur on torture, UN Doc. E/CN.4/1995/434, 12 January 1995, para. 926. In reports on its visits to Turkey in 1997 and 1999 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has repeated similar recommendations. The European Court of Human Rights has further acknowledged that the failure to grant access to counsel during the first 48 hours after arrest was also a violation of Article 6 of the European Convention. *Murray v. United Kingdom*, (41/1994/488/570), 8 February 1996.

the right of access to a lawyer.<sup>20</sup> In many cases this right is denied. If lawyers are given access to their detained clients, the meeting generally takes place in the presence of police officers and can only last five to 10 minutes. Since incommunicado detention facilitates torture, AI recommends that it should be abolished and clear guidelines should be introduced to ensure that all detainees have in practice immediate access to legal counsel.<sup>21</sup>

In Diyarbakır at least 16 people were arrested in early February 2001, probably in relation with expected protests on the occasion of the second anniversary of the arrest of Abdullah Öcalan, leader of the armed opposition group Kurdistan Workers' Party (PKK). One of them was 28-year-old Abdulselam Bayram. His detention on 11 February was reportedly unacknowledged for several days. After a previous request was rejected, Abdulselam Bayram was visited by lawyers from the Human Rights Association (IHD) at Diyarbakır Police Headquarters on 17 February. The meeting was observed by a police officer and lasted 10 minutes. Abdulselam Bayram reported that for seven days he was taken to the interrogation room every day; he was blindfolded, subjected to electric shocks, heavily beaten, hung by the arms, and sprayed with pressurised water. He also reported food deprivation. As a result of the torture he reported a severe pain in his chest. In addition, due to the hanging, his arms became numb. The lawyers observed that Abdulselam Bayram's body and hands were shaking, and he seemed exhausted. His hair was wet. The lawyers also observed signs of psychological torture. In the first session of a trial in which he is charged with PKK membership, Abdulselam Bayram said that his police statements were taken under pressure. AI is not aware of any investigations into his torture allegations.

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<sup>20</sup> The legal basis for incommunicado detention in Turkey is Article 31 of Law No. 3842 amending the TCPC in 1992, which has become a footnote to the current TCPC and provides that a number of amendments "shall not apply for offences within the jurisdiction of State Security Courts. For these, the provisions of TCPC No. 1412 [the old version of the law] are implemented with the provisions before the amendment." The right to access to a lawyer after the extension of police custody by a judge is provided in Article 16 of Law 2845 on the State Security Courts, as amended in 1997.

<sup>21</sup> Due to the confusing legal basis for incommunicado detention as set out above, the abolition of incommunicado detention should be mentioned in all related laws. Turkey's National Program for the Adoption of the Acquis announces the enactment of a new Law on Criminal Procedure and amendment of the Law on State Security Courts in the medium term (that is in more than one year), but does not elaborate on the details.

Even children suspected of offences under the jurisdiction of the State Security Courts, including those under 15 years of age, are denied the right to see a lawyer. They are also excluded from all protective mechanisms set out in Law No. 2253 on juvenile justice: access to lawyers in detention, appointment of lawyers, interrogation solely by a prosecutor, trial before a Juvenile Court. Children suspected of such offences may therefore be held in incommunicado detention for up to four days, and held in prolonged police or gendarmerie detention for up to seven days; in the four provinces under state of emergency rule they may be detained by the police or the gendarmerie for up to 10 days before appearing before a judge.<sup>22</sup>

### **Unacknowledged detention**

International standards call for proper records of apprehension and custody of individuals.<sup>23</sup> The Turkish Regulation on Apprehension also provides clear guidelines for the registration of people taken into custody and their right to inform their relatives “unless informing the relatives will harm the investigation”. In the amendment of the constitution on 3 October 2001 a similar restriction was lifted.<sup>24</sup> Yet guidelines for the prompt and proper registration of detainees and for notification of their families are often ignored.<sup>25</sup> This is extremely distressing for the families of detainees, who often spend days trying to establish the whereabouts of their loved ones. Failure to register detainees properly and promptly creates conditions in which there is an increased risk of torture, and “disappearance” or death in custody can occur.

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<sup>22</sup> The Committee on the Rights of the Child has called upon Turkey to extend the protection guaranteed by the Law on Juvenile Courts to all children up to the age of 18. Incommunicado detention should be avoided and pre-trial detention should be used only as a matter of last resort and be as short as possible. UN Doc. CRC/C/15/Add.152, para. 66, 8 June 2001.

<sup>23</sup> Principle 12 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Rule 7 (1) of the UN Standard Minimum Rules for the Treatment of Prisoners further requires that all prisoners should be registered in a “bound registration book with numbered pages”.

<sup>24</sup> Article 19/6 now reads: “The next of kin of the arrested or remanded person shall be notified immediately.”

<sup>25</sup> See also the report of the UN Special Rapporteur on torture, E/CN.4/1999/61/Add.1, paras. 50-51, and Amnesty International: *Turkey: The duty to supervise, investigate and prosecute*, April 1999, AI Index: EUR 44/24/99, p. 25.

Alpaslan Yelden was arrested in Izmir on criminal charges. He was held in detention and interrogated from 2 to 3 July 1999. He was not properly registered and his family were not informed. After some 24 hours his physical condition deteriorated so much that he was taken to hospital in a coma. He died on 14 July 1999. The interrogating police officers stated that he fell backwards several times because he did not feel well. The autopsy indicates that he died of trauma caused by blows to his head and torture. His father filed a complaint against the alleged torturers; the Bar Association and the IHD in Izmir took up the case. On 30 September 1999 the State Prosecutor issued an indictment against nine police officers charged with causing death by torture and unintended killing. A 10th officer was charged with abuse of duty by improper registration of the detainee and lack of control. The trial against them was opened on 9 December 1999. During the trial Alpaslan Yelden's parents reported in detail how they were denied information about where their son was held for three days.



AI frequently has to appeal to the Turkish authorities about unacknowledged detentions which carry the risk of "disappearance". Two representatives of the legal pro-Kurdish party HADEP, Serdar Tan\_\_ and Ebubekir Deniz, are still missing since 25 January 2001 when they were called to visit the gendarmerie station in Silopi in the southeastern province of \_\_rnak. Although witnesses reported seeing them go into the gendarmerie building, the authorities initially claimed that the two politicians had not been detained. Later they admitted that the men had visited the gendarmerie "for half an hour", but said that they had been released. Subsequently, family members were given reassurances that the men were still alive. In early March the authorities announced that a letter had been confiscated which indicated that the men had been abducted by the PKK and were being held in a camp in Northern Iraq. The authenticity of this letter is doubtful and it is difficult to understand how the PKK could have abducted the men and brought them across the border immediately after they visited the gendarmerie. Before their "disappearance", Serdar Tan\_\_, HADEP head in the district of Silopi, had repeatedly been threatened and warned to give up his party activities. This is part of a pattern of repression of HADEP politicians in \_\_rnak. The provincial head Resul Sadak and 10 other men were arrested on 23 September 2000. After the "disappearance" of his party colleagues and while it was still assumed that they were in gendarmerie detention, Mehmet Dilsiz, HADEP head in the district of Cizre, reportedly received telephone threats from a man who said he was the "death angel of Serdar and Ebubekir".

### **Torture and the extraction of "confessions"**

Lawyers, human rights defenders and some prosecutors in Turkey told AI that one of the main reasons for the persistence of torture is that confessions play a major role in the investigation of crimes. Instead of investigating material evidence and then the suspect, the security forces, who in practice conduct the investigation, use different interrogation

techniques, some of which amount to torture, in order to extract “confessions” or other “statements”.

With the amendment of the TCPC in 1992, torture and ill-treatment were declared “prohibited interrogation methods” and the following paragraph was added as Article 135a: *“The statements of the suspect and the testifying person must be based on their own free will. Ill-treatment, torture, giving medicine by force, tiring, deceiving, using physical force or violence, physical or emotional interventions which break the will like using some devices are prohibited. An illegal benefit cannot be promised. Even if there is consent, testimonies obtained by using the above mentioned prohibited methods cannot be considered as evidence.”* Article 15 of the Convention against Torture obliges the states parties to “ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

However, in nearly all torture reports received by AI, the victims allege that at the end of their interrogation in custody they were made to sign a statement in which they “confessed” their own guilt or blamed others for the offence. A number of alleged torture victims state that they were not even given a chance to read the statement and that it was not read out to them aloud: some of them were forced to sign it with their eyes blindfolded, and others despite their illiteracy. In many cases the accused declared to the prosecutor or, at a later stage, to the court that they did not accept the statement they signed at the police station because it had been extracted under duress. However, detainees are frequently remanded from custody to prison on the basis of statements declared by them to have been extracted under torture. Such testimony is still frequently read out in court and placed in the court file. AI has been told by human rights defenders and lawyers that in most of these cases prosecutors and courts do not investigate the related torture allegations. Some prosecutors told AI that many defendants retract their statements to the police saying that it was coerced only because they want to avoid being convicted. Yet Turkish prosecutors are obliged under national and international law to investigate whether a statement was made under duress, torture or ill-treatment and if it was, not to use it as evidence.<sup>26</sup> The failure of Turkish officials to investigate allegations of torture not only allows torturers to go unpunished, but contributes to the unfair trial of the victims, and in some cases is the direct cause of miscarriages of justice.

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<sup>26</sup> See also the report of the UN Special Rapporteur on torture, E/CN.4/1999/61/Add.1, paras. 39-45.



In the southeastern town of Viran\_ehir in the province of Urfa 29 young people, among them 24 children, were arrested on 8 January 2001, accused of chanting slogans in support of the PKK. They were allegedly beaten and ill-treated, and detained in cruel, inhuman and degrading conditions. They were reportedly forced to stand for two or three hours with their faces to the wall and their hands above their heads, and were not allowed to look around or speak. They were also threatened and verbally abused. None was

given access to a lawyer. The police reportedly made them sign documents, which none of them fully understood and at least some could not read. Later all but one were remanded to prison. Thirteen of them have been put on trial, and six of them remained in prison until 15 February 2001 at the end of the first trial hearing. It appears that the children may have been arrested and prosecuted solely on the basis of their ethnic identity, and that the main evidence against them consists of allegations and "confessions" which might have been elicited through ill-treatment or coercion.

## Chapter 2: Patterns of torture

### Nearly anybody is at risk of torture

In Turkey nearly anybody can become a victim of torture. Human rights organizations receive more information about torture of people suspected of pro-Kurdish, Islamist or leftist activities or protests against the F-Type prisons, because these groups have a greater knowledge of their rights and ways to seek justice. As the examples in this report show, many of the victims are women and children. Leading representatives of large legal political organizations are less likely to be tortured in custody, but some of them have become victims of this human rights violation. For example, the mayors of three southeastern cities who belong to the HADEP party were reportedly tortured in February 2000 and an Islamic-oriented mayor of a municipality close to Istanbul and his staff were allegedly tortured in April 2001.<sup>27</sup>

Human rights defenders and the Parliamentary Human Rights Commission confirm previous findings of the UN Special Rapporteur on torture that those suspected of theft and

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<sup>27</sup> See AI Index: EUR 01/03/00 for the Kurdish mayors, and Human Rights Foundation of Turkey, 3 May 2001, for the mayor near Istanbul.

burglary - among them many children - are still regularly beaten in detention. There are also reports that people have been tortured after being arrested on suspicion of corruption or connections to organized crime - including the nephew of a former State President. People who, for various reasons, are likely to have frequent problems with the police are less likely to report torture or ill-treatment to human rights defenders. Often they do not want any proceedings or their names published. Others do not want publicity due to their public status. In some cases torture is linked to discrimination on the basis of sex, sexual orientation or ethnicity. Torture on the grounds of ethnicity happens especially when police officers have previously been on duty in the southeast during the armed conflict.

On 18 March 2001 Mehmet Emin Toraman, a piano player from Diyarbakır living in the western city of Izmir, was followed by police officers who suspected him of burglary. When he tried to hide in a construction site, police reportedly pointed a gun at him and he fell from the sixth floor. Subsequently he was brought to a police station where he was beaten and insulted as a “dirty Kurd”. He had several broken bones, but reportedly was not taken to a hospital until the following day. On 25 September 2000 Mehmet Teomete protested against the detention of his brother in an identity check because he appeared to be from the east. Mehmet Teomete was then himself taken into a police car and broke his hand when he was thrown out of the car. Subsequently he was taken to the police station in Gürçeme in Izmir, where he was reportedly heavily beaten.<sup>28</sup> The police officers involved are said to have previously been on duty in the east.

### **Sexual torture of women and girls**

Rape and sexual assault by members of the security forces continues to be reported. During incommunicado detention in police or gendarmerie custody, women and men are routinely stripped naked. Methods of sexual abuse reported include electro-shocks, beating on the genitals and women’s breasts, squeezing the testicles and rape. Both men and women are subjected to sexual torture. But violence against women feeds off their discrimination in society and serves to reinforce it. The consequences of sexual torture are even more far-reaching for women than for men, because they involve the risk of pregnancies and ostracism from their own family and social group. Therefore, many women and girls prefer not to report rape and sexual abuse in custody. This taboo has been reduced since a Legal Aid project for women raped and sexually abused in custody was founded in Istanbul in 1997. Between mid-1997 and October 2001, 146 women sought the help of the legal aid project in Istanbul. One-hundred-eleven of the women are Kurds, four are Roma, one is Bulgarian and one is German. The alleged perpetrators are mainly police officers (108 cases), but also include gendarmes, soldiers and village guards, and in one case, prison guards. They are rarely brought to justice.

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<sup>28</sup> Human Rights Foundation of Turkey, 28 September 2000.



N.C.S., a 16-year-old Kurdish girl, and her 19-year-old friend, Fatma Deniz Polatta\_ were allegedly tortured and forced to give false confessions while detained at Police Headquarters in Iskenderun in March 1999. They were held in custody for seven and five days respectively. According to their testimonies, their torture included rape and other sexual assault. Both were kept blindfolded during their detention. For the first two days, N.C.S. was forced to stand continuously, prevented from sleeping and using the toilet, and denied food and drink except sour milk. She was forced to strip and remain naked in a cold room. During the interrogation she was beaten - with blows directed especially at her head, genitals, buttocks and breasts - and forced to sit on a

wet floor for long periods before being made to roll naked in water. On other occasions she was suspended from the arms and hosed with pressurized cold water. Police threatened to kill her and rape her mother. Fatma alleged the same treatment, as well as anal rape with a serrated instrument. While in police custody the two were also forcibly subjected to so-called “virginity tests”. Following a public outcry and international campaigning, four police officers were put on trial for torture. However, the trial has still not been concluded. The court has forwarded the psychiatric reports to the Forensic Institute for their comment. The reports certify that the two young women were exposed to a trauma and are suffering from Post-Traumatic Stress Disorder.<sup>29</sup>

In several cases reported to AI, “virginity tests” have been conducted on women and girls brought for medical examination in relation to police custody. Turkish authorities justify this humiliating practice by the need to establish whether a sexual assault has taken place. However, a “virginity test” (examination of the hymen) does not prove whether a rape has taken place, since rape can take place without penetration that breaks the hymen. The independent Turkish Medical Association stated in 1992 that “virginity examination” is a form of gender-based violence and an assault on a woman’s sexual identity. It can have traumatic effects. In January 1999, the Ministry of Justice issued a decree to the country’s prosecutors banning the practice of virginity examinations on women when there is no

<sup>29</sup> See Amnesty International: *Turkey: Young women raped and sexually assaulted in custody*, March 2000, AI Index: EUR 44/04/00; and *Concerns in Europe: January-June 2000*, AI Index: EUR 01/03/00.

allegation of sexual assault. In July 2001 the Health Minister decided to reinstate “virginity tests” on medical high-school students under certain conditions and authorized schools to dismiss girls who are proven not to be virgins. AI believes that forcibly subjecting detainees to so-called “virginity tests” is an egregious form of gender-based violence constituting torture or cruel, inhuman or degrading treatment. “Virginity tests” on high school students are discriminatory, can cause severe pain or suffering, are inflicted intentionally by state officials and therefore can amount to torture or ill-treatment.

AI received copies of medical documents confirming that “virginity tests” were performed on two young women on 12 January 2001. They had been taken into the custody of the Anti-Terror Branch of Siirt Police Headquarters on 9 January. The two young women were members of the HADEP youth wing and were arrested on suspicion of propaganda for the PKK. One of them was released when she was brought before a prosecutor after police detention, the other was remanded to prison. Regarding a separate incident in Van, local newspapers reported that the 16-year-old F.D.F., who had been detained on 30 June 2001, was subjected to a forcible virginity test. She was detained with another 10 people on suspicion that they might join the PKK. In his application her lawyer stated: *“My client was taken from Yoldöndü Gendarmerie Station to a hospital in Van without her consent. A female doctor subjected her to a virginity test without the necessary permission. On 3 July my client was taken to Van State Hospital. Two male doctors certified that my client was not ‘raped’.* This practice amounts to a violation of Article 243 TPC and is also in violation of the decree by the Ministry of Justice of 1999 which provides that nobody can be subjected to a forcible test of virginity.”<sup>30</sup>

### **Torture on the basis of sexual orientation**

Homosexuality is legal in Turkey, but discrimination and homophobia in Turkish society and among state officials increase the risk of violence and may hinder the victims’ access to justice. In August 2000 an AI delegate spoke to a transvestite and a transgender person who had been severely beaten by police officers in the early hours of 24 August. The transvestite had a broken nose, after having been punched by a police officer. The transgender person also reported attempts of rape during custody, and both reported discriminatory insults by police officers and prosecutors.

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<sup>30</sup> Human Rights Foundation of Turkey, 21 August 2001.



The most severe incidents of police brutality and victimization of transvestites occurred between 1995 and 1997 in Beyo\_lu, Istanbul, in an area under the supervision of a local police chief in what is alleged to have been an attempt to raise property values in the area where they lived. This police chief acquired the nickname “Süleyman the hose”, because he reportedly used to beat detainees, among them numerous transvestites, with a plastic hose. Footage of such beatings was shown on Turkish television in May 2000. Transvestites confirmed the torture, including beatings, in a subsequent press conference, which was accepted as a formal complaint and the prosecutor took their statements. On 26 January 2001 a trial began in which the chief commissioner was accused of

ill-treatment in 1996 and 1997. Only one of the eight plaintiffs could participate in this first trial session. Transgender activist Melike (Demet) Demir reported to AI that she, the other plaintiffs and the representative of IHD who accompanied them, could not enter the court room, because a group of right-wing activists blocked their way and attacked them while shouting slogans in favour of “Süleyman”. The human rights defender confirmed this report and also reported that after the trial session a group of trade unionists joined in the attacks against the transvestites.

### **Foreign nationals held in Istanbul**

More than 150 African nationals have filed complaints at the \_HD office in Istanbul about their treatment by police officers and gendarmes. The group complained of illegal detention, inhumane detention conditions, rape, sexual harassment and ill-treatment while they were held at the Foreign Nationals’ Department at Istanbul Police Headquarters from 7 to 14 July 2001 and during their subsequent deportation to the Greek border. They allege that one woman died at the border area on 22 July, and another suffered a miscarriage caused by the conditions in which she was held. The CPT visited the Foreign Nationals’ Department in 1997 and described it as “...grossly overcrowded...detainees were not provided with suitable means for sleeping (and in particular were not offered mattresses), ventilation and artificial lighting were inadequate, there was poor access to

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*natural light, and sanitary conditions were insufficient for the numbers held.*"<sup>31</sup> Judging from the complaints filed with the \_HD, conditions at the Department have not improved. Cells were crowded and detainees were apparently not provided with food, clean water or medical attention, so that several reportedly became ill. Representatives of human rights groups attempted to visit the group, but were turned away.

### **Suspected Hizbullah members in Diyarbak\_r**

On 17 January 2000, Turkish security forces started an extensive operation against the armed Islamist organization Hizbullah. Since then, AI has repeatedly expressed concerns about what appears to be a new pattern of illegally prolonged police detention with an increased risk of torture. After the maximum period of 10 days in police detention the detainees are brought before a judge who remands them to prison, but subsequently the police officers bring them back to the Police Headquarters in Diyarbak\_r. The legality of this measure remains contested. Under Law No. 3419, the so-called "Repentance Law", former members of illegal armed opposition groups may turn state's witness in exchange for reduced sentences. The Governor for the Region under State of Emergency can apply for permission to take the statements of these prisoners, who can then be taken out of prison for up to 10 days for this purpose. Yet in the cases brought to AI's attention, relatives and lawyers told AI that the involved men did not volunteer to cooperate with the state. The lawyers have reportedly appealed to the State Security Court and have said that the Court does not investigate whether the related prisoners do want to turn state's witness. Lawyers also reported that detainees were brought from other provinces to Diyarbak\_r, the only place where such prolonged custody is applied.

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<sup>31</sup> CPT/Inf (99) 2, para. 56.

Tekin Ülsen and eyewitnesses assert that he was seized in the street by four plainclothes police officers on 23 June 2001 and taken to the Anti-Terror Branch of Police Headquarters in Diyarbakır. The local police and prosecutors repeatedly denied to his family that he was in detention and his name did not appear on any lists of detainees at local police stations. During this period of unacknowledged detention, he says that he was blindfolded and questioned in relation to the armed opposition group Hizbullah. He was apparently tortured with electric shocks, hosed with cold water, had his wrist cut and his testicles squeezed. Police officers also allegedly took him to the Tigris river and threatened to kill him and his family unless he confessed to carrying out assassinations. On 13 July, police brought his sister to Police Headquarters to identify him from a group who had been detained with false identity papers. He reportedly had difficulty recognizing her and was unable to stand. He continued to be held until 19 July, when a judge ordered that he be remanded to prison. His family saw him at the entrance to the court and state that his eyebrows had been torn out, and that it seemed as though he was not really conscious. In spite of the judicial order, he was returned to the Police Headquarters. He was finally moved to Diyarbakır prison on 20 July.<sup>32</sup>

#### **Torture and ill-treatment in prisons**

Torture mainly takes place in police and gendarmerie custody before detainees are brought before a judge and remanded to prison. However, there are also long-standing concerns about ill-treatment of prisoners during transfers to and from prisons. Prisoners are usually transferred to other prisons, to medical treatment or to court by gendarmes. AI has received numerous accounts of prisoners being beaten and ill-treated during these transfers and has repeatedly called on the Turkish authorities to ensure that remanded and convicted prisoners are never brought into contact with police and gendarmerie. These concerns increased with the introduction of so-called “F-Type” prisons.

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<sup>32</sup> Further Urgent Actions with a similar concern are EXTRA 64/01 on 14 September 2001 for Hac Bayancık, UA 218/01 on 4 September 2001 for Hac Elhunisuni, UA 209/01 on 22 August 2001 for Yasin Karadağ, UA 194/10 on 31 July 2001 for Edip Balık, UA 317/00 on 17 October 2000 for Fesih & Hatice Güler - updated on 5 July 2001, EXTRA 30/00 on 3 April 2000 for Fahrettin Özdemir. See also EUR 01/03/00.

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*Isolation in prison can amount to ill-treatment*<sup>33</sup>

Prison conditions have been a subject of intense debate in Turkey for more than a year. Prisoners have usually been housed in large dormitories that hold 60 and sometimes more prisoners, but the Turkish authorities have started to build new wings to existing prisons and also 11 F-Type prisons in which dormitories are replaced by smaller cells. From the start of this process, there have been major protests and clashes in prisons. From October 2000, more than 1,000 political prisoners participated in a hunger strike in protest against the F-Type prisons.<sup>34</sup>

On 19 December 2000 the security forces conducted an operation in 20 prisons during which some 30 prisoners and two soldiers died. Hundreds of male political prisoners were transferred using excessive force to three F-Type prisons. As of July 2001, six F-Type prisons were already in use, and five more were being constructed. They have single and three-person cells with adjacent yards for three prisoners at the most.

The inmates of F-Type prisons have been kept in solitary confinement or small group isolation. They have been able to interact with at most two other prisoners, but have had no opportunity to associate with other prisoners. Such prolonged isolation can cause serious physical and mental harm and amounts to cruel, inhuman and degrading treatment. AI calls for it to be ended immediately.

Isolation conditions can even be increased by judicial decision. AI has received reports that in Tekirdağ F-Type prison Baki Yağcı, who had received an additional sentence of two years' confinement, has been held in a small cell without windows since April. He has not been allowed to receive letters from his family and has restricted access to the yard. AI was informed that the regime imposed on him improved following AI campaigning, but only temporarily. His health is reported to have deteriorated. In a letter of 17 September 2001 the Turkish authorities denied these allegations.

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<sup>33</sup> For details see Amnesty International: *Turkey - "F-Type" prisons: Isolation and allegations of torture or ill-treatment*, April 2001, AI Index: EUR 44/025/2001.

<sup>34</sup> By the end of September 2001, 39 people (31 prisoners or newly released ex-prisoners and eight relatives and supporters) had died as a result.

Article 16 of the Anti-Terror Law – which laid down a draconian regime of intense isolation, but was rarely implemented before the opening of the F-Type prisons - was finally amended in early May to allow prisoners to participate in communal activities such as sport and education, and to receive unobstructed visits. Although a welcome and overdue step, the wording of the law suggests that these rights will be provided at the discretion of the prison authorities. The use of communal areas is granted only within the "framework of rehabilitation and education programs". When an ad-hoc delegation of the European Parliament visited two F-Type prisons in early June, they found that the common areas were not yet ready for use. They concluded that "isolation was almost total and therefore excessive, provocative and a form of unnecessary oppression, which can be a form of psychological torture".<sup>35</sup>

AI has urged the Turkish authorities to take the following measures to bring the situation in Turkish prisons into line with international standards:

- Regimes of small-group isolation and solitary confinement in F-Type and other prisons should end immediately and prisoners should be allowed to spend at least eight hours of the day taking part in communal activities outside their living units as called for by the CPT;
- Prisoners should never be tortured or ill-treated; an independent and comprehensive investigation should be launched into the deaths and allegations of ill-treatment and torture during the December 2001 prison operation, with the results made public and anyone identified as responsible for torture or ill-treatment brought to justice;
- Prisons should be open to the scrutiny of human rights defenders, including doctors and lawyers, to ensure that they are run in accordance with Turkish law and international standards.

#### **Excessive force during searches and arrests**

Mass arrests have frequently been reported during protests about the new F-Type prisons and demonstrators have allegedly been beaten during arrest. Until the December 2000 prison operation, protestors were generally arrested for "violent demonstrations" and

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<sup>35</sup> EU document PE 304.365, 13 June 2001.

brought to security branches where they were detained briefly and had the right of access to lawyers.<sup>36</sup> On Mondays following protests at the weekends, numerous patients with acute problems came to the TIHV office in Istanbul. In November 2000, staff reported that of 70 to 80 protestors who applied for treatment, 30 had fractures. The protestors were generally not formally arrested and in some cases were not brought before a prosecutor. Since the victims of such excessive force cannot prove that they have been in detention, it is difficult to bring the perpetrators to justice.

Similar examples of excessive force during mass arrests were reported from Diyarbakır and other places where Kurds were involved in demonstrations in 2000 and 2001. The latest incident occurred before and after World Peace Day on 1 September 2001 when at least two members of HADEP died and hundreds were beaten or arrested throughout the country when they attempted to join a peace march. Police tried to disperse the groups with truncheons, tear gas and water cannons.<sup>37</sup>

### Chapter 3: The climate of impunity for torturers

Under Turkish law, ill-treatment, torture, and unregistered detention are all outlawed as criminal offences.<sup>38</sup> Prosecutors should pursue complaints of such offences to the same extent as any other reported crime. A specific complaint should not be necessary to trigger an investigation. Where a prosecutor hears about such offences within their jurisdiction from statements made in court or through the press or other public declarations, they are bound by duty to follow up and, where appropriate, prosecute. International human rights law and standards impose special responsibilities upon states to conduct prompt and impartial investigations into reports of torture, “disappearance” and extrajudicial execution.<sup>39</sup> The UN Special Rapporteur on torture has observed: “When a detainee or

<sup>36</sup> After the prison operation they were at high risk of being dealt with under Article 169 TPC (support for illegal organizations) and being brought to the Anti-Terror Branch with no access to lawyers and the outside world for the first four days.

<sup>37</sup> See UA 216/01, AI Index EUR 44/059/2001 and EUR 44/060/2001.

<sup>38</sup> For **torture** see above footnotes 8 and 9. **Unregistered detention:** Article 181 of the TPC: “A civil servant who deprives a person of their liberty by abusing his duty as a public officer or contravening the relevant procedures and conditions shall be punished by a sentence of imprisonment of from one year to three years.” **Death in custody as a result of torture:** Article 450/3 provides the death penalty for intentional murder by torture, while Article 452 provides for 15 years’ imprisonment for unintentional killing by wounding or battery.

<sup>39</sup> UN Convention against Torture, Articles 12, 13; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles), Principle 33; UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 13 (1); UN Standard Minimum Rules for the Treatment of Prisoners, Rule 36 (4); European Prison Rules, Rule 36.

relative or lawyer lodges a torture complaint, an inquiry should always take place.”<sup>40</sup> But states must also investigate even when there has been no complaint, but where there is nevertheless reasonable ground to believe that torture or ill-treatment has occurred.<sup>41</sup> Investigations should, where possible, conclude with the prosecution of those responsible for the torture, “disappearance” or extrajudicial execution. But in addition, a comprehensive report of the investigation should make public the methods and findings.<sup>42</sup> The Turkish government and judiciary have failed to fulfil the moral and legal responsibilities imposed by these standards. The reasons for the climate of impunity for torturers lie both within bad laws and bad practices.

### **The law on the prosecution of civil servants**

The Law on the Prosecution of Civil Servants, which dated from the Ottoman era, was an extraordinary obstacle to bringing perpetrators to justice. It gave a local administrative board established under the provincial governor the power to decide whether or not to prosecute members of the security forces for any offence other than intentional killing. This outdated law was finally replaced on 2 December 1999 (Law No. 4483). However, under the new law it is still not possible to open an investigation against a civil servant who commits a crime unless the related superior grants permission.<sup>43</sup> AI strongly recommends that the decision whether or not to prosecute security officials for torture, “disappearance” or extrajudicial executions should be taken only by prosecutors and judges.

A representative of the TIHV office in Diyarbakır studied the files of some 30 formal complaints of torture in Diyarbakır. According to his findings, between the beginning of 1999 and the middle of 2000 the governor of Diyarbakır did not give

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<sup>40</sup> Report of the Special Rapporteur on torture (UN Doc. E/CN.4/1995/34, 12 January 1995, para 926 (g)).

<sup>41</sup> *Aksoy v Turkey*, Judgment of 18 December 1996, para 99 (duty to investigate when signs of torture visible on detainee, even if no complaint); UN Declaration against Torture, Article 9: “Wherever there is a reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.”; UN Convention against Torture, Article 12: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

<sup>42</sup> UN Principles on Extra-legal Executions, Principle 17; UN Declaration on Disappearance, Article 13.

<sup>43</sup> For details see: Amnesty International: *Turkey - New Law on the Prosecution of Civil Servants: not a major step towards ending impunity for torturers*, July 2000, AI Index: EUR 44/38/00.

permission for a prosecution for torture to be initiated in any of the cases submitted to him either under the new or the old law.<sup>44</sup>

Ramazan Tekin, Deputy Mayor of Diyarbakır, was arrested in January 2000 and held for 10 days at Diyarbakır Gendarmerie where he was reportedly beaten, suspended by the arms, sexually abused and given electric shocks. Doctors from the Forensic Institute who examined him reportedly confirmed that his ribs were broken and his kidneys damaged. His lawyer filed a formal complaint against the security officers suspected of being responsible. After having been remanded to prison he was visited by a second lawyer who reported that he saw visible marks of torture on him. However, the governor of Diyarbakır did not give permission for the two gendarmes to be prosecuted. The appeal against this decision was rejected on 11 October 2000.<sup>45</sup>

The following example shows how high level politicians contribute to preventing the investigation and prosecution of suspected torturers.



<sup>44</sup> Presentation of Sezgin Tanrıkulu at the meeting with the Human Rights High Coordinator in Diyarbakır on 21 October 2000.

<sup>45</sup> Further examples mentioned in this report are those of Gülistan Durç, Sait Dönmez and Mehmet Ali Kaplan.

In July 1999 Cevat Soysal, a suspected PKK leader, was reportedly abducted in Moldova, taken to Turkey and held for 10 days in incommunicado detention. He reported that at the Turkish Secret Service (MIT) headquarters he was given electric shocks, hung by the arms, forced to lie naked on ice, sprayed with pressurized water, deprived of sleep, beaten and forced to swallow a drug. At their meeting Cevat Soysal's lawyer noted needle marks, bruising and other signs consistent with his client's allegations of torture. On 20 October 1999 the Prime Minister informed the Justice Minister that in accordance with the Law on the State Intelligence Services a prosecution of his alleged torturers would not be appropriate and in November 1999 the prosecutor decided not to proceed against them. In January and February 2000 the appeals of Cevat Soysal and his

lawyers against the decision were rejected. Cevat Soysal remains imprisoned on charges of separatism and being a leading member of the PKK.

### **Pressure on torture victims to deter them from filing complaints**

The technical and legal components of impunity are many and varied. While describing the details, it is important not to miss the broader picture of fear and intimidation. Torture is not only inflicted in order to extract confessions, but also to instil profound dread into victims, and to demonstrate the seemingly boundless power of the perpetrators. This ensures that victims and relatives are frequently terrified into silence, and is perhaps the chief barrier to investigation and prosecution.

Students are one of the groups who figure prominently among the victims of torture. They often fail to file a formal complaint because they want to resume their studies as soon as possible. Even a simple complaint about beating at school can trigger more pressure.

Seventeen-year old school student Engin Duruk in Diyarbakır filed a formal complaint against his assistant school director for repeated beatings and insults. He was called to a meeting at the director's office on 17 January 2001, where he was threatened not only by the assistant director, but also by three police officers. When he filed another complaint, he was repeatedly threatened by police officers. He was reportedly beaten and kicked by one of the police officers when he left school on 19 February. The same police officer said on 21 February: "The prosecutor is my friend. When I give my statement to the prosecutor I will tell him that this boy has connections with the organization [probably referring to the PKK]." Engin Duruk was dismissed from the school and had to leave the town temporarily. He is now continuing his studies at another school. A trial has been opened into the alleged beating by the assistant director, but the prosecutor decided not to proceed against the police officer.

In several cases AI was told that people who filed complaints of torture against security officers were threatened and assaulted.

According to reports, three armed plainclothes officers, who introduced themselves as police from the Anti-Terror branch, came to the house of a 51-year-old woman, K.Ö., in Adana at about midnight on 19 November 1999. They asked about the whereabouts of her daughter, whom they alleged had joined the PKK. After an attempt to strangle her, K.Ö. was reportedly blindfolded and raped with a truncheon. She was later found unconscious and bleeding. On 7 December she lodged an official complaint against the police officers and in February 2000 spoke publicly about what had occurred. Police officers have raided her house several times since then, beaten her and threatened her with death. The Adana State Prosecutor has issued a decision not to prosecute anyone over her complaint. Her lawyers

appealed on 12 June 2000 against that decision. On 24 June a group of men wearing snow masks allegedly came to K.Ö.'s house and tried to force her to sign a statement alleging that the person/s responsible for the rape were from the PKK. When K.Ö. refused, they beat her and pressed their guns against her neck. The last threatening raid on her home known to AI was on 10 June 2001, this time reportedly to make her withdraw her application to the European Court of Human Rights.

Many women do not want to file complaints of sexual torture, because they are terrified of further reprisals as well as the shame they believe would be brought upon themselves and their families.

After a 1 May demonstration in 2001 several young women were taken to police headquarters in Izmir. Two of them gave similar reports to AI of how police officers tried to recruit them as informers. In the middle of the night each one was taken to a separate room and blindfolded, beaten, stripped naked and sexually abused. Subsequently both women were raped by police officers in these separate rooms. The women were released the following day without having seen a prosecutor or a judge.

#### **Prosecutors' failure to investigate**

Prosecutors are responsible for conducting the preliminary investigation while a defendant is in police custody. They are therefore likely to be the first to see detainees who have obviously suffered ill-treatment, to receive medical reports suggesting that ill-treatment or torture has taken place, or to hear a direct complaint of ill-treatment or torture from a detainee. The prosecutor should be aware of any irregularities concerning detention such as late registration, failure to inform relatives, or denial of access to legal counsel. Any committed and energetic prosecutor presented with an allegation of torture in police custody is in a position to gather promptly a considerable body of evidence to support or refute the charge.

Because torture in custody takes place in an enclosed and specific locality with a limited number of known suspects, conviction rates should be very much higher than in comparable cases of common assault taking place on the street. The prosecutor can immediately seize all records at the police station or gendarmerie to find out who was on duty at the time of the alleged offence (and if no records are available, officers should be prosecuted or disciplined for their administrative failure). Other detainees can be examined and questioned about their experiences in custody. Interrogation rooms can be investigated for signs that torture has taken place. The prosecutor could establish whether detainees were permitted access to legal counsel and whether or not families were informed. Sophisticated medical techniques can establish soft tissue or nerve trauma which might not be visible to the naked eye. Yet prosecutors are still very reluctant to respond to complaints and evidence

of ill-treatment and torture. One of the reasons is the close working relationship between prosecutors and police.<sup>46</sup>

In an interim resolution adopted on 9 June 1999, the Council of Europe Committee of Ministers called upon the Turkish authorities “*rapidly to complete the announced reform of the present system of criminal proceedings against members of the security forces, in particular by abolishing the special powers of the local administrative councils in engaging criminal proceedings, and to reform the prosecutor’s office in order to ensure that prosecutors will in the future have the independence and necessary means to ensure identification and punishment of agents of the security forces who abuse their powers so as to violate human rights*”.<sup>47</sup> This reform remains overdue.

Since her first arrest in March 1996, when she was only 17 years old, Gülistan Durç, the head of the women’s commission of the legal pro-Kurdish party HADEP in Mardin, has been taken into custody numerous times for between two and seven days. During interrogations by officers from the Anti-Terror branch, she says she was subjected to various forms of torture including being stripped naked and blindfolded, heavily beaten, sprayed with cold pressurized water, suspended by her arms, threatened with death, burned with cigarettes and hot wires, and prevented from sleeping. After especially severe torture in April 1999 she filed a formal complaint, but withdrew it when she was arrested again two days later from her home by plainclothes police who threatened her. On 19 December 1999 Gülistan Durç was arrested by police officers using such force that her arm was broken. Upon her release she filed a formal complaint. She was again arrested in February 2000 and held for two days at Mardin Police Headquarters, where she was beaten on her broken arm which had only just been removed from plaster. The resulting damage and pain were so intense that she was released from prison on medical grounds pending a trial in which she was charged with membership of an illegal organization. But in spite of her long history of torture, none of the suspected perpetrators has been brought to justice. The reasons reflect a pattern of a lack of proper investigations into torture allegations in Turkey: Gülistan Durç has frequently been threatened by police to make her withdraw her formal complaints. The chief prosecutor reportedly told her: “Who are you that you open a trial against the police?” and referring to a superintendent: “He is not a small figure, he has seven units under him.” Although her arm was in plaster he said she had only pretended to be injured. Forensic examinations were in most of the cases reportedly superficial. Under the 1999 Law on the Prosecution of Civil Servants the governor of Mardin refused permission to prosecute a police officer after her formal complaint in December 1999. A court in the nearby city of

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<sup>46</sup> See also Amnesty International: *Turkey: The duty to supervise, investigate and prosecute*, April 1999, AI Index: EUR 44/24/99.

<sup>47</sup> Interim Resolution DH (99) 434.

Diyarbakır rejected her lawyers' appeal against this decision on the grounds that there was not sufficient evidence of ill-treatment, although she had a medical report. In August 2000 the prosecutor decided not to proceed. There has not been an attempt to seek further evidence. Local human rights organizations have supported Gülistan Durç's attempt to seek justice. Following medical and psychiatric examinations, specialists in Izmir issued a report in January 2001 which concluded that she is suffering from post-traumatic stress disorder and has further medical problems which corroborate her reports of torture.

### **Routine blindfolding makes identification of torturers difficult**

Steps to promote accountability by police and to end torture must include ending the practice of blindfolding in police custody. The practice of blindfolding was condemned by the UN Committee against Torture in its report on Turkey under the Convention against Torture in November 1993. However, in Turkey the Regulation on Apprehension does not prohibit blindfolding, and the practice continues as a matter of routine. Almost all detainees are blindfolded while giving their statements, some of them throughout their detention in police or gendarmerie custody. Prolonged blindfolding can constitute a form of ill-treatment or even torture in itself, and makes the reliable identification of officers responsible for abuses more difficult.

### **The role of doctors**

It is extremely difficult to achieve a proper investigation and prosecution for torture without a corroborating medical certificate from a doctor or health centre authorized by the State Forensic Medicine Institute. According to the Regulation on Apprehension, detainees are to be presented to doctors shortly after their arrest, when their detention is extended and at the end of their police or gendarmerie custody. This practice could be a safeguard against torture if these medical examinations were comprehensive and independent and took place in an atmosphere without intimidation. Furthermore, health professionals who examine the detainees need special training and guidance. In nearly all cases known to AI, doctors only used one-page forms and noted "no signs of beating or force" instead of the three-page forms for general judicial medical examination reports and sexual assault reports prescribed by the Justice Ministry since 20 September 2000.

### *Attempts by security officers to avoid proper medical reports*

Police and gendarmerie have developed strategies to avoid the risk of detainees securing a full medical report. Especially in cases when they do not expect the detainee to be remanded to prison, they seem to prefer methods of torture or ill-treatment which leave no visible marks, such as hosing with pressurized cold water, squeezing men's testicles and women's breasts, making the detainee stand or sit in uncomfortable positions for hours,

food, drink and sleep deprivation and the widespread use of psychological forms of torture, especially threats of death and - in the case of women - rape.<sup>48</sup>

Doctors at local hospitals or infirmaries are frequently asked by security officers to examine a large group of detainees within a very short time. This often happens in the middle of the night. When detainees are taken for official medical examination, they are reportedly often told by police officers that if they declare their injuries they will be brought back to the police station for further “interrogation”. According to many reports received by AI, medical examinations often take place in the presence of security officers who are either in the same room or within hearing distance in order to intimidate both the detainees and the doctors. Meetings between a psychiatrist and a female prisoner who had complained of rape in custody had to be conducted in writing because the security officers who had brought the woman from prison to the hospital refused to leave the room.

The Turkish government reportedly plans to change some provisions of the Regulation on Apprehension. Article 10 of the Regulation would read: *"It is a basic rule for the relationship between the patient and the doctor that the person to be examined stays only with the physician. Only the doctor or the suspect may ask for personal security reasons that the examination is carried out in the presence of the security officers."*<sup>49</sup>

When, in spite of intimidation attempts, the detainee obtains a medical report confirming torture wounds, some security officers reportedly destroy these medical reports or go to a second doctor who does not register torture wounds.

Seher Durgaç was reportedly tortured by heavy beating, electric shocks, pressurized water and rape threats when she was held at the Anti-Terror Branch of Diyarbakır Police Headquarters from 13 June 2001 for six days. She reported that she was subsequently taken to an infirmary. When the doctor wrote a report confirming her torture allegations, police officers took her to another doctor who wrote a report stating that she had not been tortured.

#### *Intimidation of doctors and patients by police officers*

AI has received several reports about intimidation of doctors.

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<sup>48</sup> When the Mayor of Siirt, M. Selim Özalp, was in the custody of Diyarbakır Gendarmerie Headquarters between 19 and 24 February 2000, he was reportedly also subjected to a form of strangulation where the hollow of his throat was repeatedly pressed by the thumb of his assailant. His assailants also applied severe pressure to his armpits.

<sup>49</sup> Human Rights Foundation of Turkey, 20 August 2001.

Mehmet Ali Çelik, a 17-year-old Kurd working for a legal pro-Kurdish daily newspaper, reported that he was heavily beaten by plainclothes police officers when they came to search his house in Nusaybin in the province of Mardin on the night of 18 February 2001. When he filed a formal complaint and tried to obtain a medical report the police commissioner reportedly intimidated doctors at the local hospital not to write such a report. When he subsequently went to Mardin, doctors were afraid to write a report as soon as they learned that he had been tortured.

A group of some 20 people, including Hac\_ Inan and Kamuran Kabul, were arrested in \_\_rnak on 21 March 2000 and reportedly tortured in \_\_rnak Police Headquarters. Methods included electric shocks, beating of the hands with a truncheon and hosing with pressurized water. On the way to a medical examination police officers threatened the detainees saying that they would kill them if they mentioned torture. Most of the doctors were afraid to record what they saw. One reportedly told a detainee “If I note torture wounds I will be tortured myself”. Other doctors did not allow the police inside the examination room and one noted that Hac\_ Inan had a wound on his hand caused by beatings. When, after 10 days, the group was brought to Mardin Prison the prison director did not accept them because of the wounds on their bodies.

#### *Complicity of some health professionals*

The frequently reported intimidation of doctors by the security forces leads to a degree of complicity on the part of doctors. The following examples indicate that some health professionals voluntarily contribute to the concealment of torture.

In three villages and the small town of Sivasl\_ in the western province of U\_ ak, 11 people were arrested from their homes by gendarmerie during the night of 23 and 24 January 2001. The arrests were based on an anonymous complaint that they had stolen sheep five years earlier. The local prosecutor gave permission to hold them in detention for four days. On 27 January they were released by a prosecutor. The men reported that they were blindfolded and handcuffed from the moment of their arrest. During transport and at the gendarmerie station they were beaten and forced to sit on a very cold concrete floor having been stripped of their trousers and underpants. Two of them also reported that they had been subjected to *falaka* (beating on the soles of the feet), one squeezing of his testicles, another one squeezing of his penis. They were also threatened with other forms of torture. AI was told that the gendarmes involved had previously been on duty in the east. The shepherds reported that when they were taken to the state hospital in Sivasl\_ the morning after their arrest, blindfolded and with their hands chained, the doctors did not examine them properly and did not note their complaints. When one of the detainees referred to pain in his leg caused by beatings the doctor reportedly responded “That’s normal”. To another detainee who said “My head is swollen and I think it’s bleeding” the doctor responded “Your head is split into two halves”. After their release they filed formal complaints against the gendarmerie officers

and the doctors. With the support of human rights organizations, four of the shepherds were medically examined in Izmir, and the Medical Chamber in Izmir concluded that medical and psychiatric results corroborated the torture allegations. However, seeking justice is difficult for the shepherds, who cannot afford to leave their sheep unattended.

For the first time, a deputy provincial health director has been brought to trial for attempts to conceal torture.

Sait Dönmü\_ and Mehmet Ali Kaplan were arrested on 30 June 2000 in the Silvan district of Diyarbak\_r on suspicion of support for the PKK. Subsequently they were reportedly stripped naked, blindfolded and tortured at Silvan gendarmerie headquarters. They were beaten, had their testicles squeezed and were given electric shocks for six days, until they were brought before a prosecutor and released. On 1 July they were examined at Diyarbak\_r State Hospital where doctors noted their torture wounds. After gendarmes complained about the medical report, the deputy health director intervened and tried to persuade the doctors to change their report. When the doctors refused to issue a false report the gendarmes reportedly destroyed the original report and went to a hospital in Silvan from where they obtained a report stating “No signs of beating or violence”. Later, the Medical Chamber of Diyarbak\_r, Batman and Siirt filed a formal complaint against the gendarmes, the doctor in Silvan who issued the false report and the deputy health director. Under the 1999 Law on the Prosecution of Civil Servants, the governor of Diyarbak\_r refused permission for the prosecution of the deputy health director, but the local prosecutor appealed against this decision. The appeal was accepted and finally a trial was opened in which the deputy health director was charged with misuse of his duty.<sup>50</sup>

#### *Shortcomings of the Forensic Institute*

Investigations into torture allegations rely heavily on medical reports prepared by the Forensic Institute in Istanbul, which is not independent, but operates under the auspices of the Justice Ministry.<sup>51</sup> Prosecutors told AI that the workload of the experts is so high that it can cause major delays in the investigation. They expressed the view that there should be local branches of the Forensic Institute with experts in each province. Local human rights defenders also raised the concern that fees for examinations by the Forensic Institute have to be paid by the victim, which can deter poor families. The treatment and rehabilitation centres of TIHV, however, offer free examination and treatment to torture survivors. Given the shortcomings of the Forensic Institute, the fact that prosecutors and courts often do not

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<sup>50</sup> In a second trial, two gendarmes accused of having tortured Mehmet Ali Kaplan and Mehmet Sait Dönmü\_ were acquitted on 27 April 2001. According to the statements of the plaintiffs, they were not the officers who had tortured them. The court decided to search for the real perpetrators.

<sup>51</sup> See also the report of the UN Special Rapporteur on torture, E/CN.4/1999/61/Add.1, para 54.

accept expert reports prepared by institutions other than the Forensic Institute has especially grave consequences.



Fatma Tokmak and her two-year-old son Azat were detained on 9 December 1996 on suspicion that she and her husband were supporters of the PKK. Fatma Tokmak spent 11 days in detention at the Anti-Terror Department of the police headquarters in Istanbul. During this period she was allegedly subjected to repeated physical and mental torture at the hands of police officers. According to reports, police officers also tortured Azat in order to elicit confessions from Fatma Tokmak and to make her accept the allegations against her. Fatma saw police officers burn her infant son's hands with a cigarette and administer electric shocks to his back. Police officers entered Fatma's cell one night and took away Azat, reportedly saying: "you won't see him again because we are going to kill him now". On 20 December 1996 Fatma was taken to the State Security Court in Istanbul which remanded her to prison in Gebze where she still is being held. After a long bureaucratic struggle, Azat was found in an orphanage and returned to his family. The orphanage staff reported that Azat Tokmak was in a very bad condition when he was brought to them and that he was very uncommunicative during the two and a half months he was with them. In 1997 Fatma Tokmak filed a formal complaint against the police officers who tortured her son and herself. The public prosecutor in Fatih decided in July 1998 not to initiate proceedings. The prosecutor had not taken statements from Fatma Tokmak or the police officers, nor had he considered a report by the Istanbul Medical Chamber of 21 April 1998 who examined Azat. The findings of the Istanbul Medical Chamber described a pale lesion on the third finger of his left hand consistent with the allegation of having a cigarette stubbed out on the hand. The report also stated that Azat suffered from Post Traumatic Stress Disorder, which added weight to torture allegations. He was reportedly especially disturbed by cigarettes and showed fear when he saw police officers. Fatma Tokmak's lawyers appealed against the decision not to prosecute. Upon the request of the local court, the Forensic Institute examined Azat on 29 December 1999 and found a superficial scar. The examiners stated that it was medically impossible to identify when the wound was caused. Referring to this report, Fatma Tokmak's complaint was rejected in June 2000 on the basis of inadequate evidence. None of the police officers responsible for subjecting Fatma Tokmak and her two-year-old son to torture have been prosecuted.

Psychiatric reports have gained importance in the documentation of torture, since the security forces increasingly use psychological and other forms of torture which do not leave visible wounds, making torture allegations more difficult to verify. Victims themselves and some lawyers believe that it is not worthwhile filing a formal complaint of torture if the torture has not left such visible wounds. Yet TIHV experts have equipment, knowledge and experience with which they are able to identify the traces left by a variety of torture techniques. Psychiatric reports are especially important in rape cases, because the usual delay in obtaining physical medical examinations seriously hinders the usefulness of such examinations. The Legal Aid Project in Istanbul for women sexually tortured has been urging Turkish courts to accept psychiatric reports as evidence in trials on rape in custody allegations. Although some courts have accepted such reports, AI has been informed of several trials concerning alleged rape in custody in which the courts did not seek as evidence psychiatric reports prepared by expert institutions.

An AI delegate observed the 28 March 2001 session of the trial of three gendarmes charged with having tortured Fatma Çakır in 1993. Only years later could Fatma Çakır find the strength to report her torture (which included a serious sexual assault by gendarmes in Mardin Gendarmerie Headquarters). Her lawyers requested her transfer to the Psycho-Social Trauma Centre at Çapa Medical Faculty in Istanbul, but the Heavy Penalty Court in Mardin referred her only to the Forensic Institute in Diyarbakır where no such specialized expertise exists.

The consistent failure of forensic and other doctors to follow acceptable procedures in the investigation and documentation of torture and in subsequent report writing led a number of Turkish doctors to join initiatives for a new standard for medical investigation of torture. In August 1999 the result of this initiative -- the Istanbul Protocol -- was delivered to the UN High Commissioner for Human Rights, Mary Robinson -- and in mid-2001 the protocol was published in the UN's Professional Training Series.<sup>52</sup>

#### *Harassment of medical personnel for working against torture*

Health professionals who act according to their medical ethics, who do not falsify medical reports, who document torture and provide treatment to the victims continue to face harassment and persecution. Dr Alp Ayan and Günseli Kaya, both working at the Izmir office of TIHV and active in IHD, were arrested with others on 30 September 1999 near Izmir when they tried to attend the funeral of one of 10 prisoners killed in Ankara prison. The assembly, which was regarded by the authorities as an illegal demonstration, was

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<sup>52</sup> *Istanbul Protocol - Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Geneva, 2001. Available on-line at: <http://www.unhchr.ch/pdf/8istprot.pdf>.

dispersed. On 3 October, they were remanded to prison until 20 January 2000, when they were finally released pending a trial which is still ongoing.<sup>53</sup> The TIHV representative in Izmir, Professor Dr Veli Lök, was sentenced to one month's imprisonment (commuted to a fine and suspended conditionally) for violating the press law. He had stated that in the above case, the law had been strained to its limits to make the TIHV staff members pay for their work against torture.

Dr Zeki Uzun, a gynaecologist working voluntarily for the TIHV in Izmir in the examination and treatment of torture victims, was arrested on 19 October 1999 from his surgery and reportedly tortured at the Anti-Terror Branch of Izmir police headquarters. Despite the existence of a medical report issued by the Medical Chamber confirming the torture allegation, the prosecutor decided in November not to prosecute the alleged perpetrators. However, a trial was opened against the doctor. He was charged under Article 169 of the TPC with supporting the PKK, because he had treated two patients although he allegedly "knew that they were members of an illegal organization". He was acquitted on 23 May 2000.

Professor Dr \_ebnem Korur Fincanc\_ was dismissed from her post at the Expert Council of the Forensic Institute in Istanbul on 8 February 2001. She had signed reports corroborating torture allegations, including the prominent case of the trade unionist Süleyman Yeter, who had died as a result of torture in Istanbul police headquarters in March 1999.<sup>54</sup>

The most recent and comprehensive assault on doctors who provide examinations and treatment to torture survivors is the raid of the TIHV Diyarbak\_r office and the confiscation of all patient and doctor related files, as mentioned above. It is unacceptable that Turkish authorities classify the treatment of torture victims as "illegal activities".

### **Sentences for torture and ill-treatment in Turkish law**

Law No. 4449 adopted in 1999, which amended Article 354 of the TPC, provided sentences of between four and eight years' imprisonment for health personnel who conceal torture by issuing false reports. It also increased the upper limits of sentences for torture and ill-treatment. It introduced a sentence for torture or cruel, inhuman or degrading treatment of

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<sup>53</sup> AI Index: EUR 44/67/99 and EUR 44/71/99.

<sup>54</sup> For the case of Süleyman Yeter see Amnesty International: *Turkey: Torture - A major concern in 1999*, March 2000, AI Index: EUR 44/18/00, p.5, and Council of Europe: *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 February to 3 March 1999*, Strasbourg, 7 December 2000, para 11.

up to eight years' imprisonment and permanent or temporary disqualification from holding public office (Article 243 of the TPC), and a sentence of up to five years' imprisonment and temporary disqualification from holding public office for ill-treatment or physical harm (Article 245 of the TPC). Although seemingly a step against the climate of impunity for torturers, the law has changed little in practice, because the lower limits have been left unchanged. And according to an important ruling of the Appeal Court, Turkish courts should stick close to the lower limit of sentences for torture.<sup>55</sup> If the lower limit of one year's imprisonment is applied, the judge can postpone the imposition of the sentence and the perpetrator is normally not suspended from duty.<sup>56</sup>

#### *Narrow definition of rape*

Bringing perpetrators to justice for rape and sexual abuse is especially difficult. One of the reasons is that the TPC only mentions rape (or rather "ravishing / violating the chastity, *\_rza geçmek*, Articles 414-418) and sexual harassment (Article 421) as crimes. Physical sexual abuse is not mentioned as a crime in the TPC. Furthermore, the Appeal Court has defined rape very narrowly as penetration of the vagina by a penis. Finally, rape and sexual abuse are not yet defined as torture by Turkish courts. Therefore, lawyers intending to file a formal complaint against security officers for sexual assaults in custody have to use a combination of TPC Article 243 on torture and Article 416 on rape; for sexual abuse they can only use Article 421 on sexual harassment.

#### **Trials for torture rarely end with conviction**

Examination of the trials of security force officers in criminal courts show a number of clear patterns. Officers frequently do not appear to give evidence for months or years, and the courts are reluctant to make them appear. Officers frequently continue in active service, and are often promoted, while the trials creep on for years or even decades. Acquittals are sometimes granted in the face of strong evidence, and where sentences are imposed they tend to be minimal and are frequently reduced on appeal. Suspension or conversion to a tiny fine is almost invariably the final outcome.

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<sup>55</sup> In its ruling the General Penal Council of the Appeal Court quashed a sentence imposed by the Heavy Penalty Court of Bolvadin on 7 July 1994. The local court had sentenced a deputy gendarmerie commander to two years above the lower limit (of one year) and two years below the upper limit (of then five years) for the offence of torture. The deputy gendarmerie commander had beaten, kicked and slapped two men arrested on suspicion of theft, subjected them to pressurized water and then beaten them with a wet towel and a hose. The Appeal Court ruled that the severity of torture was no reason to increase the sentence. They also argued that there was not enough reason for departing from the lower limit, because the defendant (the perpetrator) did not act in his own personal interest. T.C. Yargıtay Ceza Genel Kurulu, Esas 1995/8-58, Karar 1995/86.

<sup>56</sup> Law on the Execution of Sentences, Article 6.

Complaints of torture rarely lead to the prosecution of suspected perpetrators. According to newspaper reports, the Parliamentary Human Rights Commission forwarded 451 cases of torture to a total of 41 prosecutors' offices. Only in 69 cases did the Commission receive a response. The majority of responses showed decisions not to prosecute (43) or a decision that the office was not the competent authority (12). Having decided that in six cases the time limit had been exceeded, only one case resulted in a trial.<sup>57</sup>

According to official figures, investigations of 577 security officials accused of torture between 1995 and 1999 resulted in only 10 convictions (1.7 %). In the same period, 2,851 investigations into cases of ill-treatment ended with 84 convictions (2.9 %).<sup>58</sup> These figures also show that if cases are opened they are on charges of ill-treatment (Article 245) rather than torture (Article 243).

Özgür Bar\_\_ K\_1\_ç, a young man living in a neighbourhood mainly inhabited by displaced Kurdish people in Menemen near Izmir, had been imprisoned on charges of aiding and abetting an illegal organization (Article 169, TPC) and had recently been released. At midnight between 6 and 7 January 2001 he was arrested from his home by plainclothes police officers. He was accused of distributing leaflets calling for an unauthorized demonstration. During two days of custody at the Anti-Terror Branch of Menemen Police Headquarters he was reportedly tortured three times with his eyes blindfolded. He was exposed to electric shocks and cold water, stripped naked, suspended by the arms, had his testicles squeezed and was severely beaten. Although he reportedly pointed out lesions on his toe and penis caused by electric shocks at the forensic examination on 8 January, the doctor noted the standard formula "no signs of beating or force". After having been released, he was examined by doctors from TIHV and the Medical Chamber. They issued a detailed medical report on 29 January. Their findings corroborate the torture allegations. Submitting the report, he filed a formal complaint of torture on 6 February. A trial was opened, yet the three police officers were only charged with ill-treatment under Article 245 of the TPC.

<sup>57</sup> This case was reported to be the case of Leyla Özbakar, tortured at Bursa Police Headquarters on 24 July 2000. Human Rights Foundation of Turkey, 3 August 2001.

<sup>58</sup> This information is from a response of the Minister of the Interior to a written question from a parliamentary deputy, dated 12 January 2000. See: Izmir Bar Association Center of Human Rights Law and Law Researches: *\_\_ kence ve kötü muamele suçlar\_n\_n soru\_turulmas\_na ili\_kin\_çi\_leri Bakanl\_\_ verilerinin de\_erlendirilmesi*, Izmir, 2000.

Any public officer accused of torture or similar human rights violations must be afforded the presumption of innocence and every facility to defend themselves in the course of a fair trial. They should also be acquitted unless their guilt has been established beyond reasonable doubt. However, against the background of doubts about the independence of courts, acquittals in some prominent cases have provoked dismay. Such a case was the

repeated acquittal of 10 police officers tried for the torture of 16 juveniles and young people at Manisa Police Headquarters between 26 December 1995 and 5 January 1996.

Ten police officers were tried for torture at Manisa Heavy Penalty Court. During the trial the 16 young victims continued to be subjected to intimidation and one attempted suicide. The trial appeared to be seriously flawed. Most notably, the prosecutor changed the charges from torture to ill-treatment in spite of the fact that the allegations made by the teenagers were among the most distressing that AI knows of. They reported being stripped naked, sexually assaulted, hung by the arms, and subjected to electric shocks. In March 1998 the police officers were acquitted, but this was overturned by the Appeal Court in October. However, a retrial at Manisa Court concluded on 27 January 1999 with a further acquittal. The General Council of the Appeal Court overturned the acquittal of the 10 police officers on 15 June 1999, concluding from the file that the police officers had actively participated in torturing the juveniles. The Appeal Court ruled that they should be sentenced. Since this decision was binding, the Heavy Penalty Court in Manisa finally concluded the trial in November 2000. The police officers were given the lightest possible sentence under the law: terms of imprisonment of 12 months reduced to 10 months for each count of torture. The police officers were not suspended from duty during the criminal proceedings. While the trial was ongoing, one of the accused police officers was reportedly involved in another case of torture which included the rape of Fatma Deniz Polatta and the sexual abuse of the minor N.C.S. and the local Chief of Police was promoted to Chief of Police in Ankara during the trial. On 2 May 2001, the Court of Appeal ordered another retrial, concluding that the officers' right to a defence had been improperly restricted by the local court during the third trial. Unless the fourth trial and any related proceedings are concluded before mid-2003, there is a risk that the case will be closed, in accordance with the applicable statute of limitations which is seven and a half years. Earlier proceedings had been delayed by the inability of the court to locate the accused officers, who were still on active duty in other towns. Some of the victims are still suffering gravely from the effects of the torture they endured.

AI is concerned that Law No. 4616 on the conditional release and the suspension of trials and sentences for offences committed up until 23 April 1999, adopted on 21 December 2000, provides for the suspension of trials and investigations of law enforcement officials charged with or convicted of ill-treatment. It also provides for their conditional release. Upon application, the Constitutional Court ruled on 18 July 2001 that torture should not be included under the scope of the law. However, as shown above, prosecutions for torture are rare. Under Law No. 4616, any security force members imprisoned following conviction of ill-treatment committed before 23 April 1999 are to be released and all trials and investigations in relation to charges of ill-treatment are suspended for five years.<sup>59</sup>

<sup>59</sup> For details on this law see Amnesty International: *Turkey: The "Amnesty Law" - An ambiguous step*, August 2001, AI Index: EUR 44/052/2001.

**Pressure on lawyers and human rights defenders**





While no progress has been made in several cases of reported rape or other sexual abuse in custody, trials have been opened against some victims and their lawyers. The trial of police officers charged with having tortured Fatma Deniz Polatta\_ and N.C.S. in early 1999 lingers on. Yet on 21 March 2001 a separate trial was opened in which women and men who had denounced rape in custody at a conference held in June 2000 were charged with having insulted the security forces. Some of them were also charged with separatist propaganda in a second trial. Among the defendants in the first trial are N.C.S.'s father and Fatma Deniz Polatta\_, although she was imprisoned at that time and could not have participated in the conference. It appears that this trial aims to silence women who publicize the use of sexual torture and try to bring the perpetrators to justice.<sup>60</sup>

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<sup>60</sup> Another defendant in this trial is Nazl\_ Top, who is reported to have been raped with a truncheon in 1992 when she was pregnant (AI Index: EUR 44/52/92). At the end of 1993, seven police officers were put on trial, accused of torturing her. Five months later they were acquitted on the grounds that there was not sufficient evidence to convict them. The acquittal was upheld by the Appeal Court. However, after the *Washington Post* reported in May 2001 on the trial and AI's campaigning, the Turkish Parliamentary Human Rights Commission reportedly decided to investigate Nazl\_ Top's case.

Similarly there was no progress in the investigations into allegations that members of the Peace Mothers had been sexually abused in detention in early October 2000.<sup>61</sup> However, their lawyer, the human rights defender Eren Keskin, is now standing trial for having insulted the army. Her description of the sexual torture which the Peace Mothers had reported had been published in the newspaper *Yeni Gündem*. There are presently a number of trials opened against her related to her human rights activities. Eren Keskin is the head of the IHD Istanbul branch and one of the founders of the Legal Aid Project for sexually tortured women. After she travelled as part of a delegation to Silopi to investigate the "disappearance" of the two HADEP representatives, the governor of \_\_\_\_\_nak reportedly said on television that "This woman from the IHD came and stirred everything up". After this, telephone death threats against her, which she had received for some time, increased. Osman Baydemir, IHD vice chair and head of the Diyarbakır branch, had also received death threats. After AI campaigned for their safety, the threats ceased, at least temporarily.

With the prison protests the pressure on civil society has increased enormously. Representatives of human rights organizations, political parties or trade unions - among them members of the Union of Employees in Judiciary and Enforcement Institutions *Tüm Yargı-Sen* - who criticized the F-Type prisons, have been charged with support of illegal organizations. The branches of IHD in Gaziantep, Malatya and Bursa have been closed indefinitely and the branches in Van, Konya and Izmir were closed temporarily. Other branch offices were raided and their members temporarily detained. Several trials were opened in which IHD representatives have been charged in relation to protests against the F-Type prisons. On 25 January 2001 the IHD headquarters were raided on the basis of unfounded allegations that the association had received funding from the Greek Foreign Ministry. Although authorities later apologized saying that this allegation was based on translation mistake, many documents were confiscated in the raid and a trial subsequently opened in which the prosecution demands the closure of the IHD. AI has observed several of these trials and campaigned on behalf of the human rights defenders.

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<sup>61</sup> See AI Index: EUR 01/001/2001.

## Chapter 4: Recommendations against torture

AI welcomes the initiatives designed to combat torture and impunity already taken by the Turkish government. However, taking into consideration the persistence of torture in violation of Turkey's obligations under international law, comprehensive reforms are required urgently. Almost none of the detailed recommendations against torture, which AI submitted to the Turkish government in March 2000 on the basis of international standards, have been implemented. AI urges the Turkish authorities to implement the recommendations below in a form compatible with international human rights standards and the recommendations of international human rights bodies such as the European Committee for the Prevention of Torture, the UN Committee against Torture and the UN Special Rapporteur on torture. Some of the recommendations are very simple and could be implemented immediately.

- **Condemn torture:** The highest Turkish authorities should demonstrate their total opposition to torture. They should condemn torture unreservedly whenever it occurs. They should make clear to all members of the police, military and other security forces that torture will never be tolerated.
- **Shorten periods of custody:** All people deprived of their liberty should be brought promptly before a judge. Prosecutors and judges should only extend the custody period after having seen the detainees in person and making sure that they are not being tortured or ill-treated.
- **Incommunicado detention:** Incommunicado detention should be abolished and clear guidelines should be introduced to ensure that in practice all detainees have immediate access to legal counsel.
- **Opening detention records for scrutiny by families of detainees and by lawyers:** Relatives and lawyers should be able to find out immediately where a detainee is held and under which authority. Scrupulous record-keeping of all detentions is important, not only to establish responsibility for any violations committed during custody but, more urgently, in order to prevent "disappearances". A standardized pattern of registration form provided for in the Regulation on Apprehension, Police Custody and Interrogation, issued jointly by the Justice and Interior Ministries on 1 October 1998, would be an important innovation if presented in the form of a bound ledger with numbered pages, but this is not mentioned in the regulation.
- **No secret or unofficial detention:** As Article 10(1) of the UN Declaration on the Protection of All Persons from Enforced Disappearance states: "Any person deprived of liberty shall be held in an officially recognized place of detention".
- **Outlaw blindfolding:** Steps to promote accountability by police and to end torture should include ending the practice of blindfolding in police custody. Blindfolding is a form of ill-treatment in itself, and makes the reliable identification of officers responsible for abuses more difficult.
- **Videotape interrogations:** In accordance with the recommendation made to the Turkish government by the UN Special Rapporteur on torture in 1999, the authorities

should seriously consider the introduction of video recording of interrogations, as a means of protecting both detainees held incommunicado and law enforcement officers who may be falsely accused of acts of torture or ill-treatment.

- **Define torture in line with international standards:** The definition of torture in Turkish law should at a minimum incorporate the definition in the Convention against Torture.
- **Define rape and sexual abuse in line with international standards:** All officials involved in the custody, interrogation and medical care of detainees and prisoners should be informed that **rape and sexual abuse** are acts of torture or ill-treatment. Rape should be defined in line with international standards.<sup>62</sup> Forcibly subjecting female detainees to so-called “virginity tests” is a form of gender-based violence constituting torture or cruel, inhuman or degrading treatment. Mechanisms to ensure that such practices will not be tolerated should be put in place.
- **End isolation regimes in prisons:** Regimes of small-group isolation and solitary confinement in F-Type and other prisons should end immediately and prisoners should be allowed to spend at least eight hours of the day taking part in communal activities outside their living units as called for by the CPT.
- **Investigation of complaints:** Turkish authorities should ensure that complaints and reports of torture or ill-treatment, “disappearance” and extrajudicial execution are promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken whenever there is reasonable ground to believe that torture or ill-treatment might have occurred. The investigators should be competent, impartial and independent of the suspected perpetrators and the agency they serve. They should have access to, or be empowered to commission investigations by impartial and independent medical or other experts. The methods used to carry out such investigations should meet the highest professional standards, and the findings should be made public.
- **Medical reports:** Detainees should have immediate access to independent, impartial and competent medical experts. Independent medical or psychiatric reports should be admissible to the investigation. Appropriate equipment for the medical investigation of different forms of torture and ill-treatment should be provided. Medical examinations should be conducted in private under the control of the medical expert and outside the presence of security or other government officials. In the case of rape and other forms of sexual abuse, the examining health personnel should be of the same sex as the victim unless otherwise requested by the victim.

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<sup>62</sup> There is no single definition of rape in international law. The International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) concluded that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts. They have defined rape as a “**physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, which includes rape, is considered to be any act of a sexual nature which is committed under circumstances which are coercive.**”

- **Witness protection:** Alleged victims, witnesses, those conducting the investigation and their families should be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in human rights violations should be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.
- **Prosecution:** Those responsible for human rights violations, including those who order it, should be brought to justice. As recommended by the UN Special Rapporteur on torture after his visit to Turkey, “prosecutors and judiciary should speed up the trials and appeals of public officials indicted for torture and ill-treatment. Sentences should be commensurate with the gravity of the crime.”
- **Suspension of officers suspected of torture:** Police officers or gendarmes under investigation or trial for ill-treatment, torture, "disappearance" or extrajudicial executions should be suspended from active duty and if convicted they should be dismissed from the force.
- **Independent decisions on whether to prosecute:** The Law on Prosecution of Civil Servants and similar laws should be amended in order to ensure that any decision as to whether or not to prosecute a government officer for ill-treatment, torture, “disappearance” or extrajudicial execution, or for abuses of authority which might lead to such human rights violations, is taken exclusively by prosecutors and judges.
- **Statements elicited under torture:** Article 15 of the UN Convention against Torture obliges states parties to “ensure that any statement which is established to have been made as a result of torture should not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” A body should be established to review previous convictions based on evidence alleged to have been extracted under torture and, where appropriate, to arrange for prompt retrial.
- **Documentation of torture cases:** The Ministry of Justice should compile a list of complaints, prosecutions, convictions and sentences relating to torture and other human rights violations.
- **Compensation and rehabilitation:** Under Article 14 of the UN Convention against Torture, victims of torture and their dependants are entitled to fair and adequate redress from the state. This should include appropriate medical and psychological care, financial compensation and rehabilitation.
- **Training:** It should be made clear during the training of all officials involved in the custody, interrogation and medical care of detainees and prisoners that torture is a criminal act. They should be instructed that they have the right and duty to refuse to obey any order to torture.