TURKEY
The Entrenched Culture of Impunity Must End

> *The gaps in the legal structure remain, and provide escapes for those who master the art of taking full advantage of a weak and incapacitated system. Such escape routes are informally recognized, which gradually leads to institutionalized impunity.*
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> Report of Asma Jahangir, the UN Special Rapporteur on Extrajudicial, summary or arbitrary executions on her mission to Turkey (19 February-1 March 2001)

> *…it is clear that the past widespread use of torture during detention and criminal investigations is still not addressed in a consistent manner. The prisoners whom the Special Rapporteur interviewed in pretrial detention centres and prisons in Ankara and Diyarbakir said that they had been tortured and ill-treated during the time of their pretrial detention in the 1990s and that their indictments or convictions were based on statements obtained by torture. None of them were aware that investigations had been undertaken into those allegations or that the perpetrators had been brought to justice.*
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> Report of Martin Scheinin, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, on his mission to Turkey (16-23 February 2006)

Victims of human rights violations perpetrated by the police and gendarmerie in Turkey continue to face an entrenched culture of impunity. Their chances of securing justice are remote in a criminal justice system in which institutions and personnel regularly treat the interests of the state and its officials as ultimately in greater need of protection than those of individual citizens. The institutionalized failings of the system are compounded by it being under-resourced and in need of overhaul and reform. Alongside an overburdened criminal justice system that lacks independence, in Turkey there is still no independent body which can impartially and effectively investigate human rights violations by state agents.

This report looks at the persisting impunity for grave human rights violations: torture, ill-treatment and killings. Particular attention is paid to the process of investigating and prosecuting police and gendarmes for these crimes and to the various factors that contribute to a culture of impunity during investigation and trial. For this purpose, out of many cases reviewed by Amnesty International five are included here at some length. The cases demonstrate how flawed procedures at the investigation stage as well as flawed decisions by prosecutors and judges may contribute to a failure to secure the conviction of perpetrators of human rights violations. The focus of this report is on cases which have a continuing life in courts in Turkey in the present or are currently at investigation stage. While there are many other examples of recently concluded and closed investigations and court proceedings – where perpetrators have not faced justice despite substantial evidence against them – the inclusion of ongoing or pending cases offers the hope that the outcome will not be impunity

but rather an effective and independent investigation followed by a fair trial on the basis of which alleged perpetrators are brought to justice.[1]

While reference will be made to the legacy of impunity for mass human rights violations in Turkey in the wake of the 12 September 1980 military coup and through the 1990s, this report does not embark on the greater project of assessing the full history of violations documented by Amnesty International and other human rights groups in Turkey and internationally over the past 27 years. Focused as it is on systemic flaws, it does not address the issue of establishing mechanisms to confront the overwhelming legacy of past impunity.

1. The legacy of impunity

In the wake of the 12 September 1980 coup, an estimated one million people were detained, thousands were tortured, many died in custody or were forcibly disappeared, over 100,000 people were tried in military courts in proceedings that violated fair trial principles, and 50 people were sentenced to the death penalty and hanged. A provision in the 1982 Constitution gives immunity from any form of prosecution for all crimes committed by the leaders of the military coup, all military officials, public officials and authorities from 12 September 1980 to 9 November 1983 after a general election had taken place.[2] There have to date, however, been no concrete steps by any government or official body in Turkey to address this legacy. Turkey had become a state party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1954.[3]

The publication on 11 January 2007 of the reports of the European Committee for the Prevention of Torture (CPT), documenting the Committee's visits to places of detention in Turkey between the years 1990 and 1996, also provided a chilling reminder of the legacy of impunity.[4] Torture was systematically practised in police and gendarmerie detention throughout the country until the recent period. The mass violations of human rights in the mainly Kurdish-populated southeast and eastern regions of Turkey in the 1990s took the form of enforced disappearances and killings by unknown perpetrators which the state authorities showed no willingness to solve, and the forcible eviction of around one million villagers[5] when villages were evacuated and destroyed by the security forces during the conflict with the armed separatist Kurdistan Workers' Party (PKK). The PKK and other armed opposition groups also committed human rights abuses, some of which have been documented by Amnesty International, throughout this period.

This legacy has been acknowledged most clearly through the many judgments of the European Court of Human Rights. The first individual application to the Court was made in 1993 after the right of individual application was granted to Turkish citizens in 1987. The Court has repeatedly found Turkey in violation of ECHR provisions in cases concerning the

[1] The research for this report draws upon information collected by Amnesty International from meetings with lawyers and human rights NGOs in Turkey, from a survey of court documents, statements by the Turkish authorities about cases provided to intergovernmental organizations and published, a survey of available research on impunity issues, and an assessment of relevant legal provisions.

[2] One civil society organization in Turkey, the Association of the Generation of '78 (78liler Derneği), has campaigned on combating the legacy of impunity for gross violations of human rights in the wake of the 12 September 1980 military coup in pressing for the repeal of Temporary Article 15 of the 1982 Constitution which grants this immunity. Amnesty International opposes all laws that grant immunity to public officials where they are suspected of having committed grave human rights violations.

[3] In August 1988 Turkey ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[4] See the page of the CPT's website including all published reports relating to Turkey: http://www.cpt.coe.int/en/states/tur.htm

[5] According to the research findings of the project on internal displacement conducted by the Institute of Population Studies at Hacettepe University and released on 6 December 2006, the number of IDPs in Turkey is between 953,680 and 1,201,200.

right to life, including the right to an effective investigation; freedom from torture and ill-treatment, including the right to an effective investigation; and the rights to a fair trial, liberty and security, freedom of expression, an effective remedy, and protection of property.[6] A very high number of applications to the Court are made every year and a growing number of judgments find Turkey to be in violation of provisions of the ECHR.

Cases such as that involving the enforced disappearance of 11 villagers from Alaca, in the Kulp district of Diyarbakır province in October 1993, for which Turkey was found in violation of Articles 2, 3, 5.1 and 13 in a European Court judgment in 2001 (see *Akdeniz and others v Turkey*),[7] provided optimism that a further investigation and subsequent prosecutions may take place. Human remains were discovered in November 2004 buried in Kepre hamlet near Alaca. On 13 February 2006 the Forensic Medical Institute released the results of DNA tests which confirmed that the remains were those of the missing 11 villagers. They had been buried in the place where they had been detained for days by the Bolu Commando Brigade before they disappeared never to be seen again. An investigation by the public prosecutor was begun and continues. Other cases involving the discovery of remains include that of Bahri Budak and his grandson, Metin Budak, who went missing in the vicinity of their village – which had been evacuated – in the Lice district of Diyarbakır when they returned there on 28 May 1994. In May 2005 their remains were found alongside personal effects and empty cartridges. The Forensic Medical Institute confirmed their identities and that they had been shot dead by G-3 and G-1 assault rifles with bullets manufactured by Turkey's leading supplier of equipment to the Turkish armed forces.[8] An investigation by the prosecutor was begun and continues. With political will, in both these cases perpetrators could be found and brought to justice in Turkey.

In the recent past in Turkey impunity for grave human rights violations has also been perpetuated via laws that operate in effect as amnesties. For instance, in December 1999, the introduction of a law granting a conditional release or suspension of sentence for many crimes committed before 23 April 1999 meant that those charged with the offence of ill-treatment – so often the charge rather than torture – benefited from the automatic suspension of trial proceedings conditional upon their not re-offending for five years and simply walked free.[9] On this basis, for instance, the charges against the police chief Süleyman Ulusoy on nine counts of "ill-treatment" of nine transvestites in Istanbul, and for which he faced a possible 27-year sentence, were conditionally suspended.[10]

[6] See "General measures to ensure compliance with the judgments of the European Court of Human Rights in 93 cases against Turkey, Memorandum by General Directorate of Human Rights", Council of Ministers, Council of Europe, CM/Inf/DH(2006)24 26 May 2006: "Between 1996 and 2006 the European Court of Human Rights (hereinafter "ECtHR") and the Committee of Ministers delivered some 93 judgments and decisions finding that Turkey violated Articles 2, 3, 5, 6, 8 of the ECHR and of Article 1 of Protocol No. 1, notably in respect of disappearances, unlawful killings, unacknowledged detentions, torture and ill-treatment and destruction of property committed by members of the Turkish security forces, as well as in respect of the inadequacy of the official investigations conducted by the authorities. All these cases also highlighted the lack of effective domestic remedies which would allow adequate redress for such abuses (violations of Article 13). The problems raised in many of these cases are related to the events that took place against the background of the fight against terrorism in the 1990s. It has been repeatedly stated, in this connection, that "despite the necessity of fighting against terrorism in the south-east of the country and the difficulties faced by the State in this fight, the means used must respect Turkey's obligations under the Convention, in particular as specified by the Court's judgments and by the Committee of Minister's decisions" (IntRes DH(99)434).

[7] Akdeniz and Others v. Turkey (application number 23954/94), European Court judgment, 31 May 2001.

[8] Reported by Özgür Cebe, "Dede-torun G-3 ile vurulmuş", Radikal newspaper, 15 April 2006.

[9] 23 Nisan 1999 Tarihine Kadar İşlenen Suçlardan Dolayi Şartla Salıverilmeye, Dava Ve Cezalarin Ertelenmesine Dair Kanun (Law 4610, 22 December 1999).

[10] 'Hortum'un da suçu affedildi, Radikal newspaper, 18 February 2003.

2. "Zero tolerance for torture", but impunity for torture and killings by law enforcement officials persists

The Justice and Development Party (Adalet ve Kalkınma Parti: AKP) government repeatedly avowed its strong commitment to a "zero tolerance for torture" policy and to the protection of human rights when it assumed office in 2002. There have been positive signs in Turkey of a reduction in the incidence of torture and ill-treatment in police custody – most clearly in the Anti-Terror departments of Security Directorates – and there are now better safeguards than in the past to protect suspects against ill-treatment during their apprehension, detention and interrogation. (Below, these improvements and changes in the law are briefly summarized.) However, changes in regulations and legal reforms will on their own never be enough. Stamping out torture and ill-treatment in other contexts – during unofficial detention, during and in the aftermath of demonstrations where there are mass detentions, in prisons and during prisoner transfer – is proving a greater challenge. Moreover, there are still cases of ongoing trials in Turkey where statements allegedly extracted under torture provide a central part of the evidence in the trial and the court has turned a blind eye to the allegations and refused to rule the evidence inadmissible.[11]

The AKP government's commitment to a "zero tolerance for torture" can never be regarded as a sincere and fully effective policy until real steps are taken to address the persisting issue of the failure to punish officials who violate the absolute prohibition on torture and other ill-treatment.

Alongside the "zero tolerance for torture" policy, the government needs to affirm publicly a commitment to opposing the use of excessive force by members of the security forces in situations including demonstrations and during arrest. The resort to excessive force is a practice which has resulted in a high number of deaths. Investigation and prosecution of members of the security forces for killings remain extremely inadequate. Courts demonstrate a great reluctance to examine whether the use of lethal force by the security forces conforms to the principles of necessity and proportionality. And a recently introduced revision to the Law to Fight Terrorism on the use of lethal force directly contravenes international standards.[12]

Zero tolerance for torture and other grave violations must mean that perpetrators face the consequences by being thoroughly and independently investigated, prosecuted and convicted to custodial sentences commensurate with the gravity of their crimes. Nothing short of a fully-implemented policy of "zero tolerance for impunity" will end the spectre of torture, other ill-treatment, killings and enforced disappearances which blighted Turkey's human rights record until the very recent past.

3. Improvements and setbacks in the law

With a view to fulfilling the criteria for eventual European Union membership, the AKP government and its direct predecessor instituted an ambitious programme of legal reforms. Reforms pertaining to the strengthening of human rights protection were mainly introduced in the form of large mixed reform packages – known as "Harmonization" laws – containing changes to a variety of laws in different areas. A new Turkish Penal Code (Law 5237) and Code of Criminal Procedures (Law 5271) also came into force on 1 June 2005.

[11] Amnesty International documented these concerns in a September 2006 report, Turkey: Justice Delayed and Denied: The persistence of protracted and unfair trials for those charged under anti-terrorism legislation, (AI Index: EUR 44/013/2006).
[12] See Turkey: Briefing on the wide-ranging, arbitrary and restrictive draft revisions to the Law to Fight Terrorism (AI Index: EUR 44/009/2006).

Among the gains of this whole process were measures which provide greater safeguards for individuals in detention and which were all incorporated into the Code of Criminal Procedures and into the new Regulation on Apprehension, Detention and Statement Taking.[13] These include: significant reduction in detention periods; the right to immediate access to legal counsel and the possibility of receiving legal aid; the stipulation that police inform detainees of their rights and that relatives be informed promptly of their detention; the right to medical examination without the presence of a law enforcement officer; the requirement that medical reports be prepared, and when the detainee leaves police custody or has police custody prolonged, be sent in a sealed envelope to the prosecutor; the stipulation that the law enforcement officer bringing the detainee before a doctor for medical examination should not be the same individual conducting the interrogation; and the inadmissibility of statements made to the police without the presence of legal counsel if not repeated before a judge or court.

Some of these safeguards have undoubtedly contributed to a decline in the incidence of violations committed against detainees registered in police custody. Custody records and places of detention are in theory monitored by public prosecutors.[14] Civil society groups in Turkey continue to insist on the importance of establishing unannounced visiting mechanisms by independent bodies.[15]

The new Turkish Penal Code also recast the articles defining the crimes of torture and ill-treatment as Articles 94 and 95, including the crime of aggravated torture and also, as Article 96, the crime of torment (*eziyet*). The maximum penalties were significantly increased, and a minimum limit of three years introduced where there was previously none for the crime of torture committed by public servants such as police officers (and previously a minimum sentence of only three months for ill-treatment). The punishment for causing death as a result of torture is now aggravated life imprisonment.

A series of Ministry of Justice circulars to prosecutors and judges has emphasized the importance of combating torture and ill-treatment, recalling the particular shortcomings identified by the European Court of Human Rights in its judgments and emphasizing the requirements of national and international law. Particular emphasis in circulars was placed on the need for criminal investigations to be carried out speedily and effectively, and for decisions of non-prosecution not to be taken without the necessary investigation carried out into the facts; the need to address discrepancies between autopsy reports and other forensic reports; the requirement that the chief public prosecutor or their appointee carry out investigations into torture or ill-treatment rather than members of the security forces.

The need for prosecutors to secure administrative permission to investigate or prosecute civil servants for the crimes of torture and ill-treatment was lifted with the January 2003 harmonization package (Law 4778), which introduced a new proviso to that effect into the Law on Trials of Civil Servants and other Public Officials. The new Code of Criminal Procedures (Articles 160 and 161) seems to give public prosecutors authority to conduct direct investigations against anyone apart from governors and judges (Article 161/5). Nevertheless confusion remains regarding the applicability of the Law on Trials of Civil

[13] Yakalama, Gözaltına Alma ve İfade Alma Yönetmeliği (published in the Official Gazete, 1 June 2005).
[14] Noting that infrequent visits by public prosecutors "mostly involved perusal of the custody register and a brief tour of the premises", the European Committee for the Prevention of Torture (CPT) remarked that, "More robust on-the-spot checks of law enforcement establishments are required." See the CPT's 8 December 2005 report of its March 2004 visit to Turkey (CPT/Inf (2005) 18), Paragraph 21.
[15] This is expected in the future if Turkey ratifies the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: see Article 1. Turkey signed the Optional Protocol in September 2005.

Servants and other Public Officials on investigations into violations other than torture or ill-treatment.

Efforts at combating lengthy trials were also made. Hearings of trials of alleged perpetrators of torture or ill-treatment were to take place at intervals of no more than 30 days, according to a reform introduced in 2003. This, however, reportedly proved difficult for some courts to abide by and it was left out of the new Code of Criminal Procedures in 2005.

In the past many trials of alleged torturers have run out of time and subsequently been dropped when they exceeded the statute of limitations. Deliberate attempts to benefit from the statute of limitations were a tactic used by defendants and their lawyers (the case of Birtan Altınbaş below illustrates this). Time limits for the completion of trials are calculated on the length of the maximum sentence for a crime. The new Penal Code increased the statute of limitations for the crime of torture to 15 years, and in cases of aggravated torture to 20 years and 30 years respectively (see Articles 95/2 and 95/4 of Appendix 1). Amnesty International considers that the statute of limitations for the crime of torture should be repealed altogether.

The great importance of these steps, which could not have been envisaged a few years ago, must be acknowledged.

On the other hand, there have also been a number of setbacks in the process of strengthening protection for human rights through the law and other areas where there is little progress. There has been little progress towards implementing the terms of the Istanbul Protocol (the UN Principles on the Effective Investigation and Documentation of Torture ad Other Cruel, Inhuman or Degrading Treatment or Punishment). It is disappointing to find that despite it being a basic right in the Protocol, independent medical examination and the admissibility of independent medical reports in court are still not recognized by the Turkish legal system. Health institutions authorized to conduct medical examinations on individuals who, for example, allege torture are all official institutions bound to the government. While the Human Rights Foundation of Turkey (TİHV) and the Association of Forensic Experts (ATUD) have developed methods for preparing alternative reports, these have been accepted by courts very rarely.

Although the Code of Criminal Procedures introduced the institution of a judicial police which would be supervised by the prosecutor and which would in theory carry out more meticulous and effective investigations, progress in this area has reportedly been very limited. Circulars issued by both the Ministry of Interior and Ministry of Justice on the subject of the judicial police attest to difficulties in establishing the location of such a unit, situated as it is in the Security Directorate but working under the authority of the prosecutor.[16]

In June 2006 revisions to the Law to Fight Terrorism (Law 3713) were introduced.[17] Some of these measures represent a roll-back of gains made towards introducing safeguards against torture. The revised law now allows for the detainee's right to legal counsel from the first moments of detention to be delayed by 24 hours at the request of a prosecutor and on the decision of a judge (Article 10/b). Since the introduction of this provision, Amnesty International has observed that those detained under suspicion of committing terrorist offences have routinely been denied access to legal counsel for the first 24 hours. As feared, the exception has become the norm. The immediate right to legal counsel has been one of the major gains of the reform process in Turkey and is set out in the Code of Criminal Procedures (Article 149). The fact that incommunicado detention was effectively brought to an end through such a provision is of particular significance in a country in which allegations of

[16] See regulations: Ministry of Interior, Regulation 2005/115, and Ministry of Justice Regulation no. 98.
[17] Revisions were introduced as "Terörle Mücadele Kanununda değişiklik yapılmasına dair kanunu", (Law no. 5532; published in the *Official Gazette*, 18 July 2006).

torture and ill-treatment in police custody have been widespread and where there are serious concerns about the extent to which individuals accused of terrorist offences can receive a fair trial. Amnesty International is extremely concerned that restriction of the right to immediate legal counsel for those suspected of terrorist offences may reverse the progress made in this area, and urges the Turkish government to withdraw a provision which compromises the avowed "zero tolerance for torture" policy.

Amnesty International is also concerned about the lack of progress in investigating fatal shootings by members of the security forces in circumstances which do not involve an armed clash, or where the evidence of an armed clash having taken place is in doubt. This is an area where there have been few developments in terms of the introduction of better safeguards or more effective investigation. There has also been one serious reversal: a provision in the revised Law to Fight Terrorism (revised Appendix Article 2) specifies that in operations carried out against terrorist organizations "in cases where attempts are made to use firearms or where the order to surrender is disobeyed, the security forces have the authority to use arms directly and unhesitatingly against the target proportionate to rendering the danger ineffective". Amnesty International notes that the inclusion of this article means the restoration of a provision in slightly amended form previously included in the Law to Fight Terrorism but repealed in 1999 after the Constitutional Court's ruling that it was unconstitutional.[18] In its determination, the Constitutional Court viewed the use of this right by the security forces as a threat to the right to life. Amnesty International is seriously concerned that, formulated in this way, the provision fails to make explicit the clear stipulation in international standards that the use of force must be strictly necessary and proportionate to the aim, and that the use of lethal force is only permissible when "strictly unavoidable to protect life".[19]

Amnesty International is concerned that the re-introduction of such a provision may contribute to the climate of impunity in Turkey for killings by members of the security forces which too often are officially explained as having occurred because of a suspect's failure to obey a warning to stop or to surrender. Amnesty International reported that in 2005 there were around 50 killings by members of the security forces and that many of these may have been the result of excessive use of force or extrajudicial executions. The organization fears that a provision which sanctions the "unhesitating" use of firearms to "render the danger ineffective" may contribute further to the current unwillingness to pursue thorough and impartial investigations into shootings by members of the security forces. A case illustrating the problems of flawed investigation is included in this report (see the killing of Ahmet and Uğur Kaymaz below).

4. Contradictory statistics on investigations, prosecutions and convictions for torture and ill-treatment

Amnesty International is concerned that a reliable and consistent statistical picture of impunity in Turkey still does not appear to exist, and that the available sets of figures supplied by different authorities in Turkey for the rate of investigation, prosecution and conviction for the crimes of torture and ill-treatment appear to contradict one another. No sets of figures on the investigation, prosecution and conviction of police and gendarmes for fatal shootings or excessive use of force were identified.

[18] See Constitutional Court: 1996/68E; 1999/1K.
[19] See UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including Principle 9. See also UN Code of Conduct for Law Enforcement Officials.

The CPT questioned the reliability of the statistics on the number of prosecutions for the crimes of torture and ill-treatment presented to it by the General Security Directorate, reporting to the Ministry of Interior, and included in the Turkish government's response to the CPT's report on its September 2003 visit. Commenting on the positive legal measures being adopted to combat torture, but seeking to discover whether "this clear intent on the part of the legislator to 'get tough' on torture and ill-treatment is being fully translated into reality by the criminal justice and internal disciplinary systems", the CPT queried the accuracy of the statistics and found the numbers quoted to be very low.[20]

Low but completely different statistics, again supplied by the General Security Directorate, are included in the Turkish government's response to the CPT report on its March 2004 visit to Turkey: again there is a low rate of prosecution and conviction in criminal proceedings, and disciplinary measures are shown to be almost never imposed.[21] These figures present a very different picture from the statistics available from the General Directorate of Judicial Records and Statistics of the Ministry of Justice.[22]

Moreover, the statistics supplied by the Turkish authorities to the Committee of Ministers of the Council of Europe and reproduced in full in the appendix to a memorandum published at the time of a meeting in June 2006, seem to show a much more detailed though different picture again from those on the General Directorate of Judicial Records and Statistics website.[23] The figures indicated in the tables reproduced in the Memorandum in general seem to be between 15 and 30 per cent lower than those recorded by the General Directorate of Judicial Records and Statistics of the Ministry of Justice. Amnesty International urges the Turkish authorities to ensure centralized, efficient, up-to-date, disaggregated data collection in order to reach a clear picture of the effective operation of the law.

The figures on conviction in the Council of Europe Memorandum demonstrate that a very low number of defendants out of those convicted actually receive prison sentences for the crime of torture. The figures for 2005 shown below represent the crime of torture under Articles 94 and 95 of the new Penal Code (rather than Articles 243 and 245 in the previous Penal Code). According to the tables presented in the Memorandum, the rate of conviction and acquittal, and of those convicted the number of defendants sentenced to prison for the years 2003-2005, can be summarized as follows:

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[20] The figures were presented in the Response of the Turkish Government to the report of the CPT on its visit to Turkey from 7 to 15 September 2003: see CPT/Inf(2004)17, paragraph 41 and also Appendix 3 for figures on personnel in respect of whom judicial proceedings and disciplinary measures have been brought under Articles 243 and 245 of the Turkish Penal Code for offences committed between 1 January 1995 and 31 March 2004. In the report on its March 2004 visit, the CPT remarked: "… the CPT wonders whether the statistics provided are accurate. For example, it is stated that, in 2003, 32 law enforcement officials were prosecuted in Turkey on charges of torture (Article 243 of the Criminal Code); however, according to statistics provided by the Chief Prosecutor of Izmir to the delegation that carried out the March 2004 visit, 18 law enforcement officials were prosecuted on charges of torture during 2003 in that province alone. Regardless of which statistics are examined, it would appear that convictions under Articles 243 and 245 of the Criminal Code remain a rare occurrence. Similarly, the statistics provided in the Turkish authorities' response to the report on the September 2003 visit indicate that administrative sanctions are very rarely imposed against law enforcement officials subject to proceedings under Articles 243 and 245 of the Criminal Code." CPT/Inf(2005)18, paragraph 22, p. 17.

[21] See CPT/Inf(2005)19, Appendix 3 and 4.

[22] See the tables referring to statistics on crimes, "adli istastikler", and in the tables on the number of prosecutions and, separately, breakdown of verdicts by year under each article of the former Penal Code, the relevant Articles 243 and 245, in the website of the Ministry of Justice's General Directorate of Judicial Records and Statistics, http://www.adli-sicil.gov.tr/).

[23] Committee of Ministers of the Council of Europe, 966 DH Meeting, 6-7 June 2006, "Action of Security Forces in Turkey: Progress achieved and outstanding issues: General measures to ensure compliance with the judgments of the European Court of Human Rights in 93 cases against Turkey (Follow-up to Interim Resolutions DH(99)434, ResDH(2002)98 and progress achieved and outstanding issues since the adoption of ResDH(2005)43 in June 2005): Memorandum by the Directorate General of Human Rights". For full Memorandum, see https://wcd.coe.int/ViewDoc.jsp?id=1085521

	2003		2004		2005
	Article 243	**Article 245**	**Article 243**	**Article 245**	**Articles 94 and 95**
Acquitted	408	967	421	1210	362
Other Decisions*	63	170	373	326	511
Convictions: Prison	36	89	27	72	28
Convictions: Fine	12	122	9	76	20
Convictions: Prison plus fine	2	20	0	16	0
Convictions: Other Sanctions+	440	141	42	220	57
Convicted Total	490	372	78	384	105

Note to table: * "Other decisions" here may include postponement of trial, collapse of trial, exceeding the statute of limitations, decisions of the court that it is not competent to handle the case or that the case has to be handled by a court in another geographical location (for example, another province). + "Convicted: Other sanctions" here may refer to earlier laws which allowed courts to impose sanctions such as temporary suspension from duty or permanent disbarring from the profession. "Other decisions" and "Convicted: other sanctions" are general non-explanatory categories and in both cases it would have been helpful to provide more detailed information.

The Secretariat of the Directorate General of Human Rights of the Council of Europe also requested from Turkey in its Memorandum information on the number of investigations, convictions and acquittals into allegations of killings as a result of disproportionate use of force by members of the security forces.

The non-governmental organization, the Human Rights Association (İHD), conducted a project to monitor investigations and trials relating to torture and ill-treatment. Its own survey – albeit necessarily restricted – of the outcome of investigations and trials is nevertheless revealing, especially on the conduct of trials.[24]

Available statistics on disciplinary measures taken after administrative investigations into alleged violations reveal that sanctions (divided into categories: warnings, reprimands, deductions from salary, short-term suspension, long-term suspension, dismissal from police force, dismissal from the civil service)[25] are very rarely applied.[26] Indeed, the dismissal in September 2003 from the police force of the former Head of the Istanbul Organized Crime Department of the Police Headquarters, Adil Serdar Saçan, on the grounds of his having "turned a blind eye to torture", was an exceptional step which has not been repeated.[27]

[24] İHD undertook a project to monitor 52 torture and ill-treatment trials and 59 investigations into claims of torture and ill-treatment during 2004 and 2005. The results of 13 trials where a verdict was given in the lower court, but an appeal was pending, were as follows: nine trials resulted in acquittal; two in a conviction and two in a suspended sentence. Of two trials which were finalized (by the Court of Cassation), one resulted in acquittal and the other ended in impunity because it exceeded the statute of limitations and was dropped. The other 37 trials (12 for torture and 25 for ill-treatment) were not completed by the end of the İHD project and continued.
Of the 59 investigations into torture or ill-treatment followed by the İHD, in 32 cases a decision not to pursue an investigation was issued by the public prosecutor, in two cases the court issued a decision of non-competency, and in one case non-competency on the basis of geographical location of the court, with 24 investigations continuing when the project ended. Thus, as the İHD pointed out, 59 per cent of the cases had ended with the prosecutor's decision that there was no need for legal proceedings to be started. See Meryem Erdal, *Soruşturma ve Dava Örnekleriyle İşkencenin Cezasızlığı Sorunu* (The Problem of Impunity for Torture with examples from investigations and trials), (Ankara: İHD, 2006), published in the context of the İHD's 2003-2005 "Don't Remain Silent on Torture" campaign ("İşkenceye sessiz Kalma!"). This and an earlier work, Meryem Erdal, *İşkence ve Cezasızlık* (Torture and impunity), (Ankara: Human Rights Foundation of Turkey, 2005) provide the most detailed studies of the problem of impunity in Turkey.
[25] Disciplinary sanctions are outlined in the Discipline Statute of the Security Organization (Emniyet Örgütü Disiplin Tüzüğü, Law 16618, dating from 1979).
[26] The available statistics are those provided to the CPT by the Turkish government in its responses to the CPT's 7-15 September 2003 and 16-29 March 2004 visits, in both cases included in Appendix 3.
[27] 'İşkence ihracı', *Radikal* newspaper, 22 September 2003. The motivations behind the decision to discharge Adil Serdar Saçan from the profession are still discussed, and it is striking that the decision was reportedly taken by the Ministry of the Interior before judicial proceedings against him were complete.

5. Factors contributing to impunity

This section reviews some of the factors which contribute to a climate of impunity in Turkey for human rights violations. Examples of the factors are found in the five detailed case histories which are included in this report.

- ***Intimidation and harassment of victims and witnesses, and "counter-charges"***

Victims may be too frightened to complain and fear that the justice system will not protect them if they do. Lawyers have often reported to Amnesty International that, allegedly under police pressure, some clients will readily withdraw a complaint and that some witnesses will refuse to testify in court, knowing that witness protection schemes are lacking.

Different forms of counter-charges against individuals who allege human rights violations by law enforcement officials may be brought. Examples include charges of violent resistance to arrest for those who are bringing a case against the police for ill-treatment, or spurious investigations against family members of victims of torture or police killings for terrorism offences. Where the latter do not result in prosecution, they seem nevertheless to be effective in discrediting a family's reputation. Such investigations are possibly intended to represent the victim and their immediate circle as guilty and may therefore constitute an attempt to influence a court into being more lenient on members of the security forces on trial for human rights violations. The case of the inconclusive investigation of Ahmet Kaymaz's wife and brother for membership of the PKK is a clear example (see below).

- ***Failure to document medical evidence of torture or other ill-treatment***

Medical evidence of abuses is still often not recorded in the appropriate manner for reasons of lack of expertise, incompetence or a readiness to comply with suggestions by law enforcement officials accompanying suspects that there is no need for an examination. For, despite the stipulation that medical examinations should not take place in the presence of a law enforcement officer unless the physician requests their presence for reasons of personal security, such presence is in practice reportedly very common. The CPT has – crucially – recommended that specific legal provisions should be adopted to ensure that "a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police authorities".

The CPT recommended that courts should "look beyond the medical reports drawn up during police/gendarmerie custody and to take evidence from all persons concerned and arrange in good time for on-site inspections and/or specialist medical examinations".[28]

- ***The inadmissibility of independent medical evidence and the monopoly of the Forensic Medical Institute***

[28] On the question of medical reports, the CPT has commented, "Even assuming that the examination on which such a report is based was carried out under satisfactory conditions (which at present is still far from always being the case), it is a well recognised forensic medical fact that the absence of physical marks does not necessarily mean that the person examined has not been ill-treated. Many of the methods of ill-treatment known to have been used in Turkey do not leave visible physical marks, or will not if carried out expertly. It follows that in order to make an accurate assessment of the veracity of allegations of ill-treatment*, it may well be necessary to look beyond the medical reports drawn up during police/gendarmerie custody and to take evidence from all persons concerned and arrange in good time for on-site inspections and/or specialist medical examinations*." [Amnesty International's emphasis.]: see CPT report on September 2003 visit to Turkey.

In view of the often inadequate medical reports on detainees during their time in police custody, it is particularly concerning to find that it is only in very few instances that independent medical evidence, in the form of reports by bodies of experts (such as TİHV), has been recognized by courts. Currently the Forensic Medical Institute, institutionally bound to the Ministry of Justice, is the only body whose reports are consistently accepted by courts in Turkey. In some circumstances, this has led to long and unnecessary delays as courts wait for the Forensic Medical Institute to corroborate independent reports. The UN Special Rapporteur on torture has stated that: "Public forensic medical services should not have a monopoly of expert forensic evidence for judicial purposes."[29]

Some trials – such as that before İskenderun Heavy Penal Court in which four police officers were accused of the torture of Nazime Ceren Salmanoğlu and Fatma Deniz Polattaş in 1999 – have highlighted problems in the use of independent medical reports and in the structure of the Forensic Medical Institute.[30]

- ***Lack of independent evidence collection***

The collection and recording of forensic evidence is mostly performed by the same police or gendarmerie unit alleged to have committed a violation. In spite of the establishment of a judicial police, lawyers interviewed by Amnesty International did not feel this was operating in practice with any effectiveness. Suggestions in many cases that police have contaminated or lost evidence crucial to an investigation will only end if the crime scene investigation is undertaken promptly, thoroughly, independently and impartially.

- ***Ineffective and delayed investigation by prosecutors***

Investigations into allegations of human rights violations are frequently not conducted promptly, effectively, independently and impartially by the prosecutor responsible for the investigation and therefore perpetrators are not brought to justice in effective trials. At the investigation stage, prosecutors are too often unwilling or unable to assert their authority over the scene-of-crime investigation in cases of alleged violations by law enforcement officers. They frequently fail to initiate investigations into possible cases of torture or ill-treatment of their own accord, although obliged to do so by law, or the focus in such investigations is too narrow. These failings often contribute to a high proportion of complaints of torture and ill-treatment resulting in decisions by prosecutors that there is no case to answer (*takipsizlik kararı*). The investigations can take months and months, and sometimes years, before a decision is issued by a prosecutor. A year after prosecutors in Diyarbakır received hundreds of complaints of torture or ill-treatment in police custody following violent riots at the end of March 2006, there had still not been one decision on whether or not to prosecute a single law enforcement officer. Nor had there yet been a single decision on whether to bring charges against members of the security forces for any of the 10 deaths (eight of them fatal shootings) that occurred during the demonstrations. This delay cannot only be blamed on heavy workload; similar delays are found in cases of individual violations.

When a prosecution does go ahead, pre-trial preparation, including the investigation, often lacks thoroughness: the indictments produced by prosecutors demonstrate their overly close working relationship with the police, and a readiness to accept a version of events supplied by the security forces, especially concerning counter-terrorism operations. Few prosecutors indict senior members of the police or gendarmerie in charge of units and operations. In countless cases, the senior official responsible for a policing or military

[29] Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly, 31 July 2001, A56/156, p. 12.

[30] See *Turkey: Justice denied to tortured teenage girls* (AI Index: EUR 44/018/2005).

operation, in the course of which human rights violations have allegedly been committed, is left out of the indictment, without explanation: this occurred in the Ahmet and Uğur Kaymaz case (see below). The example of the prosecutor who led the investigation into the November 2005 Şemdinli bombing being debarred from the profession for attempting to examine possible chain-of-command involvement in human rights violations will undoubtedly deter other prosecutors from investigating the involvement of senior personnel.[31]

- ***Public statements on cases by senior officials***

In some cases the local governor's office or other senior authorities have made public pronouncements on cases strongly implying that the result of the investigation has already been decided and absolving members of the security forces of blame. Killings by members of the security forces are often presented as having arisen in the context of armed clashes before any investigation has taken place.

- ***Charges against human rights groups for reporting preliminary concerns about cases***

Another tendency has been to bring charges against human rights groups, who conduct their own initial inquiries into incidents on the grounds that they are a matter of public interest and concern, and before the details of the incident become *sub judice*, for "attempting to influence the judicial process".

- ***Failure to suspend pending investigation and leniency towards police and gendarmerie defendants***

Members of the security forces on trial for killings or torture are generally not suspended from active duty pending the outcome of the trial against them, posted to different cities, and not prevented from receiving promotions. It is extremely rare for members of the security forces to be placed in pre-trial detention pending verdict; in some cases this has had implications for the security of witnesses.

In the courts judges have frequently demonstrated a leniency towards members of the security forces on trial which they have not been known to extend to defendants in other trials: for instance, judges have failed to initiate further legal proceedings against members of the security forces who repeatedly avoid court appearances to testify. Such persistent behaviour may eventually lead to the issuing of an arrest warrant to compel a member of the security forces to testify, but repeated flouting of court summonses has not led to a decision to place the defendant in pre-trial detention.

- ***Unresponsiveness of judges to lawyers for victims and their families***

Amnesty International is concerned at reports that judges have frequently exercized their discretion arbitrarily in rejecting petitions by lawyers for the interested parties (victims or their families) without explanation; these petitions included calling witnesses (eye-witnesses or officers in the chain-of-command) to testify in court and visiting the site of the incident. International standards require states "to allow the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system".[32]

[31] See Turkey: No impunity for state officials who violate human rights: Briefing on the Şemdinli bombing investigation and trial (AI Index: EUR 44/006/2006).
[32] UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985.

- ***Delayed and protracted proceedings***

Trial proceedings in Turkey are notoriously slow and the impact of this, including in trials of members of the security forces and public officials, is delayed justice.

The recommendation that "…prosecutors and judiciary should speed up the trials and appeals of public officials indicted for torture and ill-treatment" was made by the Special Rapporteur on torture on his visit to Turkey in 1999. While Law No 4963 (the so-called "seventh harmonization package"), which came into effect in 7 August 2003, introduced an additional article to the former Code of Criminal Procedures that stipulated that trial hearings on cases of alleged torture or ill-treatment could not be postponed more than 30 days and should be heard during judicial holidays, regrettably no such provision was included in the June 2005 Code of Criminal Procedures. Amnesty International considers that there is a need to expedite trials by introducing regulatory time frames for the provision of evidence in a manner consistent with the obligation to hold trials within a reasonable time – such as medical reports from the Forensic Medical Institute; and a regulatory framework to ensure that trial hearings are conducted on consecutive days until a verdict is reached, or at least at much closer intervals than is the current practice. Moreover, mechanisms need to be improved to ensure more thorough pre-trial preparation of cases.

- ***The statute of limitations for the crime of torture***

The statute of limitations for the crime of torture is still in place and there is still a risk that some torture trials may, as they so often did in the past, collapse on the basis of having exceeded the time limit.

6. Investigations and trials of members of security forces and public officials for torture, ill-treatment and killing

Case 1: Justice delayed by 16 years: the killing of Birtan Altınbaş

> *Every day we heard his voice. They subjected him to falaka, and then used to make him run in the corridor so that his feet wouldn't swell up. Even the sounds from his chest reached us. And at night his moans would come; he suffered incredible pain. On the 22 [January 1991] everyone detained from Hacettepe [University] was brought before the court. Birtan wasn't there. We asked the police, "Where is he?" They palmed us off with "He'll appear." How could we have known that they had long since buried him in the ground?*
>
> A.F.Ö, detained with Birtan Altınbaş in January 1991[33]

On 23 March 2006, after an eight-and-a-half-year long trial and 16 years after his death in police custody, Birtan Altınbaş's torturers were each sentenced to eight years, 10 months and

[33] Quoted by Adnan Keskin and Ertuğrul Mavioğlu, "'Efsane' dava bitti", *Radikal* newspaper, 24 March 2006.

20 days for unintentional killing through torture (Articles 245 and 243, former Turkish Penal Code). The verdict against four police officers is not a final one and a decision by the Court of Cassation is awaited. Pending that decision, the defendants are at liberty but prevented by court order from travelling abroad.

Birtan Altınbaş (born 1967 and originating from Malkara, Tekirdağ) was a university student in Ankara when he was detained on 9 January 1991 in a police operation against leftist students. The students were taken to the Anti-Terror Branch of the Ankara Security Directorate and interrogated by police working under Chief Superintendent İbrahim Dedeoğlu, in charge of the questioning of leftist groups. As one of four defendants who received sentences, İbrahim Dedeoğlu is one of the most senior police officers in Turkey to have been found guilty of a gross violation of human rights and his sentencing is an affirmation that senior officials cannot always escape justice. The other defendants sentenced were Sadi Çaylı, Hasan Cavit Orhan and Süleyman Sinkil. A fifth man, Ahmet Baştan, sentenced separately, died in October 2005.

This important outcome, pending the final decision of the Court of Cassation, comes however at the end of a very long process marked at every stage by attempts to pervert the course of justice and block conviction. The history of the investigation and trial demonstrates some of the striking dimensions of impunity which blight Turkey's human rights record and reveals what Amnesty International considers to be an institutionalized failure to bring state officials who perpetrate human rights violations to justice.

Administrative delays

The defendants in the case were at liberty throughout the investigation and trial, and were never suspended from duty. One of the defendants was promoted within the Special Operations Unit of the police force, none was demoted, and one defendant attempted to become a member of parliament for the Nationalist Action Party (MHP). The trial of the (originally 10) defendants began as late as 1998, seven years after Birtan Altınbaş's death. Due to the efforts of the Ankara branch of İHD and individuals who had been direct witnesses to Birtan Altınbaş's torture, the Ankara Public Prosecutor began an investigation and indicted 10 police officers for torture and "unintentional killing". Ankara Heavy Penal Court No. 2, however, issued a decision of non-competency for the case, citing the last paragraph of Article 15 of the 1991 Law to Fight Terrorism which necessitated the "administrative permission" of the Ankara Governorate for the prosecution to proceed. Although this law was repealed by a Constitutional Court ruling on 31 March 1992, shockingly the Administrative Board of the Ankara Governorate then held back the file for another six years. After six years of prevarication, the Court of Cassation decided on 20 October 1998 that the Ankara Heavy Penal Court No. 2 was once again responsible for the case.

Failure of defendants to attend trial hearings

With a new indictment, the first hearing of the case took place on 26 November 1998. The trial proceeded very slowly, with the defendants mostly not attending court and employing many tactics which seem to have been intended to delay the process. Having completely failed to trace or secure the attendance of two of the defendants, the court decided in July 2001 to separate out their cases and to make them part of a separate process so as not to hold up the rest. At the July hearing the court rejected the defendants' argument that Birtan Altınbaş's injuries leading to death were sustained as he resisted arrest and were self-inflicted. At that hearing the court convicted defendants İbrahim Dedeoğlu, Sadi Çaylı, Hasan Cavit Orhan and Süleyman Sinkil to four-and-a-half-year prison sentences. The other four defendants were acquitted.

Failure of the court to ensure realization of the trial in a timely and effective way

The Court of Cassation overturned this decision on procedural grounds and a retrial began at the Ankara Heavy Penal Court No. 2 on 19 November 2002. Further problems were caused when a summons for another defendant, now retired from the police force, was returned and the defendant's lawyer then claimed he did not know his client's address. In 2003 the lawyer representing Birtan Altınbaş's family described to Amnesty International how she had managed herself to trace the defendant without difficulty. When the defendant finally testified in a local court in his home town, a year after an arrest warrant had been issued, he gave as his address the same one from which court summonses had been returned. Two other defendants retired, and summonses were returned on the grounds that they did not reside at the address.

Despite repeated attempts by the lawyers for the family of the deceased to lodge complaints against all the official state offices which were failing to bring the defendants to court or to arrest them, such efforts did little to push the authorities to exercise due diligence in ensuring that the trial was realized in anything like a timely and effective way. Even when defendants in this case who ignored summonses were finally arrested and brought to court, they were immediately released again after testifying and not subjected to disciplinary or further proceedings as a result of their non-compliance. It is difficult to conceive that in Turkey such leniency would ever be extended to defendants who were not public officials for flouting the justice system in so flagrant a way.

In light of debate in the press about the conduct of this trial, the Ministry of Interior issued a new regulation on the question of attendance at trials by members of the security forces whether as defendants or witnesses. The regulation published on 12 February 2004 stated: "The Security Organization's understanding of outstanding service and success is overshadowed by those members of the security forces who need to be brought to court and cannot be." The regulation emphasized that officers on trial were to be traced, if necessary through the address at which they were registered in connection with their retirement pension, issued with arrest warrants and brought before courts either as defendants or as witnesses. It also included the information that in 2000 three previous regulations had been issued on the same subject.

External pressure to bring perpetrators to justice

Importantly, too, in February 2004 a letter from the US Secretary of State Colin Powell to Foreign Minister Abdullah Gül (at the same time State Minister responsible for Human Rights) criticized the progress of the trial and called for the perpetrators of Birtan Altınbaş's killing to face justice before the statute of limitations was exceeded. This external intervention seems to have had a powerful effect on the subsequent course of the trial, in terms of strengthening the resolve of the court to proceed more quickly.

With further delays, continuing non-attendance of defendants despite the February 2004 Ministry of Interior regulation, repeated resignations by their teams of defence lawyers causing further delays to proceedings, an unsuccessful effort by their lawyers to get a press black-out on the case on the grounds that their clients' lives were under threat, and finally an attempt to resort to the tactic of questioning the impartiality of the court and pushing for the panel of judges to withdraw from the case, the retrial proceeded. The Security Directorate reportedly provided the most senior defendant, İbrahim Dedeoğlu, with a bodyguard.

Defendants convicted but given reduced sentences in second verdict

On 26 March 2004 the court reached a second verdict, repeating the first. The conviction of the four was again overturned by the Court of Cassation, while the acquittal of the other four

was this time upheld. The decision of the Court of Cassation to quash the conviction and order a retrial was based on the substantive point that the lower court had judged that the four could benefit from reduced sentences under Article 463 of the then Turkish Penal Code because "the perpetrator of the death was not known" from among the defendants. The Court of Cassation argued that the four were the perpetrators and thus could not benefit from a reduction in sentence.

In the case against the two defendants that had been separated out from the others because the court could not trace them, their eventual arrest and trial resulted in a verdict against them on 10 September 2004. The same court decided to acquit one and to give the other the same sentence meted out to the other four convicted. Apparently ready to forget the defendant's history of having avoided trial hearings, the court also decided that like the others he too should be able to enjoy a reduced sentence on the grounds of having behaved well during hearings (Article 59 of the then Turkish Penal Code).

Defendants convicted in third verdict

The second retrial of the four defendants began again in the second half of 2005. This time the defendant Süleyman Sinkil testified that he and another defendant had interrogated Birtan Altınbaş and used force against him to restrain him, but that the others including İbrahim Dedeoğlu, the most senior among them, had not been present. This was viewed by the lawyers for Birtan Altınbaş's family as a tactic by the two defendants to protect the more senior officer.

The latest sentence delivered by the court on 23 March 2006 thus came at the end of a trial lasting over eight years and beginning over seven years after Birtan Altınbaş's death. Human rights groups and lawyers for the sub-plaintiff argued that the defendants should have been charged with murder rather than manslaughter and that the proceedings lasted too long. Looking back over the course of the trial, the main lawyer for Birtan Altınbaş's family acknowledged that efforts to raise awareness of the case had paid off:

> *When the first decision came out, a crowd of police massed at the door [to the court]. They protested the verdict by clapping. We were under huge pressure. With growing public support over time this pressure decreased. After Powell's letter the trial attracted attention. If there had not been public support this trial would not have been concluded in this way. This trial shows just how important the public is.*[34]

A further point should be made about the sentences. Although the defendants were sentenced to eight years, 10 months and 20 days, in practice if the Court of Cassation upholds the verdict the defendants may serve much less than this. Subject to an article in the Law to Fight Terrorism concerning (ordinary) crimes committed prior to its implementation in April 1991, the defendants would only have to serve one-fifth of their sentences – in other words, around 21 months.

Case 2: The Kızıltepe Case: the killing of Ahmet Kaymaz and Uğur Kaymaz

[34] Lawyer Oya Aydin, quoted in a report on the trial on *Bianet* news website, 26 March 2006.

Ahmet Kaymaz and his son Uğur Kaymaz were shot dead on 21 November 2004 outside their home in Kızıltepe, Mardin, in southeast Turkey. Immediate statements by the office of the Mardin Governor Temel Koçaklar claimed that two PKK members had been killed in a clash with the security forces, despite the fact that Uğur Kaymaz was 12 years old. Forensic reports indicate that the father and son were repeatedly shot at close range and that nine bullets had been fired into Uğur Kaymaz's back and four bullets into his arm and hands, and that six bullets had been fired into Ahmet Kaymaz's chest and stomach and two more into his hand and leg.[35] There were strong suggestions from the forensic reports, as well as from indications of clear irregularities in the collection and handling of evidence and other aspects of the investigation, that the killing of the two may have amounted to a violation of the right to life.

On 27 December 2004, with great speed by Turkish standards, four members of the Special Operations Unit of the police were indicted on charges of exceeding the legitimate use of force and of killing in a manner in which the individual perpetrator cannot be determined, charges carrying a maximum sentence of six years for each killing.[36] A further decision was taken not to prosecute two other members of the security forces whose identities were not revealed, together with the senior police officer responsible for the operation who was both Head of the Anti-Terror Branch and Deputy Head of the Mardin Security Directorate. An appeal against the prosecutor's decision not to indict this individual was rejected by the Midyat Heavy Penal Court, reportedly on the grounds that the individual "directed the operation but could not be directly responsible because he did not use a gun".[37]

It is notable that the four defendants, along with the other police officers and Head of the Anti-Terror Branch originally under investigation, were initially suspended from duty on the recommendation of the Ministry of Interior's inspectors. They were then reinstated and appointed to different cities in the west of Turkey, based on the decision of the Ministry of Interior inspectors that disciplinary action against them would await the outcome of the criminal proceedings. Throughout their trial, the four thus continued to be on active service.

Problems in the indictment

The indictment concerning the four defendants alleged that the police "suddenly encountered Ahmet and Uğur Kaymaz and … issued the warning 'STOP POLICE'", that Ahmet and Uğur Kaymaz opened fire on the police and the police responded, and that the clash took place in a six m² area. The two Kalashnikovs discovered beside the dead bodies of Ahmet and Uğur Kaymaz were said to have been used in an earlier PKK attack on the security forces in the region.[38] Two hand grenades and four cartridge clips were also allegedly found on the person of Ahmet Kaymaz, with a number of cartridges found at the scene identified as having been fired from the father's and son's guns and others from the firearms of the defendants.

The indictment then argued that the police were in fact seeking to apprehend a PKK member (Nusret Bali, codenamed Kabat), who was allegedly hiding in the Kaymaz family's home, and Ahmet Kaymaz, who was suspected of aiding him. "According to information and

[35] See report of the Special Board of the Forensic Medical Institute Directorate, reference A.T. No: 110-26072005-41017-2099 Karar Nos: 2014 A and B, dated 3 August 2005.
[36] The four defendants were charged under Articles 448, 50, 463, 31, 33 of the then Turkish Penal Code; see Mardin Cumhuriyet Bassavcılığı İddianame, hazırlık ve iddianame nos. 2004/ 4054 – 896, dated 27 December 2004.
[37] Reported in *Radikal* newspaper, "Dönmez için itiraza ret", 2 March 2005. It is notable that this individual has also been put forward for promotion during the trial, according to press reports such as Saygı Öztürk, "Kızıltepe olaylarında suçlanan müdüre terfi", *Hurriyet* newspaper, 14 May 2005.
[38] The General Security Directorate spokesman Ramazan Er publicly announced on 17 December 2004 that the Kalashnikovs found on the bodies had been discovered to have been previously used in a 7 August 2004 PKK attack on the Yenişehir Police Centre Command in Mardin, which had resulted in the injury of two senior and two junior police officers (18 December 2004, *Radikal*).

documents", the indictment continued, the police officers did not realize Uğur Kaymaz was Ahmet Kaymaz's son and thought he was the PKK member when the boy and his father "went out of the house upon Ahmet Kaymaz noticing that the house was being watched by security forces in order to allow Nusret Bali, code-named Kabat, to escape from the back". The indictment framed the incident of the alleged clash with mention of Ahmet Kaymaz's previous reported connection with the PKK and a decision, allegedly taken after a tip-off by phone one day earlier, to place his home under surveillance and to secure a search warrant since it was thought that a PKK attack might be being organized from the Kaymaz home. The crime committed was argued to have been excessive use of force, on the basis of the sheer number of bullet holes in the bodies; however, the indictment also implied that the excessive force was legitimate in order to protect their lives because it came as a response to being fired upon. Several press reports also drew attention to other allegedly significant contradictions in the indictment.[39] It is important to address the flaws which reportedly marked the initial investigation into the killings.

Apparent discrepancies in evidence

A number of concerns were raised by the lawyers for the family of the deceased in relation to evidence-gathering at the crime scene and the implications of this for the subsequent investigation.[40] Consideration of these demonstrates clearly that the conduct of the pre-investigation stage may have prejudiced the course of the investigation and contributed to suspicions of a cover-up by the police.

Among the concerns raised by lawyers for the family of the deceased were the following: that, although tens of bullets were fired, no police officer was wounded and there were no traces of bullet marks on Ahmet Kaymaz's truck and no information of there being bullet marks on the walls of nearby houses. This suggested there had been no armed clash. One of the defendants himself allegedly removed from Ahmet Kaymaz's body a cartridge belt, with two hand grenades and four cartridge clips attached to it, before the prosecutor had reached the crime scene.[41] This raised the question of whether such a belt had ever been attached to Ahmet Kaymaz's body, reasoned the lawyers, and whether evidence had been tampered with. A day after the incident 11 more bullets were reportedly found at the crime scene, despite the fact that on the evening of the investigation, all evidence had supposedly been gathered and the area had been filmed and was then reportedly sealed off with yellow tape for the night. The seal of the envelope containing the hand swabs of Ahmet Kaymaz and Uğur Kaymaz, which allegedly proved they had both used firearms, had reportedly been tampered with and was received in that state by the Forensic Medical Institute. Moreover, there was no information with the hand swabs on how they had been taken and from which hands they had been taken. This was especially important since the deceased had both been shot in one hand and possibly at close range. The testimonies provided by the defendants on how many times they had fired conflicted strongly with the actual number of empty cartridges collected from the scene.

The lawyers also argued that if the Kaymaz home had been under surveillance, it would seem impossible that there could have been confusion over who the 12-year-old Uğur

[39] See Gökçer Tahincioğlu, "Savcının tarihi polisle tutmadı", *Milliyet* newspaper, 31 December 2004 and Ilhan Tasçı "Kızıltepe Çelişkiler Yumağı" , *Cumhuriyet* newspaper, 1 January 2005.
[40] A petition to the court by lawyers for the family of the deceased dated 21 February 2005.
[41] The reported removal of the cartridge belt contradicts the statement of the prosecutor to the delegation from the İHD conducting their own investigation of the shootings. To them she reportedly stated, "No one interfered with the evidence at the scene of the incident until I arrived. All evidence was collected under my supervision and the scene of the incident was determined with photographs and film and the [bodies of the] individuals were taken to hospital for autopsies."

Kaymaz was. They questioned how, if the entire house had been under surveillance, a PKK member could have allegedly succeeded in escaping from the back of the house.

Amnesty International is concerned that police working at the Mardin and Kızıltepe Security Directorates – where the defendants also worked – were reportedly responsible for the evidence gathering and investigation and that this may have undermined the independence of the investigation.

As for flaws in the prosecutor's investigation, reportedly there had been significant delays in the prosecutor requesting evidence to be provided by the Security Directorate. For instance, information about who had used which weapons during the operation was reportedly not requested until some days after the incident and the actual collection of the weapons was not demanded until 3 December, 13 days after the incident. Hand swabs were reportedly not collected from those who participated in the operation. The lawyers for the family of the deceased also raised objections to the admissibility as evidence of some of the documents in the investigation file. Most notable among these was a document purporting to show the average age of members of illegal armed organizations, such as the PKK, which the lawyers judged to have been included in the file as a way of implying that Uğur Kaymaz could have been a PKK member.

Views of the Parliamentary Human Rights Commission and the Union of Turkish Bars

Although their final report on the killings was never published, members of the Parliamentary Human Rights Commission commented publicly on the shootings, expressing the view that there was no sign that an armed clash had occurred. Commission member and parliamentarian for the Republican People's Party (CHP) Hüseyin Güler described the indictment as having been "prepared with a defensive reflex", and reasoned that the Kaymaz father and son could have been caught alive. Commission member and AKP parliamentarian Nezir Nasıroğlu remarked that, "At the end of our investigation we as a Commission established that no clash had occurred at the scene of the incident."

Commission member and CHP parliamentarian Ahmet Ersin commented on the evenness of the gunshot holes in Uğur Kaymaz's back – "there were six bullet holes running down his back like a string between his fourth and eighth rib in a 10-12 centimetre area" – as indicative that there had been no armed clash: "If it had been a clash, because both parties would have been moving, six bullets holes would not be aligned like this, in a straight and regular way." Ahmet Ersin doubted that a PKK member had escaped from the back of the house: "During our investigation there was no such claim. Reportedly the whole house was surrounded, how would he have escaped? This is fiction."[42]

The report by the Union of Turkish Bars arrived at a less clear conclusion about the shootings. While the press emphasized the point that the report had concluded that Ahmet Kaymaz was a member of the PKK, the report also addressed the issue of whether the shootings amounted to an extrajudicial execution, stating: "While the security forces generally used long-barrelled firearms in this incident the use of 9mm MP5 and Uzi automatic pistols can be evaluated as an indication of an extrajudicial killing. However, 9mm MP5 and Uzi

[42] Reported as "Çatışma kuşkulu", *Radikal* newspaper, 30 December 2004. The finding of the Parliamentary Commission was also reported elsewhere, including by Murat Çelikkan, "Kızıltepe raporu", *Radikal* newspaper, 19 March 2005.

automatic pistols are close combat firearms and the operation was to be carried out in a neighbourhood. Here the use of long-barrelled firearms is not possible."[43]

Intimidation of human rights defenders and journalists

The Human Rights Association (İHD) conducted an initial investigation into the shootings and published its findings as a report.[44] The İHD delegates had examined the area, which revealed no signs of bullet holes on the surrounding walls and the Kaymaz truck. Their report concluded, "from interviews with eyewitnesses, relatives of the victims and official authorities, and the examination of the crime scene, that both victims were civilians and one a child; that the probability of them having fired weapons is extremely low; that the event in question may in fact be an example of extrajudicial killing; that these civilians may have been killed by the security forces either by mistake or intentionally."

As a result of this report, legal proceedings were initiated against two of the report's authors. Despite the Kızıltepe Public Prosecutor having reportedly stated to the İHD delegation that she valued civil society organizations and regarded their efforts as extremely important,[45] it is striking to find that after producing their report on their initial findings two out of five authors of the report were charged. Mihdi Perinçek, Board Member of the İHD and southeast region representative, and Selahattin Demirtaş, board member and head of the Diyarbakır branch of the İHD, were charged – bizarrely under Article 19 of the Press Law, though they were not journalists –for "attempting to influence a judicial process". The indictment alleges that the İHD's report violated the law because it "included statements concerning an investigation on which a secrecy order has been placed that were misleading to the public and would influence the judicial process". Selahattin Demirtaş disputed this, emphasizing that the İHD had not had access to the files on the investigation since their content had been the subject of a court decision restricting all access to them. Prosecutions are pending.

Charges were also brought under the same law against journalists. These included İlhan Selçuk, the owner of the daily *Cumhuriyet*, and editor-in-chiefs İbrahim Yıldız and Mehmet Temoçin Sucu and the correspondent İlhan Taşçı, charged in connection with an article which pointed out the contradictory information about the sequence of events that led up to the killings as represented in the indictment.[46] There was also a complaint against the journalist Fehmi Koru, of *Yeni Şafak* newspaper, for an article on the killings.[47]

Conduct of the trial

The first hearing of the trial against the four defendants began at Mardin Heavy Penal Court No. 2 on 21 February 2005. The defendants did not attend the first hearing, on the grounds that they had now been assigned to work in other cities. The trial itself was moved to Eskişehir for reasons of security, a decision taken by the Mardin court at the first hearing.

[43] "Kızıltepe Olayı'nda Baro Raporu: Baba Kaymaz PKK milisi", *Milliyet* newspaper, 22 May 2005.
[44] İHD report, "Mardin İli Kızıltepe İlçesinde Ahmet Kaymaz ve 12 yaşındaki oğlu Uğur Kaymaz'ın yaşam hakkının ihlal edildiği iddialarını araştırma-inceleme raporu", published 25 November 2004 after an investigation carried out on 23 November 2004.
[45] Interview with Kızıltepe Public Prosecutor reported in İHD report cited above.
[46] See Ilhan Taşçı "Kızıltepe Çelişkiler Yumağı" , *Cumhuriyet* newspaper, 1 January 2005. See report by Adnan Keskin, "Kızıltepe'de fatura basına", *Radikal* newspaper, 13 July 2005.
[47] See Fehmi Koru, "Kan denizinde boğulmak", 27 November 2004, and "Suç Duyurusu", 2 January 2005, both articles in *Yeni Şafak* newspaper.

This is a fairly common practice for trials of this kind against public officials, but a practice which lawyers for the sub-plaintiff in this and similar trials have frequently criticized on the grounds that it contributes to impeding the attendance at court hearings of the family of the victim and their lawyers because of the practical obstacles and, above all, cost of travelling to another part of the country for hearings.

The lawyers for the family of the deceased repeatedly requested that the court arrest the defendants and remand them to prison pending the outcome of the trial, and also repeatedly called for senior police officers from the Kızıltepe Security Directorate to appear as witnesses. They particularly emphasized the importance of hearing the testimony of the Head of the Anti-Terror Branch responsible for the operation. They also requested that the court undertake a full examination of the scene of the crime to understand better the physical space in which the shootings had occurred.[48] All these requests were repeatedly turned down by the court.

On 18 April 2007, the court reached a verdict and acquitted the four defendants on all charges. The lawyers for the family of the deceased appealed the verdict and the appeal is now pending.

Counter-charges and investigations

Before the prosecutor had issued an indictment, the General Security Directorate made an announcement about the weapons purportedly used by the Kaymaz father and son. The implication of such an announcement was to demonstrate to the public the pair's alleged connection with the PKK rather than to question the circumstances in which they had been killed. The tendency to focus on the alleged political allegiances of the Kaymaz family rather than on the incident in question was also repeated in relation to other family members.

In December 2004 the Kızıltepe public prosecutor prepared reports on Ahmet Kaymaz's wife, Makbule Kaymaz, and his younger brother, Reşat Kaymaz, arguing that they were both "members of an illegal organization" (the PKK) and calling for them to be charged with membership. The report was forwarded to the Diyarbakır Chief Public Prosecutor. In mid-March 2005, the Diyarbakır Chief Public Prosecutor issued a decision not to pursue an investigation or prosecution of the two, having found no evidence of them being PKK members.

Amnesty International considers that this investigation may have been intended to discredit the reputation of members of the Kaymaz family and may have constituted an attempt to influence the court.

Amnesty International considers that the use of another criminal investigation against lawyers for the family of the deceased may also constitute an attempt to discredit publicly the reputation of the family's legal counsel. As a result of comments made to the press after a particularly eventful hearing on 19 December 2005, which took place in a context of extreme security measures which arguably added to the tension of the hearing, an inspector at the Ministry of Justice authorized an investigation into Tahir Elçi, one of the lawyers for the family of the deceased. Tahir Elçi was accused of making comments that constituted an intervention in the judicial process and influenced the fairness of the trial. He testified before the Diyarbakır public prosecutor on 18 October 2006. He was charged under Article 288 of the Turkish Penal Code and his first trial hearing at the Eskişehir court was scheduled for 14

[48] See, for example, the petition to the court by the lawyers for the family of the deceased, dated 10 May 2006.

June 2007. It is notable that no such investigation was launched against lawyers for the defendants for any comments made to the press after hearings.

Conclusion

The Kaymaz killings became a subject of discussion within the police force in Turkey and in some quarters it was even admitted that the killings were a "catastrophe" which required "the necessary judicial process" to be carried out and provided lessons in the need for more effective control over police operations:

> *The security units must learn the necessary lessons from this catastrophe and try to determine the weak points of the system in order to prevent similar events or mishaps from occurring and allow for the well-intentioned outfits to thrive.*
>
> *The fact that these teams [Special Operations Units of the police] are located within the Directorate General of Security and are therefore attached to the Ministry of Internal Affairs, makes their administrative, legal and even political supervision and control suitable to democratic and civilian criteria. In fact, in cases of allegations of illegitimate practices such as in the event covered above, the necessary judicial process must be launched. Public satisfaction over the issue depends on the adequacy of the information provided to it. For this reason, in parliamentary democracies, the commissioning of security units under civilian scrutiny in the fight against terrorism proves to be more suitable to the mindset required for the conditions of democracy and a state of law*.[49]

Case 3: Alleged torture of inmates at Izmir Kırklar F-type prisons Nos. 1 and 2

There were alarming allegations in 2005 and 2006 of disciplinary punishments of inmates in Izmir Kırklar F-type prisons Nos. 1 and 2 which amount to torture. These punishments were reported by lawyers who visited their clients in prison and were documented by the Izmir Independent Prison Monitoring Group (İzmir Ceza ve Tutukevleri Bağımsız İzleme Grubu).[50]

Representatives of the Monitoring Group interviewed 10 prisoners. These prisoners were remand and convicted prisoners held in an F-type prison. Nine inmates were imprisoned for ordinary crimes; a tenth inmate was in remand detention, on trial for membership of a radical Islamic organization. The 10 cases all involved allegations that one form of disciplinary punishment consisted of prisoners being subjected to a method of restraint known as the "hogtie" (*domuz bağı*) while placed in a padded cell.[51] The prisoners reported that they had been left for prolonged periods with their wrists bound behind their backs, their ankles bound, and wrists then bound to ankles, and left in this position lying on the floor. Amnesty

[49] See article by an assistant professor at the Faculty of Security Sciences at the Police Academy, Ertan Beşe, "Office of Special Operations", in Ümit Cizre (ed.), *Almanac Turkey 2005: Security Sector and Democratic Oversight* (Istanbul: TESEV publications, 2006), pp.118-127.

[50] The Izmir Independent Prison Monitoring Group is currently made up of the Izmir branches of the Contemporary Lawyers Association (Çağdaş Hukukçular Derneği İzmir Şübesi), the Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı İzmir Temsilçiliği), the Human Rights Association (İnsan Hakları Derneği İzmir Şübesi), and the Architects and Engineers Professional Chamber (TMMOB İzmir İl Koordinasyonu Kurulu). Although the Group has repeatedly requested access to prisons for the purposes of independent monitoring, it has so far been denied access and thus collated its information through the reports of lawyers and the families of prisoners. This is discussed in greater detail below.

[51] Documented in the Group's report covering the period November 2005 to October 2006: "İzmir Ceza ve Tutukevleri Bağımsız İzleme Grubu, Kasim 2005 – Ekim 2006 Raporu". Cases also reported by the Izmir Contemporary Lawyers Association in the report entitled *İzmir F Tipi Cezaevlerinde pozisyon işkencesi ve uzun süreli ağırlaştırılmış tecrit uygulaması* (*Positional torture and the practice of extended aggravated solitary confinement*) (no date).

International has documented numerous deaths in US police custody as a result of restraint procedures such as the "hogtie" which are known to be dangerous; such practices can severely restrict breathing and can lead to death from "positional asphyxia", especially when the subject is agitated or under the influence of drugs. Amnesty International has campaigned for such forms of restraint to be banned.[52] The organization considers that the use of this restraint method as a punishment in a prison cell amounts to torture or other cruel, inhuman or degrading treatment. In the Izmir case, handcuffs, rags, sheets and binding tape had reportedly been used and some prisoners reported the humiliation of being fed while hogtied by prison guards and of not being untied to go to the toilet.

It was reported to Amnesty International that the allegations of the use of this form of punishment were under investigation by the Public Prosecutor in Izmir. Amnesty International joins lawyers who have expressed concerns that the prosecutor conducting the investigation is the same individual responsible for the day-to-day monitoring of the prison and that this could constitute an obstacle to an independent and effective inquiry. Amnesty International emphasizes the need for an independent mechanism to monitor treatment of people in detention.

The names of 31 inmates who had reportedly been subjected to this treatment were reported to the Monitoring Group. Of these, in only 11 cases could a meeting with lawyers who passed on the information to the Group be arranged. One individual reportedly stated that he did not wish to lodge a complaint, 10 were ready to lodge complaints, and for reasons such as their transfer to other institutions, their discharge from prison or problems of securing the right to act on their behalf (*vekalet*), there was no opportunity to meet with a reported 20 other inmates who had allegedly been subjected to the same treatment. Out of fear of further reprisals by prison guards, the lawyers have requested that Amnesty International withhold the names of the 10 prisoners who have lodged formal complaints until the results of the prosecutor's investigation become available.

Among the 10 are cases such as these three:[53]

- The prisoner X in Izmir Kırklar F-type prison No. 1 complained that, in July 2006, as punishment for a dispute that was about to escalate to a fight with another prisoner, he was placed by prison guards in solitary confinement in the 8-10 m² padded cell described as being in B-block. There he reported that he was verbally threatened, stripped to his underpants, his hands and feet were bound and he was placed in the hogtie position for a whole day. He alleged that he was then moved to another cell in A-block where he spent another two weeks in solitary confinement, at the end of which he had expected to be removed but had been ignored. This had prompted him to set fire to his bed to secure the guards' attention, as a result of which he had then been placed once again in the padded cell in B-block. He reported he was again stripped to his underpants and restrained in the hogtie position and left for five days in the cell. Among the guards alleged to have organized this punishment were senior prison personnel, one of whom the prisoner was able to identify by name.

- Among several cases of prisoners alleging similar punishments in December 2005, prisoner Y complained that on 21 December 2005 in a cell in A-block he and two other prisoners were restrained in the hogtie position by guards including senior

[52] See, for example, *Denmark: Summary of Concerns* (AI Index: 18/01/95) and *USA: Rights for All* (AI Index: AMR 51/035/98) and website http://www.rightsforall.amnesty.org/info/report/r03.htm#.
[53] Cases documented in full in the report by Izmir Contemporary Lawyers Association, *İzmir F Tipi Cezaevlerinde pozisyon işkencesi ve uzun süreli ağırlaştırılmış tecrit uygulaması* cited above.

personnel (and the same senior individual named by prisoner X). He reported that one of the other two was also beaten and subjected to falaka (beating on the soles of the feet), and that the three were left in the hogtie position from 11am to 8am the following morning, with guards who periodically came to check on them, sometimes increasing the pain by pulling on the end of the rope that bound them, verbally threatening and insulting them. Prisoner Y reported that the three were examined by a doctor, who reportedly suggested to the guards that they be transferred to hospital "because as it is I'm already under investigation". One of the personnel reportedly answered with words to the effect of, "If we transfer them, it will be on our heads".

- Prisoner Z reported that he was subjected to punishment through being restrained in the hogtie position in the padded cell, and was kept in this position in the cell for seven days. He estimated that the punishment had begun on 8 December 2005. Some guards had allowed him to go to the toilet and had untied his hands for this purpose, but others had not. He had been fed in the hogtie position by guards once a day. The tight binding on his hands had caused great swelling, but rather than permitting him to be seen by a doctor, the guards had slightly loosened the bind. Some days later, after an incident which had entailed self-harming (lawyers observed a 10cm burn mark on the inside of his left arm), he had been subjected to the hogtie restraint for four days. He reported that, because he had attempted to resist this punishment, he was beaten and that, while being placed in the cell, guards had tightened a rope around his neck, restricting his breathing, to break his resistance. After this, he had lodged written complaints but had not received any answer. A doctor who examined him, reportedly said, "If there was no torture here I wouldn't have come", and "If only you hadn't also resisted [them]".

Prison monitoring but continuing reports of torture

In June 2001 the Law on Prison Monitoring Boards (Law no. 4681) and its accompanying regulation issued by the Ministry of Justice[54] were intended to establish a system of prison monitoring in which a board of five persons, incorporating independent individuals with suitable expertise, would be given the task of inspecting conditions in prisons, including through interviewing prisoners in private, and issuing regular reports documenting their findings. The reports produced are submitted only to the local prosecutor and to the Ministry of Justice and the findings are not made public. NGOs such as human rights groups were excluded from these boards. The boards have been criticized on a number of counts by human rights defenders and lawyers in Turkey. These criticisms include: the fact that the Boards have not been effective because allegations of ill-treatment and arbitrary disciplinary regimes in prisons continue; and that the boards are not independent and do not incorporate civil society representatives suitably qualified to perform the task.

Since October 2003, in response to what they perceived as the failings of the official Prison Monitoring Boards for Izmir, the self-constituted Izmir Independent Prison Monitoring Group, entirely composed of civil society groups including lawyers and medical professionals, has attempted to find ways of performing a monitoring function. The Group has repeatedly applied to be granted access to prisons and remand detention centres in the Izmir area for the purposes of conducting independent monitoring.[55] Where the Group has received responses from the Ministry of Justice and other authorities to its various requests, the answer has

[54] Ceza İnfaz Kurumları ve Tutukevleri İzleme Kurulları Kanunu (4681, 14/6/2001) and Ceza İnfaz Kurumları ve Tutukevleri İzleme Kurulları Kanunu Yönetmeliği (*Resmi Gazete*, 7/8/2001).
[55] See, in particular, the Monitoring Group's annual report for October 2003 to October 2004, *Yıllık Raporu*, *Ekim 2003-Ekim* 2004.

always been negative and has consistently pointed to the fact of there being no provision in law to accommodate such a request.

Amnesty International considers that the granting of access to places of detention for civil society organizations would act as an important deterrent to prison personnel who abuse their authority and resort to coercive practices which violate Turkey's obligations under international human rights law.

Conclusion

The serious allegations about the hogtie method of restraint in Izmir Kırklar F-type prisons Nos. 1 and 2 that Amnesty International considers amount to torture, alongside other abuses documented by the Izmir Independent Prison Monitoring Group, must be thoroughly and impartially investigated and perpetrators brought to justice. Amnesty International also urges the Turkish government to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides for the establishment of a system of international and independent national bodies to visit places of detention in order to prevent torture or other ill-treatment.

Case 4: Torture allegations following the Diyarbakır protests of March 2006

The Diyarbakır funerals of four members of the Kurdistan Workers' Party (PKK) – killed, along with 10 others, in a military operation on 24-25 March 2006 in the Şenyayla region between Muş, Bingöl and Diyarbakır – became the context for protests which escalated to violence and spread to other cities in the southeast region.

After the funeral ceremonies held on 28 March, at which clashes broke out between protesters and police, resulting in mass injuries of both protesters and police, and damage to property, violent protests again began on 29 March. Three people (one of them a child aged nine) were allegedly fired on by the security forces and killed. Their funerals provided the context for further demonstrations and further fatal shootings of a child aged six and another child allegedly by members of the security forces. In all there were 10 deaths of demonstrators and onlookers (four of the deaths were of children) in Diyarbakır in the course of the demonstrations, with the autopsies revealing fatal shooting in eight out of 10 cases as the cause of death. There were allegations that the Diyarbakır protests had been partially organized by the PKK and that shopkeepers, in particular, had been instructed to keep their businesses closed and shutters down.

There were also two fatal shootings of demonstrators in Kızıltepe, and in Batman a three-year-old boy was reportedly hit by a stray bullet while playing on a rooftop. On 2 April there were demonstrations in Istanbul and one group of demonstrators reportedly set a public bus on fire: a woman passenger and the two sisters waiting at a bus stop where the bus crashed were killed. Coinciding with the protests, on 31 March, members of the Kurdistan Freedom Falcons (TAK) planted a bomb in a rubbish bin in the Kocamustafapaşa neighbourhood of Istanbul, killing a street seller and heavily wounding three others.

There were mass arrests in all cities during the demonstrations. In Diyarbakır, the Bar Association reported that lawyers for the legal aid service were called out to deal with 543 detentions (199 of them under 18 years); 91 minors and 278 adults were formally arrested and remanded to pre-trial detention. There were also reports of unofficial detentions. There were widespread allegations of torture or other ill-treatment in police custody. On the basis of reports by the legal aid service of the Bar, the human rights organization Mazlum Der reported that 95 per cent of detainees were tortured or otherwise ill-treated during

apprehension and detention. Amnesty International raised concerns about violations allegedly committed by the security forces in the course of efforts to police violent demonstrations, and allegations of torture or other ill-treatment made by detainees, in a letter to the Turkish government[56].

Allegations of torture of children in adult detention facilities

A few days after the riots an Amnesty International delegate interviewed some of the children detained, arrested and bailed pending trial in Diyarbakır. Their allegations of ill-treatment amounting to torture at the Çarşı Police Station in central Diyarbakır were consistent and credible: two 14-year-old boys apprehended in different parts of the city and reportedly unknown to one another separately described being held in a confined space where they were stripped naked for some time then allowed to put their underpants back on. They both reported that they were made to pour cold water over each other or had cold water poured over them when they refused, were threatened with rape and otherwise verbally threatened throughout, were made to lie on the concrete floor, had their hands tied tightly behind their backs with plastic masking tape and were made to kneel in this position for long periods, while being regularly beaten (with fists, truncheons and iron bars) and kicked by police officers at every stage. Lawyers reported that children were not promptly taken to the children's department of the police at another location as the regulations require, but were instead held for around nine hours at the Çarşı Police Station before being transferred.

Lawyers at the Diyarbakır Bar Association also reported procedural irregularities at many stages during the apprehension and detention process, with prosecutors themselves also reportedly complaining that police apprehension records lacked detail, were worded in a generic way and did not provide a basis for formal arrest later on. The apprehension records reportedly demonstrated little difference between those detained and freed and those detained and then arrested.

The adults detained (and some children) were reportedly mainly sent to the Anti-Terror Department of the Police in Diyabakır and held *en masse* in a sports hall. Lawyers reported to Amnesty International allegations of physical ill-treatment of adults and children held there, and of them being made to sing the national anthem. Because of the large number of detentions, doctors were brought directly to the sports hall to perform the obligatory medical examination of all detainees. Lawyers also reported that as they arrived to meet with clients assigned to them by the Bar legal aid service, they were subjected to verbal threats, intimidation and were kept waiting by members of the security forces. One lawyer reported that he was punched by a police officer at the entrance to the Anti-Terror Department.

Thirty-four investigations by prosecutors reported but no progress one year on

Following the Diyarbakır incidents, 34 investigations into allegations of torture or other ill-treatment were reportedly initiated by prosecutors. Seventy-two complaints of torture or other ill-treatment were the subject of an administrative investigation by the inspectorate of the Ministry of the Interior. This entailed the interviewing of individuals, in the company of their lawyers, who had documented evidence of having been ill-treated during detention. The interviewing had reportedly taken place at the Governorate and Amnesty International was informed that lawyers were satisfied that it had been conducted effectively and without the presence of members of the security forces.

Over one year later not a single prosecution had been initiated against any member of the security forces, either in relation to the allegations of torture or the fatal shootings that

[56] See Turkey: Recent human rights violations must be investigated (AI Index: EUR 44/05/2006)

occurred during the demonstrations. Nor had there been any outcome from the administrative investigation.

The importance of immediate access to legal counsel and the erosion of this principle

In light of the apparent breakdown of correct detention procedures in Diyarbakır and the evidence of widespread misconduct and violations by law enforcement officials – in a context of mass detentions which would undoubtedly present a challenge to any police force – Amnesty International was particularly concerned at a new provision introduced in the revised Law to Fight Terrorism, which passed into law on 29 June 2006. Article 10b of the revised law permits access to legal counsel for those detained under suspicion of committing terrorist offences to be delayed for a period of 24 hours, at the request of a prosecutor and on the decision of a judge. There was concern that this 24-hour postponement would likely become standard practice in the detention of terror suspects. The Diyarbakır case revealed again quite starkly that most allegations of torture or other ill-treatment relate to the first hours of detention. In a country with a very recent history of widespread and systematic torture, changes in the law which introduced the right to immediate access to legal counsel for all detainees was an especially important breakthrough and has apparently contributed to the decrease in torture allegations. Amnesty International will therefore continue to press for a repeal of the law allowing for postponement of access to legal counsel.[57]

Case 5: Detainees in Ankara beaten, December 2006: The case of Özgür Karakaya, Nadir Cınar, İlker Şahin and Cenan Altunç

On visiting Özgür Karakaya, Nadir Çınar, and İlker Şahin in the Sincan Closed Prison for Children and Youth on 22 December 2006 where they had been detained since 21 November 2006,[58] their lawyer observed bruising to their faces and hands, and they undressed to display bruising to their backs, soles of the feet and buttocks. The three men reported that, as a punishment for shouting slogans to commemorate the anniversary of the death of prisoners during the prison operation of 19 December 2000, they and another detainee, Cenan Altunç, had been subjected to severe beatings by a group of prison guards with sticks and pipes on 20 December 2006, had then been put into separate unheated cells, were subjected to further ill-treatment the following day and were not offered food or water for around 24 hours. The men reported that they had filed a request to be sent to the Forensic Medical Institute for examination which had been ignored and that the prison doctor who examined them reportedly failed to identify signs of their alleged beating despite visible bruising, issuing a report that all was normal and that they had headaches as a result of being on hunger strike. The four men had reportedly staged a hunger strike in protest at their treatment. A request by the lawyer to meet with the Director of the prison or others to discuss the allegations of beating, including falaka (beating of the soles of the feet), was reportedly met with the answer that no one was available.

On leaving the prison, the lawyer applied directly to the public prosecutor at the Ankara court responsible for matters relating to the prison and requested the immediate referral of his clients to the Forensic Medical Institute for medical examination and necessary precautions to be taken to ensure their safety. The three men were interviewed at around 7pm on the same evening by the Sincan prosecutor[59] and referred that night to the Forensic

[57] As outlined in *Turkey: Briefing on the wide-ranging, restrictive and arbitrary draft revisions to the Law to Fight Terrorism* (AI Index: EUR 44/09/2006).

[58] The three had been detained and remanded to prison in connection with the occupation of the *Associated Press* Ankara office staged by the prisoners' solidarity group, TAYAD. See the report, "TAYAD'lılar Ankara'daki Associated Press bürosunu bastı", *Sabah* newspaper, 20 November 2006.

[59] T.C. Sincan Cumhuriyet Başsavcılığı, soruşturma no. 2006/23299.

Medical Institute in Keçiören. The Institute examined the men at around 12.40am and provided reports which documented the injuries they sustained.[60]

After referring the whole matter to the Head of the Ankara Bar, the lawyer paid a further visit to the three clients on 25 December, in the company of a member of the executive board of the Bar and two other lawyers. A formal complaint was lodged with the Sincan Public Prosecutor the same day requesting that the three clients and Cenan Altunç be promptly referred again to the Forensic Medical Institute, that video film and photographs be promptly taken of the injuries to their bodies by the Institute and of the prison cells in the presence of a prosecutor, that formal identification of the guards responsible for the torture be promptly organized, that film from CCTV cameras in the prison be examined to identify the suspects as present in the prison at the relevant times, that statements be taken, and that those who perpetrated the torture, those who ordered it, those who turned a blind eye to it and those who prevented identification of the problem, be investigated and brought to justice.

Following the 25 December visit, an altercation reportedly occurred when the four lawyers were leaving the prison and on 26 December the Director of the prison filed a formal complaint to the Sincan prosecutor, claiming that two of the lawyers had threatened and insulted members of the prison staff.

Reportedly, of the four men allegedly subjected to severe beatings only one, Özgür Karakaya, was brought before 45 prison guards in order for him to identify the perpetrators. Özgür Karakaya reportedly identified six prison guards but was not informed of their names. Amnesty International considers that a thorough investigative procedure would have required the other three men who alleged torture or other ill-treatment to also be asked to identify the guards who they believe to be the perpetrators. This has allegedly not happened. It is expected that the prosecutor will indict a number of prison guards.

Amnesty International has been informed that a complaint is being lodged against the prison doctor who saw the men after they had been severely beaten and who reportedly issued a report saying, "The routine controls have been done, everything is normal; they should take medicine since they are on hunger strike." The organization has also learned that an administrative investigation into the prison guards by the Ministry of Justice is also ongoing, though the scope of the inquiry is unclear.

7. Recommendations

Amnesty International urges the Turkish authorities to take the following steps in order to combat effectively the impunity of public officials for grave human rights violations:

1) Centralized data collection

- **Ensure centralized, efficient, up-to-date, disaggregated data collection on serious abuses by law enforcement officials in order to reach a clear picture of the effective operation of the law.**

2) Preventative mechanisms to combat human rights violations by law enforcement officials

- **Introduce video and audio recording of all interviews of suspects in police and gendarmerie custody;**

[60] Ankara Adli Tıp Şübe Müdürlüğü, raport no. 45135-7, 23/12/2006.

- **Ratify the Optional Protocol to the Convention against Torture, and implement the Protocol through the creation of an independent national body to carry out regular and ad hoc unannounced visits to all places of detention;**
- **End the harassment of human rights defenders, lawyers and journalists for monitoring the human rights situation.**

3) The prompt, independent, impartial and thorough investigation of allegations of human rights violations

- **Ensure prompt, independent, impartial and thorough investigations into any allegations of human rights violations by members of the security forces in cases concerning violations of Articles 2 (right to life), 3 (prohibition of torture or other ill-treatment) and 13 (right to effective remedy) of the European Convention on Human Rights, in a manner consistent with the judgments of the European Court of Human Rights;**
- **Develop an effective complaints mechanism able to carry out prompt, independent, impartial and thorough investigations into human rights violations allegedly committed by law enforcement officials;**
- **In cases of killings by law enforcement officials ensure immediate, independent crime-scene evidence collection, and that the prosecutor is called immediately and supervises the crime-scene investigation;**
- **In cases of alleged torture or other ill-treatment ensure that prosecutors require specialist medical and forensic examinations, on-site inspections and promptly gather evidence from all persons concerned;**
- **Ensure that prosecutors investigate the responsibility of commanding officers where law enforcement officials are alleged to have perpetrated serious human rights violations;**
- **Bring criminal and disciplinary proceedings in relation to such violations with appropriate sanctions against anyone allegedly responsible for these;**
- **Suspend from active duty officers under investigation for torture and other ill-treatment and ensure their dismissal if convicted;**
- **Ensure compensation for and rehabilitation of the victims.**

4) Address flawed trial proceedings:

- **Ensure hearings take place without undue delay by introducing regulatory time frames for the provision of evidence; an improved and sustainable regulatory framework for trial hearings; and by improving the mechanisms for thorough pre-trial preparation;**
- **Ensure sanctions are imposed against law enforcement officials who flout summonses to appear in court as witnesses or defendants;**
- **Take steps to introduce effective witness protection schemes;**
- **In cases where trials of members of the security forces are moved to distant locations "for reasons of security", ensure that the state bears the cost of**

attendance (including transport and lodgings) for the interested parties and their lawyers.

5) Legal reform

- **Prevent a return to incommunicado detention by repealing revised Article 10b of the Law to Fight Terrorism which permits the right of a detainee suspected of terrorism offences to legal counsel from the first moments of detention to be delayed by 24 hours at the request of a prosecutor and on the decision of a judge;**
- **Revise Appendix Article 2 of the Law to Fight Terrorism, revised in June 2006, to ensure that the use of lethal force by law enforcement officials is compatible with international standards which provide that lethal force be used as a last resort where necessary in order to protect life;**
- **Repeal the statute of limitations for the crime of torture.**

6) Measures to ensure improved medical reporting of torture or ill-treatment and improved forensics

- **Make the Forensic Medical Institute independent both functionally and nominally of the Ministry of Justice;**
- **Take urgent steps to promote the acceptance as evidence by courts of medical and psychiatric reports from university research and teaching hospitals, and other expert bodies;**
- **Take urgent steps to ensure that medical examinations of all detainees are carried out thoroughly, independently and impartially;**

7) Further training

- **Undertake further training of police and gendarmerie on the implementation of legal changes and international standards, ensuring that the provisions of circulars and directives issued are implemented and sanctions are attached if not;**
- **Undertake further training of judges and prosecutors on the implementation of legal changes and international standards, ensuring that circulars and directives issued are implemented.**