

TURKEY

Entrenched culture of impunity must end

Summary

Victims of human rights violations in Turkey face an entrenched culture of impunity. Chances of securing justice for victims or their relatives are remote in cases of ill-treatment, torture or unlawful killings by the police or gendarmerie.

There is still no independent body in Turkey which can impartially and effectively investigate human rights violations by state agents, in accordance with international human rights standards. The criminal justice system is not only overburdened but also appears more interested in protecting the state and its officials than individual citizens.

Sixteen years since the death in custody of Birtan Altınbaş in 1991, the police officers responsible for his death are still not behind bars. Birtan Altınbaş died after he was allegedly beaten and tortured while in police custody. After seven years of administrative delays and obstruction, and three trials over eight and a half years, four police officers have been convicted. However, the verdict is not final and they remain at liberty.

Every stage of the investigation and trial was marked by attempts to pervert the course of justice and block conviction. The defendants in the case were at liberty throughout the investigation and trial, and were never suspended from duty. One was promoted.

The first hearing of the case took place only in 1998. The trial proceeded very slowly, with the defendants mostly not attending court and the court doing little or nothing to compel their attendance. Eventually the court rejected the defendants' argument that Birtan Altınbaş's fatal injuries were self-inflicted and convicted four men. The Court of Cassation overturned this decision on procedural grounds and a retrial began in 2002. Once more, defendants failed initially to appear. In March 2004 the court reached a second verdict, repeating the first. This was overturned by the Court of Cassation and a second retrial of the four defendants began in 2005. On 23 March 2006 the court again reached the same verdict. It has yet to be confirmed by the Court of Cassation.

This document summarizes a 31-page report on impunity for grave human rights violations in Turkey, which includes five detailed case studies and recommendations.¹ It calls on the Turkish authorities to ensure prompt, thorough, independent and impartial investigations into all allegations of human rights violations, to address flawed trial proceedings and to improve medical reporting and forensics. It also calls for legal reforms, further training of public officials and improved centralized data collection.

¹ See, Amnesty International, *Turkey: Entrenched culture of impunity must end*, AI Index: EUR 44/008/2007.

Background: The legacy of impunity

An estimated one million people were detained, thousands were tortured and many died in custody or “disappeared” after the military coup of 1980. More than 100,000 people faced unfair trials by military courts and 50 people were sentenced to death and hanged. The 1982 Constitution granted immunity from prosecution for all crimes committed by the leaders of the military coup and all military and public officials from the date of the coup to November 1983.

Torture continued to be systematically practised in police and gendarmerie detention throughout the country.² In the 1990s, in the mainly Kurdish-populated south-east and eastern regions, around one million villagers were forcibly evicted and their villages destroyed by the security forces during the conflict with the armed separatist Kurdistan Workers’ Party (PKK). Men, women and children “disappeared”; many were killed.

The European Court of Human Rights has repeatedly ruled that Turkey has violated the European Convention on Human Rights in cases concerning the right to life, freedom from torture and ill-treatment, and the rights to an effective investigation, a fair trial, liberty and security, freedom of expression, an effective remedy, and protection of property.

Impunity for grave human rights violations has also been perpetuated by laws that operate in effect as amnesties. For instance, in December 1999, a law granting 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 – walked free.

1. “Zero tolerance for torture”, but impunity persists

The Justice and Development Party (Adalet ve Kalkınma Partisi, AKP) government stressed its strong commitment to a “zero tolerance for torture” policy and to the protection of human rights when it assumed office in 2002.

Although there has been a reduction in the incidence of torture and ill-treatment in police custody, and safeguards to protect suspects against ill-treatment have increased, Amnesty International still continues to receive such allegations. Moreover, allegations of torture and ill-treatment during unofficial detention, during demonstrations, in prisons and during prisoner transfer persist. Trials where statements allegedly extracted under torture provide a central part of the evidence continue, with courts ignoring torture allegations and refusing to rule the evidence inadmissible.³

² See reports of the European Committee for the Prevention of Torture (CPT), documenting the Committee’s visits to places of detention in Turkey between 1990 and 1996, at <http://www.cpt.coe.int/en/states/tur.htm>.

³ See, Amnesty International, *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).

Three young men – Özgür Karakaya, Nadir Çınar, and İlker Şahin – said they and another detainee were severely beaten with sticks and pipes by guards in the Sincan Closed Prison for Children and Youth on 22 December 2006. Their lawyer saw bruises all over their bodies. They had shouted slogans to commemorate prisoners killed during prison raids on 19 December 2000.

The three said their request to be sent to the Forensic Medical Institute for examination was ignored and that the prison doctor who examined them issued a report that all was normal. Their lawyer sought unsuccessfully to meet prison officials to discuss the allegations.

The lawyer applied directly to the public prosecutor at the competent Ankara court. The three young men were then interviewed and examined by the Forensic Medical Institute in Keçiören. Four lawyers from the Ankara Bar visited the three men on 25 December; two of the lawyers were later accused of threatening and insulting prison staff.

A formal complaint was lodged with the Sincan Public Prosecutor calling for evidence to be secured and the guards responsible for the beatings identified. Reportedly, only one of the detainees, Özgür Karakaya, was asked to identify the perpetrators. Özgür Karakaya reportedly identified six prison guards but was not informed of their names.

Investigation and prosecution of members of the security forces for killings remain inadequate. Courts are reluctant to examine whether the use of lethal force by the security forces conforms to the principles of necessity and proportionality.

Ahmet Kaymaz and his son Uğur Kaymaz, aged 12, were shot dead in November 2004 outside their home in Kızıltepe, Mardin, southeast Turkey. Both were repeatedly shot at close range.

Four members of the police Special Operations Unit were indicted, but a decision was taken not to prosecute the senior police officer responsible for the operation. Although the police officers involved were initially suspended from duty, they were reinstated and remained on active duty throughout the trial.

The indictment alleged that Ahmet and Uğur Kaymaz had opened fire on the police. However, although dozens of bullets were fired, no police officer was wounded and there were no traces of bullet marks nearby. The seal of the envelope containing the hand swabs allegedly proving that Ahmet Kaymaz and Uğur Kaymaz had both used firearms was reportedly tampered with. Police from the Mardin and Kızıltepe Security Directorates – where the defendants also worked – were reportedly responsible for evidence gathering and investigation.

Members of the Parliamentary Human Rights Commission expressed the view that there was no sign that an armed clash had occurred. The Union of Turkish Bars arrived at a less clear conclusion about the shootings, inferring that the type of weapons used did not indicate that the killings were extrajudicial executions.

The Human Rights Association's initial investigation into the shootings concluded that the father and son may have been extrajudicially executed. Two of the report's authors were prosecuted for "attempting to influence the judicial process" and there were prosecutions under the Press Law of journalists who covered the incident. Members of the Kaymaz family and one of their lawyers also faced criminal investigations.

The trial opened in February 2005. The defendants did not attend. The family's lawyers repeatedly asked the court to arrest the defendants, to call senior police officers as witnesses and to examine the scene of the crime. All these requests were rejected. On 18 April 2007, the court acquitted the four defendants on all charges. An appeal is pending.

3. Improvements and setbacks in the law

There have been reforms strengthening human rights protection, through changes to a variety of laws, a new Turkish Penal Code (Law 5237) and a new Code of Criminal Procedures.

Measures which provide greater safeguards for individuals in detention include: significant reduction in detention periods; the right to immediate access to legal counsel and the possibility of 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, with medical reports sent in a sealed envelope to the prosecutor; and the inadmissibility of statements made to the police without the presence of legal counsel if not repeated before a judge or court.

These safeguards have undoubtedly contributed to a decline in the incidence of violations in police custody. Custody records and places of detention are in theory monitored by public prosecutors, although civil society groups in Turkey continue to call for a system of visiting mechanisms by independent bodies.

The new Turkish Penal Code redefined the crimes of torture and ill-treatment and significantly increased the penalties. The new Penal Code increased the statute of limitations for the crimes of torture and aggravated torture: in the past, trials of alleged torturers collapsed because they exceeded the statute of limitations.

However, there have also been setbacks. Independent medical examinations for detainees are not allowed, and independent medical reports are rarely admitted as evidence in court. Although the Code of Criminal Procedures introduced a judicial police force supervised by the prosecutor, which would in theory carry out more meticulous and effective investigations, progress has reportedly been very limited.

During violent demonstrations in several towns and cities in March 2006, centring on Diyarbakır, 10 demonstrators and onlookers were killed, four of them children. Hundreds of people were arrested, including hundreds of children. There were widespread allegations of torture or other ill-treatment in police custody.

A few days after the demonstrations an Amnesty International delegate interviewed some of the children detained, arrested and bailed pending trial in Diyarbakır. Their allegations were consistent and credible: two 14-year-old boys separately described being held in a confined space, stripped naked, doused in cold water, threatened with rape, made to lie or kneel on a concrete floor with their hands tied tightly behind their backs with plastic masking tape, beaten (with fists, truncheons and iron bars) and kicked by police officers.

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. Over a 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. Nor has there been any outcome from the administrative investigation.

In June 2006 revisions to the Law to Fight Terrorism were introduced, some of which rolled back previous gains⁴. For example, the detainee’s right to legal counsel may be delayed by 24 hours – which has now become routine for those suspected of terrorist offences. The revised law also states that in operations against terrorist organizations, the security forces may use arms “directly and unhesitatingly” – a slightly amended form of a provision previously ruled unconstitutional by the Constitutional Court, and an invitation to excessive use of force.

4. Contradictory statistics

A reliable and consistent set of statistics does not apparently exist on investigations, prosecutions and convictions for the crimes of torture and ill-treatment. No figures on the investigation, prosecution and conviction of police and gendarmes for fatal shootings or excessive use of force have been identified.

5. Factors contributing to impunity

- *Intimidation and harassment of victims and witnesses, and “counter-charges”*

In the absence of witness protection schemes, victims are often too frightened to complain or to testify. In many cases police have brought counter-charges against victims of police abuse, such as violently resisting arrest, or have opened spurious investigations against relatives.

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

Medical evidence of abuses is often not recorded in the appropriate manner. Sometimes this is because of lack of expertise, but often law enforcement officials suggest there is no need for an examination. The stipulation that medical examinations should not take place in the presence of a law enforcement officer is regularly breached. Detainees have no right to be examined by a doctor of their choice.

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

In very few instances has independent medical evidence, (such as that provided by the Human Rights Foundation of Turkey), been recognized by courts. The Forensic Medical Institute, institutionally bound to the Ministry of Justice, is the only body whose reports are consistently accepted by courts in Turkey. Sometimes this has led to long delays as courts wait for the Forensic Medical Institute to corroborate independent reports.

- *Lack of independent evidence collection*

Forensic evidence collecting and recording is mostly performed by the same police or gendarmerie unit alleged to have committed a violation. In many cases police are alleged to have contaminated or lost evidence.

- *Ineffective and delayed investigation by prosecutors*

⁴ See Turkey: Briefing on the Wide-ranging, Arbitrary, and Restrictive Draft Revisions to the Law to Fight Terrorism (AI Index: EUR 44/009/2006)

Investigations into allegations of human rights violations are frequently not conducted effectively, promptly, independently and impartially by the prosecutor. Prosecutors often fail to assert their authority over scene-of-crime investigations when law enforcement officers are implicated in crimes. They frequently fail to initiate investigations into possible cases of torture or ill-treatment of their own accord. In a high proportion of complaints of torture and ill-treatment prosecutors decide that there is no case to answer. Investigations can take months and sometimes years.

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 the official version of events. In countless cases, the senior official responsible for a policing or military operation which led to human rights violations is simply left out of the indictment, without explanation.

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

In some cases the local governor's office or other senior authorities have made statements prejudging the outcome of any investigation and absolving the security forces.

- ***Prosecution of human rights groups***

Human rights groups conducting their own inquiries into incidents have been prosecuted for "attempting to influence the judicial process".

- ***Failure to apply disciplinary measures***

Disciplinary measures are rarely applied against members of the security forces suspected of committing violations: members of the security forces on trial for killings or torture are not suspended from active service, are generally posted to different cities, and are not barred from promotion.

Judges have frequently been extremely lenient towards members of the security forces on trial, for example if they repeatedly fail to attend court.

- ***Judges unresponsive to complainants' lawyers***

Judges have frequently rejected petitions by complainants' lawyers, for example calling for witnesses to be summonsed, without explanation.

- ***Delayed and protracted proceedings***

Trial proceedings in Turkey are notoriously slow.

- ***Statute of limitations***

The statute of limitations for the crime of torture remains, allowing torture trials to collapse on the basis of having exceeded the time limit.

7. Recommendations

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

1) Centralize and improve data collection

2) Enhance preventative mechanisms

- **Ratify the Optional Protocol to the Convention against Torture; implement it by creating an independent national body to carry out regular and unannounced visits to all places of detention;**
- **Introduce video and audio recording of all interviews of suspects in police and gendarmerie custody;**
- **End the harassment of human rights defenders, lawyers and journalists for monitoring the human rights situation.**

3) Ensure prompt, independent, impartial and thorough investigations of all allegations of human rights violations by members of the security forces

- **Develop an effective complaints mechanism;**
- **Ensure that prosecutors investigate the responsibility of commanding officers;**
- **Suspend from active duty officers under investigation for human rights violations and ensure their dismissal if convicted;**
- **Ensure compensation for and rehabilitation of the victims.**

4) Address flawed trial proceedings

- **Ensure that trial proceedings are impartial and fair;**
- **End prolonged delays in trial proceedings;**
- **Ensure law enforcement officials who fail to appear in court are punished;**
- **Introduce witness protection schemes;**
- **Provide legal aid if trials are moved to distant locations.**

5) Legal reform

- **Prevent a return to incommunicado detention by repealing revised Article 10b of the Law to Fight Terrorism;**
- **Revise Appendix Article 2 of the Law to Fight Terrorism to ensure that the use of lethal force by law enforcement officials complies with international standards;**
- **Repeal the statute of limitations for the crime of torture.**

6) Improve medical reporting and forensics

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

7) Undertake further training of police and gendarmerie, judges and prosecutors on the implementation of legal changes and international standards.