

TURKEY

CAT A/46/46 (1991)

87. The Committee considered the initial report of Turkey (CAT/C/7/Add.6) at its 61st and 62nd meetings, held on 14 November 1990 (CAT/C/SR.61 and 62).

88. In his introduction, the representative of the State party noted that the Turkish Constitution contained provisions relating to the protection of the physical and mental integrity of the individual as well as to the prohibition of torture. International instruments to which Turkey was a party became part of national legislation and could be applied directly by the courts and other authorities. No appeal could be made to the Constitutional Court with regard to international agreements on the ground that they were unconstitutional. Turkey was a party to the European Convention on Human Rights and recognized the competence of the European Commission on Human Rights and the European Court of Human Rights with regard to individual recourse procedures. As a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Turkey had accepted the competence of all monitoring mechanisms established under those Conventions.

89. The Government of Turkey gave primary importance to preventive measures in combating torture. Those measures included the teaching of human rights in police schools, the organization of courses for security and other public officials, and several legislative provisions concerning the presumption of innocence, the right to legal counsel, the prompt notification of a person's detention to his relatives, the right not to answer questions, testimony free from any kind of pressure and medical examination by independent forensic doctors of all detainees before and after detention and interrogation.

90. Other improvements had also been adopted recently to Turkey's legislation concerning conditions of imprisonment and detention. Public prosecutors were required *ex officio* to investigate any allegations or reports of torture. Turkish citizens could avail themselves of recourse procedures both at the national and the international level and the Turkish State was directly responsible for any abuses committed by public officials. Constitutional and other legal provisions provided for compensation to persons who had been unlawfully arrested, detained or subjected to torture, or who had suffered any damage caused by an abuse of State power.

91. In addition, the representative informed the Committee that the Turkish Penal Code was under review and that, according to the first set of draft amendments, sentences for torture were to be doubled, the period of pre-trial detention considerably reduced and the provision made for compulsory legal counsel, if necessary at State expense. A proposal had also been submitted concerning the establishment of a parliamentary commission on human rights which would have broad powers.

92. Members of the Committee thanked the Government of Turkey for its report which they considered

informative. They noted that the report gave a comprehensive review of the Turkish judicial system and the formal safeguards against torture in Turkey, but dealt with substantive issues rather briefly. They observed, in this connection, that a large number of allegations of torture concerning Turkey had been received by various international bodies and that the Turkish Government itself had acknowledged that torture had not yet been eradicated in the country. They therefore regretted that the report did not clearly explain that situation.

93. Members of the Committee also welcomed the fact that Turkey was a party to virtually all the international human rights instruments aimed against torture, but expressed regret that the provisions of the Convention had not yet been fully incorporated into domestic legislation. Noting that Turkey had recognized the competence of the European Commission on Human Rights to receive petitions from any person, non-governmental organizations or groups of individuals, members wished to know how that decision was implemented in practice. Clarification was also requested of the interim decision taken by a military court, referred to in the report, with regard to the legal status of the Convention.

94. In connection with the general framework in which the Convention was implemented in Turkey, members of the Committee wished to know what guarantees ensured the independence of the judiciary and requested more information on the law enforcement system in the country. They asked, in particular, what functions were performed by the State Security Courts and how they were composed, what were the status and the role of prosecutors, whether the judges in the Prosecutor's Office were removable and how often, and in what part of the country emergency legislation had been in force in the last two years. In addition, detailed information was requested on the separation organization of the ordinary courts as well as on the application in practice of the jurisdiction of military courts in so far as it extended to civilians. It was asked, in particular, what procedures and guarantees applied in such cases.

95. Referring to article 1 of the Convention, members of the Committee asked whether there was any specific definition of torture under Turkish law and, if not, whether the definition contained in the Convention had been incorporated directly into internal law and what punishment was provided for torture.

96. With regard to preventive measures under article 2 of the Convention, members of the Committee wished to know what effective guarantees existed in Turkey in respect of article 19 of the Constitution, which defined the conditions in which individuals suspected of having committed an offence could be arrested. Expressing concern at the fact that the period of pre-trial detention could be extended to 15 days in the case of collective crimes, which was an unusually long period, members of the Committee wished to know whether such extension was subject to review, whether it required approval of the courts or could be decided by the Public Prosecutor himself, and what time-limits were applied under emergency legislation. They also wished to receive clarification as to the cases where a person's arrest or detention was not communicated to the family of the detainee and as to the authority that was responsible in the matter. They asked, in particular, what the time-limit was for solitary confinement in such cases, whether the detainee was denied access to counsel and at what moment that restriction was lifted. While welcoming the provisions Turkey had adopted with regard to medical examinations

of detainees, members of the Committee observed that there was a discrepancy between the comprehensive nature of those provisions and the considerable number of complaints filed. They also wished to know how many detainees there were at present in Turkish prisons, and who was responsible for law enforcement in places of detention.

97. Referring to information provided particularly by non-governmental organizations with regard to political activists, journalists and prisoners of conscience held in detention in Turkey, members of the Committee wished to know the number of such detainees, how many such persons were currently facing the death penalty, whether those who had been convicted, as distinct from persons in pre-trial detention, were subjected to solitary confinement and, if so, how long such confinement could last, and what authority was responsible for ordering solitary confinement. Additional information was also requested on the role of the Prosecutor's Office and the State Council in protecting citizens against torture, as well as on the progress made in establishing the proposed parliamentary commission on human rights and on its programme of work and powers. Recalling that a large number of allegations of torture in Turkey had been brought to their attention by various reliable sources, members of the Committee wished to know what the Turkish Government intended to do to improve the measures taken to prevent torture and to ensure that the legislation prohibiting torture was effectively implemented.

98. Referring to article 3 of the Convention, members of the Committee wished to know what measures had been taken by the Turkish authorities to guarantee that the principle of non-refoulement was applied in respect of non-European asylum-seekers, especially Iraqi refugees of Kurdish origin who, according to various sources, were subjected to restrictive measures in an attempt to force them to return to Iraq against their will.

99. With regard to article 4 of the Convention, it was observed that although the Turkish Penal Code banned ill-treatment of prisoners, it was necessary to define what the concept of ill-treatment actually covered. Turkish law also did not appear to contain a clear definition of what constituted an act of torture and the penalties applicable for acts of violence were not commensurate with the grave nature of acts of torture, required by the Convention.

100. In connection with article 5 of the Convention, members of the Committee wished to know the reasons why, according to the figures provided in the report, there was a disproportion between the large number of allegations of torture in Turkey and the small number of sentences imposed on policemen for committing acts of torture. They also asked whether the legislation referred to in the report in relation to the principle of universal jurisdiction would be brought into line with articles 5 and 7 of the Convention.

101. In connection with articles 6 and 8 of the Convention, it was asked how the Turkish authorities discharged their obligation under the Constitution to prevent the escape of individuals suspected of having committed torture and whether the provisions of article 8 of the Convention were directly applicable in Turkey.

102. Turning to articles 10 and 11 of the Convention, members of the Committee asked whether, in

addition to human rights programmes for policemen, similar training programmes existed in Turkey for prison, military and medical personnel, how conditions in prisons were reviewed, and whether the Standard Minimum Rules for the Treatment of Prisoners were applied.

103. With regard to articles 12 and 13 of the Convention, members of the Committee wished to know whether the Turkish Government planned to establish an independent authority to examine allegations of torture, how many complaints had been received by the authorities about unlawful action by officials, how many persons had died in detention, whether the circumstances of their deaths had been investigated, and what the difference was in jurisdiction between minor courts and courts of first instance as far as allegations of torture were concerned.

104. In connection with article 14 of the Convention, it was asked whether the concept of State responsibility applied in cases where it was impossible to identify the persons responsible for acts of torture, whether the authorities could be held responsible on the grounds of omission, how victims of torture could obtain compensation, whether an amount to be paid was envisaged, whether Turkey had made any provisions comparable to those of the criminal injury compensation schemes adopted by other States, and whether there were any rehabilitation programmes for victims of torture.

105. Finally, members of the Committee wished to know how Turkey ensured that confessions obtained by coercion were not accepted by the State Security Courts or other courts, whether there was any plan to enact relevant legislation, for how long a person could be kept in detention while the circumstances in which his confession had been obtained were being determined, whether there was any remedy in that regard, and how article 15 of the Convention had been incorporated into Turkish legislation and applied by the judiciary.

106. In his reply, the representative of the State party stated that military courts tried only military personnel and were competent to try civilians only when they had committed military offences during their military service and had not been tried during that period. The courts martial had jurisdiction only during a state of emergency or to try cases that had subsequently remained pending. The State Security Court was a court of special jurisdiction which tried only cases involving security problems. The Council of State was the supreme administrative court which established the responsibility of the State and, where necessary, ordered compensation to be paid to victims. The judges and prosecutors of all courts were appointed by the Higher Council of the Judiciary and they were responsible to it. All judges were independent and could not be removed. Prosecutors had no special status. The functions of judges and prosecutors were set forth in articles 138 to 140 of the Turkish Constitution. The representative also pointed out that, so far, 13 individuals had availed themselves of their right to submit applications to the Court of Human Rights under the European Convention on Human Rights, and that, since July 1987, the state of emergency applied to 10 provinces of Turkey and concerned approximately 4.5 million inhabitants out of a total population of some 60 million.

107. With reference to article 1 of the Convention, the representative said that the definition of torture contained therein was recognized in Turkish law and reflected in articles 243 and 245 of the Penal Code.

108. With regard to article 2 of the Convention, the representative stated that responsibility for applying article 19 of the Constitution was vested in independent judges. Referring to the duration of detention for persons involved in collective offences, he explained that the question concerned only a small percentage of all detainees and that detention periods were to be shortened under the bill of amendments to the Code of Criminal Procedure mentioned in the report which covered emergency legislation. The families of persons arrested or detained were informed first of all by the police and then by the persecutor. Only the judge was empowered to prolong detention. Law enforcement was the responsibility of the security forces. The number of detainees in Turkish prisons was at present approximately 50,000.

109. Furthermore, the representative pointed out that prisoners of conscience sentenced for an offence against the State were small in number. On the other hand, approximately 3,000 persons were still being detained or had been sentenced for having committed acts of violence, particularly acts of terrorism, over the past 10 years. A death sentence could not be carried out without the approval of Parliament, which currently had approximately 270 death sentences before it. Since November 1984, no condemned person had been executed. Being held incommunicado in prison was only a disciplinary measure which had now been abolished. The parliamentary commission on human rights would concentrate mainly on the preparation of new laws. The results of its work would be communicated in the next periodic report.

110. The representative denied that his Government was seeking to compel Iraqi citizens housed in temporary reception centres to return to their country. For the past two years Turkey had been appealing to all the parties interested in the fate of those displaced persons to shoulder their responsibilities and to find means of resettling them, but so far its appeals had remained unheeded. The reception centres in question were open and Turkey was working together with the United Nations High Commissioner for Refugees.

111. With reference to article 4 of the Convention, the representative pointed out that the punishment that could be imposed on perpetrators of torture varied according to the seriousness of the offence and could amount to as much as 10 years of imprisonment. Moreover, the penalties provided for in the Penal Code could be doubled. If the perpetrator of an act of torture could not be identified, the State became responsible. An action for compensation could be brought against the Ministry of the Interior.

112. In connection with article 5 of the Convention, the representative provided detailed information about the number of alleged cases of torture brought before the courts in Turkey. The difference between the number of complaints made and the number of sentences handed down for torture was explained by the fact that only cases already tried were indicated. There were still 354 persons charged with torture who had not yet been tried.

113. Referring to articles 8 and 15 of the Convention, the representative considered that their provisions were directly applicable in Turkey.

114. With regard to articles 10 and 11 of the Convention, the representative stated that in Turkey

forensic physicians were fully independent and that prison doctors and warders were provided with human rights training, although resources allocated to such authorities were limited. As to the improvement of prison conditions, he referred to relevant information submitted to the Subcommission on Prevention of Discrimination and Protection of Minorities.

115. Referring to article 12 of the Convention, the representative affirmed that when a person died in prison, an inquiry was immediately made and that there had been no case of death under torture.

116. In connection with article 14 of the Convention, the representative said that the amount of damages paid to victims of torture in Turkey was proportionate to the seriousness of the injury suffered. Turkey had no network of voluntary organizations concerned with the rehabilitation of torture victims.

Concluding observations

117. Members of the Committee thanked the representative of Turkey for his frank replies. The report and the oral explanations presented showed that the Turkish Government had clearly embarked upon a process of legislative reform. Nevertheless, it should take steps specifically to put an end to the practice of torture which was still widespread in the country. The Turkish Government was aware of the concern which that situation was arousing within the international community and was endeavouring to remedy it. It was to be hoped that its efforts would lead to concrete results which should be reflected in Turkey's next periodic report. For its part, the Committee would continue to pay close attention to events in Turkey in the hope that the problem of torture would finally be eliminated and that all persons responsible for committing acts of torture would be duly punished.

CAT A/58/44 (2003)

117. The Committee considered the second periodic report of Turkey (CAT/C/20/Add.8) at its 545th and 548th meetings (CAT/C/SR.545 and 548), held on 2 and 5 May 2003, and adopted the following conclusions and recommendations.

A. Introduction

118. The Committee welcomes the second periodic report of Turkey, which outlines the new measures and developments relating to the implementation of the Convention that have taken place in the State party since its submission of the initial report in 1990. It also welcomes the updated and detailed information as well as the extensive responses provided by the delegation of the State party.

119. The Committee nevertheless regrets the long delay in the submission of the report, which was overdue by eight years.

B. Positive aspects

120. The Committee welcomes the following positive aspects:

- (a) The abolition of the death penalty for peacetime offences;
- (b) The lifting of the long-standing state of emergency;
- (c) The constitutional and legal reforms intended to strengthen the rule of law and to bring the legislation into line with the Convention, including the reduction of periods of detention in police custody; the elimination of the requirement to obtain administrative permission to prosecute a civil servant or public official; and the decrease in the number of crimes under the jurisdiction of State Security Courts;
- (d) The inclusion in domestic legislation of the principle that evidence obtained through torture shall not be invoked as evidence in any proceedings;
- (e) The establishment of Prison Monitoring Boards that include the participation of members of non-governmental organizations in their individual capacity, with a mandate to carry out inspections in penal institutions;
- (f) The bill submitted to Parliament concerning the establishment of the Ombudsman institution;
- (g) The acceptance, in a spirit of cooperation, by the State party of visits by monitoring bodies such as the special rapporteurs of the United Nations Commission on Human Rights and the release to the

public of reports of CPT.

C. Subjects of concern

121. The Committee expresses concern about:

- (a) Numerous and consistent allegations that torture and other cruel, inhuman or degrading treatment of detainees held in police custody are apparently still widespread in Turkey;
- (b) The failure by police always to comply with the safeguards concerning the registration of detainees;
- (c) Allegations that persons in police custody have been denied prompt and adequate access to legal and medical assistance and that family members have not been promptly notified of their detention;
- (d) Allegations that despite the number of complaints, the prosecution and punishment of members of security forces for torture and ill-treatment are rare, proceedings are exceedingly long, sentences are not commensurate with the gravity of the crime, and officers accused of torture are rarely suspended from duty during the investigation;
- (e) The importance given to confessions in criminal proceedings and the reliance of the police and the judiciary on confessions to secure convictions;
- (f) The alarming problems in prisons as a result of the introduction of the so-called "F-type prisons" which have led to hunger strikes causing the deaths of more than 60 inmates;
- (g) The State party's failure to comply fully with judgements of the European Court of Human Rights ordering the payment of just compensation.

122. The Committee is also concerned about:

- (a) The lack of training of medical personnel dealing with detainees in matters relating to the prohibition of torture;
- (b) Allegations according to which the expulsion of illegal aliens to their country of origin or to neighbouring countries is often accompanied by ill-treatment, in violation of the safeguards contained in article 3 of the Convention;
- (c) The continuing reports of harassment and persecution of human rights defenders and non-governmental organizations.

D. Recommendations

123. The Committee recommends that the State party:

- (a) Ensure that detainees, including those held for offences under the jurisdiction of State Security Courts, benefit fully in practice from the available safeguards against ill-treatment and torture, particularly by guaranteeing their right to medical and legal assistance and to contact with their families;
- (b) Take the necessary measures to guarantee that prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment are carried out, and to ensure in this connection that an efficient and transparent complaint system exists;
- (c) Repeal the statute of limitation for crimes involving torture, expedite the trials and appeals of public officials indicted for torture or ill-treatment, and ensure that members of the security forces under investigation or on trial for torture or ill-treatment are suspended from duty during the investigation and dismissed if they are convicted;
- (d) Ensure that ongoing inspections of prisons and places of detention by judges, prosecutors or other independent bodies (such as prison monitoring boards) continue to take place at regular intervals and that appropriate action is taken by the responsible authorities in response to the inspection reports and recommendations;
- (e) Guarantee that the detention records of detainees in police custody are properly kept from the outset of the custody period, including for the times they are removed from their cells, and that such records are made accessible to their families and lawyers;
- (f) Solve the current problems in prisons generated by the introduction of "F-type prisons" by implementing the recommendations of CPT and by entering into serious dialogue with those inmates continuing hunger strikes;
- (g) Review the current legislation and practice in order to ensure that the expulsion of irregular aliens is carried out with full respect for the legal guarantees required by international human rights standards, including the Convention;
- (h) Ensure that fair and adequate compensation, including financial indemnification, rehabilitation, and medical and psychological treatment are provided to the victims of torture and ill-treatment;
- (i) Ensure that human rights defenders and non-governmental organizations are respected, together with their premises and archives;
- (j) Include the prevention of torture in the Human Rights Education Programme of Turkey (1998-2007) and ensure that all the new developments in legislation are made widely known to all public authorities;
- (k) Intensify training of medical personnel with regard to the obligations set out in the Convention,

in particular in the detection of signs of torture or ill-treatment and the preparation of forensic reports in accordance with the Istanbul Protocol;

(l) Provide in the next periodic report detailed statistical data, disaggregated by crime, region, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions, and penal and disciplinary sentences;

(m) Provide in the next periodic report information on the implementation of the Return to Village Programme regarding internally displaced persons;

(n) Disseminate the Committee's conclusions and recommendations widely in the State party in all appropriate languages.

124. The State party is invited to submit its next periodic report, which will be considered as the third, by 31 August 2005.