THE TRIALS OF FERHAT KAYA

September 2004

Kurdish Human Rights Project
KHRP
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THE CORNER HOUSE

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The Trials of Ferhat Kaya

Trial Observation Report

Kurdish Human Rights Project

The Corner House

Friends of the Earth (England, Wales and Northern Ireland)

Environmental Defense (USA)

Kurdish Human Rights Project

The Kurdish Human Rights Project (KHRP) is independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living with the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people

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Environmental Defense is a leading national nonprofit organization representing more than 400,000 members. Since 1967, we have linked science, economics and law to create innovative, equitable and cost-effective solutions to society's most urgent environmental problems.

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Contents

1. FOREWORD

1.1 These are the findings of an international Fact Finding Mission to observe the trials of Ferhat Kaya in September 2004. The Mission included representatives from Corner House, Environmental Defense (USA), Friends of the Earth (England, Wales and Northern Ireland) and the Kurdish Human Rights Project. Mr. Kaya, a shopkeeper and the Chair of the pro-Kurdish Democratic people's Party (DEHAP) in the Central District of Ardahan in North-East Turkey is at the forefront of a local campaign to highlight the social and environmental impacts of BP's Baku-Tbilisi-Ceyhan (BTC) oil pipeline, which passes through Ardahan Province. In the past year, he has helped over thirty villagers adversely affected by the project take their cases to the European Court of Human Rights.

1.2 Mr. Kaya was arrested in May 2004 and he alleges that he was tortured while in police custody. He believes that his arrest and ill-treatment were directly connected to his human rights work and in particular his work regarding the BTC oil pipeline. An indictment was lodged against the 11 police officers who Mr. Kaya alleged were responsible for his ill-treatment. The police officers were acquitted following a request by the prosecution. The Mission observed the final hearing in their trial. At the same time an indictment was lodged against Mr. Kaya regarding the arrest. That indictment alleges that he resisted and insulted police officers and failed to comply with their request to provide identification details. The next hearing in that case is listed for March 2005. If found guilty Mr. Kaya faces a custodial sentence.

1.3 Previous Fact-Finding Mission reports have drawn attention to the pervasive climate of repression in the North-Eastern region of Turkey and the constraints that this has imposed on consultation on the BTC project and obtaining redress for abuses associated with land acquisition. Prior to his arrest Mr Kaya had received repeated threats and the general public stopped going to his shop for fear that they may be harmed if they were seen there. His trade has been reduced by as much as 90% since commencing this work and his employees have resigned as a result of the climate of intimidation. Mr Kaya's case reinforces these concerns and raises serious questions over the extent of the human rights due diligence undertaken by those international financial institutions that have backed the project financially. There is much work to be done before Turkish

authorities can claim full compliance with international human rights standards. Indeed the Mission found that there are serious concerns that the authorities in the North-East of Turkey are falling far behind the national programme to eliminate torture. The report also points to the continuing gap between the legal reforms recently adopted by Turkey and their implementation in practice. It is particularly disheartening to learn that on 25 December 2004 Mr. Kaya was once more detained by the police. He has made further allegations of ill-treatment and he is the subject of a further investigation for resisting the officers against whom he has made these allegations.

2. INTRODUCTION

2.1 This report constitutes the findings of a mission[1] to observe the trial of Ferhat Kaya, a Turkish human rights defender who was detained and allegedly tortured in May 2004 as a result of his work with villagers affected by the Baku-Tbilisi-Ceyhan (BTC) oil pipeline and that of the 11 police officers accused of ill-treating him. The mission is concerned that the following international human rights principles may have have been breached:

(i) The right to an effective remedy;
(ii) The independence and impartiality of the judiciary;
(iii) The failure to prosecute and investigate offences;
(iv) The prohibition against torture and inhuman and degrading treatment;
(v) The independence of the medical profession;
(vi) The right to liberty;
(vii) The right of an accused to be informed promptly of the charges;
(viii) The right to a fair trial;
(ix) The right to competent and effective defence counsel;
(x) The right to trial by an independent tribunal;
(xi) The right to trial by an impartial tribunal;
(xii) The right to equality of arms.
(xiii) The right to be presumed innocent; and
(xiv) The right to examine or have examined witnesses against the accused.

3. BAKU-TBILISI-CEYHAN (BTC) OIL PIPELINE

3.1 A consortium led by BP, the UK oil multinational, is building an oil pipeline from terminals near Baku, Azerbaijan through Tbilisi, Georgia to Ceyhan, Turkey. Construction on the Baku-Tbilisi-Ceyhan (BTC) pipeline started in 2003 and is now well underway. The life of the pipeline is anticipated to be between 40 and 60 years.

3.2 BP is the lead company in the BTC Consortium (BTC Co.)[2] which will own and operate the pipeline. Approximately 3100 hectares of land will be acquired on a temporary or permanent basis along the pipeline corridor. This figure includes the temporary use of a 20 metre wide corridor and the permanent use of an 8 metre wide corridor. In Turkey, the pipeline will stretch over 1000 kilometres, running from the Georgian border in the north-east of the country to Yumurtalik, south of Ceyhan, on the Mediterranean coast. An existing oil terminal at Yumurtalik is also being expanded in order to accommodate the tankers that will transport the crude oil for refining and sale in western markets. It is estimated that 30,000 landowners or users will be affected by the land acquisition process in Turkey alone.

3.3 The pipeline, which is being buried along its entire route, save surface facilities, will transfer up to 50 million tonnes of crude oil per annum (or one million barrels per day) from Sangachal on the Caspian Sea coast, via Azerbaijan, Georgia and Turkey, to the Mediterranean. All the oil transported through the pipeline will be exported to western markets, despite major energy shortages for poorer people in the transit countries.[3] The route chosen is more expensive than many other possible options for Caspian oil exports, and, like the project itself, is generally acknowledged to have been driven by political considerations, notably the desire by the USA and Europe to secure a non-Arabian source of oil.[4]

3.4 In Turkey, construction work is being carried out by BOTAŞ, the nationalised Turkish pipeline company, which is also responsible for overseeing the expropriation of land and the compensation of affected villagers. Under a Lump-Sum Turnkey Agreement, BOTAŞ has agreed to construct the pipeline

for an agreed price of $1.4 billion, thereby relieving the BTC Consortium of the financial risks of any cost overruns. Analysts have commented that the real cost – even assuming no over-runs – is more likely to be around $2 billion.[5] BP itself has said that it thinks it is unlikely BOTAŞ will complete its contract within budget and on schedule.[6] This has also been recognised as a reality by the UK's Export Credit Guarantee Department (ECGD), which is supporting the project with a $106 loan[7]. In this eventuality the Turkish government will have to pay a penalty to the consortium, potentially of several hundred million dollars. Inevitably, there are concerns that BOTAŞ is cutting corners – particularly over land acquisition and quality control – in order to reduce cost overruns and construction penalties.

3.5 Seventy per cent of the project's costs have been raised through debt financing, through both private banks and public development banks. In November 2003, financial support for the project was approved by the World Bank Group's International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD).[8] Export credit and insurance guarantees have also been approved by a number of Export Credit Agencies, including the ECGD, Germany's Hermes, Italy's Sace, France's Coface and the USA's Ex-Im Bank. Support has also come from 15 private banks, including ABN Amro, the Royal Bank of Scotland, Banca Intesa, Mizuho, Societe Generale and Citigroup.

3.6 Concern over the project's direct social, environmental and human rights impacts, in addition to its wider ramifications for poverty, regional economic development and democracy, has led to criticism from a range of non-governmental organisations, including Amnesty International and the World Wildlife Fund. In 2003, an analysis of the Environmental Impact Assessment (EIA) for the Turkey section of the pipeline by the Baku Ceyhan Campaign, a UK coalition of concerned NGOs, found the project to be in breach of all relevant World Bank safeguard policies on multiple counts, in addition to violating other project standards.[9] In all, the review identified at least 153 partial or total violations of IFC and EBRD Operational Policies (48 on Consultation, 28 on Resettlement, 29 on Cultural Heritage, 10 on Environmental Assessment, 8 on Assessment of Alternatives and 30 on Ethnic Minorities), plus a further 18 partial or total violations of the European Commission's Directive on EIA, and at least two direct violations of other Turkish law (specifically the Expropriation Law[10]), giving a total of at least 173 violations of mandatory applicable standards. Because compliance with these standards is required under the legal regime

for the project, such violations of the standards put the project potentially in conflict with host country law. To date, no detailed response to the Baku Ceyhan Campaign's concerns has been received.

Developments Since Financial Closure

3.7 Once financial support from the International Financial Institutions was agreed in February 2004, further evidence has emerged of continuing problems with land acquisition, compensation, human rights and construction. These problems have been the subject of an application to the European Court of Human Rights.

European Court of Human Rights Cases

3.8 In January 2004, a Fact-Finding Mission (FFM) by the Kurdish Human Rights Project and The Corner House took statements from affected villagers in the Ardahan region which resulted in an application to the European Court of Human Rights being made by 38 persons alleging multiple violations of the European Convention on Human Rights including Article 1 of Protocol 1 (the right to peaceful enjoyment of property), Article 14 (convention rights to be secured without discrimination), Article 13 (the right to an effective remedy) and Article 8 (the right to respect for private and family life). Specific problems that were documented by the FFM included:

(i) Minimal or no consultation prior to BTC commencing;
(ii) Documents being circulated in English, despite villagers being Kurdish or Turkish speakers;
(iii) Failure to inform landowners and communities of the dangers of the pipeline;
(iv) Landowners being misinformed about their legal rights – for example, many were told that if they went to court they would receive no compensation or reduced compensation or that they had no right to challenge the compensation paid;
(v) Problems obtaining legal advice and representation due to local lawyers being employed by BOTAŞ;
(vi) No negotiation on the level of compensation – despite negotiation

being a requirement of the Turkish Expropriation law;

(vii) Use of Article 27, a provision which allows land to be expropriated for military purposes or in "national emergencies", as a threat to coerce villagers into signing over their land;

(viii) Cases of landowners granting BOTAŞ power of attorney after signing blank pieces of paper;

(ix) Meetings being held in Turkish when the landowners spoke Kurdish as their first language;

(x) Cases of landowners only being told of the amount they would receive in compensation *after* they had signed over their land;

(xi) Cases of compensation being far less than landowners were originally promised;

(xii) Generalised failure of compensation to reflect the true value of the land expropriated and the losses incurred;

(xiii) Complaints that a significant proportion of compensation has been eaten up by travel costs to attend meetings with BOTAŞ etc;

(xiv) Cases of landowners being threatened where they refused to accept the compensation on offer;

(xv) Cases of land being entered without compensation first being agreed and paid;

(xvi) Cases of the pipeline route being altered without compensation being paid for the affected land;

(xvii) Cases of villagers not being informed that they were eligible for compensation for use of common land through the RAP fund, a special fund set up under the project's Resettlement Action Plan (RAP);

(xviii) Cases of villagers – particularly poorer tenants – fearing that they would have to leave their villages in search of employment because the compensation they received was too low to allow them to continue farming;

(xix) Promises of community development programmes – such as medical centres – that never materialised;

(xx) Villagers having to pay towards community development schemes that have been implemented; and

(xxi) Concerns regarding the environmental hazards inherent in living or working on land in such close proximity to the pipeline.

Intimidation

3.9 Previous Fact-Finding Mission reports have drawn attention to the pervasive climate of repression in the North-Eastern region of Turkey and the constraints that this has imposed on consultation on the BTC project and obtaining redress for abuses associated with land acquisition. The 2003 Fact-Finding Mission to the Ardahan region, for example, stated:

> "A pervasive atmosphere of repression and lack of freedom of speech in the region . . . precludes dissent about the BTC project. . . . [This was] particularly evident in the north-eastern section of the proposed pipeline route, in Kars and Ardahan provinces, a region whose population is approximately 30% Kurdish. Here the Mission found clear-cut evidence of political repression so systemic as to invalidate the consultation exercises that the project developers have undertaken."[11]

3.11 Intimidation of those critical of the project – or seeking to secure their rights – has been widely reported, with villagers stating that they were fearful of questioning the land acquisition procedures because "it was a state project". Local human rights defenders have also been subject to harassment or worse. Ferhat Kaya was detained in May 2004 and allegedly beaten up and tortured[12] as a direct result of his work in documenting cases of abuses related to land expropriation.

3.12 In September 2004, a FFM which went to the region received reports of and also directly experienced this atmosphere of intimidation.[13] The Mission was told by one villager;

> "The philosophy of people here is that you cannot challenge the state. The state does whatever it wants. The fear of the Gendarmes [para-military police] makes people passive."

3.13 It was also reported to the FFM that critics of the BTC project, or those seeking to uphold the rights of affected villagers, had been accused of being "traitors to their country." This accusation was frequently elided with accusations of supporting "separatism" and the PKK, the Kurdish guerrilla movement.

3.14 The FFM reported being stopped and having its passport details taken.

Subsequently plainclothes police followed the Mission on a visit to a village and remained in the village while the Mission spoke to villagers. The Mission later learned that the police had asked Muhtar about their visit.

3.15 When the FFM contacted BOTAŞ headquarters, its interpreter was told that the Deputy Director General would not see the Mission. When she asked whether she could tell the Mission that BOTAŞ had refused a meeting, she was told that she should bear in mind that although she was employed by the Mission, she was "a citizen of this country."

3.16 Meeting with a prominent Turkish professional association in Ankara that routinely gives input on implementation of large projects in Turkey, the FFM was told that efforts to monitor the project have been frustrated both by a reduced flow of information and by the sensitive situation in some of the project-affected regions. It was noted that sometimes even state officials cannot reach certain regions, as soldiers simply stop visitors and send them back.

3.17 Following the FFM's visit to Ardahan, a local newspaper accused the Mission of fomenting ethnic tensions and of using local villagers' concerns to "blackmail BP".

3.18 In the İmranlı region, police and BOTAŞ officials intruded on the FFM's meetings with villagers and were present during almost all interviews even when they were conducted in private houses.

4. FERHAT KAYA

4.1 Ferhat Kaya is shop-keeper and the Chair of Ardahan Central District Branch of the Democratic People's Party (DEHAP).[14] He has been campaigning for the rights of villagers affected by the BTC pipeline since March 2003. He claims that he has been subjected to intimidation and discrimination because of his work. He describes receiving threats from anonymous phone callers and complains that his business has decreased by 90 percent and that State institutions such as schools and State officials such as doctors and teachers no longer obtain supplies from his shop: "They made me an outcast. The people who worked for me received threats and therefore all but one left the job."

4.2 In September 2003 Mr. Kaya was invited to Italy to speak to senators about the pipeline and to meet with the Italian Export Credit Agency which was considering financing the project. Mr. Kaya's intention was to report to them about the problems for local people created by the implementation of the project. Mr. Kaya received a telephone call the day before he was due to leave for Italy. The caller used the name of one of Mr. Kaya's friends and asked Mr. Kaya where he was. Mr. Kaya did not recognise the voice of the caller as that of his friend and said that he would call the person back and hung up. Mr. Kaya received a further telephone call from the same person who insulted him and made death threats against him. The next day a friend [name supplied] took him to the bus stop when he was leaving for Italy. Later the police visited his friend's sister's workplace and telephoned his parents. They told them that Mr. Kaya was going to Italy and that their son had taken him to the bus station. They also said that if he continued to work for Mr. Kaya it would have negative consequences for him. Two or three days after this telephone call, while Mr. Kaya was still in Italy, three unidentified assailants assaulted the same friend on the streets in Ardahan at night. Mr. Kaya believes that this attack could only have been made by or at the request of the persons who had previously telephoned his friend's family. As a result of this intimidation his friend felt unable to continue to work for Mr. Kaya. His friend has reported receiving further threats and intimidation as a result of his continued association with Mr. Kaya.

4.3 More recently, Mr. Kaya claims that he has been subjected to further intimidation and ill-treatment at the hands of the police as a result of his campaign work

in relation to the BTC pipeline. The police actions have been the subject of two prosecutions at the Penal Court of First Instance in Ardahan. In the first set of proceedings, 11 police officers were charged under Article 245 of the Turkish Penal Code with the ill-treatment of Mr. Kaya on 5 May 2004. In the second set of proceedings (which relate to the same incident), Mr. Kaya was charged with assaulting and insulting the same police officers on the same date under Articles 266 and 269 of the Turkish Penal Code, resisting an officer in charge under Article 258 and damaging police property under Article 516 of the Turkish Penal Code.

Statement of Ferhat Kaya

4.4 Mr. Kaya provided the following statement to the September 2004 Fact Finding Mission:

4.4.1 "My name is Ferhat Kaya. I live in Ardahan, Turkey. I am the Chairman of the Ardahan Central District branch of DEHAP. I am actively involved in campaigning for the rights of the villagers in my area who have been affected by the construction of the BP Baku-Tiblisi-Ceyhan (BTC) oil pipeline.

4.4.2 "Mr. Ziya Avşar is one of these affected villagers. He is a land-owner who is currently involved in litigation with BOTAŞ regarding customary land which has been expropriated for the purposes of the pipeline. BOTAŞ says that it is treasury land. Mr. Avşar says that it is his land. The villagers support him and say that it belongs to his family. He says that from his grandfather's time the family has used the land but that there are no title deeds. Mr. Avşar is also an applicant in a case currently before the European Court of Human Rights (ECtHR) regarding the lack of adequate compensation for this land. Mr. Avşar had been to the BOTAŞ offices in Ardahan numerous times. On one visit a few days prior to 5 May 2004, he was thrown out of their offices because they had recently become aware of the ECtHR cases.

4.4.3 "Mr. Avşar came to my shop some time during the morning of 5 May 2004. He was very angry that his land had been demarcated and excavated for the purpose of the BTC pipeline construction. He made serious threats regarding the people who had done this to his land. He felt that he had no other option as his objections to the construction had been ignored. He was frustrated that he had been unable to resolve his problems through the courts. I urged Mr. Avşar

not to carry out his threats. He asked me to help him. I advised him to continue to seek to resolve his problems through the courts. I also advised him to talk to BOTAŞ again and to talk to his lawyer. He said that he would never go to BOTAŞ again and that the lawyer had told him that there is nothing that he could do while they were waiting for an outcome from the court. I agreed to call BOTAŞ at his request. First I introduced myself as Chairman of DEHAP in Ardahan and then handed the phone to Mr. Avşar. The BOTAŞ employee said that there was nobody who could talk to him. Mr. Avşar said that he lived off the land and had no other means of living. He said that his children do not take care of him. He repeated his threats of violence. On hearing this I took the phone from him. The person on the phone said that they knew Mr. Avşar. I explained that Mr. Avşar is of Kurdish origin and does not speak Turkish very well. I explained that he had come to me seeking help as a result of the expropriation of his land. I requested more information about the expropriation of his land. I explained that Mr. Avşar was having difficulties understanding why BOTAŞ were refusing to accept that they should compensate him for the expropriation of his land. The BOTAŞ employee said that he was taking notes and that he would give a message to the competent person. The BOTAŞ employee suggested that I phone again when there was someone who would be able to speak to me about the problem. After the phone call I could see that Mr. Avşar was serious about his threats. I persuaded him that this was not a good idea and advised him to wait to see if his problems could be resolved by the courts. I sent him home. This happened about 12.00 midday on 5 May.

4.4.4 "That afternoon I attended a meeting at Eğitim-Sen (trade union of teachers) in Ardahan. There were some people from the Yılmaz Güney cultural and arts foundation (which provides scholarships). Members of the foundation were fundraising by selling books and CD's. I had to go back to my shop to get money so that I could go back and buy a book. As I passed the police station (Polis Merkezi) which is approximately100 metres away from where the meeting was being held, a police man asked whether I was Ferhat Kaya . I asked him why he wanted to know this. Another police officer then came and the two of them dragged me into the police station by my wrists. They had not asked me to go inside and had not told me why they wanted to know who I was. I asked why. I did not struggle in any way. Once we were inside the police station they told me that the Public Prosecutor had issued a warrant and that I was required to be at court the following day. They stated that the Public Prosecutor had requested that I be brought to court in handcuffs by the police. I objected to this, stating that I had not been informed of any hearing but stated that if I was required to

go to court for some reason, that there was no need for the police to bring me there. I stated that I was known to the police and that there was no reason to detain me even if there was such a hearing. They refused to listen and requested my ID card which I showed to them. Still they said that there was a warrant from the prosecutor and asked for my ID card. I was concerned about my safety as I had previously been tortured by the police so I called a friend who works at the Kurdish Human Rights Project in London. I also called another friend who lived locally. In accordance with detention procedures the police brought me to the local hospital to have a medical examination. The report which was completed at 18.30 on 5 May 2004 shows that I was in good health and had no injuries to my person.

4.4.5 "Before we went to the hospital the police had been impolite and rude but up until that point they had not harmed me. The situation changed when we returned to the police station after my medical examination. There were lots of policemen and two policewomen present. They were all talking about me. I was put into a room with the two policewomen. I think that they were talking to the Public Prosecutor on the phone. The policewomen were saying that I had resisted the police officers. I told them that I had not resisted and had provided my identification when they had requested it. There were policemen also present and they were insulting me and accusing me of being a supporter of the PKK. They were insulting my family and said that I was a traitor to my country because I had been travelling abroad even though I had my own country. This was a reference to my campaign work in Italy and the United Kingdom regarding the BTC pipeline. It is the only time that I have travelled abroad recently. I asked them to stop saying these things. They were laughing at me for defending DEHAP even whilst I am in the police station.

4.4.6 "One of the policewomen was the first to hit me. She said that I was talking too much and then hit me on the cheek with her open hand. Then a policeman started beating me and took me to a room across the corridor which was crowded with at least five or six police officers. They handcuffed my hands behind my back and made me lay face-down on the ground. They kicked all over my body. They folded my legs back onto my back. One or two of them sat on my legs when they were like this, which was extremely painful.

4.4.7 "There was a policeman who had a rifle – it might have been a Kalashnikov. He pointed this rifle into the room that I was in from outside the door. I was very frightened and believed that he was going to shoot me. I had recently witnessed

a person being killed in police custody and was terrified for my life. When he cocked the rifle the policemen stopped kicking me and went to prevent this policeman from shooting me. I saw the glass in the door break and thought that he had shot at me. The policemen and women who were present were trying to calm the policeman with the rifle down. The policemen came back into the room and put me on my back so that I was looking at the ceiling. They resumed beating me and standing on me. I do not know how long they were beating me for as I lost consciousness at some point.

4.4.8 "After a while they took me to the hospital again. I was covered in blood and in extreme pain. They made me walk to the hospital through the streets handcuffed in this condition. I had sustained numerous injuries as a result of the beatings. Four or five policemen accompanied me whilst the doctor examined me. I was concerned that the doctor would be affected by their presence and would not accurately record my injuries. I objected to their presence but they refused to leave the room. The doctor assured me that their presence would not affect his report. The doctor completed his report at 19.30 hours. I requested a copy of this report and on receiving it saw that the doctor had stated that I would not be able to work for three days. I was very surprised as this did not reflect the serious injuries that I had sustained and started to discuss this with the doctor. The police would not let me say anything and removed me from the hospital immediately. I did not receive any medical treatment for my injuries.

4.4.9 "On leaving the hospital the police took me to another place of detention. Still in handcuffs, I was placed in a cell that was in the basement. I was not aware of any other prisoners. There were very bright lights shining in the cell. I would estimate that the lights were 20 times brighter than a normal domestic light bulb. There was a loud speaker in the cell that was emitting a constant noise. The noise sounded like the noise which comes from a machine. The noise and the lights remained all night. My handcuffs were not removed. I was very distressed and in severe pain.

4.4.10 "The following morning the police took me to the hospital again. I was still in severe pain and my injuries were in need of medical attention. I was subjected to a brief examination by a doctor whose report did not reflect any injuries. This was in clear contradiction to the report which had been made at 19.30 hours the previous evening. I did not receive any treatment for my injuries despite the fact that I complained of being in pain.

4.4.11 "I was then brought by the police to the Public Prosecutor's office. Again I was made to walk through the streets in handcuffs. I saw a prosecutor called Mehmet Çömük. He told me that the police were alleging that I had resisted the police officer in charge. I denied this resistance. I said that I had shown the police my identification card when I had been detained and stated that I had had no knowledge of the supposed court hearing which was the reason that they had given me for my detention. I complained that the police had beaten me up and pointed out that the medical report would show that I had no injuries on my first trip to the hospital the previous evening. The police were present during this meeting with the prosecutor and I did not feel able to go into all of the details of the attack on me by the police officers. The prosecutor did not let me talk for long. He said that they would transfer me to the court and that I could make my complaint to the judge.

4.4.12 "The judge made an order for my arrest (tutuklanmak) at the request of the prosecutor. I was taken to the prison. When I arrived at the prison there were a number of soldiers waiting for me at the entrance. They had a file in my name and they questioned me about my job and family for two hours. They noted down my description. Later when I spoke to the other detainees at the prison I learned that this is not the usual procedure and that they had not been questioned in the same way. I was still in a lot of pain and suffering because I had not received any medical treatment for my injuries. Whilst I was being questioned I was holding my hands behind my back. A soldier got angry at me and told me to put my hands in front of me and to stand straight. The soldier threatened to break my bones if I made him angry. The gaoler intervened and I was taken to a dormitory (Koğuş). Because I was in such a bad state the other prisoners made up a bed for me and I slept.

4.4.13 "A day or two after that I wrote a petition addressed to the judge who had ordered my arrest. Such a petition must first go to the prison administration, then to the public prosecutors office and finally to the judge. The court is very close to the prison and I was concerned when I had not received any response after three or four days. As a result of this I decided to commence a hunger strike despite the fact that I was still suffering from the injuries I had sustained on 5 May 2004.

4.4.14 "When I started this hunger strike I was moved to the women's section of the prison which was empty. It was in an extremely bad state of repair as it had been out of use for a long time. The windows were broken and it was very cold

(Ardahan is a mountain province where the temperatures at night can drop very low even in summer). The toilets were in a very bad state and there were no kitchen facilities which meant that I was unable to make the sweet water which was the only substance that I would allow to cross my lips during this hunger strike. My family were notified about my hunger strike and were asked to come to the prison to persuade me to stop. My family were shocked at the state that I was in and eventually I ceased the hunger strike because of requests by my family and by DEHAP.

4.4.15 "When I came off the hunger strike I lodged a complaint with the Public Prosecutor regarding my torture by the police. The Public Prosecutor Mehmet Çömük, came to the prison and took a statement from me. He brought many photos of policemen and women and I identified officers who were involved in beating me. The prosecutor investigated the complaint and lodged an indictment concerning ill-treatment under Article 245 of the Turkish Penal Code at the Ardahan Penal Court of First Instance. This case was joined to the prosecution against me for assaulting, insulting and resisting police officers and damaging state property at the first court hearing. My friend Barış Altun also lodged a complaint with the public prosecutor and was registered as a complainant in my case. He provided a witness statement to the prosecution which corroborated the allegations which I had made. He was later forced to withdraw as a result of intimidation and threats by the police.

4.4.16 My family talked to the lawyers in Ardahan but none of them wanted to take the case. DEHAP also searched for lawyers but the ones they found were too far away and they would not come. In the end my family found a local lawyer who made an application for bail. I was finally released 18 days after my initial detention. The final hearing in the prosecution against the 11 police officers was on 22 September 2004. The public prosecutor, Metin Aslan, requested that the court acquit the police officers of the charges on the indictment because the elements of the offence had not been proved. I was very surprised when the prosecutor said this as the office of the public prosecutor had obviously felt that there was sufficient evidence to lodge an indictment. The judge, Şermin Gölünçür, found the 11 police officers not guilty of ill-treatment. Immediately after that hearing the case regarding the charge of resisting arrest was heard by the same judge. The prosecutor was also the same. That hearing was adjourned until 3 November at 11.30am in order to ensure that Ziya Avşar can come and give evidence in support of my defence."

5. THE TRIAL OF 11 POLICE OFFICERS

5.1 Police officers Nebile Karaman, Kahraman Ediz, Yalçın Yıldız, Yunus Ulus, Şener Emir, Selim Çam, Ergün Karakuş, Özer Çelik, Recep Cesur, Osman Kocabaş, Ercan Yaman were charged with ill treatment of Mr. Kaya under article 245/1-2 of the Turkish Penal Code.

5.2 Indictment (See Appendix)

5.2.1 The indictment which was lodged on 17 May 2005 contains the testimony of Ferhat Kaya and Bariş Altun. The indictment states that on being shown 26 photographs of police officers, he identified six of the police officers involved in the incident. He identified police officer Ergün Karakuş as one of the officers who was outside the police station when he was passing on the afternoon of 5 May. He identified Nebile Karaman as the female police officer who hit him with her open hand and alleged that he was a member of the PKK. He identified Kahraman Ediz as the one who held the rifle. The indictment further states that Bariş Altun identified nine police officers who were involved in the assault.

5.3 Prosecution File[15]

5.3.1 The prosecution file included :

(i) Statements from the 11 defendants;
(ii) Statements from Ferhat Kaya and Bariş Altun;
(iii) Medical reports;
(iv) Writs No: 2004/2283 and 2003/7278 requesting identification and address details of Ferhat Kaya;
(v) Police radio records;
(vi) Record of police officers on duty on 5 May 2004; and
(vii) Record of grounds for detention of Mr. Kaya 5 May 2004.

5.3.2 All of the 11 defendants refused the assistance of a lawyer when giving their statements.

5.3.3 Yalçın Yıldız, Yunus Ulus and Şener Emir stated that they were not on duty on

the relevant date.

5.3.4 Ergün Karakuş and Recep Cesur state that pursuant to court summonses from Erzurum First Executive Penal Court, Erzurum Executive Directorate and Ardahan Executive Penal Court they stopped Ferhat Kaya on 5 May when he was walking towards the police station from the direction of the Teachers Guest House. Ercan Yaman stated that he was present outside at this time. They state that Mr. Kaya went into the station without any force being required and on being shown the documents refused to give his address. As a result Ergün Karakuş contacted the public prosecutor who authorised his detention. Recep Cesur then finished his shift and left the police station before Ferhat Kaya was taken to the hospital.

5.3.5 Ufuk Ertan, Ergün Karakuş Selim Çam, Özer Çelik, Kahraman Ediz, and Nebile Karaman, Ercan Yaman, Osman Kocabas and Fikret Yarar said that on returning from the initial hospital visit Ferhat Kaya was acting aggressively and was rude to the female police officers who were trying to calm him down. He was brought to the legal consultation room and on the way he broke the glass in the door of that room with his left hand. He knocked over tables and chairs that were in the room. He was handcuffed by the police officers in order to prevent him harming himself or someone else. Kahraman Ediz, Ergün Karakuş and Nebile Karaman stated that when Ferhat Kaya returned from the first visit to the hospital he refused to sign a police document and removed his denim jacket, trouser belt and threw them at the female police officers who were present. He was threatening to remove his trousers. They further stated that Mr. Kaya banged his head and hands off the walls of the police station and that he threatened to make a complaint of torture against the police officers. They stated that the injuries sustained were as a result of his own actions, throwing himself against walls and grabbing broken glass from the floor.

5.3.6 Bariş Altun states that when he went to the police station Mr. Kaya was requesting his lawyer prior to signing any documentation. Police officers were not listening and one police officer asked him what he meant by refusing to sign and pushed Mr. Kaya in the chest area. Mr. Kaya was asking why he was being treated in this manner and was asking to be treated with respect. Police officers who were outside the station came in and took Mr. Kaya across the corridor into another room where he was pushed so that he hit his back off the wall. The police officers were trying to stamp on Mr Kaya. Police officers hit Mr. Kaya's arms, chest and stomach with their fists bringing him to the ground. Mr. Altun

tried to go to the assistance of Mr. Kaya but was restrained by a police officer who insulted and swore at him. During this time a police officer directed a weapon at Mr. Kaya stating "I will shoot you". Mr. Altun did not see who broke the glass but while he was later being questioned by other police officers he was pressured to say that the glass was broken by Mr. Kaya. He did not see Mr. Kaya take his trousers off. He identified Kahraman Ediz as being the person who insulted him.

5.3.7 Mr. Kaya refused to make a statement to the police stating that he was on hunger strike. He made a detailed statement to the prosecutor on 6 May giving the details of the incident.

5.3.8 The prosecution file also contains a copy of writ from Erzurum First Executive Penal Court (File No. 2004/2283) sent on 4 March 2004 requesting the Office of the Chief Public Prosecutor of Ardahan to obtain identification registration details from Mr. Kaya before 27 April 2004 (the date when the next hearing in a matter at that court) was to take place. The writ requires the police to attend Mr. Kaya's address and obtain these details from him. A second writ from the Erzurum First Executive Directorate (File No. 20037/278) sent on 29 March 2004 requests the Office of the Chief Public Prosecutor of Ardahan through the municipal police to obtain Mr. Kaya's new home and work address and to send it to the Erzurum First Executive Directorate as soon as possible. Neither of the writs indicates a power of arrest attached to the requests.

5.3.9 On 5 May 2004 at 18.30 hours Mr. Kaya was examined by Dr. İ. Özgür Kara who reported that Mr. Kaya was in good health and had no injuries. At 19.30 hours the same doctor examined Mr. Kaya and recorded a cut to his right wrist measuring 0.5cm, a surface cut to the outside of his little finger measuring 0.4cm, a scratch to the outside of his fourth finger, a scratch to his third finger, early signs of bruising (*Erythematous*) surrounding Mr. Kaya's left wrist, early signs of bruising in an oblong shape under the right scapula area measuring 10cm x 2cm, early signs of a linear bruise on the right shoulder and small bruises on the right side of the back. The doctor estimated that although Mr. Kaya's condition was not life threatening he would be incapable of work for three days. The following morning at 9.30am Mr. Kaya was examined by Dr. Levent Uzun at the Ardahan Central Health Centre who recorded a surface scratch under Mr. Kaya's right wrist. The report states that there are no other signs of force and that there is no reason for Mr. Kaya not to return to work.

5.3.10 A receipt for the repair of the damage to a broken window at the police station shows that the total repair comes to 13,500,000TL (approximately €7).

5.3.11 Statements which appeared in the separate prosecution file relating to the case against Mr. Kaya included one by Mr. Bariş Altun claiming that the statement which he gave at the police station was not true and was given under psychological pressure. He stated that he was insulted by police officers and that Mr. Kaya was beaten by them.

5.4 Hearings

5.4.1 Hearing on 3 June 2004 The judge was Şermin Gölünçür and the prosecutor was Ali Özdemir. The defendants Yunus Ulus, Osman Kocabas, Ercan Yaman, Kahraman Edis, Ergun Karakus, Selim Çam, Şener Emin, Yalçın Yildiz and Özer Çelik, and the witness Sükrü Kaya Yazici were present and gave evidence adopting their previous statements. Warrants for the arrests of Recep Cesur and Nebile Karaman (who were defendants but were not in attendance) were issued. The hearing was adjourned to 30 June 2004 to execute a witness summons against the complainants Ferhat Kaya and Bariş Altun and against the defendants Recep Cesur and Nebile Kahraman as they had not attended court. The hearing was adjourned to 30 June 2004.

5.4.2 Hearing on 30 June 2004 The judge was Şermin Gölünçür and the prosecutor was Ali Özdemir .The defendants Recep Cesur and Nebile Kahraman and the complainant Mr. Kaya were present and gave evidence in accordance with their statements. Nabile Karaman stated that during the events the complainant, Bariş Altun was constantly working to calm Mr. Kaya down and after the events he said "older sister, I apologise to you because of these incidents, all these happened because Mr. Kaya is too nervous, I apologise on his behalf". She stated that if Mr. Altun had been at the hearing she would have asked him to confirm that this is what happened. She stated that the complaint made was untrue. She produced a cutting from Azgur Gundem newspaper stating that she was in fact the victim in the matter. A witness summons was issued for Bariş Altun in order to bring him to court for the hearing on the next occasion. The hearing was adjourned to 22 September 2004 to execute a witness summons against the complainant Bariş Altun and for police radio records to be produced.

5.4.3 Hearing on 22 September 2004: The Mission observed the third hearing in

this matter which took place on 22 September 2004. The previous hearings had been on 3 June 2004 and 30 June 2004. The trial judge was Şermin Gölünçür. The prosecutor was Metin Aslan. Three of the defendants; Recep Cesur, Kahraman Ediz and Ergün Karakuş were in attendance. The defendants were represented by Mecit Kaya.

5.4.4 At the outset of the hearing Barış Altun withdrew his complainant statement. He appeared in court and was asked in the presence of the defendants in open court what his reasons were. He did not give any specific reason.[16] Mr. Kaya addressed the court. He complained that the transcript of the previous hearing was incomplete in that it did not include reference to the fact that Mr. Kaya had referred to his campaign work on the BTC oil pipeline as being a reason for his detention and ill treatment.

5.4.5 Mr. Aslan then concluded the case for the prosecution. He stated that he did not wish the judge to enlarge the enquiry into the offences and requested the judge to find the defendants not guilty as he believed that they did not commit the crimes that they were charged with.

5.4.6 The defence lawyer stated that he agreed with the request of the prosecutor and further stated that the force used by the police officers had been legitimate force in the course of their duty.

5.4.7 The Judge, Ms Gölünçür, gave a judgment finding the defendants not guilty of ill-treatment of Mr. Kaya. She reserved her reasons. The hearing lasted for 15 minutes.

5.4.8 Ms. Gölünçür's reasons were handed down on 3 December 2004 stating that when the file was considered as a whole including the fact that the defendants denied the allegations and that no evidence other than the allegations of the complainant could be obtained in support of the prosecution case and the fact that the injuries recorded in the medical report on 5 May 2004 may have been sustained whilst the complainant was resisting police officers, her conclusion was that there was no evidence to satisfy her beyond reasonable doubt that the defendants are guilty.

5.5 Concerns

5.5.1 The following features of this hearing were of particular concern to the Mission:

(i) That the trial of the 11 police officers on such serious charges was concluded in three short hearings with no apparent detailed questioning of the police officers by either the prosecution or the trial judge. The defendants simply appear to have been permitted to adopt the statements which they drafted for each other;

(ii) That the case was adjourned from 30 June to 22 September due to a judicial recess. According to the seventh Harmonisation Package adapted on 30 July 2003, proceedings under Article 245 of the Turkish Penal Code should not be adjourned for more than 30 days and should take place even during judicial recesses;[17]

(iii) That the statements of the police officers, which formed their evidence as they were not questioned in any detail during the hearings, were drafted by colleagues who were also defendants;

(iv) The assertion that Recep Cesur went home before Mr. Kaya was taken to the hospital for the first time on 5 May 2004 is highly questionable as he typed the statements of his fellow police officers later that evening. These statements included those of Osman Kocabas at 19.30, Fikret Yarar at 20.10, Ufuk Ertan at 20.20, Sükrü Kaya Yazici at 21.00. His own statement was taken at the police station at 21.00. There does not appear to have been any investigation into this discrepancy;

(v) That the grounds of Mr. Kaya's detention are very unclear. The file simply contains two writs requesting the identification and address details of Mr. Kaya;

(vi) That the Public Prosecutor had felt that there was sufficient evidence to lodge an indictment alleging ill-treatment – including medical evidence of injuries –and then, without explanation, requested that the trial judge find the defendants not guilty;

(vii) The apparent lack of independence of the tribunal where the trial judge did not exercise her powers to further investigate the allegations once the Public Prosecutor had expressed his opinion regarding the guilt of the police officers;

(viii) That Mr. Altun, a complainant (and witness) complained of psychological pressure exerted by police officers when making a statement at the police station;

(ix) That Mr. Altun felt compelled to withdraw his complaint as a result of

intimidation;

(x) The contradiction between defence counsel's assertion in one case that Mr. Kaya's injuries were sustained as a result of legitimate use of force and the assertion of the complainant in the other case who claims that Mr. Kaya's injuries were sustained as a result of his own actions. The Mission sought independent medical advice[18] in Ankara on the medical report prepared at the hospital at 19.30 hours on 5th May 2004. It was the view of the doctor whom the Mission consulted that the injuries recorded were consistent with kicking and that these injuries could not have been sustained by Mr. Kaya "throwing" himself around the room in which he was being detained. It is of particular note that police statements refer to Mr. Kaya's left hand whereas the injuries recorded are mostly on his right hand;

(xi) The presence of police officers throughout the medical examinations of Mr. Kaya despite the fact that recent legal reforms in Turkey include a further amendment to the Regulation on Apprehension, Detention and Statement Taking in January 2004, which strengthened the rights of detainees. That law provides that medical examinations of detained persons are now to be carried out without the presence of the security forces, except when the doctor requires otherwise.";[19]

(xii) The contradiction between the injuries recorded in the medical reports prepared on 5 and 6 May 2004. It seems impossible that the kind of injuries which were recorded 5 May 2004 would have not been visible or apparent to the doctor examining Mr. Kaya on 6 May 2004;

(xiii) The fact that Mr. Kaya received injuries in police custody and received no medical treatment for these injuries;

(xiv) That Mr. Kaya was held in handcuffs and subjected loud noises and bright lights during the first night of his detention;

(xv) That defence counsel, Mecit Kaya, is a lawyer employed by the Legal Advisor's Office in the Directorate-General of Security, the Ministry of Internal Affairs. This gives the appearance that special treatment is being afforded to these police officers by the Ministry of Internal Affairs.

(xvi) That trials in relation to essentially the same incident are heard by the same judge and prosecuted by the same prosecutor at the same sitting. It is of particular concern that in the judgment handed down on the acquittal of the police officers, the judge refers to the fact that she considers the injuries sustained by Mr. Kaya may have been the result of his resisting police officers – this is the subject matter of a

trial which has not yet concluded;

(xvii) The structure of the court-room where the prosecutor and the trial judge sit at the same level and retire through the same door during recess; and

(xviii) The accuracy of the court transcript where the stenographer notes exactly what the prosecutor says in court but where the judge summarises for the stenographer what should be noted of what all other parties say.

6. TRIAL OF MR. KAYA

6.1 Ferhat Kaya was charged with threatening, insulting and resisting police officers and damaging state property (who detained him on 5 May 2004) under Articles 266/1, 269, 258/1, 516/3, 522, 95/2 and 40 of the Turkish Penal Code.

6.2 Indictment

6.2.1 The indictment was lodged on 14 May 2004. The evidence referred to in the indictment included the statements of Recep Cesur, Sükrü Kaya Yazici and Bariş Altun, the crime scene investigation report, a sketch, photographs, a record of the incident. The indictment states: "While the defendant, Ferhat Kaya, was passing by the police centre on 5 May 2004 at around 18.00 he was invited into the police centre by the police officer in charge because of a writ which had been received from Erzurum First Executive Penal Court No: 2004/2283 dated 4 March 2004 requesting confirmation of identification details, and the writ of the Erzurum First Executive Directorate No: 2003/7278 dated 29/03/04 requesting the home and work address of the defendant. The defendant, Mr. Kaya, said to the police officer "I am not giving the address, I am not confirming my identification, go and sue me, you can't do anything to me, you can't keep me here ….you don't know who you are dealing with, I am HADEP provincial chair".[20] The situation was communicated to the Public Prosecutor on duty who said that he wanted the defendant to be detained and taken to court by the police on the following day. The custody procedure was then initiated. He was taken for a medical check and on his return he started to shout, he threw his jacket and belt at the complainants Nebile Karaman and Fatmanur Küçük. The defendant said "if that is not enough I will give you my trousers too" and started to unbutton his trousers and trying to take them off. He was asked to stop doing this by Nebile Karaman and Mr. Kaya then said "you are the impolite, dirty woman" and raised his hand whilst moving towards her. The other police officers intervened and the defendant was taken to the legal consultation room to be calmed down. The defendant continued to shout saying "you don't know me ….. I'll make this Ardahan small for you, you are all dogs, even the state can't do anything to me, what can you do?". The defendant broke the glass in the door of the consultation room with his fist, hit his head and kicked the table.

He tried to harm himself with the pieces of the broken glass on the ground. The defendant continued his threats saying "I will make a complaint to the Public Prosecutor telling them that you tortured me in the police station". He was handcuffed in order to prevent further harm to himself. On 6 May 2004 the defendant was taken to the court building by the police officers Gultekin Ozkurt and Şener Emir. He said to them both "I will get out of here in half and hour, you are 500 people at the most, I will kill you all … dishonourable people, hit me if you are a man." The police officers involved then made a complaint against Mr. Kaya."

6.3 Bail

6.3.1 On 7 May 2004 Mr. Kaya applied to the Peace Penal Court for bail. On the same day Judge Gölünçür of the First Instance Penal Court refused the application on the grounds of the nature of the charges, the strength of the evidence and the length of time that he had been in custody.

6.3.2 On 11 May 2004, Mr. Kaya's lawyer Ulker Caliskan made a further application for bail to the Peace Penal Court. On the same day, Judge Handan Oren refused the application for the same reasons as before.

6.3.3 On 12 May, Ulker Caliskan appealed the refusal to grant bail to the First Instance Penal Court. On the same day the judge of the First Instance Penal Court Şermin Gölünçür (the same judge who had initially refused bail) allowed bail on the condition of 5 billion TL security being deposited with the court under Article 117 of the Penal Procedures Code.

6.3.4 On 21 May 2004 Mr Kaya (without the assistance of a lawyer) appealed the decision to the Aggravated Felony Court. He stated that he wasn't able to afford the security set by Judge Şermin Gloluncur. Judge Dursun Buyukbas granted unconditional bail to Mr. Kaya.

6.4 Prosecution File[21]

6.4.1 In relation to the right to legal representation the rights of detainees form which appears on the file reads: "your lawyer can be present while your testimony is being taken. If you are detained on a charge within the scope of the State

Security Courts you can see your lawyer only when you are arrested, or when your period of detention is extended by the judge."

6.4.2 The custody record completed on 5 May 2004 for Mr. Kaya also states "You have been captured/detained on charges of [……] upon suspicion/warrant of the prosecutor, concerning the event [……] The chances that you might be connected to other offences is also in the scope of the inquiry".[22]

6.5 Hearings

6.5.1 **Hearing on 03 June 2004:** The judge was Şermin Gölünçür and the prosecutor was Ali Özdemir. The defendant, Mr Kaya gave evidence. The complainants Osman Kocabas, Ercan Yaman, Kahraman Edis, Ergun Karakus, Şener Emir, Özer Çelik, Fikret Yarar, Ufuk Ertan, Ahmet Yaman, Gültekin Özkurt also gave evidence confirming that the statements which they gave in relation to the proceedings against them (where Mr. Kaya was a complainant) were correct. The witness Bariş Altun gave evidence. He said his statement at the police station was taken under psychological pressure exerted by the police officers and it was not true. He confirmed that Mr. Kaya was beaten and he himself was insulted by the police officers. The hearing adjourned to 30 June 2004.

6.5.2 Hearing on 30 June 2004: The judge was Şermin Gölünçür and the prosecutor was Ali Özdemir . The complainants Nebile Karaman and Cengiz Özdemir gave evidence in accordance with their statements. Mr. Kaya stated that he did not accept the evidence given by the defendants. He stated that Ergun Karakus used force to bring him into the police station and had told him that he was to be detained because of a hearing that was to take place the following day. He stated that he did not resist the police officers. He stated that while he was going through the detention procedure on returning from his first visit to the hospital, police officers were insulting him and he was slapped by Nebile Karaman. He stated that he was then attacked by the other police officers who were there. A police officer directed his rifle towards him and told the other police officers that he would shoot Mr. Kaya. It was the other police officers who restrained the police officer with the rifle.

6.5.3 The hearing was adjourned to 22 September 2004 for the complainant Fatmanur Küçük to be summonsed. Subpoenas for the witness police officers Gültekin Özkurt and Şener Emin were issued.

6.5.4 **Hearing on 22 September 2004:** The Mission observed the third hearing in this matter which took place on 22 September 2004. This hearing took place immediately after the conclusion of the trial of the 11 police officers on the same date with the same trial judge (Şermin Gölünçür) and the same prosecutor (Metin Aslan). Mr. Kaya was not represented by a lawyer.

6.5.4.1 The complainant Ms. Fatmanur Küçük gave evidence adopting her previous witness statements and stating that the injuries reflected in the medical report were sustained as a result of Mr. Kaya's own actions. She stated that he threw himself around the "lawyers" room in which he was being detained. She said that he hit the glass in the door and then hit his back and shoulder on the walls. She stated that while he was doing this he was shouting insults at the police officers and threatening to make a complaint alleging that they had tortured him.

6.5.4.2 The second prosecution witness, Mr Gültekin Özkurt, gave evidence stating that he had not been at the police station on 5 May during the time when Mr. Kaya was alleged to have resisted arrest. The Judge, Ms. Şermin Gölünçür, inquired as to the reason for the discrepancy between the oral evidence that he was giving to the court and the evidence which he had given in his written statement. He stated that the evidence in his written statement referred to an incident which occurred on the way to the court on 6 May 2004, the following morning, and not to any incident on the 5 May 2004.

6.5.4.3 Mr. Kaya addressed the court stating that he believed that the complainant and the witness were part of a concerted effort to have him sent to prison. He stated that he believed that his detention was as a result of his work on the BTC pipeline. He requested that the hearing be adjourned in order to allow Mr. Ziya Avşar, witness for the defence, to attend. Mr. Kaya explained that Mr. Avşar would be able to tell the court about Mr. Kaya's campaign work regarding lack of adequate compensation for villagers affected by the BTC pipeline. Mr. Kaya stated to the court that he was of the view that this campaign work formed the reason for his detention by the police. He stated that when he was detained by the police they called him a "terrorist" and a "traitor" when referring to his international campaign work relating to the pipeline.

6.5.4.4 Mr. Kaya stressed his concerns regarding the independence of the trial judge in light of the fact that she had also been the trial judge in the case of the 11 police officers which had immediately preceded the present hearing.

6.5.4.5 The case was adjourned to 11 November 2004 at 11.30am in order to allow defence witness Ziya Avşar to attend and for the police to execute a witness summons for prosecution witness Şener Emir.

6.5.5 **Hearing on 11 November 2004**: On 11 November 2004 the trial judge and the prosecutor were changed. The transcripts of previous hearings were read in court. Witness Şener Emin attended court and stated that he was not working on 5 May 2004. A witness summons for the witness Ziya Avşar had not been served and Mr. Kaya offered to obtain Mr. Avşar 's correct address. The hearing was adjourned to 22 December 2004.

6.5.6 **Hearing on 22 December 2004:** On 22 December the court adjourned to 2 March 2005 in order to secure the attendance of Ziya Avsar, witness for the defence.

6.6 Concerns

6.6.1 The following features of the hearings were of particular concern to the Mission:

(i) The failure of the Ardahan Police Force to amend the custody record to incorporate Article 31 of the 4th EU Harmonisation Package (Law Amending Various Laws No: 4778) [23] published in the official gazette on 11 January 2003 which abolishes provisions limiting access to lawyers for State Security Court suspects;

(ii) That Mr. Kaya requested a lawyer at the police station but was not given one;

(iii) That Mr. Kaya's family found it so difficult to find a lawyer who was willing to represent Mr. Kaya;

(iv) That the lawyer who was eventually found by Mr. Kaya's family did not appear to act with due diligence and ultimately failed to attend trial hearings;

(v) The failure to promptly notify Mr. Kaya of the reasons for his detention. The police failed to complete the custody record with the record of charges;

(vi) That Mr. Kaya received injuries in police custody and received no medical treatment for these injuries;

(vii) That Mr. Kaya was held in handcuffs and subjected to loud noises and bright lights during the first night of his detention;

(viii) That Mr. Kaya, on being admitted to prison, appears to have been questioned extensively by persons other than police officers in the context of an interview regarding the offences for which he was being detained;

(ix) The hearing of an appeal against a refusal to grant bail by the very judge who had initially refused bail;

(x) The failure to give the defendant an opportunity to question or have questioned the complainant in the case against him;

(xi) That an independent witness complained of being pressured by the police when making a statement regarding the incident;

(xii) The lack of impartiality of the tribunal where trials in relation to essentially the same incident are heard by the same judge and prosecuted by the same prosecutor at the same sitting;

(xiii) The structure of the court-room where the prosecutor and the trial judge sit at the same level and retire through the same door during recess; and

(xiv) The accuracy of the court transcript where the stenographer notes exactly what the prosecutor says in court but where the judge summarises for the stenographer what should be noted of what all other parties say.

7. RELEVANT INTERNATIONAL STANDARDS

7.1 Torture[24]

7.1.1 Torture is universally condemned, and whatever its actual practice, no country publicly supports torture or opposes its eradication. The prohibition against torture is well established under customary international law as *jus cogens*; that is, it has the highest standing in customary law and is so fundamental as to supersede all other treaties and customary laws (except laws that are also *jus cogens*). Criminal acts that are *jus cogens* are subject to universal jurisdiction, meaning that any state can exercise its jurisdiction, regardless of where the crime took place, the nationality of the perpetrator or the nationality of the victim.

7.1.2 Article 5 UDHR[25] states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

7.1.3 Article 7 ICCPR[26] states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

7.1.4 Article 2 of the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture)[27] states:

"1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture."

7.1.5 Article 3 ECHR[28] states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

7.1.6 Principle 1 of the Body of Principles states "All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person."

7.2 Arbitrary Detention / Right to Liberty

7.2.1 Article 3 ICCPR states: "Everyone has the right to life, liberty and security of the person."

7.2.2 Article 9(1) ICCPR states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

7.2.3 Article 5(1) ECHR states:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

7.3 The right to presumption of release pending trial

7.3.1 Article 9(3) ICCPR states: "it shall not be the general rule that persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment."

7.3.2 Principle 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Body of Principles")[29] states: "Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review."

7.3.3 The ECHR provides for this presumption of release in Article 5 and the European Court of Human Rights has held that continued pre-trial detention can only be justified "if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty" *Van der Tang v. Spain* 13 July 1993, para 55.

7.4 Right to be informed immediately of reasons for arrest or detention

7.4.1 Article 9(2) ICCPR states: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

7.4.2 Principle 10 of the Body of Principles states: "Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him."

7.4.3 Principle 11 (2) of the Body of Principles states: "A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore."

7.4.4 Article 5(2) ECHR states: "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any

charge against him."

7.5 Right to notification of rights

7.5.1 Principle 13 of the Body of Principles states: "Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights."

7.6 Right to Legal Counsel

7.6.1 Principle 5 of the Basic Principles on the Role of Lawyers[30] states: "Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."

7.6.2 Principle 17(1) of the Body of Principles states: "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it."

7.7 Fair Trial

7.7.1 The right to a fair trial is provided for in various international and regional treaties. These standards are to be considered binding on the States who have ratified (or acceded to) them. Turkey has ratified or acceded to the following instruments:

(i) International Covenant on Civil and Political Rights of 1966 (ICCPR);
(ii) Convention against Torture of 1975; and
(iii) European Convention for the protection of Human Rights and Fundamental Freedoms of 1953 (ECHR) and Protocol No. 7 of 1984.

7.7.2 There are also a variety of non-binding instruments that are related to the right to fair trial. These instruments have persuasive force as they were negotiated by governments and have been adopted by political bodies, such as the UN General Assembly. In addition, in many cases, non-treaty standards are a reaffirmation of principles already established by other binding instruments. These international non-treaty standards include:

(i) Universal Declaration of Human Rights of 1948 (UDHR);
(ii) United Nations Basic Principles on the Independence of the Judiciary of 1985;
(iii) United Nations Basic Principles on the Role of Lawyers 1990; and
(iv) Guidelines on the Role of Prosecutors 1990.

7.7.3 Equality of Arms

7.7.3.1 Article 14(1) ICCPR states: "All persons shall be equal before the courts and tribunals."

7.7.3.2 Principle 27 Basic Principles on the Role of Lawyers states: "Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice."

7.7.3.3 Principle 17 Basic Principles on the Independence of the Judiciary[31] states: "A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge."

7.7.4 Independence and impartiality

7.7.4.1 Article 14(1) ICCPR states: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

7.7.4.2 Article 10 UDHR[32] states "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

7.7.4.3 Article 6(1) ECHR states: "**In the determination of his civil rights and obligations** or of any criminal **charge against him, everyone is entitled to a fair and public** hearing within **a reasonable time by an independent and impartial tribunal** established **by law."**

7.7.4.4 Independence has been interpreted to mean the separation of powers based on an institutional protection of the judiciary against undue influence by, or interference from, the executive branch and, to a lesser degree, from the legislative branch, is the basis criteria for independence.

7.7.4.5 Impartiality has been interpreted to mean open-mindedness, objectivity, and absence of bias or ill will.

7.7.5 Innocent until proven guilty

7.7.5.1 Article 14(2) ICCPR states: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

7.7.5.2 Article 11(1) UDHR states "(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

7.7.5.3 Article 6(2) ECHR states: "**Everyone charged with a criminal offence shall be** presumed innocent until proved guilty according to law."

7.7.6 Right to be informed of charge

7.7.6.1 Article 14(2) ICCPR states: "In the determination of any criminal charge

against him, everyone shall be entitled to the following minimum guarantees, in full equality:(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him."

7.7.6.2 Article 6(3) ECHR states: "Everyone charged with a criminal offence has the following minimum rights:(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him."

7.7.6.3 The information forming the basis of the charge needs to be promptly given: as soon as the charge is first made by a competent authority The information given must include the nature(exact legal description of the offence) and cause (the facts upon which the allegation is based) of the charge The charge must be provided orally or in writing, in a language that the accused understands.

7.7.7 Adequate time and facilities

7.7.7.1 Article 14(2)(b) ICCPR states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality… (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing."

7.7.7.2 Article 6(3)(b) ECHR states: "Everyone charged with a criminal offence has the following minimum rights…. (b) to have adequate time and facilities for the preparation of his Defence."

7.7.7.3 Principle 21 of Basic Principles Role of Lawyers states: "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time." "Facilities" has been interpreted to mean accused and defence counsel must be granted access to appropriate information, files and documents necessary for the preparation of a defence including statements made by witnesses and police memoranda which are in the possession of the police.

8. TURKEY'S PROGRESS TOWARDS EU ACCESSION

Human Rights Reforms and the BTC Experience

8.1 Intimidation

8.1.1 It is clear that intimidation has shaped the implementation of the BTC project, both during the consultation period (see previous Fact Finding Mission reports) and during construction. The intimidatory use of police power – as witnessed directly by the September 2004 Fact Finding Mission itself and illustrated by the experience of Ferhat Kaya – can only have one result: preventing already-marginalized affected villagers and their advocates on from freely communicating their concerns and pursuing redress. In the Ardahan region, the use of police harassment/violence and the court proceedings to prevent the legitimate activities of DEHAP party workers and others documenting the impacts of the project on villagers is of particular concern.

8.1.2 It seems that the human rights reforms implemented by the Turkish Government in advance of its EU accession application have had little impact in the North-East region, perhaps because of the relative lack of national and international scrutiny. It is likely that had a DEHAP representative in the South-East of Turkey been detained under similar circumstances to those that pertained in the case of Mr Kaya, there would have been widespread coverage in the national newspapers and scrutiny by international observers.

8.1.3 The September 2004 Fact Finding Mission raised this concern with members of the EC Delegation in Ankara and with officials of both the UK and Netherlands Embassies. It noted that this lacuna in monitoring the progress of Turkey's human rights reforms is recognised and that the North-East may be subject to closer scrutiny in future which is both necessary and welcomed.

8.2 Torture

8.2.1 While considerable reforms have been put in place by Turkey with a view to the eradication of torture, recent reports and in particular the case of Ferhat Kaya have shown that there continues to be allegations of torture and there is much work to be done in terms of implementation and enforcement of the new "zero tolerance" policy.

8.2.2 The trial observation mission is seriously concerned that the authorities in the North-East of Turkey are falling far behind the national programme to eliminate torture. The mission has recently been informed of a further allegation of police ill-treatment of Mr. Kaya.[33] It is alleged that on 25 December 2004 he and Mr. Altun were stopped by an unmarked car and when they refused to provide their identification documents to a plainclothes officer who had not identified himself properly as being an officer – they were beaten and handcuffed by three plainclothes officers. When Mr. Kaya and Mr. Altun were taken to the police station they were beaten by a number of police officers including an officer of senior rank (two stars). At the hospital the doctor who was examining them made derogatory comments about DEHAP and failed to conclude the examination. They were kept in custody overnight and their families were not informed of their detention. The following morning they were taken to the doctor again and he failed to examine them properly. They were taken to the public prosecutor who said that he had "had enough"of Mr. Kaya and failed to note Mr. Kaya's statement correctly. Mr. Kaya and Mr. Altun were subsequently released. No charges were pressed against the police officers.

8.2.3 The Mission's concerns over implementation of reforms in the North-East are reinforced by evidence from more intensely monitored areas of Turkey which reveal continuing abuse of state powers. Despite the recognised efforts being made by the Turkish authorities it is reported that Governmental as well as nongovernmental organizations interested in this issue continue to receive substantial numbers of torture allegations. In a recent report Human Rights Watch observed: "In the first four months of 2004 the Human Rights Directorate of the Office of the Prime Minister recorded that it had received fifty complaints of torture and ill-treatment in police custody. The Turkish Human Rights Association reported **692 incidents of torture** (emphasis added) and ill-treatment by police in the first six months of 2004. During the first eight months of 2004 **597 people applied to the Turkish Human Rights Foundation for medical attention** (emphasis added) for torture and ill-treatment as well as

illness arising from prison conditions." [34] According to the Foundation, 918 torture victims received medical treatment from its centres throughout Turkey in 2004, of whom 337 affirmed that they had been tortured. Furthermore, the Foundation recorded five deaths in custody. On the basis of these figures, Yavuz Önen, the head of the Foundation, stated on 4 January 2005 that torture is still systematic state practice in Turkey.[35]

8.2.4 It is further reported that "most detainees reporting ill-treatment describe beatings, threats and insults, but some also complain of blindfolding, sexual assault, hosing with cold water, electric shocks, and hanging by the arms." The report notes that the European Commission's assessment of progress in combating torture in its *2003 Regular Report on Turkey's Progress Towards Accession* is entirely accurate when it says that "while implementation has led to some concrete results, the situation is uneven and torture cases persist." Later the report notes that "Turkey's performance this year is likely to earn a similar assessment. It will be difficult for the European Commission to declare in outright terms that Turkey has met the Copenhagen Criteria while significant members of Turkish citizens are still being abused in police custody". The conclusion of Human Rights Watch is that in allegations of torture "even when evidence is very strong, convictions of offenders and appropriate sentences are rare."

8.2.5 Turkish law currently provides special protection for police officers and officials who are on trial for torture. These protections include exempting police officers charged with torture from appearing personally before the court, appointing lawyers under the special budget of the Directorate General of Security at the Ministry of Internal Affairs[36] and special trial procedures for police superiors charged with torture.[37]

8.2.6 With regard to the legislative and administrative framework required to combat torture and ill-treatment which has been put in place since 2002 the European Commission's 2004 *Regular Report on Turkey's Progress towards Accession Commission of the European Communities*[38] notes that these amendments include pre-trial detention procedures which have been aligned with European standards, amendments to sentencing legislation so that sentences for torture and ill-treatment can no longer be suspended or converted into fines, and the lifting of the requirement to obtain permission from superiors to open investigations against public officials. The Commission concludes however, that although many of the recommendations of the Council of Europe's Committee

for the Prevention of Torture and Ill-treatment (CPT) and the relevant UN bodies have been acted upon, a number have still not been followed up by the Turkish authorities, concluding that "Turkey still needs to pursue vigorously its efforts to combat torture and other forms of ill-treatment by law enforcement officials." This conclusion is strongly supported by the findings of the September 2004 trial observation mission.

8.2.7 The new legislation requires that medical examinations of detained persons are now to be carried out without the presence of the security forces, except when the doctor requires otherwise. In October 2003 the Council of State clarified that detainees' medical examination reports should not be copied to law enforcement officers. In April 2004 the Turkish Medical Association issued a guideline stating that disciplinary penalties should be brought against doctors who discriminate on the basis of gender, race, nationality, or for any other reason, during medical checks and treatment. The trial observation mission is concerned that its findings show that enforcement of these practices and procedures has not been achieved in the Ardahan region.

8.2.8 Recent reform measures include a further amendment to the Regulation on Apprehension, Detention and Statement Taking in January 2004, which strengthened the rights of detainees. Pocket-sized cards setting out a suspect's rights, including his right to see a lawyer, have been distributed to police officers, who have been instructed to read the rights to a suspect immediately upon arrest. Enlarged versions of the cards have been displayed in police stations. The card also reminds police officers that breaching a suspect's rights makes them liable for the financial compensation due. The new Penal Code increases sentences for perpetrators of torture and foresees life imprisonment in cases where the victim has died. An April 2004 circular calls on all law enforcement officials to avoid methods that may engender allegations of ill-treatment of detained persons, such as sleep deprivation, prolonged standing and threats and blindfolding. The trial observation mission has grave concerns that despite these recent measures there is evidence that the rights of detained persons continue to be violated.

8.2.9 In October 2003, a circular was issued instructing public prosecutors to carry out, in person, investigations regarding allegations of torture and ill-treatment, which should be considered as priority cases. The amendment to the Military Criminal Code and the Law on the Establishment and Trial Procedures of Military Courts in January 2004 aligned the detention procedures of the

military courts with those of other courts. Certainly, in light of the conduct of the case against the 11 police officers charged with the ill-treatment of Mr. Kaya and the allegations made regarding the actions of the public prosecutor following the detention of Mr. Kaya on 25 December 2004, it is questionable whether such instructions have been enforced in the province of Ardahan.

8.2.10 The European Commission reported that the Government's policy of zero tolerance and its serious efforts to implement the legislative reforms have led to a decline in instances of torture. In the first six months of 2004 the Turkish Human Rights Association received 692 complaints related to torture, a 29% decrease on the first six months of 2003. Similarly, the Diyarbakir Bar Association notes a decrease from 489 reported cases of torture in 2003 to 338 in 2004.[39] However the European Commission concluded that **"the number of complaints of torture outside of formal detention centres has increased considerably as compared with 2003** [emphasis added]**.** Of the total human rights violations claims received by the Human Rights Presidency between January and June 2004, a significant proportion related to "torture and ill-treatment", indicating that such practice remains a problem."

8.2.11 As regards the fight against impunity the European Commission reports that, according to official statistics, **"of 2454 law enforcement agents who were tried in 2003 in relation to allegations of torture or ill-treatment, 1357 were acquitted and of the 854 defendants that were convicted, 138 were imprisoned** [emphasis added]". In February 2004, the Minister of the Interior issued a circular aimed at ensuring the attendance of the accused at trials concerning torture or ill-treatment. In some cases, defendants had been able to avoid attending trial for many years, thus causing their cases to exceed the statute of limitation. Concerns remain that despite reforms prosecutors are not always promptly and adequately conducting investigations against public officials accused of torture. In July 2004 the Court of Cassation overruled a judgment concerning the prison sentence given in 2002 to four policemen found guilty of torture on the grounds that the sanction (11 months and 20 days suspended prison sentence) did not adequately reflect the gravity of the offence. Further to this decision a retrial of these policemen will take place.

8.2.12 In March 2004 the CPT[40] published its report, together with the response of the Turkish Government, following its field visits to the South and southeast of Turkey in September 2003. The report notes a considerable improvement in detention facilities and in the treatment of people in custody. The use of torture

methods such as suspension by the arms and electric shocks is now very rare, although in some police headquarters such methods were reported. It is reported however, that less detectable methods of torture or ill-treatment still occur. The CPT confirms that notwithstanding the January 2004 Regulation, there are still reports of detainees being seen by a doctor in the presence of enforcement officials without the prior request of the doctor and that the requirement to transmit the medical report to the authorities concerned, without providing copies to law enforcement officials, is also not always met. It is clear from the findings of the September 2004 trial observation mission that this regulation is not being complied with in the Ardahan region, in the North-East of Turkey.

8.2.13 The European Commission reports that NGOs have reported that access to a lawyer during pre-trial detention is improving. Official sources indicate that individuals are more inclined to exercise this right; of those accused of crimes related to the State Security Courts in the first quarter of 2004, 46% requested and were given access to their lawyers, whereas the figure for the same period in 2003 was 28%. However it concludes that such access varies throughout the country. While the CPT report indicates instances of the security forces discouraging detainees from requesting a lawyer, or not informing them of their right, the Commission reports that NGOs have suggested that many individuals may not be inclined to exercise this right even when it is offered because they might fear, for example, that to request a lawyer could be seen as an admission of guilt. While there has been an improvement in informing relatives when suspects are held in custody, the Commission reports that this obligation is still not always respected. The European Commission concludes that there are still reports of arbitrary detentions, disappearances, abductions, and at least one alleged extra-judicial execution. Some of these cases are under investigation by the Turkish authorities. Prosecutors still require permission to open investigations against members of the security forces when extra-judicial killings and disappearances are alleged. Certainly it is clear that although Mr. Kaya may have technically had the right to a lawyer he did not have one at the police station despite asking for one on numerous occasions and later it was very difficult for his family to find a lawyer who would represent him.

8.2.14 Following a fact finding mission to assess the situation regarding torture and ill-treatment in Turkey in September 2004 the European Commission has confirmed that the Government is seriously pursuing its policy of zero tolerance in the fight against torture. The Commission concludes, however that "numerous cases of ill-treatment including torture still continue to occur and

further efforts will be required to eradicate such practices." The Commission recommends that the Turkish **authorities could further tackle this problem** through the establishment of a system of **independent monitoring of detention** facilities, in line with the recommendations of the **UN and the CPT." It is not** clear whether the Commissions fact finding mission visited the North-East of Turkey – certainly the case of Ferhat Kaya shows that the pursuit of a policy of zero tolerance in the fight against torture appears to be less than serious in the province of Ardahan.

9 CONCLUSIONS AND RECOMMENDATIONS

9.1 Conclusions

It is clear from what was observed by both the trial observation mission and the recent fact finding mission that despite constitutional and legislative changes adopted over the last three years there **remain serious concerns regarding compliance with international human rights standards**. The findings of the trial observation mission highlights the need for continued monitoring of enforcement and implementation of these changes. The mission concludes that numerous international human rights standards appear to have been breached during the detention and subsequent trials of Ferhat Kaya including:

(i) The right to an effective remedy;
(ii) The independence and impartiality of the judiciary;
(iii) The failure to prosecute and investigate offences;
(iv) The prohibition against torture and inhuman and degrading treatment;
(v) The independence of the medical profession;
(vi) The right to liberty;
(vii) The right of a defendant to be informed promptly of the charges;
(viii) The right to a fair trial;
(ix) The right to competent and effective defence counsel;
(x) The right to trial by an independent tribunal;
(xi) The right to trial by an impartial tribunal;
(xii) The right to equality of arms;
(xiii) The right to be presumed innocent; and
(xiv) The right to examine or have examined witnesses against the accused.

9.2 Recommendations for the Turkish Government:

(i) Comply with international fair trials standards;
(ii) Comply with international human rights treaty obligations and in

particular obligations under Convention against Torture;

(iii) Implement and enforce measures to ensure independence and impartiality of the Judiciary, separation of the roles of Prosecutor from Judge, fair trials, equality of arms and due diligence so as to ensure impartial, neutral and objective determination at hearings;

(iv) Implement and enforce all new laws enacted to comply with the Copenhagen Criteria and the Harmonization Packages; and

(v) Address the criticisms outlined in the EU Commission's 2004 Regular Report on Turkey's Progress towards EU accession.

9.3 Recommendations for public lenders involved in the financing of the BTC pipeline project:

(i) Instigate an independent investigation into the alleged connection between the arrest and detention of Ferhat Kaya and his work with those affected by the BTC project;

(ii) Make public what due diligence was undertaken on the potential human rights impacts of the BTC project prior to financial closure; and

(iii) Make public what assessment was made of the project's compliance with the European Convention on Human Rights and other international human rights obligations, in particular the provisions relating to the right to a fair trial.

9.4 Recommendations for DfID/FCO/UK Government

(i) Provide oversight and assessment of the independent investigation carried out into the alleged connection between the arrest and detention of Ferhat Kaya and his work with those affected by the BTC project.

(ii) Ensure a UK Government representative is informed of future legal developments regarding Ferhat Kaya and is present at any future court hearings.

9.5 Recommendations for International Organisations

(i) Monitor Turkey's implementation of new legislation and compliance with international treaty obligations;

(ii) Initiate and maintain contacts with human rights organisations in Turkey;

(iii) Maintain dialogue with the European Union on the issues raised in this report throughout future discussions on accession; and

(iv) That the International Finance Corporation, the European Bank for Reconstruction and Development and the Export Credit Agencies introduce measures to screen projects for their human rights impacts, taking full account of the context in which projects will be implemented.

Appendix 1:

Indictment 11 Police Officers

R.T.
ARDAHAN
OFFICE OF THE CHIEF
PUBLIC PROSECUTOR
NUMBER

PRELIMINARY NO: 2004/505
MERITS NO: 2004/ 239
INDICTEMENT NO: 2004/ 143

INDICTMENT
TO THE FIRST INSTANCE PENAL COURT ARDAHAN

PLAINTIFF: PUBLIC LAW

COMPLAINANTS:

1- FERHAT KAYA- Son of Bayram and Dilber, born in Ardahan on 29. 12. 1974, registered in Degirmenli village, Ardahan province, domiciled at Ardahan province, Karagol Mahallesi, Unuttum Sokak bila no, at present IMPRISONED in Ardahan Closed Prison

2- BARIS ALTUN: Son of Dincer and Cimen, born in 1980, domiciled at Ardahan Halilefendi Mahallesi, Halilefendi sokak

DEFENDANTS:

1- NEBILE KARAMAN: Daughter of Murtaza and Fatma, born in Ortakoy on 07.11.1971, registered in Elazig province, Aricak district, Kanpertepe village (C: 15, H: 11, BSN: 49, TC: 27037608924), police officer at police centre of Ardahan Directorate of Security

2- ERGUN KARAKUS: Son of Ali and Melek, born in Buyuksobecimen on 02.02. 1970, registered in Kayseri, Sariz District, Buyuksobecimen (C: 9, H: 7, BSN: 100, TC no: 30380002882), police officer at police centre of Ardahan Directorate of Security

3- ERCAN YAMAN: Son of Ali and Munevver, born in Tosya on 26.07. 1971, registered in Kastamonu province, Tosya District, Kargin village (C: 48, H: 36, BSN: 16, TC no: 33295885700), police officer at police centre of Ardahan Directorate of Security

4- OSMAN KOCABAS: Son of Saban and Rukiye, born in Fethiye on 10.01. 1974, registered in Mugla province, Fetiye District, Zorlar village (C: 98, H: 42, BSN: 52, TC no: 10109892628), police officer at police centre of Ardahan Directorate of Security

5- OZER CELIK: Son of Fedai and Sengul, born in Sivrihisar on 01.11. 1974, registered in Eskisehir province, Sivrihisar District, Benliyaver village (C: 25, H: 72, BSN: 40, TC no: 45571097288), police officer at police centre of Ardahan Directorate of Security

6- KAHRAMAN EDIS: Son of Idris and Saadet, born in Narman on 01.08. 1964, registered in Erzurum province, Narman District, Ergazi village (C: 14, H: 63, BSN: 34, TC no: 16056044678), police officer at police centre of Ardahan Directorate of Security

7- SENER EMIR: Son of Ahmet and Zehra, born in Vakfikebir on 22.10. 1972, registered in Trabzon province, Carsibasi District, Serpil village (C: 22, H: 39, BSN: 42, TC no: 26996489216), police officer at police centre of Ardahan Directorate of Security

8- YALCIN YILDIZ: Son of Ibrahim and Ayse, born in Ivrindi on 10.051.[sic] 1972, registered in Balikesir province, Ivrindi District, Gokceyazi/Koseagalar village (C: 33, H: 21, BSN: 56, TC no: 13147721028), police officer at police centre of Ardahan Directorate of Security

9- SELIM CAM: Son of Muammer and Rukus, born in Meric on 10.04. 1972, registered in Edirne province, Meric District, Rahmanca village (C: 19, H: 34, BSN: 65, TC no: 14950999052), police officer at police centre of Ardahan Directorate of Security

10- RECEP CESUR: Son of Mehmet and Nebahat, born in Akcakoca on 10.08.1971, registered in Akcakoca District, Goktepe village (C: 27, H: 6, BSN: 17, TC no: 26453652924), police officer at police centre of Ardahan Directorate of Security

11- YUNUS ULUS: Son of Ali and Fatma, born in Oltu on 28.10. 1967, registered in Oltu District, Inanmis village (C: 38, H: 38, BSN: 7, TC no: 43063146322), police officer at police centre of Ardahan Directorate of Security

OFFENCE: ILLTREATMENT

DATE OF OFFENCE: 05.05.2004

PLACE OF OFFENCE: Ardahan Province centre police centre

RELATED ARTICLE: 1- TPC Article 245/1-2, twice (for defendant Kahraman Edis)
2- TPC Article 245/1-2 (for all the other defendants)

EVIDENCE: Statements of the complainants and the defendants, the medical report no: 9751 dated 05.05.2004, the consigne receipt, and the scope of the whole file.

PRELIMAINARY DOCUMENTS WERE INVESTIGATED

The complainant Ferhat Kaya alleged that while the complainant Ferhat Kaya, whose identity is written above was passing in front of the police centre on the day of the incident, 05.05.2004 at around 18.00 the defendant police officer Ergun Karakus approached him and invited him to the police centre because the letter no: 2004/283 dated 04.03. 2004 of Erzurum 1st Executive Penal Court requested his population register and the letter no: 2003/7278 dated 29.03.2004 of Erzurum 1st Executive Directorate requested his home and work place address; but upon the complainant Ferhat Kaya's opposing the police officer the Public Prosecutor on duty instructed his detention; upon this instruction Ferhat was forcefully taken to the police centre; from here he was taken to the hospital

for medical report; when they returned to the police centre he was asked to take off the objects on him in the room on the left-hand side of the entrance; at that time the police officer behind him said to him "you are a PKK member, you are a traitor to the country"; another police officer insulted him severely; a woman police officer said to him "shut up, you are talking too much" and she slapped him on his face and pushed him backwards; some police officers held him; some of them pulled him from his back; some of them hit his legs; the complainant suddenly found himself on the floor of the opposite room; while he was on the ground some police officers stepped onto him and hit him; another police officer pulled the mechanism of the rifle in his hand; he filled the rifle and directed it towards the complainant; some police officers lifted this rifle towards the ceiling; in the fuss the glass of the room where Ferhat was lying broken; after this the complainant was handcuffed; while the complainant Ferhat was in this room some police officers came and insulted him severely; then he was taken to the hospital again for medical report; furthermore while the complainant Ferhat was being taken to the opposite room he was hit to the doors and walls by the defendant police officers; while he was lying on the ground in the consultation room his hands were on the pieces of broken glass and his hands were cut in this way.

When the complainant Ferhat Kaya stated that he didn't know who were the police officers who ill-treated him but he could recognize them if he saw, the photographs of the police officers working in the police centre were provided from Ardahan Directorate of Security; he identified 6 of the 26 photos sent; among these he identified the defendant police officer Ergun Karakus as the officer who took him to the police centre in the first place, and stated that this police officer dragged him to there and he kicked him while he was on the ground of the consultation room.

He identified the defendant Nebile Karaman as the one who slapped him on the face and who said "dishonorable; PKK member".

He identified the defendant Kahraman Ediz as the one who held the rifle; and stated that this police officer insulted him severely; and he identified three other policemen Selim Cam, Osman Kocabas, and Sener Emin as being present at the same place during the incident.

The complainant Baris Altun whose witness statement was taken stated that, after Ferhat Kaya was detained in the police centre when he took cigarettes to Ferhat the police officers touched the complainant Ferhat and shouted at him "what does it mean 'I am not signing', you are going to sign" and pushed him; after this shouting the other police officers took Ferhat to the opposite room by pushing and pulling; they hit Ferhat's back

to the wall; when he understood Ferhat and the police officers would respond he bent towards Ferhat's tummy and embraced; but police officers hit to Ferhat's tummy, arms, chest by their fists and took him down; in the meantime a police officer said to him "son of a ....., get out, take his statement too" and held him from his back; another police officer directed his weapon to Ferhat Kaya and said to him 'I shall shoot you'; and he didn't know the names of the police officers.

The photographs provided before were shown to the complainant Baris Altun as well, he identified Kahraman Ediz as the one who insulted him; he identified the defendants Selim Cam, Kahraman Edis, Ergun Karakoc, Osman Kocabas, Recep Cesur, Ozer Celik, Yunus Ulus, Yalcin Yildiz and Ercan Yaman as the ones who had beaten Ferhat.

It is understood from the medical report no: 9751 dated 05.05.2004 which was among the documents that Ferhat Kaya was wounded in a way that made him incapable of work for three days.

The assessment of the evidence being up to the court, before the allegations of the complainants and the defendants' not admitting the accusation.

It is claimed and alleged on behalf of the public that, the defendant police officers who ill-treated the complainant Ferhat Kaya, who was detained on the day of the incident and the other complainant Baris Altun, who took cigarettes to Ferhat Kaya be tried before your court and they be sentenced pursuant to the articles relevant to their actions written above, the photos of the defendant police officers registered by number 2004/55 of the safe custody be returned to Ardahan Directorate of Security. 17.05.2004

Mehmet COMUK
Public Prosecutor 34579
Signed-Stamped

Appendix 2:

Indictment Ferhat Kaya

R.T
ARDAHAN
OFFICE OF THE CHIEF
PUBLIC PROSECUTOR
IMPRISONED IS

PRELIMINARY NO: 2004/490
MERITS NO: 2004/238
INDICTMENT NO: 2004/142

INDICTMENT
TO THE FIRST INSTANCE PENAL COURT ARDAHAN

PLAINTIFF: PUBLIC LAW

COMPLAINANTS:

1- NEBILE KARAMAN- Daughter of Murtaza and Fatma, born in 1971, Police Officer in charge in Ardahan Directorate of Security Police Centre

2- FATMANUR KUCUK: Daughter of A. Vakkas and Halime, born in 1971, Police Officer in charge in Ardahan Directorate of Security Police Centre

3- ERGUN KARAKUS: Daughter [sic] of Ali and Melek, born in 1970, Police Officer in charge in Ardahan Directorate of Security Police Centre

4- ERCAN YAMAN: Son of Ali and Munevver , born in 1971, Police Officer in charge in Ardahan Directorate of Security Police Centre

5- FIKRET YARAR: Son of Nafiz and Esen , born in 1970, Police Officer in charge in Ardahan Directorate of Security Police Centre

6- OSMAN KOCABAS: Son of Saban and Rukiye , born in 1974, Police Officer in charge in Ardahan Directorate of Security Police Centre

7- UFUK ERTAN: Son of Salih and Sevim , born in 1975, Police Officer in charge in Ardahan Directorate of Security Police Centre

8- AHMET YAMAN: Son of Duran and Emine, born in 1969, Police Officer in charge in Ardahan Directorate of Security Police Centre

9- CENGIZ OZDEMIR: Son of Hamit and Ayse , born in 1974, Police Officer in charge in Ardahan Directorate of Security Police Centre

10- OZER CELIK: Son of Fedai and Sengul, born in 1974, Police Officer in charge in Ardahan Directorate of Security Police Centre

11- KAHRAMAN EDIZ: Son of Idris and Saadet, born in 1964 , Police Officer in charge in Ardahan Directorate of Security Police Centre

12- GULTEKIN OZKURT: Son of Raif and Mahigul, born in 1969, Police Officer in charge in Ardahan Directorate of Security Police Centre

13- SENER EMIR: Son of Ahmet and Zehra , born in 1972, Police Officer in charge in Ardahan Directorate of Security Police Centre

DEFENDANT:

FERHAT KAYA- Son of Bayram and Dilber, born in Ardahan on 29.12.1974, registered at Ardahan province, Degirmenli village (C: 11, H: 48, BSN: 54, Tcno: 38315234414), domiciled at Ardahan Province Karagol Mahallesi Unuttum sokak Bila No, now IMPRISONED in Ardahan Closed Prison of the same offence

OFFENCE: THREAT, INSULT AND RESISTANCE TO THE OFFICERS IN CHARGE AND DAMAGING STATE'S PROPERTY

DATE OF OFFENCE: 05.05.2004-06.05.2004

DATE OF OBSERVATION: 05.05.2004- 06.05.2004

DATE OF ARREST: 06.05.2004

PLACE OF OFFENCE: Ardahan province centre police centre

RELEVANT ARTICLE: TPC Articles 266/1, 269 (twice each), 258/1, 516/3, 522, 95/2, 40

EVIDENCE: Allegation, the submissions of the defendants and the witnesses Recep Cesur, Sukru Kaya Yazici and Baris Altun, the incident scene investigation report, sketch, photographs, record of the incident, and the scope of all the documents

THE PRELIMINARY DOCUMENTS WERE EXAMINED:

While the defendant Ferhat Kaya, whose identity info is written above was passing by the police centre on the first day of the incident, 05.05.2004 at around 18.00, he was invited to the police centre by the police officer in charge due to the writ of Erzurum 1st Executive Penal Court No: 2004/2283 dated 04.03.2004 requesting his population record and the writ of Erzurum 1st Executive Directorate No: 2003/7278 dated 29.03.2004 requesting his home and work address; but the defendant Ferhat said to the police officer "I am not giving my address, I am not issuing a population record, go and sue me, you can't do anything to me, you can't keep me here, I shall blast here onto your head, you don't know who you are dealing with, I am HADEP provincial chair" ; the situation was communicated to the Public Prosecutor on duty; the Public Prosecutor on duty wanted the defendant to be detained and taken to the court by the police on 06.05.2004; upon this instruction the procedure about the defendant was initiated; after he was taken to and back from Ardahan State Hospital for medical report the defendant was asked to take off the things on him in the police centre; then he started to shout; he threw the blue jeans jacket and his belt onto the complainants Nebile Karaman and Fatmanur Kucuk;

the defendant then said "if it's not enough, I'll give you my trousers too" and started to unbutton his trousers; while he was trying to take down his trousers the police officer Nebile Kahraman told him what he did was wrong and wanted to warn him not to be impolite; the defendant Ferhat said "you are the impolite, dirty woman" and he raised his hand and walked onto her; then the other police officers intervened and the defendant was taken to the consultation room to be calmed down; despite this the defendant said "you don't know me …… I'll make this Ardahan small for you, you are all dogs, even the state can't do anything to me, what can you do?" and broke the glass on the door of the consultation room with his fist; he hit his head and kicked the table in the consultation room; he bent down and tried to harm himself with the pieces of broken glass on the ground; he continued his threats saying "I will make a complaint to the Public Prosecutor telling you tortured me in the police station"; the defendant was handcuffed to prevent him from harming himself, despite this he tried to take off the handcuffs and harmed his wrists by the handcuffs; then the defendant was sent to the state hospital.

On 06.05.2004 when the defendant Ferhat Kaya was taken to the court building by the complainant police officers Gultekin Ozkurt and Sener Emir he said to both of them "I will get out of here half an hour later, you are 500 people at the most, I will kill you all, one from you one from us, I will take this from your children, dishonourable people, hit me if you are men" and so he threatened and insulted the police officers; during the previous event the complainant police officers whose identities are written above complained about him; in this way it is understood from the scope of all the documents that the defendant committed the offences he is charged with.

It is alleged and claimed on behalf of the public that the defendant is tried by your court and he is sentenced pursuant to the relevant articles written above in relation to his action. 14.05.2004 S/B

Mehmet COMUK
Public Prosecutor 24579
Signed Stamped

Endnotes

[1] This mission took place at the same time as the fourth International Fact Finding Mission undertaken by the Kurdish Human Rights Project, Cornerhouse, Friends of the Earth (England, Wales and Northern Ireland) and Environmental Defence (USA) in September 2004.

[2] The BTC Company is led by BP, which, with a 30.1 per cent share, would also be the operator of the project as a whole. Other shareholders in the BTC Company are the State Oil Company of the Azerbaijan Republic (SOCAR), Unocal, Statoil, Turkish Petroleum (TPAO), ENI, TotalFinaElf, Itochu, Inpex, ConocoPhillips and Delta Hess.

[3] As BP's own Caspian Development Advisory Panel notes in its December 2003 report; "The Panel also notes the potential incongruity of more than one million barrels of oil and an equally significant amount of natural gas passing every day through or near villages and towns along the pipeline corridor where some houses have no heat or electricity. In the Panel's view, such a dichotomy would be neither healthy nor sustainable over the long term. If the host countries do not manage the anticipated economic gains for the benefit of their populations, BP and its Partners could be exposed to criticism, warranted or not, for having failed to help the region capitalize on a historic opportunity while exporting resources and related profits for the benefit of the Project Participants and consumers in industrialized nations." See: Caspian Development Advisory Panel Report, December 2003, p.3, www.caspiandevelopmentandexport.com

[4] See for example: Export Guarantees Advisory Council (EGAC), 2004, 2nd Meeting, Minutes of Meeting held on 17 March 2004, www.ecgd.gov.uk: "Politics had dictated the route – the aim was to get the oil from the Caspian to the Mediterranean without going through the Black Sea, Iran, Armenia and certain areas of Georgia." For a discussion of the geopolitics behind the project, see: Platform et al., Some Common Concerns, www.baku.org.uk

[5] See for example Sunday Business, 1/7/01, 'Lazard win puts Caspian oil deal firmly on line'

[6] BP presentation to selected NGOs and investors, London, 24/3/03.

[7] In a letter dated 14 December 2004 from Patrick Crawford, Chief Executive ECGD to Greg Muttit of Cornerhouse it was stated "ECDG has been made aware from recent reports from the consultants that construction on the Turkish section of the pipeline is running behind schedule" It is assumed that the consultants referred to are d'Appolonia who are referred to in the previous paragraph of the letter.

[8] BP's chief executive, Lord Browne, stated in 1998 that the project would only be possible if the company, one of the most profitable in the world, was able to obtain "free public money" through the major international development banks. See: Corzine, R., "Wisdom of Baku pipeline queried", Financial Times, 4 November 1998, p.4.

[9] Baku Ceyhan Campaign, Review of the BTC Environmental Impact Assessment – Turkey Section, September 2003, www.baku.org

[10] Turkish Expropriation Law, No.2942, Official Gazette No 18215, Article 27.

[11] www.baku.org.uk

[12] In his complaint to the Prosecutor, Ferhat Kaya alleged that he was "beaten up and tortured by the police". The case lodged by the Prosecutor against the eleven police officers was for "ill-treatment".

[13] Preliminary Report of Fact Finding Mission conducted jointly by Kurdish Human Rights Project, Cornerhouse, Friends of the Earth and Environmental Defense: September 2004.

[14] A legally-established, pro-Kurdish political party.

[15] The opinions stated here are based on the prosecution papers which were provided to the Mission.

[16] Whilst he did not give a reason for this request to the court, he had made it clear to the Mission that this action was as a result of police intimidation. Mr. Altun's statement was withdrawn and he left the courtroom.

[17] Article 5- The following article has been added to the Code of Criminal Procedures No. 1412 dated 4.4.1929:
"Additional article 7- The investigation and prosecution concerning those who commit the criminal offences specified in article 243 and 245 of the Turkish Penal Code No. 765 dated 1.3.1926 shall be considered urgent cases and will be treated without delay as priority cases. Hearings of cases relating to these offences can not be adjourned for more than 30 days, unless there are compelling reasons, and these hearings will also be held during judicial recess." http://www.abig.org.tr/en/template.asp?nx=0&id=822&go=News%3ANews%3ATowards+Negotiations%3ANATO+Summit

[18] The doctor we spoke to did not wish to be named.

[19] "2004 Regular Report on Turkey's Progress towards Accession" Commission of the European Communities, Brussels 6 October 2004, SEC 2004 (1201)

[20] HADEP (the People's Democracy Party) was the pre-cursor to DEHAP. HADEP was banned by the Turkish Constitutional Court in March 2003. Mr. Kaya is a member of DEHAP and not HADEP.

[21] The opinions stated here are based on the prosecution papers which were provided to the Mission. The prosecution file relies on the statements of the police officers which appear in the case against the police officers. It is quite difficult to determine which documents relate to which case. It seems that both files were open and considered to be relevant for each of the cases.

[22] Blank spaces not filled in.

[23] http://www.abig.org.tr/en/template.asp?nx=0&id=819&go=News%3ANews%3ATowards+Negotiations%3ANATO+Summit

[24] Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 provides: "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

[25] Universal Declaration on Human Rights: http://www.unhchr.ch/udhr/index.htm

[26] International Covenant on Civil and Political Rights: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

[27] CAT http://www.unhchr.ch/html/menu3/b/h_cat39.htm

[28] European Convention for the Protection of Human Rights and Fundamental Freedoms: http://www.echr.coe.int

[29] http://www.unhchr.ch/html/menu3/b/h_comp36.htm

[30] http://www.unhchr.ch/html/menu3/b/h_comp44.htm

[31] http://www.unhchr.ch/html/menu3/b/h_comp50.htm

[32] Universal Declaration of Human Rights : http://www.un.org/Overview/rights.html

[33] This allegation has been made orally to the Kurdish Human Rights Project and as yet no paperwork has been seen by the writer of this report.

[34] "Eradicating Torture in Turkey's Police Stations: Analysis and Recommendations", Human Rights Watch, September 2004: http://www.hrw.org/backgrounder/eca/turkey/2004/torture/

[35] Özgür Politika, 04.01.05

[36] Article 9(b) of the Law on the Duties and Powers of the Police

[37] Article 154 of the Criminal Procedure Law

[38] "2004 Regular Report on Turkey's Progress towards Accession" Commission of the European Communities, Brussels 6 October 2004, SEC 2004 (1201)

[39] Turkish Daily News, 11.01.05

[40] Committee for the Prevention of Torture: http://www.cpt.coe.int/documents/tur/2004-16-inf-eng.pdf

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