

# TORTURE IN TURKEY

## The Current Status of Torture and Ill-treatment

KHRP | Last Updated 11 July 2006

---

### Contents

Summary	1
I. What is torture?	1
II. Who are likely victims of torture?	1
III. Who are the likely perpetrators?	2
IV. Where and when is torture likely to occur?	2
VII. Causes for concern	3
A. Concerns over the nature and content of the reforms	3
B. Concerns over the impact of the reforms	3
C. Justice, reparation and ending impunity	5
VI. Progress made in Turkey	5
A. Turkey and the EU	6
B. Pro-EU reforms	6
C. Has torture decreased?	7
V. How can torture be prevented?	8
A. Torture and detention	8
B. Accountability and redress	8

---



### Kurdish Human Rights Project

11 Guilford Street

London WC1N 1DH

Tel: +44 (0) 20 7405 3583

Fax: +44 (0) 20 7404 9088

Email: [khrp@khrp.org](mailto:khrp@khrp.org)

---

The Kurdish Human Rights Project (KHRP) is an 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 of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its beneficiaries include both Kurdish and non-Kurdish people.

---

---

## Summary

Turkey has signed numerous treaties agreeing not to subject its population to torture or ill-treatment and to actively prevent it occurring. The Constitution of Turkey forbids it. Yet despite these commitments the practice of torture and ill-treatment persists.

Whilst the legal reforms of the last few years have been positive, torture in Turkey remains serious and systematic. Recent developments suggest potentially retrogressive steps in Turkey's reform process which must be addressed, and further effort is needed to bring about widespread and effective change on the ground. 'Zero tolerance' must correspond to 100 per cent accountability, and if Turkey is serious about ending torture, it must ensure that potential victims are protected and perpetrators are answerable to the courts.

---

### I. What is torture?

Torture is the infliction of severe pain as a means of punishment or coercion. The UN Convention Against Torture defines it as '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.'<sup>1</sup>

In Turkey common reported methods of torture include electric shock, *falaka* (the beating of the soles of the feet), being stripped naked, blind folded and hosed,

---

<sup>1</sup> Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

---

severe beatings, rape, death threats, sexual assault and 'Palestinian hangings'.

Torture is unequivocally banned by a number of international treaties. The prohibition of torture is so strong that it has the special status of *jus cogens* in international law. This means that along with other grave crimes like genocide it has the status of a 'higher law', allowing no derogation and overriding all other obligations.<sup>2</sup> Alongside torture is 'inhuman and degrading treatment' which whilst by definition less severe, has equally significant status in international law.

### II. Who are likely victims of torture?

---

<sup>2</sup> Article 53 Vienna Convention on the Law of Treaties

---

Anyone can be a victim of torture but often victims are individuals involved in political, social, or religious opposition or are members of ethnic or religious minorities. In Turkey, individuals involved with pro-Kurdish organizations and activities are often victimised. Individuals suspected of Islamist or leftist activities are also common victims of torture and ill-treatment as are ordinary criminal suspects.

The Kurds in Turkey, who make up approximately 23 per cent of the population have historically been perceived as a threat to the mono-ethnic nationalism of the Turkish Republic and have as a result found themselves victims of state brutality. The repression of the Kurds in Turkey has been intensified by a long and bloody conflict between armed groups, particularly the Kurdistan Workers' Party (PKK), and the state security forces. This conflict has involved human rights abuses on a massive scale including widespread incidents of torture and ill-treatment.

### **III. Who are the likely perpetrators?**

Just as the victims of torture are usually involved in opposition; perpetrators are typically involved in security and law enforcement.

The conflict with the PKK which reached its peak in the mid 1990s

---

created a tense security situation. In response to the unrest in the southeast (the region of Turkey occupied mainly by Kurds) the Turkish government armed a civil defence force in the region known as the 'village guard'. Whilst recruitment is said to have stopped, the paramilitary village guard are still thought to number around 58,000 and have a reputation for being the least disciplined of the Government forces and are commonly involved in torture and ill-treatment allegations. Much torture and ill-treatment also occurs at the hands of the Gendarmerie, branch of the Turkish armed forces responsible for policing rural regions in Turkey. Police 'Special Teams' involved in anti-terrorist activity are also thought to be responsible for torture and ill-treatment. A ceasefire between the PKK and Turkish state broke down in June 2004. According to information received, so far at least 550 people have died on both sides of the conflict since the ceasefire broke down.

### **IV. Where and when is torture likely to occur?**

The greatest risk of torture and other forms of ill-treatment is in the first phase of arrest and detention, before individuals have access to a lawyer or a court.

'Incommunicado' detention (that is without the means or right to communicate with others) is usually the period of most risk for

detainees as there is no outside monitoring of the conditions of detention and interrogation. However, torture does not have to be confined to a place of detention, and can occur in the victim's own home or during transportation.

## VII. Causes for concern

"It is unfortunately fair and frank to say that the pace of changes has slowed in 2005 and the implementation of the reforms remains uneven, to say the least. Human rights violations continue to occur. The new laws that in principle enhance the rule of law and human rights must be duly implemented on the ground."

**Olli Rehn, European Commission  
Responsible for Enlargement**<sup>3</sup>

### A. Concerns over the nature and content of the reforms

It should be emphasised that Turkey's pro-EU reform process is a remarkably positive development, and a considerable amount has been achieved. However there remain concerns over some provisions omitted from the reforms, and especially over the practical effect of these reforms on the ground.

<sup>3</sup> Speech by Olli Rehn, "Accession negotiations with Turkey: fulfilling the criteria" to the European Economic and Social Committee EU-Turkey JCC, 28 November 2005, available at: <[http://europa.eu.int/comm/commission\\_barroso/rehn/index\\_en.htm](http://europa.eu.int/comm/commission_barroso/rehn/index_en.htm)>

Despite the obvious threat it presents to detainees, the abolition of 'incommunicado' detention was neither among the constitutional amendments nor the short-term measures promised by Turkey in its reforms for EU accession.

There is widespread concern about the content of some of the recent reforms amongst the human rights community, particularly the new Penal Code and the new Code on Criminal Procedure implemented in 2005. Elements of both have been criticised as a retrogressive development for human rights. As far as torture and ill-treatment are concerned, despite the recommendations of the UN Committee Against Torture to repeal the statute of limitations for crimes involving torture,<sup>4</sup> the New Penal Code merely extended the limitation. In the new Code on Criminal Procedure an Article limiting the postponement of torture trials is notably absent and it is unclear whether the new Code permits suspended sentences or reductions to a fine for perpetrators.

### B. Concerns over the impact of the reforms

Violent clashes erupted between protestors and security forces in late March 2006 after the funerals of four alleged guerrilla fighters who were among 14 killed in Turkish Military operations in

<sup>4</sup> UN Committee Against Torture, 'Conclusions and recommendations of the Committee against Torture: Turkey. 27/05/2003.' para D7(c)

South East Turkey. Security forces were observed to shoot indiscriminately, use tear gas, truncheons and pressurised water on protestors. This incident sparked further protests which resulted in further clashes. In total, 14 people were killed as a result of civil unrest and the actions of security forces, 400-600 people were held in detention, and six of the men detained have disappeared following their detention. There is evidence of the use of torture and ill-treatment on detainees, and that many were denied access to legal advice. Furthermore, there have been reports of harassment and attacks of individuals by police officers in the wake of the clashes.

According to the US Department of State's March 2006 report, during 2005 'incidents of torture and abuse declined during the year but remained widespread.' According to Turkey's Human Rights Foundation (TIHV) chairman Yavuz Onen, 113 out of 165 claims of torture in the first five months of 2006 were successful. In 2005, 193 of the 675 torture claims were successful, 5 people died in custody and at least 7 people died in prison.<sup>5</sup> Human rights advocates claimed that 'only a small percentage of detainees reported torture and ill-treatment because they feared retaliation or believed that complaining was futile.'<sup>6</sup>

---

<sup>5</sup> BIA News Centre "Onen Speaks Out: Why Torture is Systematic" 28 June 2006

<sup>6</sup> USDOS "Country Report on Human Rights Practices" 8 March 2006

---

In October 2005 the EU Human Rights Sub-Committee visited southeast Turkey and voiced concerns that security forces were reverting to past abusive practises. Richard Howitt MEP said 'there were accounts of soldiers cutting off people's ears and tearing out their eyes if they were thought to be Kurdish separatist sympathisers.' The Sub-Committee spoke with various regional human rights organisations and Mr Howitt described the sources they had consulted as credible and corroborated.<sup>7</sup>

As noted above, reports of traditional forms of torture have certainly decreased. However reports suggest that perpetrators are adapting their methods to meet the new state of affairs. Regional NGOs have reported that authorities are deliberately using less detectable methods and adopting more devious practices including forms of psychological torture such as sexual harassment and humiliation, mock executions and sleep deprivation<sup>8</sup>. It seems that perpetrators are also adapting old methods by beating detainees with weighted bags instead of clubs or fists, or applying electric shocks to a metal chair where the detainee sits, rather than directly to the body. Meanwhile, KHRP continues to receive complaints of severe torture methods being used

---

<sup>7</sup> Smith, H. 'European mission unearths torture claims in Turkey', *Guardian*, 10 October 2005

<sup>8</sup> Home Office Country Information & Policy Unit, 'Turkey Country Report, April 2005' para 6.36

such as rape, Palestinian hangings and falaka.

Another alarming development is that whilst torture and ill-treatment in detention are thought to have decreased, cases of torture and ill-treatment outside detention and are still common<sup>9</sup> and the number of reports of such cases actually increased in 2004<sup>10</sup>. Often, people suspected of being involved in terrorist activities are taken into unofficial detention. No records are kept of such incidents and suspects are generally kept until the authorities have the information they require.

### C. Justice, reparation and ending impunity

Turkish official statistics stipulate that in the first quarter of 2005, 1,239 torture and ill-treatment cases were filed against law enforcement officials. Of these only 447 prosecutions were pursued by the relevant prosecutor.<sup>11</sup> In the first half of 2005, final verdicts were reached in 531 torture and ill-treatment cases that were previously started, resulting in 232 convictions and 1005 acquittals. "Of the convicted officials, 30 were given jail terms, 32 were fined, and 163 were subjected to other punishments," such as suspensions

---

<sup>9</sup> European Commission 'Turkey 2005 Progress Report' pp.22-23

<sup>10</sup> Commission of the EC '2004 Regular Report on Turkey's Progress Towards Ascension' p.34

<sup>11</sup> European Commission 'Turkey 2005 Progress Report' p.23

and salary cuts.<sup>12</sup> In 2004, of the 1,831 cases that were concluded, 1,631 led to acquittals, 99 to imprisonment, and 85 to fines<sup>13</sup>.

The İHD's October 2005 'Report on Prevention of Torture and Impunity of Perpetrators'<sup>14</sup> gathered information from the 52 cases and 59 investigations in August 2005. This report suggested that perpetrators of torture are still protected in almost all levels of investigation and judicial prosecution.

According to İHD (İnsan Hakları Derneği - Human Rights Association), 69 per cent of trials led to acquittals and 15 per cent led to postponement, bringing no punishment to suspected perpetrators.

These statistics show that changes in law do not necessarily correspond to changes in practice. In the absence of any fundamental changes in the detention centres and in the courts, the legal reforms are irrelevant.

---

## VI. Progress made in Turkey

The Republic of Turkey from the outset has been an overtly

---

<sup>12</sup> USDOS "Country Report on Human Rights Practices" 8 March 2006

<sup>13</sup> European Commission 'Turkey 2005 Progress Report' p.23

<sup>14</sup> İnsan Hakları Derneği, 'İşkenceye Sessiz Kalma' 2005

nationalist state and legislative provisions have traditionally been geared towards protecting the state against attack from individuals. At least theoretically, the last few years have seen great improvements in Turkey's human rights related legislation, and a positive move towards protecting the individuals from the excesses of state power. The progressive reform of Turkey's domestic law is largely associated with Turkey's prospective membership of the EU.

---

#### A. Turkey and the EU

The process of Turkey's accession to the EU has been a slow one. Turkey applied for associate membership of the European Economic Community (as it was then) in 1957 and entered into an Association Agreement in 1963. Economic instability and internal strife stunted the process and it was not until October 2005, that the EU agreed to accession negotiations. In the lead up to this agreement, the EU set many conditions for membership; the so called 'Copenhagen Criteria' was required and the eradication of torture was an early priority. The 'fight against torture practices' and compliance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) were short term priorities in the 2000 ascension plan.<sup>15</sup>

---

<sup>15</sup> Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Ascension Partnership with the Republic of Turkey, (2001/235/EC)

---

#### B. Pro-EU reforms

In 2001 some major constitutional reforms were adopted, including a reduction in the amount of time an individual can be detained without judicial scrutiny. Police training was extended and a human rights unit was established.

In 2002 the new AKP government famously announced a 'zero tolerance' policy on torture.<sup>16</sup> That year the maximum length of police and gendarmerie 'incommunicado' detention was reduced from four days to 48 hours for individuals suspected of crimes under State Security Court jurisdiction. Other pieces of legislation banned blindfolds and required families to be informed immediately of an individual's detention. State officials were made liable for compensation ordered by the European Court of Human Rights for torture and ill-treatment violations (Article 3 of the European Convention of Human Rights). The reforms in August that year were particularly far reaching and included the limiting of police discretionary authority and new detainee's right to legal representation and unsupervised medical examination.

In 2003 amendments to the Turkish Penal Code meant public officials could investigate allegations of torture without clearance from superiors and prison sentences for

---

<sup>16</sup> See Deputy Prime Minister Abdullah Gül's statement to the Grand National Assembly, 10 December 2003

health officials who falsified medical reports were increased. Hearings concerning torture and ill-treatment were given greater priority and under new legislation could not be delayed for more than 30 days. Judges were also denied the power to suspend prison sentences for torturers or reduce their sentences to fines, as had been a common practice.

Detainees' rights were strengthened again in 2004 by a further amendment to the Regulation on Apprehension Detention and Statement Taking and an amendment to bring the detention procedures of military courts in line with those of other courts. Policy circulars were sent to police officers urging them to avoid possible ill-treatment and to Public Prosecutors instructing them to prioritise investigations into allegations of torture and ill treatment.

A new Penal Code and Code of Criminal Procedure were introduced in 2005, as well as further safeguards for detainees in the new Regulation on Apprehension, Detention and Statement Taking in June 2005.

A draft of the new anti-terror legislation (TMY) was passed by Parliament in June 2006 and is currently with the President, who may ratify the bill or send it back to Parliament for reformulation. The current TMY represents a step backwards in legislative reform. It renders statements made under torture admissible in court,

eliminates the examination of security officials responsible for taking statements and preparing incident reports at trial and allows the use of secret investigative agents, whose identities will not be revealed and who cannot be examined at trial. These reforms will seriously affect the fairness and efficacy of torture trials, as well as increase the opportunity for extra-judicial detention without recourse.

### C. Has torture decreased?

Most sources suggest that the widespread reforms have had a positive impact on the number of incidents of torture and ill-treatment.<sup>17</sup> According to the Diyarbakir Branch of the İHD torture in the first three months of 2005 continued to decrease despite an overall increase in human rights violations.<sup>18</sup> Extreme forms of torture such as electric shock and 'Palestinian hangings' have notably decreased.<sup>19</sup>

However there is a worrying disparity between the breadth of the legislation, which according to

---

<sup>17</sup> See for example EU Commission Turkey 2005 Progress Report p.22; Commission of the EC 2004 Regular Report on Turkey's Progress Towards Ascension p.34; KHRP's fact-finding mission report on *Turkey's Implementation of Pro-EU Reforms* November 2004

<sup>18</sup> Ozgur Politika, 20 June 2005

<sup>19</sup> Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) from 7 to 15 Sept 2003 p.10



the President of the CPT exceeds most European standards,<sup>20</sup> and the relatively limited or at least inconsistent impact of the reforms. “There has been a decrease in torture but it has certainly not been eliminated. We are not witnessing ‘zero tolerance’”, one İHD lawyer explained.<sup>21</sup> The Government’s pledge of ‘zero tolerance’ and the extensive EU related legislation should have led to the near eradication of incidents, and a total end to impunity. This has not happened.

## **V. How can torture be prevented?**

There are many practical measures capable of dramatically reducing incidents of torture. International human rights instruments have developed safeguards designed to prevent incidents of torture and ill-treatment. Broadly speaking, independent supervision of law enforcement and security authorities coupled with effective criminal accountability are thought to be the most efficient ways of preventing torture and ill-treatment.

### **A. Torture and detention**

Detention provides an environment in which the victim can be isolated and easily controlled, and most incidents of

---

<sup>20</sup> European Commission, ‘Turkey 2005 Progress Report’ p.22

<sup>21</sup> KHRP’s fact-finding mission report on *Turkey’s Implementation of Pro-EU Reforms* November 2004

torture occur during detention. Torture and ill-treatment can be reduced by limiting the circumstances in which people can be detained and instituting effective safeguards to monitor their detention. Standard measures include the mandatory notification of a detainee’s rights, the keeping of custody records, and impartial judicial scrutiny of detention. Allowing the detainee contact with the outside world and especially affording independent legal representation is one of the most effective ways of preventing torture and ill-treatment. Legal measures ensuring detainees have communication with family, and access to a lawyer or medical professional are crucial.

It is also possible that the conditions of detention may themselves amount to ill-treatment. It is important that the detention conditions respect the human dignity of the detainee and that the detention regime is open to independent scrutiny.

Education and monitoring are crucial to the prevention of torture in detention. Security officials should be given proper human rights training, which should be reinforced by effective monitoring.

### **B. Accountability and redress**

Effective accountability and redress are essential for preventing torture, and for dealing with its brutal consequences. Seeking reparation is an important part of the

rehabilitation process both for the individual victim and for the wider society. However, bringing perpetrators to justice can present serious obstacles, since most of them work within law enforcement and are protected by the legal system. Independent complaints procedures, criminal and disciplinary proceedings are essential to preventing authorities from abusing their positions. The need for impartial scrutiny cannot be overstated.