Haldane Society of Socialist Lawyers

# CONDITIONS OF DETENTION IN TURKEY:

# BLOCKING ADMISSION TO THE EU

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The delegation in Istanbul with lawyers from the Turkish Progressive Lawyers Association (CHD).

# Glossary

| | |
|---|---|
| AKP | *Adalet ve Kalkınma Partisi* or AK Party [Justice and Development Party] |
| CAT | UN Convention Against Torture |
| CEDAW | UN Convention on the Elimination of all forms of Discrimination Against Women |
| ÇHD | Progressive Lawyers Association |
| CHP | *Cumhuriyet Halk Partisi* [Republican People's Party] |
| CPT | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment |
| DTP | *Demokratic Toplum Partisi* [Democratic Society Party] |
| ECHR | European Convention on Human Rights |
| ECPT | European Convention for the Prevention of Torture |
| ECRML | European Charter for Regional or Minority Languages (Language's Charter) |

| | |
|---|---|
| ECtHR | European Court of Human Rights |
| ELDH | European Lawyers for Democracy and Human Rights |
| HRFT | Human Rights Foundation of Turkey |
| HRW | Human Rights Watch |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IHD | The Human Rights Association |
| PKK | Kurdistan Workers Party |
| TIHV | Human Rights Foundation of Turkey |
| TOHAV | Foundation for Society and Legal Studies |
| TTB | Turkish Medical Association |
| TUHAD-FED | Associations for Solidarity with Prisoners and their Families |

# Introduction

A delegation of lawyers from three European countries spent five days in Turkey from 4th to 8th February 2008. Its brief was to investigate whether Turkey is implementing its commitments on prison reform and conditions of detention.

The delegation consisted of: three English barristers – Bill Bowring (International Secretary of the Haldane Society of Socialist Lawyers), Hannah Rought-Brooks and John Hobson (both executive members of the Haldane Society of Socialist Lawyers); and two Scandinavian practising lawyers – Ville Punto (human rights lawyer and member of the Democratic Lawyers of Finland) and Bent Edresen (human rights lawyer, Norway).

The background to the mission was as follows. Turkey has now undertaken obligations both under the Council of Europe's European Convention for the Prevention of Torture (ECPT), and under the Copenhagen Criteria (the conditions for its joining the European Union). However, a summary of Turkey's recent history in a report published in 2007 by Amnesty International, demonstrates that compliance with those undertakings will require fundamental changes in law and practice:[1]

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

1. Amnesty International Turkey: Entrenched culture of impunity must end, 5th July 2007. AI Index: EUR 44/014/2007.

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

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

The primary objective of the mission was to obtain information from those directly engaged in protecting human rights and promoting the rule of law. The delegation therefore received valuable information from authoritative non-governmental organisations: the Human Rights Association (IHD),[3] the Human Rights Foundation of Turkey (TIHV),[4] the Foundation for Society and Legal Studies (TOHAV),[5] the Turkish Medical Association (TTB)[6] and from former prisoners, represented by the Associations for Solidarity with Prisoners and their Families (TUHAD-FED).[7]

We also met senior representatives of Turkey's main political parties, from the AKP (the Islamist party currently in government),[8] CHP (the Republican People's Party, in Turkish, *Cumhuriyet Halk Partisi*),[9] and pro-Kurdish DTP (Democratic Society Party).[10]

We were warmly welcomed in Istanbul and Ankara by the members of the Haldane Society's sister organisation and fellow member of the European Lawyers for Democracy and Human Rights (ELDH):[11] the Progressive Lawyers' Association (ÇHD)[12] and their members in the Asrin Law Office (Abdullah Öcalan's lawyers). We also met the Turkish and Istanbul Bar Associations.

Unfortunately, and despite formal requests made prior to the visit of the delegation, we were refused access to any F-type prison or to İmralı Island Closed Prison.

As a result of these meetings, we were gravely concerned that Turkey is falling short of its obligations, and that the positive progress made through reform under the Copenhagen Criteria has stalled. We set out our recommendations at the end of this report.

The costs of the delegation were born by the members of the delegation themselves and/or by the organisations represented on the delegation. The Haldane Society is grateful for the financial assistance of Garden Court Chambers and the Lipman Miliband Trust and for the practical help of Farah Wise, Estella Schmidt and Liz Davies.

2. See reports of the European Committee for the Prevention of Torture (CPT), documenting the Committee's visits to places of detention in Turkey between 1990 and 1997, at http://www.cpt.coe.int/en/states/tur.htm
3. http://www.ihd.org.tr/english/index.php
4. http://www.tihv.org.tr/EN/
5. http://www.tohav.org/?bolum=yayin&tur=kitap&no=19
6. http://www.ttb.org.tr/index_en.php
7. http://www.tuhadfed.org/
8. http://eng.akparti.org.tr/english/index.html
9. http://www.chp.org.tr/index.php?module=news&sid=e83952e69c2bdd8f7e76a993a2e8397f
10. This has no website as far as we know.
11. http://www.eldh.eu
12. http://www.cagdashukukculardernegi.org/

# Turkish rejection of Minority Rights

The delegation was repeatedly confronted by evidence not only of lack of progress in compliance with international obligations and EU expectations, but of actual regress. This is confirmed by the Human Rights Watch (HRW) *World Report 2008*, on events in 2007, which states the following:

> **Recent trends in human rights protection in Turkey have been retrograde. 2007 saw an intensification of speech-related prosecutions and convictions, controversial rulings by the judiciary in defiance of international human rights law, harassment of pro-Kurdish Democratic Society Party (DTP) officials and deputies, and a rise in reports of police brutality. The state authorities' intolerance of difference or dissenting opinion has created an environment in which there have been instances of violence against minority groups.[13]**

In the view of the delegation, this is deeply disappointing. It should be recalled that Turkey was one of the first states to join the Council of Europe, and to ratify the European Convention on Human Rights (ECHR). Since Turkey has a "monist" approach to international law, the ECHR became automatically part of Turkish law, with priority over domestic law. Turkey has also ratified the most important international human rights instruments. Nevertheless, as HRW report:

> **"[…] the European Court of Human Rights […] issued 242 judgments against Turkey in 2007 for torture, unfair trial, extra judicial execution, and other violations.**

13. Human Rights Watch *World Report 2008*, p 437.

Furthermore, Turkey has for a long time wished to join the European Union. The Association Agreement between Turkey and the then EEC was signed in 1963 and entered into force in December 1964. Turkey and the EU formed a customs union in 1995. The Helsinki European Council of December 1999 granted the status of candidate country to Turkey. Accession negotiations with Turkey opened in October 2005. Yet, as already noted, initial progress has now effectively been negated.

The delegation takes the view that the root cause both of the armed conflict in South-East Turkey and of the extraordinary measures of repression adopted by the government, is to be found in the continued refusal of Turkey to recognise or in any way acknowledge the existence of any minority on its territory, or even of any language other than Turkish, notwithstanding the fact that one quarter of its population are Kurds, speaking Kurdish, a language unrelated to Turkish.

This failure is also highlighted by the European Union. In its latest Progress Report dated 6th November 2007 the European Commission noted the following with respect to minority rights:[14]

> **[...] Turkey's approach to *minority rights* remains unchanged. According to the Turkish authorities, under the 1923 Treaty of Lausanne minorities in Turkey consist exclusively of non-Muslim religious communities. In practice the minorities associated by the authorities with such Treaty are Jews, Armenians and Greeks. Without prejudice to the Treaty, the Turkish authorities consider Turkish citizens as individuals having equal rights before the law rather than as individuals belonging to the majority or to a minority.**
>
> **This approach should not prevent Turkey from granting specific rights to certain Turkish citizens on the grounds of their ethnic origin, religion or language, so that they can preserve their identity. Full respect for and protection of language, culture and freedom of association, assembly, expression and religion and effective participation in public life for all citizens irrespective of their background or origin, in accordance with European standards, have yet to be fully achieved. [...]**
>
> **Turkey is a party to the UN International Covenant on Civil and Political Rights (ICCPR). However, its reservation regarding the rights of minorities and its reservation to the UN Covenant on Economic, Social and Cultural Rights (ICESCR), regarding the right to education, are matters of concern.[15] Turkey has not signed the Council of Europe Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages. [...]**
>
> **Overall, Turkey has made no progress on ensuring cultural diversity and promoting respect for and protection of minorities in accordance with European standards.**

14. European Commission, *Turkey 2007 Progress Report*, 6th November 2007, SEC(2007) 1436.
15. Extract from the reservation to the ICCPR: "The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes".

This finding of "no progress" is of great concern. The delegation's understanding was confirmed by its meetings, reported below, with senior Turkish politicians. Resistance to compliance with European standards appears to be rigidly entrenched. While there have been concessions to demands for Kurdish language broadcasting, these have been limited in the extreme. The EC found as follows:

> **As regards *cultural rights*, broadcasting in languages other than Turkish, in March 2007 a new radio channel in Diyarbakır, Çağrı FM, received authorisation to broadcast in Kırmanchi and Zaza Kurdish. There are now four local radio and TV stations broadcasting in Kurdish. However, time restrictions apply, with the exception of films and music programmes. All broadcasts, except songs, must be subtitled or translated into Turkish, which makes live broadcasts technically cumbersome. Educational programmes teaching the Kurdish language are not allowed. An appeal against these rules has been pending before the Council of State for three years. Court cases have been opened against some broadcasters for trivial reasons.**

The situation as regards education in the Kurdish language is, according to the EC, even more depressing.

> **Children whose mother tongue is not Turkish cannot learn their mother tongue in the Turkish public schooling system. Such education can be provided only by private educational institutions. In the case of Kurdish, all such courses were closed down in 2004. Today there are no opportunities to learn Kurdish in the public or private schooling system.**

This closure constitutes a flagrant violation of Turkey's existing obligations.
The EC further notes that no progress has been made with regard to public services.

> **No measures have been taken to facilitate access to public services for non-speakers of Turkish, although interpretation is usually available in courts. In a case against the municipality of Sur in June 2007 the Council of State dismissed the mayor from office and dissolved the Municipal Council for providing multilingual municipal services. The court ruled that this is contrary to the constitutional principles that the language of the state is Turkish and that no language other than Turkish should be taught as a mother tongue (Articles 3 and 42 of the Constitution respectively). An appeal is ongoing.**

However, these serious failures are compounded by the continued criminalisation of the use of speaking of Kurdish, especially in relation to political participation.

> **Use of languages other than Turkish remains illegal in political life. Several investigations and court cases have been opened against officials and executives of the Democratic Society Party (DTP) for alleged infringements of Article 81/c of the Law on Political Parties which forbids the use of languages other than Turkish by political parties. In February and April 2007 several members and executives of the Rights and Freedoms Party (Hak-par) were sentenced in two separate Court cases for having spoken Kurdish at party's general congresses. A Court case for the closure of Hak-par is pending.**

It is evident that from these observations of the EC that Turkey has made little or no progress in complying with the obligations it undertook either when joining the Council of Europe and ratifying the ECHR, or when starting the procedure for accession to the EU.

The Haldane Society's Turkish colleagues have also confirmed Turkey's resistance to its international obligations. Saniye Karakas of the ÇHD, reporting to the UN Sub-Commission on Human Rights in 2004,[16] observed as follows:

> **Turkey's desire to be part of European Union has encouraged the government to undertake reforms. Since 2001, the Turkish government passed several legal reforms within the framework of harmonization with the Copenhagen Political Criteria, including a constitutional reform (October 2001), the adoption of a New Civil Code (November 2001), seven sets of reform packages. Turkey ratified ICCPR and the ICESCR. Turkey also made a reservation to Article 27 relating to minority rights. Therefore, Turkey has reserved the right to consider the minority rights in terms of Lausanne Treaty.**

In the opinion of the delegation, the main obstacle to a resolution of the Kurdish problem in Turkey is to be found in the country's Constitution.

Several provisions of the Constitution of Turkey of 1982, as amended in 2001, provide for the indivisible status of the Turkish state. This is interpreted to mean that any assertion of Kurdish identity is to be treated as unconstitutional and punishable under criminal law.

Furthermore, Article 3 of the Constitution provides that the language of the Turkish state is Turkish. Of course, it is not uncommon for a modern state to have a state or official language, and many member states of the Council of Europe have just such a constitutional provision, which does not contradict any human rights or minority rights provisions of the Council. However, the Turkish Constitution entrenches Article 3 and thus prevents any future attempts to acknowledge additional languages as state languages.

Thus Article 3 (as amended on 17th October 2001), states:

> **The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish.**

Entrenchment is to be found in Article 4, which provides:

> **The provision of Article 1 of the Constitution establishing the form of the state as a Republic, the provisions in Article 2 on the characteristics of the Republic, and the provision of Article 3 shall not be amended, nor shall their amendment be proposed.**

To this must be added Article 14 (as amended on 17th October 2001), which provides:

> **None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation,**

16. http://www2.ohchr.org/english/issues/minorities/docs/CLA3a.doc, 1st-5th March 2004.

> **and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights. No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution. The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law.**

In this way, constitutional entrenchment is combined with criminalisation.

Turkey does not wish to be seen to be violating its obligations under the ECHR on the face of its Constitution. Thus, on freedom of expression, Article 27 provides:

> **Everyone has the right to study and teach freely, explain, and disseminate science and arts and to carry out research in these fields.**

However, it continues:

> **The right to disseminate shall not be exercised for the purpose of changing the provisions of Articles 1, 2 and 3 of this Constitution.**

And Article 28 moves directly to the most draconian provision for criminalisation. It provides:

> **Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the state with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Distribution may be suspended as a preventive measure by the decision of a judge, or in the event delay is deemed prejudicial, by the competent authority designated by law. The authority suspending distribution shall notify a competent judge of its decision within twenty-four hours at the latest. The order suspending distribution shall become null and void unless upheld by a competent judge within forty-eight hours at the latest.**

Thus, the status of the Turkish language provides an absolute block on dissemination of research on Kurdish language or culture.

The real effect of these provisions has not gone unnoticed by the European Court of Human Rights. It should be noted that Turkey was condemned for violation of the right to freedom of expression in the case of *Özgür Gündem v Turkey*[17] in which Bill Bowring represented the applicant. On many occasions the paper had been prosecuted by the authorities in respect of the publication of particular articles. The Court found that a

17. Application no. 23144/93, judgment of 16th March 2000, and see: http://www.echr.coe.int/eng/Press/2000/Mar/Ozgur%20Gundem%20Jud%20epress.htm

number of the articles were highly critical of the authorities and might be regarded as provocative where the term "Kurdistan" was used in a manner implying that it was, or should be, separate from the territory of Turkey. Nonetheless, the Court insisted that the public enjoyed the right to be informed of different perspectives on the situation in South-East Turkey, however unpalatable they might be to the authorities. In respect of three articles, the Court found the prosecution to be justified where they contained passages which advocated intensifying the armed struggle and glorified violence. In other cases, where the language was colourful and pejorative but stopped short of advocating or inciting the use of violence, the Court found the measures were disproportionate. Most importantly, the Court found that an obligation arose under Article 10 of the Convention to take positive measures of protection, given that despite requests for protection several journalists of the paper were murdered.

Article 28 is followed by an even more draconian provision. Article 42 provides that:

> **No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved.**

It is plain that resolution of the problem of minority rights in Turkey requires the exercise of political will.

The delegation therefore raised the issue of minority rights with Onur Öymen, Deputy Chairman of the CHP (the Republican People's Party).[18] In order to justify Turkey's position he pointed to the failings of a leading CoE and EU state: the 800,000 Turks in Germany are not recognised as a national minority for the purpose of the Council of Europe's Framework Convention for the Protection of National Minorities of 1994 (FCNM), nor is the Turkish language recognised as a regional or minority language in Germany for the purpose of the European Charter for Regional or Minority Languages of 1992 (the Languages Charter).

This was his answer to the question why Turkey could not at least ratify the Languages Charter.

Furthermore, he insisted, at the time of the Lausanne Treaty of 24th July 1923, which following the expulsion of Greek forces from Turkey established the borders of modern Turkey but made no provision for the Kurds, neither the Kurds nor the Alevis considered themselves to be a minority.

The delegation emphasised to him that this is not the view of the Kurds, who see this treaty as the starting point of their misfortune.

Similarly, Dengir Firat, the Deputy Chairman of the ruling AK Party, who is himself a Kurd, insisted that his party in fact represents the great majority of Kurds in South-East

18. The Republican People's Party (CHP or *Cumhuriyet Halk Partisi* in Turkish) is the oldest political party in Turkey, founded in 1923 by Kemal Ataturk.

Turkey; that 52 of their deputies are Kurds. He emphasised the reforms which now allow some broadcasting in Kurdish.

But so far as he was concerned there was no conceivable question of ratifying the FCNM or the Languages Charter.

The delegation found these positions very disappointing. The Languages Charter does not require a state to recognise the existence on its territory of a national minority, nor even of persons belonging to such a minority. It was specifically designed for Council of Europe states like France and Turkey which do not recognise the existence of minorities on their territories, but in which languages other than the state language are traditionally spoken.

# Torture and ill-treatment of detainees

Torture and ill-treatment of detainees and prisoners has been one of the most serious and persistent human rights problems in Turkey for many years. Torture began to be practised on a large scale after the 1980 military coup and for almost 30 years it has been a routine method for law enforcement and security officials. In 1999, when Turkey was accepted as a candidate country to become a member of the EU, there were some positive developments. In relation to torture, important changes were incorporated into three laws: the Turkish Criminal Code, the Criminal Procedural Code, and the Law on the Duties and Competencies of the Police. This provided safeguards against abuses by police by limiting their discretionary authority, including notification where possible in writing of reasons for arrest, restrictions on the permissible use of force in apprehending suspects, medical examination and judicial control of detention. The number of reported incidents of torture decreased. There were further improvements when in September 2003, Turkey ratified the ICCPR, the ICESCR and Protocol 6 to the ECHR, which abolishes the death penalty.

However, these positive changes have come to an end, and the improvements made earlier have started to be reversed since membership negotiations with the EU began in 2005. The delegation is very concerned that the progress achieved by these reforms has been undermined by later legislation and through the exploitation by the authorities of technicalities contained within the early laws.

The delegation met representatives of two Turkish human rights NGOs which specialise in the issue of torture: TOHAV in Istanbul on 4th February 2008, and TIHV in Ankara on 7th February. Both organisations provide rehabilitation to torture

survivors free of charge. TIHV has five rehabilitation centres in Adana, Ankara, Diyarbakir, Istanbul and Izmir. TOHAV has a centre in Istanbul, where it also provides free legal aid and counselling to torture survivors.

TOHAV reported three recent severe torture cases to the delegation. Two of them concern suspicions of death as a result of torture. The third case is one where torture resulted in severe injury. The first case concerned a Nigerian citizen, who had applied for asylum in Turkey through the UNHCR, and who had died in custody. In the second case, a person was reportedly beaten to death in a park by the police. In the third case, a man named Nezir Cirik was tortured to such an extent that he lost his spleen. TOHAV's evaluation was that the Turkish government's "zero tolerance" policy on torture seems not to be genuine, but to be only propaganda made for Europe. In practice, impunity for torture continues.

According to TOHAV, special torture rooms in police stations no longer exist. If true, that would be a positive development, but information collected from clients of TOHAV's lawyers, from patients of the torture rehabilitation clinic, and from the Istanbul branch of the IHD, suggest that the practice of unofficial detention has increased. This information is also confirmed by the reports of TIHV.

TIHV specialises in the rehabilitation and treatment of torture survivors and in scientific research on medical aspects of torture. The organisation prepares alternative medical reports for torture survivors in accordance with the Istanbul Protocol,[19] which provides a set of guidelines for the assessment of persons who allege torture and ill treatment, for investigating cases of alleged torture, and for reporting such findings to the judiciary and any other investigative body. TIHV had a central role in preparing the protocol with other Turkish NGOs. TIHV has participated in training programs on torture in 10 countries. In Turkey it has held training programmes for 4000 doctors and 5000 prosecutors and judges. As part of its "man made trauma" programme, TIHV arranged a trauma seminar in 2007, where isolation in prisons, solitary confinement and small group isolation were discussed. According to TIHV's evaluation, the human rights situation in prison has became worse since 2005.

TIHV produce detailed annual reports regarding torture survivors with a statistical breakdown and evaluation of all the data that they have collected regarding torture and ill-treatment during the year. According to TIHV's Report on Treatment and Rehabilitation Centres published in 2004, 898 new applicants stated to them that they had been tortured. Of these applicants, 348 stated they had been tortured in 2004 (38.7% of all new applicants). Of these 348, 302 reported to TIHV that they had been tortured outdoors rather than in the security centre or police station (86.8% of those applicants tortured in 2004).[20]

19. *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted by UNGA Res A/Res/55/89 of 4th December 2000.
20. Human Rights Foundation of Turkey, *Treatment and Rehabilitation Centres report* 2004, pp 19, 54 and 59.

| Place of Most Recent Torture in Detention | Number of Applicants | % |
|---|---|---|
| Security Centre | 135 | 60.8 |
| Outdoors | 41 | 18. |
| Police Station | 30 | 13.5 |
| In the car | 4 | 1.8 |
| Gendamarie Headquarters | 3 | 1.4 |
| Gendamerie station | 3 | 1.4 |
| Home | 1 | 0.5 |
| Other | 2 | 0.9 |
| Not known/not remembered | 3 | 1.4 |
| Total | 222 | 100 |

In 2005 TIHV interviewed and medically examined 675 new applicants who stated they had been tortured. Of those applicants, 193 had been tortured in 2005 (28.5% of all applicants). Of these 193, 90 were tortured outdoors (46.6% of the new applicants tortured during 2005.)[21]

In 2006, TIHV examined 333 new applicants. 222 of them had been tortured during 2006 (66.6% of all new applicants). The statistical data prepared by TIHV appears in the table above[22] and illustrates that the large majority – 135 or 60.8% – were tortured in a security centre, 41 were tortured outdoors (18.5% of the applicants tortured in 2006).[23] It appears that, whilst in 2004 and 2005 outdoors had been the most common place for torture, by 2006 the most common place for torture had again become security centres. The delegation is concerned that the practice of committing torture outside of detention centres, which is particularly noticeable for the years 2004 and 2005, indicates that the torture of detainees continues but that officials are seeking to escape scrutiny by fellow officials.

At the time of the delegation's visit, the report for 2007 had not been completed, but representatives of TIHV informed the delegation that the number of new applicants in 2007 is 452. Of those, 314 were tortured during 2007. Information published after the delegation's visit states that the percentage of new applicants who had been tortured in 2007 rose to 70.07%. Of the new applicants 112 were tortured in open spaces or vehicles[24] (which means that 35% of the applicants tortured in 2007 were tortured outdoors). In 2007, outdoors was again the most common place of torture for the applicants.

21. Human Rights Foundation of Turkey, *Treatment and Rehabilitation Centres report* 2005, pp 19 and 53-55.
22. Human Rights Foundation of Turkey, *Treatment and Rehabilitation Centres report* 2006, p57.
23. Human Rights Foundation of Turkey, *Treatment and Rehabilitation Centres report* 2006, pp 19, 51 and 57.
24. Bia News Centre, 20th February 2008.

The Istanbul Protocol contains detailed guidance for best practice in conducting medical examinations:

> **The examination must follow established standards of practice. In particular examination shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials. The medical expert should promptly prepare an accurate written report. The report should include at least the following:**
> **(a) The name of the subject and the name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house); and the circumstances of the subject at the time of the examination (e.g. Nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner) and any other relevant factors.**
> **(b) A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;**
> **(c) a record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;**
> **(d) An interpretation as to the possible relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and further examination should be given;**
> **(e) The report should clearly identify those carrying out the examination and should be signed.**

The report should be confidential and communicated to the subject or a nominated representative. The views of the subject and his or her representative should be solicited and recorded in the report.

If a person has not been officially detained (which means that his or her detention has never been registered and so does not constitute "detention" according to the law), there is no official doctor's examination. Therefore torture in these cases is also difficult to prove and trial against torturers is in practice impossible.

The right to access to a lawyer is one of the most important safeguards against torture, acting as a deterrent to security officials who might otherwise engage in ill-treatment of detainees. Article 14 of the International Covenant on Civil and Political Rights (ICCPR)[25] and Article 6 of the ECHR both recognise the right of detainees to access to

25. Article 14(3): "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
[...] (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance of this rights; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

legal advice. For the right to be effective, it is crucial for defendants to be able to access legal advice promptly. In the case of *Aksoy v Turkey*[26] the European Court of Human Rights stated:

> **[...] the denial of access to a lawyer, doctor, relative or friend and the absence of any realistic possibility of being brought before a court to test the legality of the detention meant that he was left completely at the mercy of those holding him.**

This report sets out below the difficulties faced by Abdullah Öcalan's lawyers, the cases brought against them under Article 257 of the Criminal Code, and the reports from the IHD about lawyers being subject to invasive searches when visiting clients in the F-type prisons. Any actions that are designed to intimidate lawyers involved in human rights activities, and that serve to undermine this crucial safeguard against torture, are clearly unacceptable.

Lawyers from TOHAV have received reports of 200 cases of torture in detention, but only 4-5 cases have been taken to court. In practice cases should be started by obtaining a doctor's report about the torture and then filing an official complaint to the prosecutor, but torture victims are often afraid to make complaints against their torturers. In the investigation process, the problem is that prosecutor and police are not separated. It is the duty of the police to investigate crimes and prosecutors are therefore dependent on the work of the police. This has the effect that prosecutors are unwilling to investigate torture allegations. In March 2006, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, expressed concern about this stating: "with regard to allegations of torture and ill-treatment of terrorism suspects, he did not find convincing evidence that an independent, impartial, accessible and effective mechanism is in place".[27] In most of the cases there is no investigation made at all. Only if torture has serious consequences, is an investigation actually undertaken. In practice, this often means that there has been a death in custody.

In a case where the prosecutor decides not to prosecute the alleged torturer, there is the possibility of appealing to a higher court against the decision of the prosecutor. However the appeal can only succeed if there is new evidence or an obvious error by the prosecutor can be shown. Usually the higher court confirms the prosecutor's decision not to prosecute. Government statistics concerning investigations of torture and ill-treatment indicate that very few cases have actually led to trials and convictions: in 2004, of the 1831 cases concluded, 99 led to imprisonment, 85 to fines and 1631 to acquittals.[28] We were told by lawyers at TOHAV that they have taken approximately 50 such cases to the European Court of Human Rights. The European Court has held that there was insufficient investigation by the Turkish state in most of these cases. As the Special

26. (1997) 23 EHRR 553 para.83.
27. Preliminary Note by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, para 9, 24th March 2006, E/CN.4/2006/98 Add.2.
28. Cited in Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, para 50A, 16th November 2006, A/HRC/4/26 Add.2.

Rapporteur, Martin Schenin states: "[...] it is clear that the past widespread use of torture during detention and criminal investigations is still not addressed in a consistent manner".[29]

In the few cases alleging torture during detention that are taken to the domestic courts, the charge is usually not the crime of torture, but misconduct of duty, a more lenient charge. According to Article 94(1) of the Turkish Penal Code (law number 5237) torture is punished with imprisonment for three to 12 years. The definition of torture in that article includes causing severe bodily or mental pain, loss of consciousness or ability to act, or dishonouring a person. The crime of torment in Article 96(1) includes causing suffering and is punished with imprisonment for two to five years. In Article 257(1) of the penal code, misconduct in office is defined as causing suffering of people or injury by acting contrary to the requirements of office and is punished with imprisonment for one to three years. Article 257(1) excludes from its scope acts defined as an offence elsewhere. This should mean that priority should be given to other articles prohibiting torture and torment, but, according to TOHAV the practice is different.

Article 20 of the Anti-Terror Law (no 3713) gives the law enforcement officials a wide right to use firearms against attacks by terrorists even if they are not on duty. The definition of terrorist in Article 1(1) is very wide and vague, allowing for an overly broad application of the term terrorism.[30]

After the maximum period for ordinary detention was decreased to 24 hours in 2005, torture methods changed. Deprivation of access to toilet facilities or to food or drink, and being forced to stand for a long time, have become more common. This information is confirmed by the TIHV reports on treatment and rehabilitation centres. In 2004, of those applicants who had been tortured during the same year, 4% stated that their access to toilet facilities had been restricted, 6.3% had had access to food and water restricted and 6.9% were subjected to positional torture methods, such as long periods of being forced to stand etc.[31] In 2005, the percentages were 8.8%, 10.9% and 14% respectively.[32] In 2006, the numbers were 12.6%, 16.7% and 14.4%.[33] These figures show that these torture methods (which leave fewer marks and are harder to trace) have became more common during recent years.

Regarding the problem of torture, TOHAV also referred to the effects of the 20 year history of torture in Turkey. If torture had a deterrent effect on crime, criminality would have been abolished in Turkey. Representatives of TOHAV stated that torture is a sign of the militarization of society in Turkey. Torture in Turkey is a problem of the system and this system is inherent in the society as a whole. Violence in Turkey also comes "from below" like violence in schools, in homes, etc. The beating of political

29. Ibid, para 49.
30. It appears to criminalise the aims of changing the "political, legal, social, secular and economic system" of Turkey and the aim of "weakening...the authority of the State", rather than the tactics employed in the furtherance of these aims.
31. TIHV, Treatment and rehabilitation centres report 2004, p 64.
32. TIHV, Treatment and rehabilitation centres report 2005, p 57.
33. TIHV, Treatment and rehabilitation centres report 2006, p 60.

demonstrators is common. In the 1990s TOHAV reported that the torture method known as "Palestinian hanging"[34] was so common that detainees who had been subjected to it, said they had not been tortured. It had become commonplace. Another common public attitude is that the tortured deserve torture, like terrorists, gay people or criminals. This has resulted in the legitimisation of torture.

TIHV believe that international developments have a considerable influence on the human rights situation in Turkey. In particular, the Turkish government has been very eager to refer to a contradiction between security and human rights in its national and international political rhetoric. Representatives of TIHV considered that the year 2007 has been especially concerning on human rights issues in Turkey – starting with the murder of Hrant Dink, a high profile human rights activist, and ending in the Turkish army's incursions into Iraqi Kurdistan in pursuit of the PKK. Human rights are not on the agenda of the government and government has explicitly stated that security issues take priority over human rights issues. The general international attitude of "if you are not with us, you are against us", has had a negative effect on the discussion and implementation of human rights in Turkey.

34. Victims are hanged with the arms straight out or with the arms behind the back (the so-called reverse or "Palestinian hanging"). For further information on this see for example the 1997 Human Rights Watch report on Turkey available at http://www.hrw.org/reports/1997/turkey/Turkey-04.htm

# The F-type Prisons

A clear and recurrent theme conveyed to the delegation by a number of organisations concerned the system of F-type prisons in Turkey.

The F-type prisons are high security prisons used primarily for persons accused or convicted of "terrorist" offences or organised crime. They are characterised by conditions in which prisoners are held in solitary confinement, or isolated in groups of three from the wider prison population. The regime is underpinned by clear objectives to ensure the preclusion, or otherwise limiting, of association between prisoners sentenced or remanded under the Anti-Terror Law.

Article 16 of the Anti-Terror Law makes explicit reference to the objective of preventing contact between prisoners held for offences relating to the membership of terrorist groups. It states:

The sentences of those convicted under the provisions of this law shall be executed in special penal institutions built with rooms each capable of holding between one and three persons. In such institutions, free visits may not be allowed. Contacts between the convicts and communication with other convicts may be prevented. Those convicts who have served at least one third of their sentences with good conduct and have less than three years to serve before becoming entitled to conditional release may be transferred to other closed penal centres. Those held in pre-trial detention for crimes within the scope of this law shall be kept in detention centres as described in paragraph 1. The provisions of paragraph 2 shall also apply to pre-trial detainees

35. ÇHD Istanbul; ÇHD Ankara; IHD, TOHAV; TIHV; TTB; TUHAD-FED

The first F-type prison was introduced in 1996 within the Eskisehir prison complex. A total of 12 are now in existence. In terms of the association afforded to prisoners, it is apparent that the F-type prisons stand in sharp contrast to the dormitory prisons in which prisoners convicted or remanded for "terrorist" offences had previously been held.

In dormitory prisons there were military interventions after prisoners protested at the introduction of F-type prisons and restrictions on their right of free association. In 1996, over 70 remanded prisoners had gone on hunger strike in protest at the establishment of the first F-type prison at Eskisehir. Twelve of those prisoners died as a result of the hunger strike.

The Turkish government also intervened militarily in 1999 in Ulucanlar prison following a dispute between prisoners and prison guards. Ten prisoners died and many others were seriously injured as a result of intervention by special troops after the withdrawal of the prison guards.

On 20th October 2000 hunger strikes against conditions of isolation involving one hundred prisoners began in over 25 prisons throughout Turkey. Military intervention took place in 20 prisons on 19th December 2000 and left 28 prisoners dead.[36] Many other prisoners suffered serious injury. Following these events, many prisoners were transferred into the newly built F-type prisons for the first time.

Despite the military intervention the protest escalated in 2001, with prisoners' families and supporters joining the strikes. The hunger strikes continued until January 2007. The delegation was informed during its meeting with the ÇHD in Istanbul on 6th February 2008, that in January 2007 several NGOs had been involved in negotiating the end of the hunger strike with the government and by which time 122 prisoners and their supporters had died.[37] A compromise was reached such that association between 10 prisoners in the F-types could take place for a period of 10 hours per week. The agreement, according to the branch of the ÇHD in Istanbul, had not been implemented.[38]

This was confirmed to the delegation by the branch of the ÇHD in Ankara who cited the content of a circular issued by the Ministry of Justice that set out the agreement. The TIHV had already raised its concerns with the delegation that the agreement that had ended the hunger strikes was not being implemented. The TIHV also confirmed what we had heard from the other organisations: that since April 2001 the relevant regulations said that groups of 10 prisoners would be afforded five hours per week communal time when they could use social facilities, but in reality this was not being facilitated.[39]

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36. http://www.bianet.org cited in KHRP, An Ongoing Practice: Torture in Turkey.
37. A lawyer and member of the ÇHD, Behiç Aşçi had joined the hunger strike for eight months before ending his protest as part of the negotiated compromise.
38. The ÇHD campaigns against the regimes in the F-type prisons. Prior to its meeting with the delegation on 6th February 2008 the ÇHD had held a press conference in Ankara where the findings of a report detailing concerns and demands were presented.
39. Pursuant to its visit to three F-type prisons in December 2005, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated: "The CPT calls upon the Turkish authorities to take all necessary steps to develop communal activity programmes in F-type prisons. Immediate action should be taken to ensure that there is a significant increase in the amount of association time offered per week, the goal being to reach the maximum permitted by the regulations."

The government denies the existence of the January 2007 agreement. On 6th February 2008 the delegation was informed by the Vice-Chair of the ruling AK Party, Dengir Firat, that no such agreement existed. Despite these denials, the delegation understands that a government document, circular 45/1, is publicly available and contains details of the agreement.

The delegation is very concerned at the government's failure to implement the agreement reached in January 2007, its refusal to end the isolation of prisoners, and the continuing restrictions on prisoners' freedom of association.

The delegation listened to contributions and analysis from a number of organisations, as well as oral testimonies from prisoners who had been held in F-type prisons.

IHD stated in its meeting with the delegation on 7th February 2008 that within the F-type prisons "isolation was the most important and serious issue and other problems are related to this".

IHD receives communications from serving and former prisoners who complain of torture and ill-treatment. One such complaint concerned allegations of ill-treatment during the transfer of prisoners a few months prior to our meeting. Complaints have also been received from lawyers attending clients, that lawyer-client confidentiality is violated as officers' rooms are located next to interview rooms. The manual searching of lawyers and confiscation of mobile telephones and other electronic devices also impedes the legal support afforded to prisoners.[40]

During its meeting with TIHV in Ankara on 7th February 2008, the delegation was informed that some 500 applicants accessing the organisation had spent time in F-type prisons. The TIHV, whose publications set out detailed categories of types of torture and ill-treatment complained of and associated effects, had observed differences in the particular difficulties experienced by such prisoners when compared with those who had been held in other types of prison.

They told us that they had only been able to visit the F-type prisons in the summer of 2000, despite having made repeated earlier requests for visits. They observed that the intention to isolate prisoners was easily ascertainable from the architecture of the prisons. Prisoners isolated in groups of three can only interact with each other, not being able to physically see, or otherwise associate with any others save during specifically designated times.

The design of the cells and other areas is such that any lawyer visiting his or her client would not see or have any other interaction with any other prisoner. TIHV told us that they believed it to be common ground amongst all human rights organisations working in Turkey that the F-type prisons are not acceptable because they are based on isolation. TIHV is also of the view that the consequences of small group isolation are similar to those in solitary confinement with attendant direct impacts upon the physical integrity of prisoners and their psychological health.

40. Such matters were also raised with the delegation by the ÇHD in Istanbul and Ankara.

Noting the existence elsewhere of spatial studies and enquiry into the effects upon prisoners of regimes of isolation, TIHV stated that it is keen to implement retrospective research that will facilitate and assist discussion of the impact of the F-type prison on prisoners' physical and mental health on a scientific basis.

During its meeting with TUHAD-FED in Ankara on 8th February 2008 the delegation met with a former inmate of F-type prisons whom we shall refer to as "X" for these purposes. X had spent two lengthy periods in prison. He had originally been imprisoned for 10 years in the early 1980s.

Having completed his sentence, X was later convicted of being a member of a leftist group. This resulted in a further prison sentence of seven years. X served six of those seven years in three F-type prisons. He spent two years in solitary confinement and a further four years imprisoned with two others. X confirmed that the keeping of prisoners in groups of three is characteristic of the regime.

The three prisoners had access to a courtyard adjoining the cell but were otherwise not permitted to interact with any other prisoners.

X stated that the Turkish authorities have allowed the press a degree of access to F-type prisons, with subsequent photographs published by the press showing, for example, flowers on the tables in cells. X's testimony directly contradicts the impression conveyed by those photographs with X commenting that flowers or plants, in his experience, had not been allowed to be brought into prison.[41] He further stated that the only greenery in his cell had been grown from seeds dropped by birds into the concrete courtyard. When the prison officers had discovered the plants, they took them away.

Although X had not taken part in the major hunger strikes mentioned above, he had engaged in various protest actions during his imprisonment. X stated that many prisoners refused to allow their shoes to be searched upon visiting the prison library and therefore did not visit. X stated that, like many prisoners, he also refused to use recreational time and space as this was embedded within a system of rewards and punishment, rather than being given to prisoners as a right.

X's testimony confirmed other reports from several organisations that resistance to the regimes within the F-type prisons by political prisoners remains an ongoing feature, notwithstanding the system of punishments actively at work.

The delegation heard that a particular area of conflict concerned routine searches carried out by prison staff. According to TOHAV, it is not uncommon for political prisoners to refuse to accept searches, and for those searches then to proceed by way of force. When prisoners shout political slogans, a common response to forced searches or other abuses, they find themselves charged under prison rules with insulting authority or taking an organised stance against prison governance. The most common

41. The delegation noted that whilst not disputing the fact of access having been granted to observers / journalists, the CHD questioned the reality of what could be observed, highlighting, for example, the restriction of access to a specific F-type prison within Ankara and the selection of prisoners with whom visitors could converse.

sanction imposed under these charges is a six day period of non-association.

The delegation was further informed of the mechanism for discipline within the prisons. When an allegation is raised against a prisoner, the individual receives a file containing a record of the decision (which has already been made) and of any disciplinary sanction made. There is no hearing or adjudication. If appropriate notice is given, a prisoner can seek assistance from a lawyer in making a written application to a judge who is the final executor of discipline within the prison. It was the view of TOHAV that the initial decisions are usually upheld by the judge when such applications are made.

The ÇHD in Ankara informed the delegation of their extensive accumulation of accounts collected from prisoners, from their families and from doctors and lawyers, which they believe document the severe psychological effects of isolation. One prisoner, who had previously not exhibited any apparent physical or psychological problems, had set fire to his cell which he shared with two others. As a punishment he was confined to the cell for a period of 15 days. His two fellow prisoners, who had broken glass in order to reach him during the incident, had also been subject to disciplinary proceedings.

The delegation was also informed that, whilst women were not kept in F-type prisons, high security units within women's prisons exhibit similar architecture. Furthermore, the regimes in those women's high security units were also similar to the F-type prisons in terms of isolation, compounded by issues of resistance and attendant punishment.[42]

42. See the testimony of D in the section "Women and detention" below.

# Women and detention

The delegation welcomes the reports it has received that indicate that the treatment of women in detention has improved in recent years. In particular, we welcome the fact that the indications are that the practices of rape and of stripping women naked for interrogation have largely been eliminated. However, the delegation, based on what it has heard, remains concerned about the treatment of women in detention. While it acknowledges and commends the Turkish government for the improvements that have been made, it believes that more needs to be done to ensure that the human rights norms in respect of the treatment of women in both police and prison detention are implemented.

Turkey has ratified the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and was one of the first State Parties to ratify CEDAW's Optional Protocol permitting the bringing of individual complaints against State Parties. It has also withdrawn all the substantive reservations to CEDAW, signed up to the Beijing Platform for Action and agreed to implement Security Council Resolution 1325. These are important landmarks for women but, as with concerns raised in other sections of this report, the delegation believes that problems remain with the practical implementation of these rights and protections.

Unfortunately, for many years Turkey has had a very poor record in respect of its treatment of women in detention. This is one of the reasons why the delegation is concerned that it may take some time for the documented and legislated for human rights standards to be implemented. In 1997, Turkey was found in breach of Articles 13 and 20 of the ECHR in the case of *Aydin v Turkey*.[43] The applicant was a 17 year old

43. (1998) 25 EHRR 251 Case No. 57/1996/676/866, 25th September 1997.

girl of Kurdish origin who had been detained, tortured and raped by security officers in June 1993. The court found that rape was a form of torture as "the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape amounted to torture in breach of Article 3 of the Convention". The court also found that there had been a failure by the authorities to conduct a thorough and effective investigation into her complaint. In particular, the authorities had accepted the security services' denial of the allegations too readily.

This case illustrates two of the key problems facing women who suffer abuse in detention. The first is the fact of the sexual abuse and the second the culture of impunity surrounding those responsible for these abuses, which contributes to a reluctance by women to report or follow up complaints against state security officials.

That these problems are not confined to the 1990s is illustrated by a 2003 study by Amnesty International[44] that details how women from all social and cultural backgrounds are subjected to abuse, assault and rape in detention. The study revealed that women are frequently stripped naked by male officers during questioning in police custody or in prison, exposing women to violence and humiliation. It also found that the practice of forced "virginity tests" is frequently used as a form of punishment or humiliation, with the consequences for many women being violence, humiliation, and on occasion, death.

The delegation met with Erin Keskin on 5th February 2008 in her offices in Istanbul. She is a lawyer who established and works on, amongst other things, a project called *"Legal Aid for Women Raped or Sexually Assaulted by State Security Forces"* that specifically deals with cases of rape and sexual abuse in detention. She told us that she herself was imprisoned for six months in 1995 for an article she had written, and horrifyingly found that *"without exception"* the women that she met in detention had been subject to sexual harassment and some had been raped. As a result of this she decided to set up the project to address this issue specifically. As well as gaining justice for the women victims, one of the aims of the project is to initiate discussion of the topic and so break through the taboos attached to the subject and help women realise that "this crime is not an individual fate but a political means of repression". She told us that it was clear to her that women in prison are largely those who are pushing for change and an alternative to the political and social situation in Turkey. She also observed that many such women came from patriarchal communities and that there were difficulties in conveying their experiences even to others within their own political organisations. She hopes that by discussing the links between the causes and potential legal consequences of rape and sexual assaults by state officials, other women will be encouraged to break their silence, name their perpetrators and call for their punishment.

The delegation was given a copy of a report from 1999 produced by Keskin's project entitled: *Sexual violence: perpetrated by the state*. It details the stories of 113 women. In

44. Amnesty International, Turkey: *Sexual violence of women in detention must be eradicated*, 26th February 2003 at http://www.amnesty.org.uk/news_details.asp?NewsID=14367

it, the women describe physical and sexual torture and humiliation perpetrated against them while they were in state detention. Many of the women in the report are Kurdish or are involved in political activities, illustrating the link that Erin Keskin made to us between the use of rape and political repression. The Story of Victim 1, a Kurdish woman, is typical: "N.A pointed his gun towards Victim X and forced her to the ground. He tore her clothes from her body and raped her despite all her resistance. After he raped her, N.A. threatened her by saying: 'Here, I am the state. If you talk to anyone about this, I will bomb your house and tell everyone, that the PKK had done it. Everybody will believe me. Nobody will protect you.' A case was brought but the perpetrator was only convicted of 'sexual contact with an under aged person outside marriage'."[45]

Keskin told us that rape had long been used as torture but was not an easy thing for women to talk about because of the shame attached to it. She has worked for a long time with women to gather the reports and document the torture, as well as brought cases in the domestic courts and to the European Court of Human Rights. She has had some success in her awareness raising campaigns amongst the public and politically. As a result of her efforts, and the efforts of others like her, there have been a number of changes to the law and other positive changes. However, she is concerned that change has only occurred because of the EU, that is, because of external pressure: she believes that the real change will only happen if there is internal change – there remains a contradiction between the written law and actions in practice. She told us that since 2003-4, she has heard of virtually no cases of rape perpetrated in prison, and she says that this of course is to be welcomed. Furthermore, she told us there are fewer cases where women are stripped naked and interrogated, although she told us that this still happens in all cases involving transsexuals. Nevertheless, she remains concerned about the treatment of women in custody. She told us that the state authorities have been using different methods of torture, citing an increase in the number of women reporting that they have been beaten with sandbags so as not to leave marks and that there are more reports of psychological torture.

Whilst having been successful in putting the issue of rape and sexual abuse of women by state officials in the public eye and on the public agenda, Erin Keskin has herself been the subject of a number of prosecutions for her statements and comments that have been deemed to be "insulting Turkishness". Thus, in March 2006, HRW reported[46] that Erin Keskin, who was at that time the president of the Istanbul Human Rights Association, was sentenced to 10 months imprisonment (later converted to a fine) for "insulting the armed forces" because she had publicised sexual assaults of women by soldiers. She told us that there continue to be complaints brought against her for the work that she does.

After the delegation returned to the UK, we saw reports in the Turkish press that she has again been sentenced by a court in Istanbul for alleged violation of Article 301 of the

45. Eren Keskin, 'Sexual Violence: Perpetrated by the State, a documentation of Victim Stories.' Project 'Legal Aid for Women Raped or Sexually Assaulted by State Security Forces', Istanbul 2000, pp9-10.
46. See Human Rights Watch World Report 2007 at http://hrw.org/englishwr2k7/docs/2007/01/11/turkey14845.htm

Turkish Criminal Code. As detailed in a previous section of this report, the delegation is deeply concerned at the targeting of human rights defenders through such prosecutions and would urge the Turkish government to immediately address this issue.

The delegation spoke to a woman former prisoner, D, who had been released from prison only three days before. She told us that she had served 14 years out of a total sentence of 36 years after having been convicted of membership of a terrorist organisation. We understand that she had been released early after the laws were changed, reducing the sentence for the crime of membership of a terrorist group.

D told us that she had been raped by the police whilst detained in custody in 1995. She said that she had made a complaint some 15 days after the rape occurred and that she was told that the case she is pursuing in the domestic courts is unlikely to be successful, because she did not make the complaint immediately. The delegation believes that this indicates that, while it may be right that rape is no longer being perpetrated against women in detention, issues around the bringing to justice those responsible for rape and other forms of sexual violence during the 1990s and before have still not been addressed. The delegation is very concerned that there may still be impunity for those responsible for the most serious incidents of torture against women in detention.

D spoke about her more recent experiences in detention and told the delegation that she had not suffered any physical attacks during her time in prison. However, she told us that she believed that the psychological torture that she had suffered as a result of the isolation regime in prison had been far worse than any physical torture. She told the delegation that she had spent 14 years in the same room with the same two people, having no contact with any other prisoners. D told us that it felt very bewildering being released and felt very strange being present in a room with a number of people. She had shared a cell with Kurdish women who had been charged with offences linking them to the PKK and said that leaving them upon release had been very difficult and felt like some sort of betrayal to them. As detailed in the previous section regarding the isolation regime, the delegation is very concerned about the short term and the long term impact of these conditions.

We met with D at the offices of TUHAD-FED in Istanbul and also spoke with members of the Association. They told us that, on the basis of the information that they had received from the prisoners that they support and have contact with, there are particular problems facing women in detention. They told us about some recent issues of great concern that have arisen at a central prison for women political prisoners in the Marmara region. The prison also holds male prisoners convicted of serious criminal offences rather than political offences. About a month and a half before our meeting, around the time of increased political tensions in Turkey, the Association had received reports that the women in the prison had been the victims of serious sexual harassment including verbal abuse and being sent pornographic materials. This had continued for around one month. During this time, the women had been unable to go outside because they were fearful of being sexually attacked. The Association told us that it hoped to raise the issue publicly and to bring a complaint to the public prosecutor.

An even more serious report regarding women prisoners was made a few years ago to the European Committee against Torture and Inhuman and Degrading Treatment or Punishment (CPT). In 2004, the CPT drew the attention of the Turkish authorities to reports of sexual exploitation of women at the Izmir (Buca) Closed Prison. There had been reports that two female prisoners from one of the women's units were being used as prostitutes for male prisoners. It was said that prison staff were making the necessary arrangements.[47] It is clear from these recent reports that there are still significant areas for improvement in the conditions and standards for women in prison in Turkey.

Upon meeting the IHD in Ankara the delegation was told by its members that they believed that women held in isolation regimes in Turkish prisons faced particular problems, but these were not sufficiently documented at this stage. They told us that they intend to conduct a special investigation into this issue, in particular to look at the following issues: inadequacies in the health treatment for women in detention, attacks and harassment of women, and problems with hygiene in prisons. The delegation believes that this type of study is invaluable and would encourage the Turkish government to co-operate with any such investigations and studies.

47. Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16th to 29th March 2004, para 53.

# Conditions of detention of Abdullah Öcalan

Abdullah Öcalan is the 1978 founder and leader of the Kurdistan Workers Party (PKK), and led an armed campaign inside Turkey from 1984. Following his capture in Kenya, he was sentenced to death on 19th June 1999, but this sentence was commuted to life imprisonment when the death penalty was abolished in Turkey in August 2002. Since his capture Öcalan has been held in solitary confinement as the only prisoner on İmralı Island in the Sea of Marmara, 70 kilometres south of Istanbul.

The delegation met Abdullah Öcalan's brother, Mehmet Öcalan, at the offices of TUHAD-FED in Istanbul on 5th February 2008. This section sets out the delegation's assessment of Abdullah Öcalan's conditions of detention and our recommendations, based on first hand sources together with the detailed findings made by CPT after a visit to Abdullah Öcalan in May 2007. Unfortunately, the delegation was not given permission to visit İmralı High Security Prison where Abdullah Öcalan is held and therefore we did not interview him or observe his living conditions. The delegation also requested a meeting with officials from the Ministry of Justice, but unfortunately that request was also declined.

As a result of what the delegation has heard and read, we are very concerned about the conditions in which Abdullah Öcalan is held. The CPT have been recommending since 2001 that Abdullah Öcalan should "at the earliest opportunity be integrated into a setting where contacts with other inmates and a wider range of activities were possible."[48] It is clear that this has not happened and that there are no moves by the Turkish government to comply with the recommendation.

48. *ibid*, paras 7 and 33.

It is very disappointing that the visits between Abdullah Öcalan and his brother and sister are not being facilitated effectively. Mehmet Öcalan told us that, although he has permission to visit his brother on İmralı, in reality he has enormous difficulties in actually making visits. He told us that the last time that he had seen his brother was in July 2007. The last time his sister, Fatima, had been able to visit was in September 2007. According to Section 32 of the Internal Regulations of İmralı High-Security Closed Prison, visits have to take place on Wednesdays (between 9am and 4pm) and they may last a maximum of one hour. However, Mehmet Öcalan told us that, since 2005, the visits had been reduced to half an hour a week. Such a short visit is pointless, so he now only attempts to visit every fortnight. The delegation was told he has to apply to the authorities on Tuesday for the Wednesday visit, but it seemed to him that it was only exceptionally that they would grant him permission. He told the delegation that the reason given for refusing permission is usually a practical one: "normally they tell me that there are reasons such as the boat being out of order or the weather conditions being too bad".

This is confirmed by the latest report of the CPT who wrote specifically about this matter: "As regards the vessels used for transporting family members and lawyers to İmralı Island, the CPT has taken note of the fact that the "*Tuzla*" was brought into service in 2006. Although seaworthy in less favourable weather conditions than those required by İmralı 9 and 10, it has nevertheless shown signs of weakness, with several breakdowns, some of them lasting several weeks (in March 2007, for instance). Moreover, monthly monitoring of visits has shown that access to the island remains very irregular".[49]

This seems unusual, given that Abdullah Öcalan's lawyers are usually able to see their client on the island, and while they use the same boat to cross to İmralı they do not usually (or at least not as frequently) encounter such problems with the boat or with the weather.

Mehmet Öcalan added that "when we have made complaint through the lawyer we are simply told that it is a practical problem and that there is no ill-intent. They also point out to us that it is not one single institution that is responsible. It is both the gendarmerie[50] and the Ministry of Justice who are making the decisions".

Therefore, while the CPT noted that the regularity of family visits seemed to have been improving in May and June 2007, this delegation found that as at the time of our meeting, there has been an effective suspension of family visits. Mehmet Öcalan has not been permitted to visit since July 2007.

Another issue raised with us by Mehmet Öcalan was that there is no opportunity for family group visits. Instead, family members all have to make separate visits. He told us: "I am simply looking for the same rights as other family members to people in Turkey's prisons, that I can have open visits with family members and see him on religious

49. *ibid* para. 15.
50. The Turkish police.

holidays". Ordinarily, prisoners are permitted group visits (known as "table" visits), but these are limited to parents, spouses, children and grandchildren. As Abdullah Öcalan does not have any family members falling in these categories, he is excluded from enjoying these more relaxed and ordinary style visits. The CPT have recommended since 2003 that measures be put in place to allow such visits to take place, but at the date of our visit in February 2008, it was clear that no such provision had been made and there had been no follow up to this recommendation.

The visits by the lawyers to their client on İmralı Island raise separate areas of concern for the delegation. The delegation was told by Abdullah Öcalan's lawyers that, since 1st June 2005, they have not been able to have a consultation alone with him. One lawyer told us: "there is always an officer from the Ministry of Justice sitting between me and the client, there is a tape recorder and there are prisoner officers listening at the doors [...] this happens in every consultation". The CPT report of March 2008 stated:

> **More generally, the CPT considers that the confidentiality of contacts between a prisoner and his lawyers is a fundamental safeguard against ill-treatment and that, consequently, such contacts should be subject only to scrutiny *ex post facto*, leading if necessary to prohibitive measures if the deontological and ethical rules applicable to lawyers have not been observed.[51]**

The Turkish government, in its letter in response to the most recent CPT report, cites Article 59(4) of Law No 5275[52] of the Execution of Prison Sentences and Security Measures. It relies on this section to justify the tape-recording and the presence of a security official during each consultation. Such an interference with this fundamental right must only apply in exceptional circumstances, and it seems to this delegation that this interference must be exercised with great caution and be subject to the most rigorous review. Upon the hearing of the oral testimony of the lawyers, the delegation is concerned that there is not the appropriate caution or rigorous review in this instance.

Both the lawyers for Abdullah Öcalan and his brother, raised concerns with the delegation concerning their own treatment when they visit İmralı. Mehmet Öcalan told us that each time he visited "I am subjected to humiliating searches [...] I have to strip down completely to my underwear and they check my hair and my mouth". The lawyers also told us about their treatment by the prison officials when visiting İmralı Island. They

51. *ibid footnote 47*, para. 20.

52. Article 59(4) of Law No. 5275: (4) (Amended: 25th May 2005 – 5351 Article 5) The attorneys' documents, files and records of the conversations with their clients shall not be subject to examination. However regarding the relation between the attorney and the convict sentenced for the crimes included in Article 220 of the Penal Code (Law No.5237), as well as in Sections Four and Five of Part Four in Book Two of the Penal Code, those documents and files declared by the attorney to concern his defence can be physically examined. Where findings and documents which point to the fact that acts constituting a crime are committed, the security of the penal institution is put under risk, or they serve as a means of organised-related communication between members of a terrorist organisation and other criminal organisations are produced, then, upon a request by the Office of the Chief Public Prosecutor and a decision by an execution judge, an official can be appointed to attend the consultation; furthermore, those documents and files given by such convicts to their attorneys as well as those given by the attorneys to the convict can be examined by the execution judge. The execution judge shall decide whether the documents shall be given or not, as well as whether in part of fully. The convict concerned may object to such decision in accordance with Law no.4675."

are subjected to more intensive searches than at any other prison, and they are searched three times when they go in and when they go out. They are not permitted to take in paper or pens and have to remove their belts before going into the prison. This, they told us, only applies to visits to Abdullah Öcalan.

Mehmet Öcalan also told us that he was concerned that his brother did not have the same rights as other prisoners and lacked many basic facilities, such as a television, regular papers and telephone calls. He was also concerned that there was no reliable information about his brother's health situation. Öcalan's lawyers told us that he doesn't have a television and the radio that he has is fixed on state radio. Moreover, he has never been able to make phone calls and he is required to speak in Turkish rather than Kurdish to his family and to his lawyers. They explained that his room is 12 to 13 metres square, with the toilet and shower in the room. There is a camera in this room and he is therefore under surveillance 24 hours a day. He is allowed out for half an hour in the morning and half an hour in the afternoon, to an enclosed space 25 metres square which is covered with wire netting. This again shows that there has been no change or improvement in the conditions since the CPT visited in May 2007. It is clear that the Committee's recommendations[53] – allowing him to move freely between his cell and adjoining rooms; access to a larger exercise area; access to a television and greater interaction with prison staff – have not been implemented.

The issue of greatest concern for his lawyers and for his brother, however, was the psychological impact of the isolation conditions on Abdullah Öcalan (Mehmet Öcalan, as noted above, has not seen his brother since July 2007). His lawyers told us that not only does he not see any other prisoners but that "he is not even allowed to shake the hands of his lawyers" and that "the most severe thing for him is loneliness". Indeed the CPT noted "a distinct deterioration of his mental state since 2001 and 2003". That deterioration is "connected with a situation of chronic stress and prolonged social and emotional isolation, coupled with a feeling of abandonment and disappointment".[54] It is evident to this delegation that the failure by the Turkish government to facilitate visits between Abdullah Öcalan and his family will contribute further to a deterioration in his mental state.

53. *ibid footnote 47*, para 13.
54. *ibid footnote 47*, para 28.

# Interference with the right to legally qualified defence

The delegation was especially concerned by reports of the effect of the recent (2005) amendment to Article 151 of the Criminal Procedural Code on lawyers seeking to represent their client. We note that the problems caused by this amendment do not appear to have been identified in other recent reports.

The effect of the amendment is to nullify the right of an accused to be represented by the defender of his or her choice, a clear violation of Article 6 of the ECHR. Furthermore, a detainee denied competent legal representation is much more likely to suffer ill-treatment.

Article 151 is as follows (translation into English provided by ÇHD) :

> **Article 151**
> **1) Should the defender, entrusted under the clauses of Article 150, fail to be present in the hearing or withdraws from the hearing in an untimely manner or avoids fulfilling the tasks pertaining to the position, the judge or the court takes the necessary steps immediately for the entrusting of another defender. In this case the hearing may be adjourned or postponed.**
> **2) If the new defender declares that the duration is insufficient to prepare a defense, the hearing will be postponed.**
> **3)** ***(as amended by Article 22 of Law no. 5353 dated 25 May 2005)*** **Should a legal prosecution be initiated against a lawyer, who was selected under Article 149 or appointed under Article 150 and has assumed the defense or representation of those that are convicted and detained under the crimes listed in the articles 220 and 314 of the Turkish Penal Code and terror crimes, with charges related with the crimes listed**

**in this paragraph, the defender may be banned from assuming the defense or representation of the convicted or detained**
**4) *(As amended in 2005)* Regarding the request of the public prosecutor for the ban, the court that runs the prosecution launched against the defender or representative will make a ruling without delay. The rulings can be appealed. If the ban ruling is annulled in consequence of the appeal, the lawyer assumes the task again. The ruling of ban from defense task may be valid for one year, provided that it is limited with the crime subject to the prosecution. However, this term may be extended for two times at most for six months in line with the nature of the prosecution. In case of a ruling other than conviction in consequence of the prosecution, the ban ruling becomes void before it becomes final.**
**5) *(As amended in 2005)* The ruling of ban from the task will be immediately communicated to the detainee or convict and the related bar chairmanship for the appointment of a new defender .**
**6) *(As amended in 2005)* The defender or representative cannot visit the person whom he/she assumed the defense or representation of in detention center or prison even concerning other cases as long as banned from the defense task.**

For completeness we set out two other relevant articles – the provisions in respect of which a criminal prosecution can be commenced against practising lawyers. Article 220 provides:

**Forming organized groups with the intention of committing crime**

**ARTICLE 220-(1) Those who form or manage organized groups to executes acts which are defined as offence by the laws, is punished with imprisonment from two years to six years unless this organized group is observed to be qualified to commit offence in view of its structure, quantity of members, tools and equipment hold for this purpose. However, at least three members are required for existence of an organized group. […]**

**(8) Any person who makes propaganda by praising the organized criminal group and its object is punished with imprisonment from one year to three years. The punishment to be imposed is increased by one half in case of commission of this offence through press and broadcast organs.**

While Article 314 provides:

**Alliance for offence**

**ARTICLE 314-(1) If two or more persons make a deal to commit any one of the offences listed in fourth and fifth sections of this chapter by using suitable means, the offenders are sentenced to imprisonment from three years up to twelve years, depending on the quality of offence.**

**(2) No punishment is imposed on the persons who break up the alliance before commission of the offence or commencement of investigation.**

The extraordinarily draconian effect of these provisions may be illustrated as follows.

On 4th February 2008 the delegation met three of the lawyers representing Abdullah Öcalan: Emray Emekçi, Özgür Erol, and Ibrahim Bilmez. They are also members of ÇHD.

These lawyers told us that altogether 150 lawyers have a Power of Attorney for Öcalan, but 39 lawyers are actively involved, and six to seven actually represent him.

They informed us that the amendments to Article 151 as set out above came into force on 1st June 2005. Until that date there was no legal basis for banning lawyers from representing their notorious client. These amendments were specifically designed for Öcalan's lawyers; the amending law is known as the "Öcalan law". The new provisions come in to effect if a case is filed – that is a prosecution is commenced under the articles above – against a lawyer, which is a very easy process, and do not depend upon a case having been determined against a lawyer. "Praising" a terrorist group can include use of the phrase "Mr Öcalan" (implying respect) rather then "Öcalan". Mr Erol did just that.

Since June 2005, Mr Erol told us, the law has been a real "sword of Damocles". Once filed, a prosecution can go on for at least a year and a half. It starts when the prosecutor issues a call to take statements from the lawyer. This is a document known as "tebligant", a summons to come to the prosecutor's office. Only once an indictment is submitted can the lawyer can be called before the court.

When the amendment to the law came into force, 12 lawyers were subjected to this banning process. Once a case is filed, the lawyer is automatically banned for a year. This can be extended twice.

On 1st October 2007 a case was opened against Mr Erol under Article 257 of the Criminal Code, on the basis of the articles set out above. Article 257 provides:

**Misconduct in office**

**ARTICLE 257-(1) Excluding the acts defined as offence in the law, any public officer who causes suffering of people or injury by acting contrary to the requirements of his office, or secures unjust benefit to third parties, is punished with imprisonment from one year to three years.**

**(2) Excluding the acts defined as offence in the law, any public officer who causes suffering of people or public injury, or secures unjust benefit for others by showing negligence or delay in performance of his duties, is punished with imprisonment from six months to two years.**

**(3) Any public officer who secures benefit for himself or others in order to fulfil his obligations or for similar other reason, is punished with imprisonment according to provisions of the first subsection if such act does not constitute the offence of malversation.**

The first court hearing under Article 151 of the Criminal Procedural Code is held ex parte (without notice to the lawyer against whom the case is filed). Mr Erol only found out that there was a case against him when he went to the prison to see Öcalan. He then had one week to file a complaint, that is, in the first week of December 2007. This case should according to law be heard in a few weeks, that is, a "reasonable time". He and his colleagues learned about the ban on 28th November 2007: it had been imposed by the Court – *ex parte* – on 6th November 2006. After that the domestic law was exhausted.

The delegation found it extraordinary and outrageous that this defence lawyer should be prohibited from acting for his client by an action taken without his knowledge.

Originally there were 12 of Öcalan's lawyers who were banned, but now there are only three. The 12 were banned for one year, extended by six months on two occasions. Now those two years are over and all these lawyers can go once more to İmralı Island.

Not one of the cases which were filed has been brought to trial. In fact in none of the cases was there any serious intention to secure a conviction. The aim was to prevent these lawyers from representing Öcalan, and this was achieved as a result of the cases having been filed.

This is what is perhaps most shocking. The intention of the authorities is, apparently, not to prosecute a crime but simply to remove the defence lawyer. Some of the lawyers concerned were forbidden to leave the country, although these prohibitions had by the time of our meeting all expired.

The lawyers told us that no complaints had been made on their behalf by the Bar Association. Indeed, we were told that members of the Association had instead demanded that the lawyers affected should be expelled.

When we met members of the Istanbul branch of ÇHD, they informed us that in their opinion Article 151 is a very shameful provision. They confirmed that it was enacted specifically for the Öcalan lawyers. In addition, one lawyer defending the prison hunger strikers, Behiç Aşçi, has also been banned for allegedly defending ("praising") the organisation, DHKP, of which his clients were members.

Lawyers at the Ankara headquarters of the ÇHD confirmed that Article 151 is used to open prosecutions not with the intention of bringing the allegation to trial but simply to get a particular lawyer out of a case. They also confirmed that in the first draft of the new Criminal Procedural Code there had been no such provision. When it suddenly appeared they were shocked and surprised. They made an approach to the Bar Association, and at the Congress of the Bar Associations in Antalya, with Bar Associations from all over Turkey, there was a decision that lawyers should boycott the criminal courts if the provision came into force. But then the local Bars failed to implement the decision.

When the delegation met representatives of the Istanbul Bar Association (IBA), we raised the question of Article 151. The answer was that the prohibition indeed exists, is effective from the beginning of the case, and is an interim decision. The prosecutor can request prohibition and the court can take the decision. It is a new principle. The IBA

told the delegation that it had criticised the new provision before it was enacted, and had lobbied the authorities to include a right of objection. They also sought to reassure the delegation that even if a lawyer is banned, another lawyer is quickly found. There can be no court hearing without a defender. When the delegation put to them the situation described above, no cogent explanation was received.

The delegation was gravely concerned at this failure by the Bar Association to defend its members.

We were informed that there ought to be a remedy in the Constitutional Court. However, in order to bring the Article before the Constitutional Court there would have to be an application by the main opposition party, 20% of the parliament, that is, 110 deputies. Or the court in a case in which the prosecutor was seeking a ban could itself decide to refer the issue to the Constitutional Court. But usually the courts will not agree to do this. Thus, the Constitutional Court should have the power to review the constitutionality of Article 151. However, to bring the Article before the Constitutional Court, there must first be an application, as already noted. So far, neither parliament nor the courts have been prepared to take this step.

The ÇHD insisted that if the Bar Associations had shown serious resistance, this measure would not have passed. The Bar did not put up a serious fight. They did not even open a case or file a complaint.

Hüsnü Öndül, the President of the IHD, also confirmed that his lawyers faced difficulties with Article 151 when taking political cases. Use of this extraordinarily draconian and unjust provision is clearly not limited to the lawyers representing Mr Öcalan.

# Conclusion

Again and again the delegation was confronted by the fact that Turkey's ratification of international instruments, its desire to achieve accession to the EU, and the appearance of reform, are all consistently undermined by actual practice. Thus, Turkey plainly continues to subject detainees to torture and inhuman and degrading treatment, albeit in different forms and circumstances. The F-type prisons at first glance are modern and humane institutions, in which prisoners are detained in the company of others. On closer inspection, these are new modes of "treatment" for political prisoners, carefully designed to cause the maximum psychological stress in detainees, as the delegation witnessed in recently released prisoners. Women continue to be the subject of especially degrading treatment, intimidation and harassment. Turkey did not execute Abdullah Öcalan, but he is denied legal representation, and his conditions of detention violate international standards and flout the recommendations of authoritative international bodies. Finally, those lawyers who have the temerity to seek to represent him are summarily deprived of their ability to practice at all.

# Recommendations

### On Minority Rights

[1] The delegation is very concerned about the failure by Turkey to recognise or in any way acknowledge the existence of any minority on its territory or recognise any language other than Turkish. The delegation recommends that the Turkish government take immediate steps to ensure that all minority groups are afforded full respect and protection of their language, culture, expression and religion.

[2] The delegation calls on the Turkish government to sign and ratify both the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages and withdraw its reservation to Article 27 of the ICCPR.

### On torture and ill-treatment of detainees

The delegation recommends that the Turkish government:

[1] End the practice of torture and the impunity of those responsible.

[2] Implements the safeguards contained within national anti-torture legislation.

[3] Ratifies the Optional Protocol to the UN Convention Against Torture.

[4] Implements procedures found in the Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

### On the F-type prisons

[1] The delegation recognises that the F-type prisons are underpinned by the systematic use of isolation and notes the widely held position that such isolation in detention stands on its own as a human rights violation. The delegation therefore calls on the Turkish government to end the practice of isolation in all of the F-type prisons, as effected by Article 16 of the Anti-Terror Law.

[2] The delegation notes with serious concern, reports that the agreement that ended the hunger strikes in January 2007 is not being implemented. In view of the recent history of confrontation and violence that has accompanied disputes within Turkish prisons, we urgently recommend to the Turkish government that the agreement regarding association set out in circular 45/1 is implemented with immediate effect.

[3] The delegation recommends an end to the practice of small-group isolation and solitary confinement in other prisons in Turkey and further recommends that all prisoners, in F-type and other prisons, should be allowed to spend at least eight hours of the day taking part in communal activities outside their living units.

[4] The delegation recommends that the right of association between prisoners should be removed from systems of reward and punishment existing in F-type prisons, such right being a matter integral to the question of the securing and preserving of prisoners' human rights.

[5] In view of the CPT's previous visit conducted in December 2005, the delegation further calls upon the CPT to revisit Turkey and prepare a report that focuses on the question of isolation that is particular to the F-type prisons. In view of the delegation's finding of the ongoing dispute relating to degree of association afforded to prisoners, the CPT's attention is particularly drawn to its own previous findings and it is asked to investigate this matter with immediate effect.

[6] In view of its obligations under Article 6 of the ECHR, the delegation recommends that the Turkish government undertakes a review of the practical arrangements regarding access and confidentiality afforded to prisoners and their lawyers who attend the F-type prisons.

### On Women and detention

The delegation notes Turkey's poor record in respect of women in detention over many years. It commends the Turkish government on the improvements made, but urges the Turkish government to:

[1] Do more to practically implement the rights and protections contained within the ECHR, CEDAW and its Optional Protocol, the Beijing Platform for Action and Security Council Resolution 1325.

[2] End the culture of impunity for those responsible for rape and sexual violence, and recommends that the Turkish government effectively investigate and prosecute all those responsible.

[3] Recognise that forcibly subjecting female detainees to 'virginity tests' is a form of gender based violence constituting torture or cruel, inhuman or degrading treatment. The delegation recommends that mechanisms are put in place forthwith to ensure that such practices will not be tolerated.

[4] Improve access to medical attention and reliable medical evidence for victims of sexual torture.

### On Abdullah Öcalan's conditions of detention

The delegation recommends to the Turkish government:

[1] That Abdullah Öcalan be moved to a prison facility where he is able to have contact with other prisoners.

[2] That the Turkish government immediately undertake to ensure that family visits take place.

[3] That the Turkish government immediately implement the recommendations made by the CPT report of 6th March 2008.

### The delegation recommends to the Committee for the Prevention of Torture and Inhuman or Degrading Treatment:

[1] That it instigates the procedure under Article 10 (2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment in respect of family visits.[55]

### On interference with the right to legally qualified defence

[1] The delegation notes the use of Article 151 of the Criminal Procedural Code to remove lawyers from cases. In particular the delegation notes that this has been used against 12 of Öcalan's lawyers. The delegation therefore recommends that this draconian and unjust provision be removed and/or reviewed by the Constitutional Court.

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55. Article 10(2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1997: "If the Party fails to co operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two thirds of its members to make a public statement on the matter."

## NOTES


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# Haldane Society of Socialist Lawyers

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The Haldane Society of Socialist Lawyers with colleagues from Finland and Norway sent a delegation to investigate whether Turkey is implementing its commitments on prison reform and conditions of detention, in February 2008. The delegation met authoritative non-governmental organisations, representatives of the main political parties, practising lawyers, former prisoners and families of prisoners.

Turkey has now undertaken obligations both under the Council of Europe's European Convention for the Prevention of Torture (ECPT), and under the Copenhagen Criteria (the conditions for its joining the European Union). However, a summary of Turkey's recent history in a report published in 2007 by Amnesty International, demonstrated that compliance with those undertakings will require fundamental changes in law and practice.

The lawyers' delegation in 2008 reports on Turkey's continuing failure to comply with international human rights law, in particular its failure to respect minority rights for the Kurds, and reports of torture and inhuman and degrading treatment in Turkey's prisons, with women being subject to particularly harsh treatment. Turkey maintains high-security F-type prisons, where prisoners are kept isolated from each other in conditions designed to produce "psychological stress".

The delegation met lawyers and family members of Kurdish leader Abdullah Öcalan, held in solitary confinement on Imrali Island, in the Sea of Marmara. Öcalan's rights to visits from his family are not respected, his lawyers are monitored and subjected to harassment.

The delegation concludes that Turkey's ratification of international instruments, its desire to achieve accession to the European Union, and the appearance of reform, are all consistently undermined by actual practice. It recommends 29 practical steps by which Turkey could achieve compliance with international law.

# CONDITIONS OF DETENTION IN TURKEY: BLOCKING ADMISSION TO THE EU

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