

Response to the Committee of Ministers Resolution of 18 September 2008, on the Execution of ECtHR Judgements in Relation to Turkish Security Forces

KHRP Public Statement

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KHRP welcomes the 18 September decision by the Council of Europe (CoE) Committee of Ministers to continue its investigations into Turkey's human rights practices in relation to the need to establish accountability of members of the security forces and to ensure that reform measures have a practical impact.¹ More disappointing, however, was the Committee's choice to end investigations in five other areas of concern, many of which remain extremely problematic.

The Committee, which is made up of representatives of CoE member states and is responsible for supervising the execution of the findings of the European Court of Human Rights (ECtHR), considered 175 ECtHR judgements and decisions in relation to this latest resolution. Of these, 65 stemmed from cases in which KHRP has provided legal assistance.

In relation to the need to ensure accountability of members of the security forces, the Committee noted that steps taken by Turkey in 2003 to remove the precondition for administrative authorisation prior to investigation of such officials applied only in cases where they are specifically accused of torture or ill-treatment. Although the Committee acknowledged evidence that security forces members had been investigated in relation to other serious crimes without any need for administrative authorisation, it pointed out that the relevant legislation does not explicitly allow for this. KHRP supports the Committee's call for the Turkish authorities to make it clear from a legislative point of view that members of the security forces can be prosecuted for any serious crimes without the need for prior administrative authorisation.

With regard to the need to ensure that steps taken to improve the human rights situation in Turkey have a concrete effect on the ground, the Committee noted that statistics provided by the Turkish authorities concerning investigations, convictions and acquittals of members of the security forces in recent years relate only to those officials who were accused specifically of torture and ill-treatment.

¹ Interim Resolution CM/ResDH(2008)69, "Execution of the judgements of the European Court of Human Rights: Actions of the security forces in Turkey: Progress achieved and outstanding issues", available at <https://wcd.coe.int/ViewDoc.jsp?id=1344121&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75> (last accessed 2 October 2008).

It urged Turkey to provide detailed statistics relating to other serious offences allegedly committed by security officials.

Also in relation to the need to ensure that human rights reforms have a practical impact, the Committee further strongly encouraged the Turkish authorities to actively pursue their self-professed policy of 'zero tolerance' towards torture and other forms of ill-treatment. In this regard, KHRP wishes to underline the fact that this policy is still a long way from being universally implemented. Responding to a question in parliament recently, Turkish Justice Minister Mehmet Ali Şahin stated that in the course of 2006 and 2007 alone complaints were filed in relation to 4,719 individuals alleged to have suffered torture or excessive use of force. According to the information supplied by Şahin, a total of 9,716 police officers, 616 gendarmerie officials and 554 other officials were implicated in such offences. Of these, just 1,423 apparently faced criminal charges. Rather than a clear reduction in the practice of torture, in the context of the 'zero tolerance' policy KHRP has instead witnessed a shift to more subtle forms of ill-treatment that leave few long-term physical traces, as well as an increase in incidences of ill-treatment outside official detention centres.

Whilst the Committee's commitment to continuing its examination of Turkey's efforts in relation to the above issues is to be welcomed, KHRP was disappointed by the decision to end investigations in relation to five other areas of concern: procedural safeguards in police custody; professional training of members of the security forces; implementation of the 'Law on Compensation of the Losses Resulting from Terrorism and from Measures Taken Against Terrorism'; giving direct effect to the requirements of the European Convention on Human Rights; and training of judges and prosecutors. Of these five issues, the first three remain particularly problematic.

In relation to the need to improve procedural safeguards in police custody, the official statistics given above concerning allegations of torture and excessive use of force in 2006 and 2007 help to show that the measures in place to prevent such abuses are clearly not being effectively implemented. This state of affairs is further evidence by the number of allegations of torture recorded by human rights organisations. In 2007, 687 cases of alleged torture were reportedly registered by the Human Rights Association (İHD), 163 by the Organisation of Human Rights and Solidarity with the Oppressed People (MAZLUMDER), and 452 to the Human Rights Foundation of Turkey (TİHV).

In recent years, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has noted outstanding problems in a number of specific areas relating to procedural safeguards in custody, including implementation of legislation concerning the right to access to

a lawyer and the quality of medical examinations of detainees. Following a visit to Turkey in May 2007 the CPT raised particular concerns about the solitary detention conditions of high-profile prisoner Abdullah Öcalan, noting that his access to family and lawyers remained very irregular, that a court official had been present during his meetings with lawyers, and that there had been a distinct deterioration in his mental state. The CPT stated that there can be no justification for keeping a prisoner in such conditions for so many years.

KHRP is further concerned by the increasing use of anti-terror laws to erode custodial safeguards in Turkey. Problematic aspects of Turkish anti-terror legislation in this respect include provisions that allow for restrictions on the right of detainees to legal assistance, interference in their privileged communications with their lawyer, and limitations on access to family members. This legislation has contributed to the emergence of a two-tier legal system in which any improvements in custodial protections are limited to those detained in connection with 'regular' offences.²

The statistics concerning cases of torture mentioned earlier in this statement also point to the fact that the benefits of professional human rights training for members of the security forces are yet to become apparent. This is further illustrated by frequent instances of excessive use of force by officials in the course of efforts to break up demonstrations and conduct searches. In March 2008, the Turkish authorities used extreme force during unrest connected with the violent suppression of traditional Newroz celebrations, with videos and photographs circulated in the media of riot police baton-charging unarmed civilians, many of whom were elderly. Two months later, May Day celebrations in İstanbul were repressed by police using pressurised water, tear gas and batons. Police officers allegedly attacked Cumhuriyet reporters Esra Açıkgöz and Ali Deniz Uslu, with the latter suffering a broken arm. The Bahçelievler District Governorship subsequently denied permission for the accused officers to face trial. In a further example of excessive use of force, on 14 August İHD member Hüseyin Beyaz suffered a broken arm during a police search of a building in Adana Province associated with the pro-Kurdish Democratic Society Party.

Though the Committee welcomed amendments introduced in June 2007 to Turkish laws governing the duties and legal powers of police, it should be noted that human rights organisations remain critical of the amended legislation. Several human rights organisations in Turkey have said that provisions in the law governing the use of armed force in cases where suspects are judged to have

² For more information about the erosion of custodial safeguards under Turkish anti-terror legislation, see KHRP Briefing Paper, *Turkey's Anti-Terror Laws: Threatening the Protection of Human Rights*, (KHRP, London, 2008), available at www.khrp.org

displayed resistance are open to misinterpretation by police officers and have been to blame for several fatal incidents.

In relation to the Committee's decision to end its investigations concerning implementation of the 'Law on Compensation of the Losses Resulting from Terrorism and from the Measures Taken Against Terrorism' (Law No. 5233), it is KHRP's assessment that both this legislation and official efforts to put it into practice remain deeply unsatisfactory. There is broad consensus on this point amongst civil society groups, human rights organisations and bar associations in Turkey, despite the fact that the ECtHR ruled in 2006 that the law provides an effective mechanism for redress.

Given the scale of displacement and destruction of property that has occurred as a result of the conflict between state security forces and the Kurdistan Workers' Party (PKK) in south-eastern Turkey, the establishment of an effective compensation mechanism is clearly crucial. To date, however, fewer than ten per cent of applicants have received compensation under Law No. 5233. The legislation is subject to a number of exclusions which fail to take into account the complex and intertwined factors surrounding the conflict, including where IDPs have already received some minimal compensation or where they are judged to have left their homes 'voluntarily'. The law also provides that IDPs are to receive less pecuniary compensation than state officials who have suffered damages in the course of the conflict. A series of further problems with the legislation and its implementation that have been noted by KHRP include: gender-based discrimination inherent in the composition of the compensation commissions, in the amounts awarded to female and male applicants and in the number of cases accepted on behalf of male and female applicants; unrealistic demands for documentary evidence to back up compensation claims; exclusion of non-pecuniary damages such as post-traumatic stress; delays in processing claims; inadequate mechanisms for appeal; a lack of legal assistance for applicants; arbitrary calculations and reductions in awards; and a systematic conflict of interest stemming from the fact that the Interior Ministry, which was responsible for the security forces who inflicted much of the damage in question, is now charged with payment of compensation.

The Committee noted assurances given by the Turkish authorities on the availability of a range of remedies for situations that fall outside the remit of the compensation law, including the administrative court system in particular. In light of the entrenched problems seen with the compensation system to date, however, it is KHRP's view that there is an ongoing need for the Committee to continue its examination of all such mechanisms. Problems observed in relation to the administrative courts in particular which create an effective bar to redress

for many victims have included prohibitive court fees and a lack of legal aid for applicants.

In conclusion, despite limited progress in some areas, Turkey has a long way to go in improving its human rights practices in line with judgements handed down by the ECtHR. In this context, the decision of the Committee to close most of its avenues of examination is disappointingly premature. Looking to the future, KHRP calls upon the Committee to continue its examinations of Turkey's human rights practices with vigour. The efforts of the Committee in this regard will become even more crucial in light of recent cross-border operations by Turkish forces into Kurdistan, Iraq, which have had severe implications for the human rights situation in the region. This year alone, KHRP has begun work on behalf of 76 new applicants before the ECtHR who were injured, lost property or family members or otherwise suffered as a direct result of such operations. It is of utmost importance that Turkey should be held accountable for putting into practice the future findings of the ECtHR in relation to such cases.