

THE DEATH OF ENGIN ÇEBER: PROSECUTING TORTURE AND ILL-TREATMENT WITHIN THE TURKISH DETENTION SYSTEM

TRIAL OBSERVATION REPORT

June 2009

By Mark Himsworth



THE DEATH OF ENGİN ÇEBER: PROSECUTING
TORTURE AND ILL-TREATMENT WITHIN THE
TURKISH DETENTION SYSTEM

TRIAL OBSERVATION REPORT

BY MARK HIMSWORTH

JUNE 2009

KURDISH HUMAN RIGHTS PROJECT
BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

ACKNOWLEDGEMENTS

This report was written on behalf of the Kurdish Human Rights Project by Mark Himsworth, KHRP Legal Team member. It was edited by Michael Farquhar, Mustafa Gündoğdu and Rachel Bernu, with the invaluable assistance of Saniye Karakaş, Saadiya Chaudary, Matt Malone, Noga Kogman and Cerid Lugar.

The author would like to extend his thanks to Abdulcelil Kaya for his invaluable translation and interpreting assistance throughout the mission.

The author would also like to express his appreciation to the following groups and individuals for their time, cooperation and assistance to the fact-finding mission:

Hürriyet Şener, Member of Executive Board of *Türkiye İnsan Hakları Vakfı* (Human Rights Foundation of Turkey, TİHV); complainants Özgür Karakaya, Aysu Baykal and Cihan Gün; Ali Tekin, father of Engin Çeber and a complainant in the case; Taylan Tanay, Naciye Demir, Oya Aslan, complainants' lawyers and members of *Çağdaş Avukatlar Derneği* (Contemporary Lawyers' Association, ÇHD); Hakan Gündüz, President of *Toplum ve Hukuk Araştırmaları Vakfı* (Foundation for Legal and Social Studies, TOHAV); Dr Ali Küçük, Dr Veysi Ülgen, Dr Canel Bingöl and Dr Nevin Küçükali of the Turkish Medical Association Human Rights Commission.

Finally KHRP gratefully acknowledges the financial support of:

The Big Lottery Fund (UK), Irish Aid (Ireland), The Sigrid Rausing Trust (UK), The Corner House (UK), Dutch Ministry of Foreign Affairs (Netherlands), UN Voluntary Fund for Victims of Torture (Switzerland), Bishop's Subcommission for Misereor (Germany), Stichting Cizira Botan (Netherlands).

Layout & Design: Torske & Sterling Legal Marketing www.torske.co.uk

Keywords: Arbitrary arrest and detention, detention, human rights, inhuman treatment, prisons, trial observations, torture, Turkey.

Printed in Great Britain

June 2009

Published by KHRP (London)

ISBN 978-1-905592-24-1

All rights reserved

Kurdish Human Rights Project



Established 1992

Kurdish Human Rights Project

11 Guilford Street

London

WC1N 1DH, UK

Tel: +44 (0) 207 405-3835

Fax: +44 (0) 207 404-9088

khrp@khrp.org

www.khrp.org

The Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.



Bar Human Rights Committee of England and Wales

Garden Court Chambers

57-60 Lincoln's Inn Fields

London, WC2A 3LS, UK

Tel: +44 (0) 7993 7755

Fax: +44 (0) 207993 7700

bhrc@compuserve.com

www.barhumanrights.org.uk

The Bar Human Rights Committee is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards relating to the right to a fair trial. The remit of the BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales.

CONTENTS

LIST OF ABBREVIATIONS	9
INTRODUCTION	11
I. TORTURE AND ILL-TREATMENT IN TURKEY: INTERNATIONAL AND DOMESTIC LEGAL FRAMEWORK	15
1. International Legal Obligations	15
a. Universal Declaration on Human Rights	15
b. European Convention on Human Rights	15
c. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	16
d. International Covenant on Civil and Political Rights	17
e. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	17
f. Optional Protocol to the Convention against Torture	18
g. Other documents and mechanisms	19
2. Domestic Legal Framework	20
II. BACKGROUND TO THE CASE	23
III. THE TRIAL	27
1. The Defendants and the Charges	27
2. The Trial Process	29
IV. SPECIFIC ISSUES ARISING FROM THE CASE	35
1. Impunity within the Detention System	35
2. Role of Medical Staff in Cases of Alleged Torture and Ill-Treatment	38

3. Prevalence and Concealment of Torture and Ill-Treatment	41
4. Significance of the Official Apology and Trial Process	44
CONCLUSION	47
RECOMMENDATIONS	49
APPENDIX 1: INDICTMENT	51
APPENDIX 2: RELEVANT ARTICLES OF THE TURKISH PENAL CODE	81

LIST OF ABBREVIATIONS

AKP	<i>Adalet ve Kalkınma Partisi</i> (Justice and Development Party)
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CHP	<i>Cumhuriyet Halk Partisi</i> (Republican People's Party)
CPT	Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
KHRP	Kurdish Human Rights Project
OPCAT	Optional Protocol to the Convention against Torture
PHRC	Parliamentary Human Rights Commission
PKK	<i>Partiya Karkeren Kurdistan</i> (Kurdistan Workers' Party)
TİHV	<i>Türkiye İnsan Hakları Vakfı</i> (Human Rights Foundation of Turkey)
TOHAV	<i>Toplum ve Hukuk Araştırmaları Vakfı</i> (Foundation for Legal and Social Studies)
TTB	Turkish Doctors' Union
UDHR	Universal Declaration on Human Rights

INTRODUCTION

'In my opinion, the state was caught red-handed. They couldn't deny it.'

Ali Tekin, father of Engin Çeber

Between 2 and 4 March 2009 the Kurdish Human Rights Project (KHRP) dispatched a mission to Istanbul to observe the fourth day of the criminal trial of 60 defendants charged in connection with the case of Engin Çeber, a political activist who is alleged to have suffered a brain haemorrhage and died as a result of being severely beaten in custody in October 2008.

The Turkish security forces have a longstanding and well-documented history of ill-treating and torturing individuals detained in their custody. Such abuses reached their height in the 1990s, in the context of the protracted armed conflict between the state and the *Partiya Karkeren Kurdistan* (Kurdistan Workers' Party, PKK) in the Kurdish region of the country. In recent years, however, violations of this kind have continued to be reported across the length and breadth of the country by national and international human rights NGOs.

This situation has led to a large number of cases, including many filed with assistance from KHRP, in which the European Court of Human Rights has found Turkey in violation of Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment. The *Türkiye İnsan Hakları Vakfı* (Human Rights Foundation of Turkey, TİHV) reports that in the last six years such rulings have climbed steadily, from one finding of torture and eight findings of inhuman and degrading treatment in 2003 through to three findings of torture and 30 findings of inhuman and degrading treatment in 2008.¹ Despite such rulings, Turkey has generally failed to implement the Court's judgments effectively.

In the context of Turkey's progression towards European Union accession, however, the ruling *Adalet ve Kalkınma Partisi* (Justice and Development Party, AKP) has been keen to demonstrate to the EU and the wider international community

1 TİHV, *An Evaluation of the ECHR Case Law on the Prohibition of Torture*, 12 March 2009. It should be noted that there is generally a long time lag between these cases and the instances of alleged abuse that they relate to.

its commitment to internal reform and has declared a ‘zero tolerance’ policy with regard to torture. Against this background, the Turkish authorities appear to be hoping that in their response to the Engin Çeber case they may go some way to convincing the international community of their commitment to this rhetoric and determination to increase transparency in the detention system and accountability of members of the security forces. Just days after Mr Çeber’s death, the then Turkish Justice Minister Mehmet Ali Şahin took the remarkable step of appearing to acknowledge wrongdoing on the part of the security forces by issuing a formal apology to his family. The case is also marked out by the unprecedented number of suspects who have been brought before the courts accused of carrying out or facilitating the alleged abuses in question.

The KHRP mission was tasked with assessing the place of this trial in the context of recent developments in human rights practices in Turkey and the country’s compliance with its national and international legal obligations to prevent torture and inhuman or degrading treatment or punishment. In addition to observing part of the trial proceedings, the mission also interviewed local civil society and human rights organisations and met with a range of actors in the case, including lawyers, relatives of Mr Çeber, and individuals who were detained with him at the time of his death and who are now involved in the legal proceedings as complainants.

The mission found that there is cause for very considerable doubt over whether the case marks or even predicts a significant improvement in the treatment of those detained at the hands of the Turkish state. While this case may have set a significant precedent in the number of defendants charged, there is a very real question over whether it constitutes a ‘watershed moment’ or illustrates fundamental shifts in state policy towards detainees. In reality, given Mr Çeber’s relatively high profile as a political activist and the seemingly clear-cut circumstances of his death, it appears more likely that the authorities were left with little choice but to make an example of his case. In fact, the mission heard of many other allegations of similar abuses in Turkey receiving no such response, with countless instances of torture and ill-treatment in custody never being seriously investigated or punished.

This report begins by outlining Turkey’s obligations in relation to torture and ill-treatment under international and domestic legislation. The next section elaborates on the circumstances surrounding the case, including the events that led to Mr Çeber’s death. Subsequent sections explore the trial process and issues that arise from it, including questions about the impunity of officials, the role of medical staff in relation to cases of alleged torture and ill-treatment, and the extent to which such abuses within the Turkish detention system are successfully covered up. At this point, the report also tackles the question of whether or not the trial at hand represents a turning point in official attitudes and practices in relation to torture and ill-treatment. The report concludes with recommendations to the Turkish authorities

and the European Union for improving protection of detainees' rights, increasing transparency and accountability in the detention system, and helping to end torture and other forms of ill-treatment of detainees.

I. TORTURE AND ILL-TREATMENT IN TURKEY: INTERNATIONAL AND DOMESTIC LEGAL FRAMEWORK

1. International Legal Obligations

Turkey is obliged under international law to take effective measures to prevent torture and ill-treatment of individuals held in custody, and its adherence to international standards in this regard represents a key step in the country's progress towards EU accession. The remainder of this section explores some of the key international documents relevant to Turkey's obligations in relation to torture and ill-treatment.

a. Universal Declaration on Human Rights

Article 5 of the Universal Declaration on Human Rights (UDHR), which was adopted by the UN General Assembly in 1948 and forms the foundation of contemporary international human rights law, clearly states that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

b. European Convention on Human Rights

Turkey ratified the European Convention on Human Rights (ECHR) with certain reservations on 18 May 1954. Article 3 of the ECHR (Prohibition of Torture) echoes the wording of the UDHR, stating that:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The case *Ireland v. UK* set key precedents for analysing a case under Article 3 of the ECHR,² including a ruling that for an act to qualify as torture it must constitute 'deliberate inhuman treatment causing very serious and cruel suffering'. Generally, a purposive element, such as the seeking of information, infliction of punishment

² ECtHR, Appl. No 5310/71, *Ireland v. United Kingdom*, judgment of 18 January 1978, para 167.

or intimidation, is required for a finding of torture within the European Court of Human Rights (ECtHR) framework.

Inhuman treatment under Article 3 has been found to include acts which cause ‘intense physical or mental suffering’, while degrading treatment includes ‘treatment that arouse feelings of fear, anguish and inferiority capable of humiliation and debasement and possible breaking of physical or moral resistance.’ When evaluating acts in this regard, the Court may consider the motive underlying them and the question of whether the acts were intended to bring about such effects. The ECtHR has consistently found that physical force against detainees in principle constitutes ill-treatment in violation of Article 3, except where it is made necessary as a result of the detainee’s conduct.³ ECtHR case law has also established that the minimum level of severity necessary for an act to violate Article 3 depends on the circumstances of the case, including factors such as the duration of the act, its physical and/or mental effects, and sometimes the sex, age and health of the victim.⁴

The right to freedom from torture or ill-treatment is non-derogable, and it is incumbent on Turkey to carry out effective investigations into alleged acts of torture carried out by state agents, to bring to justice those responsible and to provide adequate redress for victims.

c. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The European Convention for the Prevention of Torture, which came into force in 1987 and was ratified by Turkey in 1988, provided for the establishment of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).⁵ The role of the CPT includes travelling to the countries bound by the Convention and visiting places where persons are deprived of their liberty by a public authority, both on a periodic basis and in circumstances where there is a particular call for this to happen.⁶ The CPT is charged with drawing up a report and communicating its findings, including any necessary recommendations, to the State Party in question. In cases where the State Party fails to cooperate or act on the recommendations of the CPT, the latter may decide to make a public statement on the matter.⁷

3 ECtHR, *Ribitsch v. Austria*, Application No. 18896/91, judgment of 4 December 1995.

4 Yildiz, Kerim and Frederick Piggot, *An Ongoing Practice: Torture in Turkey*, (KHRP, London, August 2007), p. 126. Particularly significant in this regard was the KHRP-assisted case of *Aydin v. Turkey* [23178/94, 25/09/1997 (57/1996/676/866)].

5 European Convention for the Prevention of Torture, Article 1.

6 European Convention for the Prevention of Torture, Articles 2 and 7.

7 European Convention for the Prevention of Torture, Article 10.

The CPT last conducted a periodic visit to Turkey in 2004 and at the time of writing is due to conduct another visit in 2009.⁸ The CPT has also conducted visits to Turkey in the interim to investigate issues such as individual confinement of certain categories of prisoners in F-type (high security) prisons and the controversial treatment of Abdullah Öcalan, the founder of the *Partiya Karkeren Kurdistan* (Kurdistan Workers' Party, PKK) who has been held in solitary confinement since his capture in 1999.

d. International Covenant on Civil and Political Rights

Turkey ratified the International Covenant on Civil and Political Rights (ICCPR), with a reservation to Article 27 governing minority rights, in 2003.⁹ Article 7 of the ICCPR (No Punishment Without Law) states that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 10 (General Comments on its Implementation) includes a clause stating that:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

e. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Turkey ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 2 August 1988, with a reservation opting out of a clause allowing for disputes between State Parties concerning the interpretation or application of the Convention to be referred to arbitration and then to the International Court of Justice.

Article 1 of CAT defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a

8 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'Council of Europe Anti-Torture Committee: Visits in 2009,' available at <http://www.cpt.coe.int/en/visits/2008-11-25-eng.htm> (last accessed 22 May 2009).

9 For details of Turkey's standing in relation to the various UN treaties, including reservations made upon ratification, see 'United Nations Treaty Collection', at <http://www2.ohchr.org/english/bodies/ratification/index.htm> (last accessed 22 May 2009).

third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The same article excludes from the definition of torture ‘pain or suffering arising only from, inherent in or incidental to lawful sanctions’.

CAT goes on to stipulate that each State Party is obliged to take ‘effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction’. It explicitly rules out any scope for justifying torture on the grounds of ‘exceptional circumstances’ such as war, political instability or any other public emergency. It also specifically notes that an order from a superior officer or a public authority cannot be invoked as a justification of torture.¹⁰

According to the terms of CAT, State Parties are also obliged to ensure that all acts of torture, attempts to commit torture and complicity or participation in torture are offences under domestic criminal law, ‘punishable with appropriate penalties which take into account their grave nature’.¹¹

f. Optional Protocol to the Convention against Torture

The Optional Protocol to the Convention against Torture (OPCAT) was adopted by the UN in December 2002, was opened for signature in February 2003 and came into force in June 2006. Like the European Convention for the Prevention of Torture, its objective is to establish a system of regular visits by independent international and national bodies to places where individuals are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.¹² However, while the European Convention for the Prevention of Torture is geared towards member states of the Council of Europe, OPCAT is open to any state that has signed CAT. Turkey signed OPCAT in September 2005 but has so far failed to ratify this important instrument.

10 CAT Article 2.

11 CAT Article 4.

12 See OPCAT, Articles 1 and 3.

g. Other documents and mechanisms

In addition to the conventions and protocols outlined above, there are also a number of other UN documents which, while they are not legally binding, set out internationally accepted guidelines relevant to the prevention of torture and ill-treatment.

Chief amongst these are the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol), which was submitted to the UN High Commissioner for Human Rights on 9 August 1999. Turkish medical professionals were involved in the Protocol's inception in response to shortcomings in the investigation of torture in Turkey.

The Istanbul Protocol sets out a framework for medical and legal experts for:

the documentation and recording of evidence of torture and ill-treatment, aiming at; clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families; identification of measures needed to prevent recurrence; facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.¹³

Other documents which set out internationally accepted guidelines relating to treatment in custody include: the UN Standard Minimum Rules for the Treatment of Prisoners,¹⁴ which was adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955 and was subsequently approved by the Economic and Social Council; and the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by the UN General Assembly in 1985.¹⁵

13 Yıldız and Piggott, fn. 4 above, p. 144. The protocol is available at <http://www2.ohchr.org/english/law/investigation.htm> (last accessed 28 May 2009).

14 Office of the United Nations High Commissioner for Human Rights, 'United Nations Standard Minimum Rules for the Treatment of Prisoners,' available at <http://www2.ohchr.org/english/law/treatmentprisoners.htm> (last accessed 28 May 2009).

15 Office of the United Nations High Commissioner for Human Rights, 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice,' available at <http://www2.ohchr.org/english/law/beijingrules.htm> (last accessed 29 May 2009).

It is also worth noting that in March 2001, Ankara extended a standing invitation to UN Special Rapporteurs to visit Turkey.¹⁶ By extending a standing invitation, a State commits to always accept requests to visit from all Special Rapporteurs.

2. Domestic Legal Framework

As mentioned earlier in this report, the current *Adalet ve Kalkınma Partisi* (Justice and Development Party, AKP) government declared a ‘zero tolerance’ policy on torture following its election in 2002. Since that time, there have been some improvements in relation to legislation and the practices of the authorities in this regard.

In a significant step forward in 2005, a new Penal Code (Law No. 5237) and Criminal Procedure Code (Law No. 5271) were introduced which consolidated a series of reforms that had been developed since 2002 in relation to prosecutions of public officials for torture and other forms of ill-treatment of individuals held in custody. This included introducing definitions of such crimes that are more in line with international standards.¹⁷

Article 94 (Torture) of the current Penal Code covers any act by a public officer towards a person which is:

incompatible with human dignity, and which causes that person to suffer physically or mentally, or affects the person’s capacity to perceive or his ability to act of his own will or insults them

This definition is expanded upon in an official commentary to the Penal Code, which speaks of torture as:

an act that gives physical or psychological pain to a person, or a third person, with the consent or permission of a public servant for the purpose of punishment for an offence committed or thought to have been committed by this person or a third person, or for the extraction of information or a confession, or for any discriminatory reason¹⁸

Under Article 94 of the Penal Code, torture is punishable with three to 12 years in jail, or up to 15 years in jail where the offence is committed against a child, a pregnant woman, or persons who are physically or mentally incapable of defending

¹⁶ Office of the United Nations High Commissioner for Human Rights, ‘Standing Invitations’, available at <http://www2.ohchr.org/english/bodies/chr/special/invitations.htm#turkey> (last accessed 22 May 1009).

¹⁷ Stewart QC, Nicholas and Walter Jayawardene, *Closed Ranks: Transparency and Accountability in Turkey’s Prison System*, (KHRP, London, April 2009), p. 20.

¹⁸ It is worth noting that the wording here is very close to that used in Article 1 of CAT.

themselves. A sentence of up to 15 years is also available where the abuses in question are committed against a public officer or lawyer specifically because of their performance of their duty. The available sentence is also increased to 15 years in cases where the act ‘is conducted in the manner of sexual harassment.’¹⁹

Article 95 of the Penal Code covers the offence of Aggravated Torture on Account of its Consequences. This article provides for various increases in available sentences depending on the effects of the torture in question, including in cases where it endangers a person’s life or results in permanent impairment of an organ, permanent disfigurement or an incurable illness. Where the torture causes the victim’s death, this article provides for a punishment of ‘aggravated life imprisonment’, meaning imprisonment for the entire remainder of the convict’s life.

The Turkish Penal Code also includes provisions under Article 96 for an offence referred to as ‘Torment’, which covers acts that are incompatible with human dignity, or which cause physical or mental pain or humiliation but which do not amount to torture. This offence is punishable with two to five years in jail, or up to eight years where the victim is a child, a pregnant women, a person who is physically or mentally incapable of defending himself, or is closely related to the perpetrator, such as being his or her spouse.

In late 2008, in response to the Çeber case, Turkey’s main opposition party, the *Cumhuriyet Halk Partisi* (Republican People’s Party, CHP), proposed legislative amendments to ensure that jail time cannot be replaced with a fine or a suspended sentence in cases where an individual is convicted of torture, aggravated torture or ‘torment’. However, at the time of writing this proposal has not entered into law.

In addition to the new Penal Code, there have also been positive procedural reforms in recent years. Under Article 150 of the current Criminal Procedure Code, for example, detainees have the right to immediate access to legal counsel and most detainees may request legal aid provided by bar associations.²⁰ Other improvements have included removing legal barriers to opening torture cases against state officials such as members of the security forces, allowing complainants to take part in court proceedings, introducing judicial review of decisions not to go ahead with prosecutions for torture and improving procedures for medical examinations.²¹ Steps have also been taken to improve the monitoring framework within detention centres, including the appointment of judges to review complaints by prisoners and the es-

19 For the full text of this and other relevant articles of the Turkish Penal Code, see Appendix 2.

20 Human Rights Watch, *Closing Ranks Against Accountability: Barriers to Tackling Police Violence in Turkey* (December 2008), p. 18.

21 Stewart and Jayawardene, fn. 17 above, p. 21.

establishment of prison monitoring boards and provincial and sub-provincial human rights boards.²²

In spite of positive developments such as these however, serious concerns remain in relation to the current legislative framework in Turkey. For example, the Chair of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe has called for relevant legislation to be amended to remove any ambiguity about the fact that administrative authorisation is no longer required for prosecutions of officials for torture, ill-treatment and other serious crimes, and to ensure that members of the security forces of all ranks can be prosecuted without the necessity for such prior permission.²³

Advances of the kinds outlined above have also been undermined by amendments to the Law on the Fight Against Terrorism (Law No. 3713) which were brought in by Law No. 5532 in June 2006. The amended legislation effectively introduces a two-tier system, reducing procedural safeguards for detainees who are suspected of terrorist offences and exposing them to a greater risk of torture and ill-treatment. This includes allowing for a judge to delay their access to legal counsel for the first 24 hours of detention and restricting their access to family members.²⁴

22 *Ibid.*, pp. 21, 24 and 25-28.

23 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), *Information Note on the Fact-Finding Visit to Turkey by the Chair of the Committee (24-26 November 2008)* (7 April 2009), para. 71. Available at http://assembly.coe.int/CommitteeDocs/2009/20090407_amondoc10rev_2009.pdf (last accessed 26 May 2009).

24 KHRP Briefing Paper, *Turkey's Anti-Terror Laws: Threatening the Protection of Human Rights* (KHRP, London, August 2008), pp. 8-10.

II. BACKGROUND TO THE CASE

Engin Çeber was 29 years old at the time of his death. His family, who are Alevi Kurds, moved from Bingöl to Istanbul in 1965, which is where he was subsequently born and raised. His father, Ali Tekin, recalls that Engin was largely politically inactive until after he had completed his military service, which included postings to Erzincan and Ağrı in the east of the country in 2001. He became increasingly political from 2002 and was first detained in 2004, apparently for his political activities. This event marked the start of what was to become a continuing cycle of arrests and detentions. In 2005, he changed his surname by deed poll to 'Çeber' to avoid increasing harassment of his family.²⁵

Engin Çeber's final arrest took place at a gathering that he had organised – along with three of the complainants in the current trial proceedings, Mr Özgür Karakaya, Mr Cihan Gün and Ms Aysu Baykal, and other members of the left-wing political group the Rights and Freedoms Association – in the Sarıyer district in northern Istanbul on 28 September 2008. There has been some disagreement concerning the exact nature of the gathering, with the complainants describing it as a press conference while the authorities have referred to it as a public meeting. The aim of the event was to call for police officers to be promptly brought to justice for the allegedly deliberate shooting of a 19-year-old political activist, Ferhat Gerçek, by police the previous October.

Ferhat Gerçek and other political activists had been selling copies of a legally-operated left-wing magazine on 7 October 2007 when they were stopped by police who ultimately opened fire with live rounds. Mr Gerçek was permanently paralysed when a bullet hit him in the back. An investigation into his shooting resulted in seven police officers being charged with criminal offences, but the indictment alleges that the shot which hit Mr Gerçek had ricocheted and was therefore not the result of a direct attempt to wound him. It has been alleged by Mr Gerçek's lawyer that no forensic examination of the scene took place, as would have been normal in the circumstances. It has also been alleged that a potentially crucial piece of evidence, the T-shirt that Mr Gerçek was wearing when he was shot, was subsequently 'lost' by police. Mr Gerçek was subsequently charged with breaching laws governing demonstrations, resisting public servants carrying out their duties, insulting a public servant and criminal damage. Two bystanders who offered assistance to Mr

25 FFM interview with Ali Tekin, father of Engin Çeber, Istanbul, 3 March 2009.

Gerçek were also prosecuted, as was a witness who was due to give evidence in his case.²⁶

Mr Gün and Mr Karakaya allege that they and Mr Çeber were tortured and otherwise ill-treated on the day of their arrest. They claim that at the Sariyer event itself, police officers surrounded them and beat them with batons, and that they later faced further abuse in detention at the Muhsin Bodur Police Station in İstinye. Ms Baykal says she was forced to watch the abuse.²⁷ The complainants report being punched, kicked and slapped indiscriminately across the whole length of their bodies, having their heads stepped on and their arms twisted whilst in handcuffs, and suffering kicks to the genitals. They further state that the ill-treatment and torture continued while they were returning from a visit to hospital for medical examinations.

According to what KHRP has learned, Mr Çeber and his fellow detainees were initially taken to the *İstinye Devlet Hastanesi* (İstinye State Hospital) on 28 September. However, at 1am that night, lawyers succeeded in getting them transferred to the *Şişli Etfal Eğitim ve Araştırma Hastanesi* (Şişli Etfal Education and Research Hospital). Four medical reports produced between 28 and 29 September give conflicting accounts of the physical state of Engin Çeber during that period. While one report states that there were no signs of violent abuse, another, which was drawn up just an hour later, describes various injuries and links these to possible ill-treatment. Such discrepancies raise several issues concerning the role of the medical profession in the penal process, which will be taken up in more detail later in this report.

On 29 September 2009 the Sariyer Penal Court ordered that Engin Çeber, Cihan Gün and Özgür Karakaya be transferred to Metris Prison in Istanbul, having been charged with resisting police officers. Ms Baykal, who was also accused of resisting police officers, remained in police custody for two days before being transferred to Bakırköy Women's Prison. On arrival at Metris, according to statements made by Mr Gün and Mr Karakaya to their lawyers during a visit on 9 October, all three men were asked to strip. KHRP understands that when they refused they are alleged to have been beaten about their bodies and their heads by a prison officer using a wooden truncheon. Later, when they refused to stand up while a roll call was taken, four or five prison guards allegedly assaulted them with a metal pitcher, an iron bar and a chair. On 1 October, they are alleged to have been doused with cold water before being beaten by approximately 15 prison guards with similar objects and

26 Amnesty International, 'Send a Message of Hope: Turkey: Ferhat Gerçek,' November 2008, available at http://www.amnesty.org.uk/uploads/documents/doc_18846.pdf (last accessed 16 July 2009).

27 FFM interview with complainants Özgür Karakaya, Cihan Gün and Aysu Baykal, Istanbul, 2 March 2009.

a wooden truncheon. This was again apparently because they refused to stand up during a roll call, saying that they were political prisoners and not criminals.

A letter purportedly written and signed by Mr Çeber on 6 October and addressed to the Sarıyer Prosecutor's Office was allegedly handed for safekeeping to a fellow inmate, who hid it in his shoe before passing it to Justice Ministry officials. In the letter, Mr Çeber is said to have written, 'The police officers who brought us in falsely told the soldiers and prison officials things like, "These people are terrorists and shot soldiers dead," inciting them against us. We were beaten by soldiers under the guise of body searches. We were also assaulted by prison guards during the morning roll calls. I have bruises and pain. We were never taken to the prison hospital.'²⁸

Mr Gün says that during their time in detention together, Mr Çeber told him that he had suffered physical assault and that he was very ill. It is alleged that throughout his incarceration at Metris prison Mr Çeber was not examined by a doctor, and that torture and ill-treatment went on unchecked until he was transferred first to Bayrampaşa State Hospital on 7 October and then to Şişli Etfal Hospital. He died at the latter hospital on 10 October. KHRP understands that the report on his autopsy describes injuries observed on his body and concludes that his death was due to cerebral bleeding as a result of blunt trauma consistent with blows to the head. The brain haemorrhage that caused his death was found to have occurred four to five days prior to 10 October.

It was just days later, on 14 October, that the then Justice Minister Mehmet Ali Şahin issued his unprecedented public apology to Mr Çeber's family.²⁹ He announced that an official inquiry into Mr Çeber's death had shown that he died as a result of 'ill treatment', announced that 19 public officials had at that time been suspended from duty and gave assurances that anyone found to be responsible would be punished.

'We are deeply saddened by this incident,' he said. 'I wish God's mercy upon him [Çeber] and I offer his relatives my condolences. I apologise to the relatives of [Çeber] on behalf of my government and the state. Those who are responsible will be punished. Our despair has increased endlessly because the incident happened in Istanbul, Turkey. Regardless of whoever is responsible we will go on until the end...

28 Hürriyet, 'Domestic Torture Decried in Voice from Grave', 3 March 2009, available at http://www.hurriyet.com.tr/english/domestic/11119441_p.asp (last accessed 26 June 2009).

29 BBC News, 'Turkey Apology Over Prison Death,' available at <http://news.bbc.co.uk/1/hi/world/europe/7670678.stm> (last accessed 3 April 2009).

I am pushing this ahead with a high sensitivity [sic] and following up on the matter minute by minute.³⁰

On 15 October, Cihan Gün and Özgür Karakaya were released from custody following a third application to the Sarıyer Penal Court by their lawyer Oya Aslan. On 22 and 23 October, a delegation of the Parliamentary Human Rights Commission (PHRC) investigating Engin Çeber's death spoke to state officials and witnesses from Metris prison, and viewed closed circuit television (CCTV) footage. In his statement to the PHRC delegation, the lawyer who was acting for Engin Çeber at the time of his death said that during a visit to his client on 6 October, Mr Çeber had stated that he believed he would not leave the prison alive.

On 5 December 2008, the PHRC issued a report which found that Engin Çeber had been tortured and otherwise ill-treated while in detention at Metris Prison. The report states that the Commission believes, on the basis of CCTV footage showing that he had a visible swelling on his head, that he may also have been ill-treated before arriving at the prison. The report goes on to recommend that the issue be investigated further.³¹

At the time of writing, Aysu Baykal, Cihan Gün and Özgür Karakaya face criminal proceedings for allegedly resisting police and violating the Law on Meetings and Demonstrations. The next hearing in their case is due to take place on 10 November 2009.³²

30 Sabah, 'Adalet Bakanı işkence için 'özür' diledi', 15 October 2008, available at <http://arsiv.sabah.com.tr/2008/10/15/haber,817384B05D7842ADB5A3F1DA60B2FBF2.html> (last accessed 25 June 2009).

31 Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu Başkanlığı, 'Engin Çeber'in Metris Ceza İnfaz Kurumunda Gördüğü Şiddet Nedeniyle Öldüğü İddialarını Araştırma Ve Bakırköy Kadın Kapalı Ceza İnfaz Kurumu İnceleme Raporu,' 5 December 2008.

32 Bianet, 'Çeber'le Birlikte İşkence Gördüler, Polise Mukavemetten Yargılanıyorlar,' 8 July 2009, available at <http://www.bianet.org/bianet/insan-haklari/115725-ceberle-birlikte-iskence-gorduler-polise-mukavemetten-yargilaniyorlar> (last accessed 10 July 2009).

III. THE TRIAL

1. The Defendants and the Charges

On 17 November 2008 the Bakırköy Public Prosecutor Cevdet Doğan issued an indictment naming as defendants 39 prison guards, three prison governors, 13 police officers, four gendarmes and one doctor. The indictment lists four complainants in the case: Mr Özgür Karakaya, Mr Cihan Gün and Ms Aysu Baykal, who were detained with Engin Çeber, and Mr Ali Tekin, Mr Çeber's father.³³

The most serious charge in the indictment, Aggravated Torture on Account of its Consequences under Article 95 of the Penal Code, is levelled against four of the suspects, all of them prison officials in Metris Prison. One, Selahattin Apaydın, is accused of banging Engin Çeber's head against a wall and an iron door, an act which is said to have caused the brain haemorrhage that resulted in his death.³⁴ Nihat Kızılkaya and Sami Ergazi are said to have joined Mr Apaydın in striking Mr Çeber's head and neck with their hands and feet, and are accused of abetting the crime of aggravated torture. At one point, Mr Ergazi is alleged to have dragged an already motionless Mr Çeber into a garden at the prison, where he continued to beat him.

The fourth suspect charged under Article 95 of the Penal Code is Fuat Karaosmanoğlu, who was the duty governor at Metris Prison on the day when Mr Apaydın allegedly banged Mr Çeber's head against a wall and an iron door. Rather than taking steps to stop the torture of Mr Çeber, Mr Karaosmanoğlu is alleged to have stated that, 'From now on, anyone who does not stand up and answer to his name will be punished in this way.' Prosecutors claim that it is possible to lip-read Mr Karaosmanoğlu making this statement on CCTV footage from the prison.

The above four suspects are specifically charged under Article 95(4) of the Turkish Penal Code, which stipulates a punishment of aggravated life imprisonment where the torture results in the death of the victim. In relation to Mr Karaosmanoğlu, the indictment makes specific mention of Article 94(5), which states that, 'If the of-

³³ An English translation of the indictment is available in Appendix 1.

³⁴ It should be noted that the indictment alleges that this particular episode of abuse, which led to the fatal brain haemorrhage, occurred on 7 October, whilst also citing the post mortem finding that the haemorrhage occurred four to five days prior to Engin Çeber's death on 10 October.

fence [of Torture] is committed by way of omission there shall be no reduction in the sentence.’

In concluding that the treatment meted out to Mr Çeber amounted to torture, the indictment considers Article 3 of the ECHR and its interpretation in cases before the ECtHR.³⁵ It alleges that the abuse in question was ‘designed to break physical and psychological resistance to the prison administration and to inflict punishment by the prison warders’, and that it caused death and extreme pain and distress. In this light, prosecutors allege that the treatment of Mr Çeber falls within the definition of torture laid down in the ECHR.

Besides the few individuals charged with torture, most of those accused of involvement in the abuse of Mr Çeber and his fellow detainees are charged under Article 96 of the Penal Code with the lesser offence of Torment, punishable with two to five years in jail. This charge is levelled against 16 of the suspects, including all 12 police officers.

Six of the suspects named in the indictment, including all four gendarmes, are charged under Article 86 of the Penal Code with Intentional Injury. While this offence is ordinarily punishable with a jail term of between one and three years, the suspects in this case are charged under two specific sub-sections of this article: Article 86(2), which specifies that the maximum sentence will be a one-year jail term or a judicial fine in cases where the effect of the intentional injury ‘is minor and can be cured by a simple medical treatment’; and Article 86(3)(d), which specifies that the penalty given is to be increased by half when the offence is committed ‘on account of a public officer misusing his influence.’

In relation to the same six suspects, the indictment also makes mention of Article 256 of the Penal Code, which covers the crime of Excessive Use of Force and states that any public official found to have committed this offence shall be subject to the provisions relating to the crimes of Intentional Injury.

By far the most common charge on the indictment is Failure by a Public Officer to Report an Offence (Article 279 of the Penal Code). This charge is levelled against 29 of the suspects, the vast majority of whom are accused of no other offence. Except in exceptional circumstances involving failure to report offences against children, pregnant women or those who are ‘physically or mentally impaired’, this crime is punishable with six months to two years in prison.

35 For more details of the ECHR framework, see the section of this report outlining Turkey’s obligations with regard to torture and ill-treatment under international law.

Other charges in the indictment include Misuse of Public Duty (Article 257 of the Penal Code), comparable with the offence under English law of ‘misconduct in public office’, which is punishable by a maximum of two or three years depending on whether the offence relates to acts which are contrary to the suspect’s duty or a failure to discharge that duty ‘by omission or delay’.

One suspect named in the indictment, Metris Prison doctor Yemliha Söylenmez, is charged with counterfeiting documents, an offence which, under the circumstances, is punishable with up to a year in prison. He is accused of repeatedly producing false records of medical examinations without actually examining Mr Çeber and his fellow detainees.

Six defendants – including Apaydın, Kızılkaya, Ergazi and Karaosmanoğlu – were remanded in custody.

2. The Trial Process

The trial began on 21 January 2009 before Judge Nesibe Özer and two others at the High Criminal Court at Bakırköy. This first hearing, which lasted two days, was not attended by any of the police officers named as defendants in the indictment. The mission was told that the police authorities had said they either could not locate the personnel in question or that removing them from their duties could result in public disorder.³⁶ The court responded by threatening to have the suspects brought by force if necessary.

The absence of the police defendants during this early stage of the trial proceedings was strongly criticised by many of the observers and actors in the case who were interviewed by the mission. Complainant Ms Baykal in particular argued that their non-attendance was ‘being done on purpose to frustrate the [prosecution] process’.³⁷

The hearing attended by the KHRP mission on 3 March marked the fourth day of trial proceedings and took place at the 14th High Criminal Court in Bakırköy. More defendants were in attendance than on any of the previous days of the trial, including a much larger number from the police force. The room was full to capacity with defendants, lawyers, members of the public and representatives of the local and international press, as well as national and international human rights groups. The mission estimated that there were a total of around 150 people present in court, and

36 FFM Interview with Oya Aslan, Contemporary Lawyers’ Association, Istanbul, 2 March 2009.

37 FFM interview with complainant Aysu Baykal, Istanbul, 2 March 2009.

statements by the complainants' lawyers suggested that approximately that number had attended for each of the sitting days.³⁸

The three judges and the prosecutor were identically dressed and sat at the same level and alongside one another, an arrangement which is common throughout Turkey and is widely criticised.³⁹ The prosecutor's part of the bench was angled very slightly towards the judges, marking something of the difference between their functions. To the judges' right was a group of around 30 lawyers who either represented the complainants' interests or supported those who did so. In total, some 850 lawyers are said to have applied for joint attorney status in the case.⁴⁰

The six defendants who were remanded in custody sat together in a waist-high dock in the centre of the room. Though no physical barrier impeded their exit, the perimeter of the dock was surrounded by a unit of ten or so gendarmes, who faced alternately towards and away from their charges. There were moments of very obvious tension between these gendarmes and the complainants' supporters who were in attendance, and from time to time a gendarme could be seen nodding apparent agreement during or immediately after one of the defendant's evidence. At one point there was a near-scuffle in the public area of the court when a defendant and one of the complainants became involved in a heated argument whilst the court was sitting, which resulted in an intervention by one of the gendarmes. On another occasion, a complainant chuckled audibly but softly in seeming disbelief at evidence given by a defendant, after which he was sharply ordered to be quiet by another gendarme.

With evidence already before the judges in the form of statements taken by the prosecutor, the oral parts of the proceedings take the form of expansion from and exploration of those original depositions. On the day of the hearing attended by the KHRP mission, the complainants' lawyers were engaged in questioning the defendants. They occasionally addressed the individual giving testimony directly but at other times posed their questions to the judge in order that she could then put them to the defendant. It is worth noting that cross-examination is relatively new

38 Bianet, 'Torture Suspect Sexually Assaults Victim's Sister,' 16 April 2009. Available at <http://bianet.org/bianet/kategori/english/113885/torture-suspect-sexually-assaults-victims-sister> (last accessed 17 April 2009).

39 See for example US State Department, *Human Rights Report 2008*, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119109.htm> (last accessed 15 April 2009). The same report notes other aspects of the relationship between judges and prosecutors in Turkey which contribute to an 'appearance of impropriety and unfairness in criminal cases' including the fact that they study together before being assigned by the High Council of Judges and Prosecutors and that, following their appointment, 'they are housed together, frequently share the same office space, and often work in the same courtroom for more than five years.'

40 Bianet, 'Torture Suspect Sexually Assaults Victim's Sister,' fn. 37 above.

in Turkey and that lawyers have only been able to ask defendants questions directly since the new Criminal Procedure Code came into force in 2005.

In the past the taking of oral evidence was accompanied by the court clerk typing questions and answers on a mechanical typewriter. It is a mark of the perceived importance of the present trial that it is only the second case to use a new computerised audio recording system, which permits the publication of the transcript of the entire proceedings. The only previous occasion on which this system has been used was during the trial of those accused of involvement in the high-profile murder of the outspoken Turkish-Armenian journalist Hrant Dink outside the offices of his newspaper *Agos* in Istanbul on 19 January 2007.⁴¹ This new audio equipment appeared to be somewhat temperamental, causing a delay of over 15 minutes at the beginning of the day during which court staff struggled to get it working. The proceedings were also monitored by a separate CCTV system, though the mission was informed that the CCTV footage is not made publicly available but rather serves as a backup in case the audio recording should fail.

During the hearing witnessed by the KHRP mission, the complainants' lawyers appeared dissatisfied with various aspects of the way the trial was being handled. On several occasions, for example, the lead judge refused them permission to put specific questions, telling them variously that they ought to have submitted them in writing in advance or that the questions were not relevant to the issue being tried. The interruption of one particular line of examination, involving a series of quick-fire who/what/when/why questions, led to a heated exchange between the judge and the lawyer concerned, with each talking over the other for significant periods of time. It was clear that the complainants' lawyers felt strongly that the court's interventions were unreasonable. The mission later learned that cross-examination was only recently introduced in Turkey, and considers that the disagreements may well be due to growing pains for both sides in understanding what is appropriate and not in this process. In this instance, the mission was unable to take a view on which party was right or whether there is a systemic problem with the implantation of cross-examination in Turkish courtrooms. However, the mission recommends that those involved in future efforts to monitor this and other trials in Turkey, particularly proceedings involving state agents as defendants, should be alert to this issue.

The mission had concerns in relation to the judges' handling of oral testimony by defendants, which at times appeared excessively sympathetic. Having put a question to a defendant, the judge would often nod throughout the response and punctuate that response by saying 'Yes', in a manner which implied approval of the answers

41 Trial proceedings in the Hrant Dink case were also observed by KHRP. See KHRP Trial Observation Report, *Freedom of the Media in Turkey and the Killing of Hrant Dink*, (KHRP, London, September 2007).

received. On one occasion, a police witness was asked by one of the complainant's lawyers whether a particular set of actions that he had described taking was normal practice. When the witness responded by demanding of the lawyer, 'Are you my superior officer?', the judges did nothing to check his behaviour.

The mission noted that key pieces of evidence had not been disclosed to the complainants' lawyers in advance. One example of this arose in relation to testimony from defendant Mehmet Pek, a policeman who is amongst those who are alleged to have beaten the complainants at the İstinye Şehit Muhsin Bodur police station. Later, Mr Pek and another defendant, Mustafa Kirgil are alleged to have taken the male complainants to Metris Prison and to have been responsible for stirring up prison guards there by calling the detainees 'terrorists' and implying that they were somehow connected with the armed conflict in the Kurdish region of the country.

In seeking to explain the injuries sustained by the complainant Mr Karakaya at the police station, Mr Pek claimed that when he had begun to conduct a search of the complainant, the latter had 'started hitting himself against a wall'. He said that the police 'were trying to stop [the complainants] hitting themselves but they did so at any opportunity they got'. To back up his claims, Mr Pek referred to a particular piece of CCTV footage from the police station and gave an explanation of what could be seen happening in the footage at that specific hour and minute. Not only had this footage not been made available to the complainants' lawyers in advance of the hearing, but it was also not available to be viewed in court on the day, making it extremely difficult for them to cross-examine the defendant on this line of defence.

Tensions in the courtroom peaked in the afternoon of the 3 March hearing, as some of the defence lawyers argued that the evidence against their clients was insufficient for the case to go ahead. At this point a disagreement between the lead judge and complainants' lawyers descended into little less than a shouting match, with one lawyer insisting that the judge was displaying partiality towards the defence. Shortly afterwards the court was cleared so that the judges could consider their ruling on the submissions that had been made. On returning to the courtroom, the judges announced that they had decided to recuse themselves from deliberating further on the case because of the allegation of bias, with this decision to be subject to review by another court. With that, the hearing attended by the KHRP mission came to an end.

The decision of the judges of the 14th High Criminal Court to recuse themselves from the case was referred to the 15th High Criminal Court for review. On 20 March, after the mission had left Turkey, judges there ruled that under the circumstances the same trial court should continue hearing the case. The accusations of bias made by the complainants' lawyers were baseless, the court said, and had arisen

only as a result of the lawyers' attempts to raise issues in court which were irrelevant, premature or political.⁴²

The case resumed on 15 April with the viewing of CCTV footage. The following day local media reported an allegation by Mr Çeber's sister, Şerife Tekin, that she had been sexually assaulted during the hearing by Salim Geniş, one of the prison guards on trial in connection with her brother's death. Ms Tekin accused Mr Geniş of touching her in a sexual manner in the crowded courtroom. Taylan Tanay, a lawyer of the People's Law Office, told media that Mr Geniş had repeatedly touched Ms Tekin and that his behaviour, which he claimed had been witnessed by five lawyers and a journalist, went beyond sexual harassment. According to Mr Tanay, a complaint was immediately filed against Mr Geniş, who later made a statement at the Osmaniye police station before being released.⁴³

In a further session in June, the court was presented with an expert report which argued that it was not in fact possible to lip-read Mr Karaosmanoğlu in CCTV footage threatening other prisoners with treatment like that meted out to Mr Çeber, though the report noted that the low quality of the available footage meant that it was not possible to come to a definitive conclusion on this point.⁴⁴ On the other hand, the claim regarding the alleged threat was supported by testimony in court from at least one of Mr Çeber's fellow detainees, Şükrü Zeren.⁴⁵

Media reports at this stage in the proceedings also suggested that serious concerns had emerged about the security of witnesses due to testify in the case. Two individuals who said they were detained with Mr Çeber and had seen him being tortured, at least one of whom remained in detention at this stage in the trial, reportedly refused to testify because of fear for their safety.⁴⁶ Complainant lawyer Oya Aslan was reported in the media as saying that dangers posed to the lives of witnesses were such that the issue threatened to inhibit justice in the case.⁴⁷

42 Radikal, 'Çeber'de suçlu bulundu: Sanık avukatları', 20 March 2009, available at <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetay&ArticleID=927130&CategoryID=77> (last accessed 17 April 2009).

43 Bianet, 'Torture Suspect Sexually Assaults Victim's Sister,' fn. 37 above.

44 Hürriyet, 'Lip Reading Report Creates Controversy', June 2009, available at <http://www.hurriyet.com.tr/english/domestic/11823784.asp> (last accessed 25 June 2009).

45 Bianet, 'Engin Çeber Torture Case: Prison Chief Threatened Fellow Prisoners After Torturing Çeber', 9 June 2009, available at <http://bianet.org/english/human-rights/115071-prison-chief-threatened-fellow-prisoners-after-torturing-ceber> (last accessed 25 June 2009).

46 Hürriyet Daily News, 'Lip Reading Report Creates Controversy', fn. 43 above.

47 Bianet, 'Engin Çeber Torture Case: Prison Chief Threatened Fellow Prisoners After Torturing Çeber,' fn. 44 above.

There were also ongoing problems at this stage in the case with the failure of several defendants to attend court hearings.⁴⁸

At the time of writing, the next hearing in the case is scheduled for 22 July.

48 *Ibid.*

IV. SPECIFIC ISSUES ARISING FROM THE CASE

The circumstances of Engin Çeber's death and aspects of the trial proceedings against those accused of involvement underline a number of longstanding concerns in relation to torture and ill-treatment in Turkey's detention system. These include the question of impunity and accountability, efforts by perpetrators of torture and ill-treatment to cover up their actions, and the role of medical personnel in hiding abuses in custody. In light of such issues, this section will also tackle the question of whether it is right to view the Engin Çeber case as a significant step forward in official attitudes and practices in relation to abuses in custody in Turkey.

1. Impunity within the Detention System

The nature of the abuses that appear to have led to Engin Çeber's death, and the sheer number of officials who are alleged either to have played a direct part in those abuses or to have known about them and done nothing, underscores the extent to which those working in the Turkish detention system continue to feel that they are free to act as they wish without the likelihood of being held accountable for their behaviour.

A notable allegation in this regard is the claim made by prosecutors that Mr Karaosmanoğlu, the Metris Prison duty governor, announced that in future any other prisoners who stepped out of line would receive the same treatment. If true, the allegation that Mr Karaosmanoğlu expressed explicit approval of the violent treatment of Mr Çeber would be a remarkable illustration of support of torture and ill-treatment by those in positions of authority within the prison system, the very individuals whose responsibility it is to investigate and punish such behaviour.

In the event of convictions, another striking illustration in this case of the sense of impunity felt by officials working in Turkey's detention system will have been the apparent lack of regard on the part of many of the suspects for the presence of CCTV cameras in Metris Prison. At the time of the mission's visit to Turkey, the full significance of the footage as evidence in the prosecution case was yet to be determined and it remained unclear whether it would turn out to be a central pillar of that case or represent only a minor part of the body of evidence that the court would have to consider. Nevertheless, it was clear that prosecutors were claiming that the footage in itself amounted to potentially very incriminating evidence, not least against Mr Karaosmanoğlu. In addition to the footage of Mr Karaosmanoğlu

allegedly approving the treatment of Mr Çeber, film from another camera is said to capture a truncheon being taken to and from a search room at a time when the complainants say they were being beaten with a truncheon in that room. Prosecutors also allege that there is footage of complainant Özgür Karakaya walking with difficulty when emerging from the search room.⁴⁹

Where prison guards bent on beating detainees understood that their actions were illegal and believed there was a likelihood that they would be effectively prosecuted and severely punished if the case came to light, the mission considers it extremely likely that they would have made every effort to avoid the emergence of CCTV footage evidencing their actions. The fact that CCTV cameras were able to capture footage of the kind used in the prosecution case, and that this footage should have been successfully retrieved by investigators days after Mr Çeber had been hospitalised in a coma, might suggest that staff at the prison charged with abusing him and his fellow detainees did not believe that they were doing anything wrong. It is certainly the case that parts of the evidence given by at least some of the defendants indicate that they intend to argue that they were merely using ‘reasonable force’ or perhaps acting in self-defence. In light of the findings of the autopsy concerning the severity of the injuries sustained by Mr Çeber, however, it is difficult to see how anyone with even the most basic grasp of Articles 1 to 3 of the ECHR who was involved in what seems to have been the fatal final beating might have genuinely felt themselves entitled to use the degree of force that was used, or indeed any force at all. An equally alarming alternative hypothesis is that the existence of potentially incriminating CCTV footage might not have been taken seriously because those responsible considered it unlikely that there would be a thorough investigation or prosecution.

The latter hypothesis would fit in with the picture painted by a KHRP fact-finding mission that travelled to Turkey in December 2008 to investigate allegations of abuses within the country’s detention system. That mission found that a culture of impunity had developed within prisons, largely because of a lack of any real transparency or accountability.⁵⁰ While a system of prison monitoring boards was set up in 2001 to inspect prisons and report on any failures and shortcomings, these boards have been widely criticised as being ineffective and lacking independence. Provincial and sub-provincial human rights boards were also set up in 2003 and have undertaken inspections of police stations and at least one prison, with some indications that they are slightly more effective as monitoring bodies. However, members of both the prison monitoring boards and human rights boards are state-appointed, and there are no provisions in Turkish penal regulations for civil society oversight of detention conditions in prisons.⁵¹

49 See indictment in Appendix 1.

50 Stewart and Jayawardene, fn. 17 above, p. 13.

51 *Ibid.*, pp. 25-28.

Time and time again the mission heard from its interlocutors that the police and others in authority showed no concern over the prospect of investigation and prosecution of ill-treatment. The complainants even allege that whilst they and Mr Çeber were being beaten at the police station one officer took a photograph of them on his mobile phone and said he would put it on Facebook to show others what was being done.⁵² The *Türkiye İnsan Hakları Vakfı* (Human Rights Foundation of Turkey, TİHV) told the mission that currently the ‘system is protecting the torturer.’⁵³

Even where cases of torture and ill-treatment do come to light, prosecutions are frequently ineffectual. In cases of police violence that could be prosecuted under Article 94 of the Penal Code (Torture), prosecutors have often opted to use Article 86 (Intentional Injury) instead. A public official convicted under this article could receive a jail sentence of as little as one and a half years, and would therefore be eligible for a suspended sentence.⁵⁴

In November 2008, just weeks after Mr Çeber’s death, the European Commission adopted the latest of its periodic reports on Turkey’s progress towards membership of the European Union, which noted a ‘lack of prompt, impartial and independent investigation into allegations of human rights violations by members of security forces’ and objected that ‘judicial proceedings into allegations of torture and ill-treatment are often delayed by the lack of efficient trial procedures or abuse of such procedures.’⁵⁵ Similarly, in a resolution of 12 March 2009, the European Parliament underlined ‘the failure of the judiciary to prosecute cases of torture and ill-treatment, the number of which is growing.’⁵⁶

52 FFM interview with complainants, Istanbul, 2 March 2009.

53 FFM interview with Hürriyet Şener, member of TİHV Executive Board, 2 March 2009.

54 Human Rights Watch, *Closing Ranks Against Accountability: Barriers to Tackling Police Violence in Turkey* (December 2008), p. 17-18.

55 European Commission, *Turkey 2008 Progress Report*, SEC/2008/2699 FIN, available at [http://www.ipex.eu/ipex/webdav/site/myjahiasite/groups/CentralSupport/public/2008/SEC_2008_2699/COM_SEC\(2008\)2699_EN.doc](http://www.ipex.eu/ipex/webdav/site/myjahiasite/groups/CentralSupport/public/2008/SEC_2008_2699/COM_SEC(2008)2699_EN.doc) (last accessed 15 April 2009).

56 European Parliament Resolution, 12 March 2009, P6_TA-PROV(2009)0134: '[The European Parliament] ... Welcomes the apologies offered by the Minister of Justice, Mehmet Ali Şahin, on behalf of the government to the family of Engin Çeber, who died in prison as a consequence of abuse; joins the Human Rights Committee of the Turkish Parliament in its concern over the failure of the judiciary to prosecute cases of torture and ill-treatment, the number of which is growing; calls on the Turkish government to undertake further systematic efforts to eliminate torture and ill-treatment, inside and outside official places of detention, and to end the culture of impunity; stresses in this regard that ratification and implementation of the Optional Protocol of the UN Convention against Torture would increase considerably the credibility of these efforts; is also concerned about excessive use of police force in dealing with public demonstrations.' Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0134+0+DOC+XML+V0//EN&language=EN> (last accessed 15 April 2009).

Turkey's close ally the United States has been similarly critical of efforts to prosecute those accused of torture and ill-treatment in Turkey. In its latest annual report on the human rights situation in Turkey, the US State Department noted that, 'Courts investigated many allegations of abuse and torture by security forces during the year; however, they rarely convicted or punished offenders.'⁵⁷

2. Role of Medical Staff in Cases of Alleged Torture and Ill-Treatment

The presence in the trial of the Metris prison doctor accused of forging medical reports is illustrative of a broader set of problems in relation to the role of medical staff in cases of alleged torture and ill-treatment in detention facilities in Turkey. The mission heard frequent reports of malpractice and shortcomings in the healthcare system within detention centres which hinder efforts to combat abuses of detainees.

While the Istanbul Protocol asserts that 'medical experts involved in the investigation of torture or ill-treatment shall behave at all times in conformity with the highest ethical standards',⁵⁸ the mission heard that examinations of detainees in cases of alleged torture and ill-treatment are hindered by malpractice on the part of doctors, often under pressure from police officers, prison guards and other officials.

One doctor to whom the mission spoke said that members of the security forces frequently produce a pro-forma 'non-torture' medical statement for a doctor to sign. This individual alone claimed to have seen 'hundreds or thousands' of such forms. Not being present at prison full-time, doctors would also sometimes also be asked to sign medical report forms for individuals they had not seen, or backdate them.⁵⁹

The mission also heard reports of widespread 'doctor shopping,' where police deliberately approach more than one doctor to examine a detainee in order to be able to select the most favourable examination report, a practice which is alleged to have arisen in the Çeber case. The mission was told that doctor shopping 'isn't rare' and that although it represents a 'moral violation' by doctors, it is a 'classic violation that everybody is aware of'.⁶⁰ The mission also heard that security officials do not limit themselves to obtaining medical reports from different doctors within the same

57 US State Department, *Human Rights Report 2008*, fn. 38 above.

58 Istanbul Protocol, para. 6(a). For more on the Istanbul Protocol, see the section of this report outlining Turkey's obligations under international law.

59 FFM interview with members of Turkish Medical Association Human Rights Commission, 3 March 2009.

60 FFM interview with members of Turkish Medical Association Human Rights Commission, 3 March 2009.

hospital, but also take detainees to multiple hospitals in order to find the most ‘co-operative’ one.

Contextual and structural factors contribute to the frequency with which such malpractices arise. Prison doctors are frequently recent graduates and are required to work in extremely difficult physical conditions, often without a properly equipped room or even a desk at which to work. Often remaining in what is seen as being a low-grade post for only one or two years, doctors don’t develop a feeling of ‘ownership’ over the cases which they manage. During their time working in prisons, doctors operate under the aegis of the Ministry of Justice’s Forensic Medicine Institute, except in districts where this department has no presence, in which case they operate under the auspices of the Ministry of Health.⁶¹ Factors such as these contribute to their vulnerability to direct or implied pressure by prison governors.

What is more, consultations are often conducted in the presence of police officers and prison guards, despite the stipulation in the Istanbul Protocol that ‘examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.’⁶² This further contributes to the pressure brought to bear on the doctors themselves and also renders the reporting by detainees of torture or ill-treatment unlikely in the extreme. This issue is compounded by the fact that the rooms where prison doctors work are, according to those employed in prisons, physically attached to the prison administration office, with prisoners not getting the impression of being seen by an impartial doctor. Doctors to whom the mission spoke admitted that they themselves ‘start to feel like guards.’⁶³

Even where cases of malpractice on the part of medical staff in relation to torture and ill-treatment of detainees have come to light, the authorities have shown little will to take the issue seriously. This fact is particularly well illustrated by the case of Nur Birgen, a prison doctor who was barred from practice for six months after examining seven detainees in 1995 and reporting them to be in good health, despite the fact that they had been tortured. Ms Birgen was subsequently appointed head of the governmental Forensic Medicine Institute’s Third Specialised Committee. In that post, she wrote a medical report on two hunger-strikers suffering from Wernicke-Korsakov syndrome (a brain disorder caused by a lack of thiamine, or vitamin B) confirming their continued fitness to be detained. For her authorship of that report she was barred from practice for one month and fined TL300 million by the

61 Stewart and Jayawardene, fn. 17 above, p. 39.

62 Istanbul Protocol, para. 6(a).

63 FFM interview with members of Turkish Medical Association Human Rights Commission, 3 March 2009.

Turkish Doctors' Union (TTB).⁶⁴ In December 2002 she was once again found to have issued medical reports concealing torture and was sentenced to three months in jail, though this was later commuted to a nominal fine.⁶⁵ Despite this appalling record of well-publicised malpractice,⁶⁶ the state not only maintained Dr Birgen's employment but also appointed her in 2006 to lead a 3 million-euro EU-sponsored training programme for judges and prosecutors. She was only replaced after the TTB and TIHV spent over two years contesting her appointment and ultimately threatened to withdraw from the programme.⁶⁷

The findings of the mission in relation to inadequacies in medical examinations of detainees in cases of alleged torture and ill-treatment coincide with the findings of the KHRP mission to investigate prisoners' rights in Turkey in December 2008, which 'encountered several general claims of cursory or inadequate medical examinations, or examinations in the presence of security guards or gendarmes.'⁶⁸ More generally, the same mission also noted consistent reports of far broader failings in the provision of healthcare to detainees, including long waits for treatment, a reluctance on the part of prison authorities to pay for expensive medications, and lack of medical staff based permanently on the prison premises. There were also reports that prison doctors were sometimes reluctant to carry out proper examinations of political prisoners in particular, and were in some cases even openly hostile to them.⁶⁹

The trial observation mission's findings are also consistent with the findings of the Committee for the Prevention of Torture, which in a 2006 report on the situation in Turkey noted concerns including medical examinations in the presence of law enforcement officials, a failure to keep proper records and examinations of fully-clothed prisoners resulting in a failure to find any physical signs of ill-treatment.⁷⁰

64 Today's Zaman, 'From blackmail to false reports, Ergenekon employs all methods,' 15 January 2009, available at <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=164104> (last accessed 21 April 2009).

65 Human Rights Watch, *Annual Report 2002*, available at <http://www.hrw.org/legacy/wr2k2/europe19.html> (last accessed 21 April 2009).

66 For an example of the publicity surrounding the case, see Amnesty International, *Turkey: Memorandum on AI's recommendations to the government to address human rights violations*, 31 July 2005, available at <http://www.amnesty.org/en/library/info/EUR44/027/2005/en> (last accessed 21 April 2009).

67 FFM interview with members of Turkish Medical Association Human Rights Commission, 3 March 2009.

68 Stewart and Jayawardene, fn. 17 above, p. 40.

69 *Ibid.*, p. 32-35.

70 CPT/Info (2006), *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 7 to 14 December 2005* (6 September 2006), para. 26.

Such concerns about the practices of state medical officials in relation to cases of alleged torture and ill-treatment are even more serious in light of the fact that jurisprudence in Turkish courts has established that only official medical examinations are admissible in legal cases, despite an ECtHR judgment in the KHRP-assisted case of *Aydın v. Turkey* dating back to 1996 emphasising the necessity for independent medical examinations in cases of alleged torture.⁷¹

3. Prevalence and Concealment of Torture and Ill-Treatment

The example of the Engin Çeber case and the light that it throws on practices within Turkey's detention system corroborates KHRP's longstanding position that, despite an officially registered reduction in cases of reported torture and ill-treatment in recent years, such abuses nonetheless remain a fact of life both inside and outside detention centres across the country. Aspects of the case also appear to confirm the view that the apparent reduction in reported cases is at least partly a result of increasing sophistication on the part of perpetrators with regard to efforts to hide their actions.

In general, most of those with whom the mission met painted a picture of a decline in recent years in the use of particularly severe methods of torture which were once common in Turkey. The practises of *falaka* (beating the soles of the feet) and 'Palestinian hanging' (suspension of the whole body's weight from the hands, bound at the back), which had at one time been hallmarks of the police and security services, were believed to be dying out.⁷² More generally, the mission heard that there had been a decrease in the last decade in the overall number of cases of torture and ill-treatment that are reported.

However, none of this is to be taken as suggesting that torture and other forms of abuse in custody are no longer an issue. In fact, torture and ill-treatment continue to be widespread in Turkey and, despite the long-term trend for the better, appear to have been on the increase again recently.⁷³ Local human rights groups say that

71 Stewart and Jayawardene, fn. 17 above, p. 40. See in particular *Aydın v. Turkey* (57/1996/676/866), para. 107.

72 FFM interviews with Hürriyet Şener, member of TİHV Executive Board, Istanbul, 2 March 2009; and Hakan Gündüz, President of TOHAV, Istanbul, 3 March 2009. See also United Kingdom Home Office *Country of Origin Report - Turkey* (13 March 2009), para. 11.24, which cites İHD Chairman Hüsnü Öndül as saying that out of 500 to 800 reports of mistreatment put forward in a year, only around three to four cases would tend to involve 'extreme' forms of torture such as these. Available at <http://www.unhcr.org/refworld/docid/49c366252.html> (last accessed 15 April 2009).

73 See, for example, Human Rights Watch, *World Report 2008*, (14 January 2009), p. 439: 'Ill-treatment appeared to be on the rise in 2007 and was regularly reported as occurring during arrest, outside places of official detention, and in the context of demonstrations, as well as in detention centers.'

even cases in which abuses go so far as to cause death are far from unknown. TIHV recorded 45 suspicious deaths in custody in 2008.⁷⁴ İHD received reports of 37 deaths in custody that year.⁷⁵ This includes a number of cases which were officially recorded as having been suicides but in which family members say they observed injuries on the bodies inconsistent with the victims taking their own lives.

Any signs of a longer-term decrease in cases of reported torture should also not necessarily be taken as signalling a clear-cut and fundamental shift in official attitudes and practices. Some interviewees linked the reported decline in torture to circumstantial factors. Members of the TTB, for example, argued that at best the PKK ceasefire between 1999 and 2004 had led to a reduction in the number of those likely to be detained in the first place and ill-treated on suspicion of sympathy for or participation in armed opposition to the state. It was this shift, they suggested, which in fact brought about the reduction in the number of complaints of ill-treatment.

Alongside such circumstantial factors, a number of organisations also argued that the decline in reports of abuse was not symptomatic of a growing reluctance in Turkey to engage in torture but rather increasing efforts to hide physical evidence of its continuing practice.

Many, for example, spoke of an increase in what was described as ‘outdoor torture.’ Typified by its occurrence away from places of interrogation or detention, this new threat from the police and others was identified by the mission’s interlocutors as a development which seemed to have ironically been facilitated by legislation presented as being part of drives to bring Turkey into line with Council of Europe norms. Examples include amendments adopted in 2007 to laws governing the duties and powers of the police. Supporters of these amendments argued that there was a need to allow police greater scope to take preventive measures to pre-empt crimes, claiming that this would help bring Turkey into line with European standards. For the first time, the new legislation formally allowed police to carry out identity checks and preventive searches of public places.⁷⁶ It also laid down new rules concerning the use of lethal force. Since the amendments were introduced, there have been al-

74 TIHV annual report, cited in Bianet, ‘Too Many Deaths in 2008,’ 14 January 2009, available at <http://bianet.org/english/human-rights/111917-too-many-deaths-in-2008> (last accessed 7 July 2009).

75 İHD, *The Balance Sheet of Human Rights Violations of 2008 in Prisons in Turkey*, available at http://www.ihd.org.tr/images/pdf/balance_sheet_of_human_rights_violations_of_prisons_in_turkey_in_2008.pdf (last accessed 15th April 2009).

76 Human Rights Watch, *Closing Ranks Against Accountability: Barriers to Tackling Police Violence in Turkey*, fn. 20 above, pp. 23-26.

legations of ill-treatment during routine searches and serious concerns have been raised about the scope allowed by the law for arbitrary use of force by the police.⁷⁷

Describing the adoption of different *modus operandi* of ill-treatment as ‘a tactic to show the European Union they’re changing’, interviewees from TİHV argued that that nonetheless ‘torture [remains] a state policy in Turkey’.⁷⁸

This ties in with KHRP research in recent years, which has identified a shift towards ‘more subtle forms of ill-treatment’ which leave minimal physical evidence, as well as increasing cases of ill-treatment outside official detention institutions. Less detectable forms of abuse reported to be in use include ‘hosing, food and sleep deprivation and psychological forms of torture, such as threats of physical ill-treatment or to take into custody other members of the detained person’s family’, as well as ‘beatings of detainees with weighted bags instead of clubs or fists, forced prolonged standing, isolation, loud music, forced witnessing or hearing incidents of torture, being driven to the countryside for a mock execution, and threats to detainees or their family members or applying electric shocks to a metal chair where the detainee sits, rather than directly to the body’.⁷⁹

This general shift towards less detectable forms of abuse was also corroborated by the KHRP mission that travelled to Turkey in December 2008 to investigate the situation of prisoners’ rights. That mission noted widespread reports of gendarmes beating detainees outside of prison premises, particularly during transfers between detention centres or to court, as well as ‘welcome beatings’ of new prisoners by gendarmes and prison guards on their arrival at detention centres.⁸⁰

Aspects of the Engin Çeber case appear to tie in with this reported shift towards more subtle, less detectable forms of torture.

Doctors who observed Mr Çeber’s autopsy told the mission that the intensity of the beatings that he had sustained was such that there was bleeding in his lungs and chest. The medical evidence, they said, clearly indicated that the fatal injury had occurred in the five or six days prior to his death. The mission was told that there were signs of further damage which would have had to have occurred while Mr Çeber was in police custody, though dating those injuries precisely was more difficult.

77 European Commission, *Turkey 2008 Progress Report*, fn. 54 above, p. 13. And Human Rights Watch, *Closing Ranks Against Accountability: Barriers to Tackling Police Violence in Turkey*, fn. 20 above, pp. 23-26.

78 FFM interview with Hürriyet Şener, member of TİHV Executive Board, Istanbul, 2 March 2009.

79 Yildiz and Piggott, fn. 4 above, pp. 18 and 26-27.

80 Stewart and Jayawardene, fn. 17 above, p. 41.

Alarming,ly, the mission was told that the methods by which injury had been caused displayed considerable knowledge of how to bring about maximum pain whilst leaving the minimum long-lasting signs of damage.⁸¹ The doctors who viewed the autopsy reported that there are typically four or five types of bleeding which can occur in the brain following trauma and that all were found in Mr Çeber's case. Abnormally under these circumstances, however, there were no breaks of the skin. Despite the damage done to Mr Çeber's brain, his skull was also not fractured. According to the doctors, this indicated that a blunt object of significant size had been used to beat Mr Çeber about the head. This would appear to tie in with the prosecution allegation that the likely cause of death was his head being hit against a wall or door.

The doctors informed the mission that from their examination it seemed likely that Mr Çeber's head had been dampened prior to beating, which would have softened his scalp and thereby also reduced the risk of blows to the head causing visible injury. This would be consistent with evidence gathered by the Prosecutor, which suggests that Mr Çeber was doused with water during the roll-call meetings.

The use of such methods of violence against Mr Çeber would seem to suggest that his was not an isolated case, with the kinds of techniques employed instead pointing towards a practised expertise in ill-treatment on the part of the perpetrators. In the words of doctors that the mission met with, 'The reports indicate that there was torture, and this technique shows that this is systematically going on ... *they knew what they were doing*.'⁸²

4. Significance of the Official Apology and Trial Process

The official apology issued following the death of Engin Çeber and the trial of those accused of responsibility are without precedent in Turkey. Never before have so many defendants faced such apparently proactive steps on the part of the state to investigate and prosecute those responsible for torture. However, many of those interviewed by the mission were deeply sceptical about any suggestion that this case represents a turning point in official attitudes and practices, arguing that it is not at all typical of how such cases are handled more widely.

The doctors with whom the mission met were downbeat about the apology and prosecutions arising from the Çeber case indicating a change in government policy,

81 FFM interview with members of Turkish Medical Association Human Rights Commission, 3 March 2009.

82 FFM interview with members of Turkish Medical Association Human Rights Commission, 3 March 2009. Emphasis added.

arguing that, ‘You can’t say [the case] is a cornerstone - that’s not the reality – that’s not the political reality.’

Interviewees argued that Mr Çeber’s case received exceptional treatment because of his profile as a political activist and because of concerns that those arrested with him would have substantial access to the media. In the words of Hürriyet Şener, a member of the Executive Board of TİHV, ‘It’s because Engin Çeber was political that this case was exposed - if he hadn’t been it would have been dealt with like the others.’⁸³

Ali Tekin, Engin Çeber’s father, summed up the stance of many interviewees when he argued that the officials allegedly involved in the death of his son acted as they did ‘because they feel they have immunity and impunity’. Explaining the subsequent court case, Mr Tekin said, ‘In my opinion, the state was caught red-handed. They couldn’t deny it.’⁸⁴

In the view of the mission, given the evidence outlined above of ongoing widespread abuses within the detention system and the extent of impunity of those responsible, there are solid grounds for scepticism over any claims that the trial of those accused of Mr Çeber’s death marks a watershed in Turkey’s approach to torture and ill-treatment.

83 FFM interview with Hürriyet Şener, member of TİHV Executive Board, Istanbul, 2 March 2009.

84 FFM interview with Ali Tekin, father of Engin Çeber, Istanbul, 2 March 2009.

CONCLUSION

The case of Engin Çeber underlines the extent to which torture and ill-treatment, far from having become a thing of the past in the course of the EU accession process and associated reforms, remain very real problems in Turkey's detention system. The evidence that the abuse meted out to Mr Çeber and those detained with him was tailored to exert maximum pain whilst minimising any lasting physical traces supports the thesis that any claimed reduction in the occurrence of torture and ill-treatment in recent years can at least partly be put down to increasing efforts on the part of those responsible to hide their actions. The relative sophistication of the techniques of abuse used against Mr Çeber may also indicate that the individuals responsible had some experience of such matters, thus further corroborating the suggestion that this was by no means an isolated case.

At the same time, factors such as the alleged role of the duty prison governor in the abuse of Mr Çeber, the apparent disregard of the alleged perpetrators for CCTV cameras installed in the prison and the attitudes of many of the defendants towards the court process tend to confirm the view that those working in the Turkish detention system feel a strong sense of impunity. The charges filed against the Metris Prison doctor for alleged forging of documents also illustrates the extent to which medical staff are implicated in torture and ill-treatment of detainees.

While it is certainly true that the issuance of an official apology in the wake of Mr Çeber's death and the scale of the trial that followed are without precedent in Turkish history, there is every reason to be circumspect with regard to claims that this case marks a turning point in official attitudes and practices in relation to torture and ill-treatment. The vigour with which the investigation and trial were conducted in this case does not compare with the official reaction to other recent cases of alleged torture and ill-treatment, or even other recent cases of deaths alleged to have resulted from such abuses. In the view of the mission, the reaction in this instance may have much to do with the extent to which the Turkish authorities felt pushed into a corner by the apparently clear-cut nature of the case and the profile of those involved.

Rather than accepting the Engin Çeber case as in itself representing a watershed, the international community and local and international human rights NGOs should view it as an opportunity to raise awareness of the issue of torture and ill-treatment in Turkey and to increase pressure on the authorities to tackle such problems in a

consistent and concerted manner. In light of the concerns noted by the mission in relation to the conduct of the trial in the present case, this pressure should include close monitoring of this case to its conclusion, as well as long-term efforts to highlight other instances of torture and ill-treatment in Turkey and to ensure that they are effectively and transparently investigated and prosecuted. In terms of domestic reforms in Turkey, a priority should be the establishment of genuinely independent monitoring of detention facilities in order that prison staff and security officers feel that their work is being scrutinised. This would represent a crucial first step towards fostering a culture of openness and accountability.

RECOMMENDATIONS

This report urges Turkey to:

- Ensure that the court proceedings against those charged with involvement in the alleged abuse of Engin Çeber and his fellow detainees, as well as the upcoming proceedings against Aysu Baykal, Cihan Gün and Özgür Karakaya for allegedly resisting police and violating the Law on Meetings and Demonstrations, are conducted in accordance with international fair trial standards. The same standards should also be observed in any future proceedings relating to these cases, including appeals processes.
- Ensure that any individuals convicted in relation to the alleged abuse of Engin Çeber and his fellow detainees receive punishments which are commensurate with their crimes.
- Ensure that lawyers involved in court proceedings stemming from the Çeber case, as well as in trials in Turkey more generally, are permitted to freely cross-examine witnesses in accordance with the 2005 Criminal Procedure Code.
- Ensure that in this case and in other trials in which the accused are state actors, such individuals receive the same treatment as any other defendant and are required to comport themselves in court like any other defendant. Those employed to provide security during such trials should also not be allowed to influence the atmosphere in court through displays of partiality towards the defendants or ill will towards complainants.
- Take immediate steps to facilitate independent monitoring of the detention system in order to foster a culture of transparency and accountability. This should include swiftly ratifying and implementing the Optional Protocol to the Convention against Torture. It should also include putting in place the necessary laws and procedures to provide for regular access to detention centres for domestic and international civil society organisations.
- Ensure that all future allegations of torture and ill-treatment are swiftly and fairly investigated and prosecuted, and that, where a conviction is secured, punishments are applied which are commensurate with the crime in question.

- Focus in particular on stamping out abuses such as ‘welcome beatings’ and violent treatment during transfer, as well as sexual intimidation, and bringing to account those responsible for such practices.
- Provide systematic and ongoing training for judges, prosecutors, doctors, prison guards, police officers, gendarmes and other relevant officials and members of local monitoring bodies.
- Implement procedures for the medical examination of detainees alleging torture or ill-treatment in line with the standards set out in the Istanbul Protocol. This should include allowing detainees who allege ill-treatment and/or torture to have access to an independent medical examination, and allowing independent medical reports to be admissible in ensuing investigations. It should also include ensuring that consultations take place in private, ensuring that the role of medical staff is clearly distinguished from that of the prison establishment, and granting as much responsibility as possible for medical treatment of detainees to the Ministry of Health.
- Provide adequate facilities and improved working conditions to doctors and other medical staff responsible for treating detainees in order to ensure that they are able to effectively carry out their duty.
- Put in place strict measures to prevent the practices of ‘doctor shopping’ and the provision of medical reports without examination of a detainee.

This report urges the European Union to:

- Continue to monitor the human rights situation in the Turkish detention system and compliance with the Copenhagen Criteria, the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and other international human rights instruments.
- Monitor the court proceedings stemming from the Çeber case and other future trials, in order to ensure that allegations of torture and ill-treatment are dealt with fairly and effectively within the Turkish justice system.
- Support reforms of the Turkish detention and justice system through the provision of expert advice and human rights training for judges, prosecutors, doctors, prison guards, police officers, gendarmes and other relevant officials and members of local monitoring bodies.

APPENDIX 1: INDICTMENT⁸⁵

To the High Criminal Court of Bakırköy

Applicant: Public

Victim: ENGİN ÇEBER, The son of Ali and Kamile, born in 05/05/1979.

Complainants:

- 1) ÖZGÜR KARAKAYA, the son of Abdullah and Cemile, born in 14/07/1986, registered at the address *[information redacted]*
- 2) AYSU BAYKAL, the daughter of LEMYAZ and ŞADIYE, born in 20/09/1972 registered at the address *[information redacted]*
- 3) ALİ TEKİN, the son of ALİ and ŞEHRİBAN, born in 12/12/1951 registered at the address *[information redacted]*
- 4) CİHAN GÜN, the son of KEMAL and GÜLİZAR, born in 18/09/1990 registered at the address *[information redacted]*

Legal representatives:

NACİYE DEMİR, *[information redacted]*

TAYLAN TANAY, *[information redacted]*

OYA ASLAN, *[information redacted]*

Suspects:

- 1) YUSUF GAYIR, the son of ABDULBAKİ and HANİFE, born in 10/06/1954, *[information redacted]* with the address Directorate of Metris Prison, the second director, Istanbul

⁸⁵ Unofficial translation of original Turkish-language document. Some personal information, such as home addresses, have been redacted. In all cases where redactions have been made, this is clearly marked.

Offence: Misuse of Public Duty, Deprivation of Exercising Certain Rights

Date of Offence: 29/09/2008

Propelling charge: Article 257/1, 53 of the Turkish Penal Code

2) FUAT KARAOSMANOĞLU, son of TURHAN and SEVİM, born in 26/09/1970
[information redacted] Still in detention due to the accusation.

Defense Lawyer: EMİNE GEÇİM, Istanbul, registered at the address *[information redacted]*

Offense: Breach of duty leading to torture, Deprivation of Exercising Certain Rights

Date of the offense: 01/10/2008, 07/10/2008

Date of arrest: 03/11/2008 the decision of the Bakırköy Magistrate Criminal Court dated 03/11/2008 number 2008/231.

Propelling charge: The articles 95/4, 53, 63, 257/2, 53 of the Turkish Penal Code with reference to 94/5

3) TUNCAY AYAN, the son of ASIM and PAKİZE, born in 22/09/1980,
[information redacted] with the address Sariyer Police Department/Istanbul

Defense Lawyer: AYHAN GÜNAY, Istanbul registered at the address *[information redacted]*

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: Application of the articles of 96/1, 53 of the Turkish Penal Code

4) KADEM KARADENİZ, the son of AHMET and ŞAZİYE, born in 27/11/1959, [information redacted] with the address Directorate of Metris Prison, Istanbul.

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 01/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

5) CUMA KAÇAR, the son of ABDULLAH and FETHİYE, born in 15/02/1960, [information redacted] with the address Metris Closed Prison, Principal Official, Bakırköy/Istanbul

Offense: Misuse of Public Duty, Failure by a Public Officer not to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 29/09/2008, 06/10/2008

Propelling charge: The articles of 257/1, 53, 279/1, 53 of the Turkish Penal Code

6) HÜSEYİN ARSLAN, the son of BAYRAM and NİLÜFER, born in 17/05/1988, [information redacted] Metris Gendarmerie Protection Commandership, Istanbul

Offense: Intentional Injury, Excessive Use of Force, Deprivation of Exercising Certain Rights

Propelling charge: The double application of the articles of 86/2-3/d, 53 of the Turkish Penal Code with reference to 256/1

7) ERDOĞAN COŞARDERELİOĞLU, the son of ARAP ALİ and HAYRİYE, born in 01/01/1966, [information redacted] with the address Metris Prison, Istanbul

Offense: Misuse of Public Duty, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 257/2, 53 of the Turkish Penal Code

8) NEVZAT KAYIM, the son of ŞAHİN and KAZİME, born in 26/05/1962, [information redacted] with the address of the principal official for the Protection in Execution of Metris Prison, Istanbul

Defense Laywer: KAYAK BABACAOĞLU, Istanbul with the address [information redacted]

Offense: Intentional Injury, Excessive Use of Force, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 86/2-3/d, 53 of the Turkish Penal Code with reference to 256/1

9) SELAHATTİN APAYDIN, the son of NURETTİN and BİLOR, born in 01/07/1956, [information redacted] on duty in Metris Prison. Still in detention due to the accusation.

Defense Lawyer: NURŞEN ALKAN, with the address [information redacted]

Offense: Aggravated Torture on Account of its Consequences, Deprivation of Exercising Certain Rights, Deductions

The date of offense: 07/10/2008

Date of arrest: 03/11/2008 the decision of the Bakırköy Magistrate Criminal Court dated 03/11/2008 number 2008/231.

Propelling charge: The articles of 95/4, 53, 63 of the Turkish Penal Code

10) NURİ KELEŞ, the son of NURETTİN and FATMA, born in 01/06/1962, [information redacted] with the address Metris Prison Protection in Execution Department

Defense Lawyer: İBRAHİM ÖZDEMİR, with the address [information redacted]

Offense: Failure By a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of the offense: 07/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

11) MUSTAFA KIRÇIL, the son of AHMET and HAYRİYE, born in 25/08/1967, *[information redacted]* Sarıyer Police Department, Istanbul

Defense lawyer: AYHAN GÜNAY, with the address *[information redacted]*

Offense: Torment, Deprivation of Exercising Certain Rights

The date of the offense: 28/09/2008, 29/09/2008

Propelling charge: The articles of 96/1, 53 of the Turkish Penal Code

12) SALİM GENİŞ, the son of MEHMET and GÜLLÜ, born in 02/04/1961, *[information redacted]* Metris Prison Protection in Execution Department, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of the offense: 06/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

13) MESUT YAVUZ, the son of RAMADAN and FATMA, born in 20/02/1971, *[information redacted]* Sarıyer Police Department, Istanbul

Defense lawyer: AYHAN GÜNAY, with the address *[information redacted]*

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: Double application of the articles of 96/1, 53 of the Turkish Penal Code

14) ABDÜLKADİR ÖZTEKİN, the son of ALİ and MÜNEVVER, born in 05/04/1967, *[information redacted]* Metris Gendarmerie Protection Commandership, Istanbul

Offense: Intentional Injury, Deprivation of Exercising Certain Rights, Excessive Use of Force

Date of offense: 29/09/2008

Propelling charge: The articles of 86/2-3/d, 53 of the Turkish Penal Code with reference to 256/1

15) NERMAN AKKILIÇ, the son of İSA and CEMİLE, born in 30/09/1960, *[information redacted]* with the address Metris Prison Protection in Execution Department, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 01/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

16) MUSTAFA ERASLAN, the son of EFE and DÖNDÜ, born in 25/07/1971, *[information redacted]* with the address Metris Prison Protection in Execution Department, Istanbul

Defense Lawyer: KAYA KABACAOĞLU, with the address *[information redacted]*

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of the offense: 07/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

17) YAVUZ UZUN, the son of ARSLAN and NADİME, born in 29/05/1962, *[information redacted]* directorate of T Type Closed Metris Prison in the Protection in Execution Department, Istanbul. Still in detention due to the accusation.

Defense Lawyer: NURŞEN ALKAN, with the address *[information redacted]*

Offense: Torment, Deprivation of Exercising Certain Rights, Deductions

The date of offense: 01/10/2008

Date of arrest: 03/11/2008 the decision of the Bakırköy Magistrate

Criminal Court dated 03/11/2008 number 2008/231.

Propelling charge: The triple application of the articles of 96/1, 53, 63 of the Turkish Penal Code

18) MEHMET PEK, the son of DOĞAN and AYŞE, born in 10 /12/1985, *[information redacted]* with the address Ş.M Bodur Police Station, Sarıyer, Istanbul

Defense Lawyer: AYHAN GÜNAY, Istanbul with the address *[information redacted]*

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: Four times application of the articles of 96/1, 53 of the Turkish Penal Code

19) SIDDİK GÜNGÖR, the son of HASAN and GÜLNAZ, born in 15/05/1975, *[information redacted]* with the address the directorate of Metris Prison, Bakırköy/Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

20) YUSUF AY, the son of MEHMET SALİH and HAMİL, born in 08/04/1981, [information redacted] with the address Sarıyer District Police Department, Istanbul

Defense Lawyer: AYHAN GÜNAY, Istanbul with the address [information redacted]

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: The articles of 96/1, 53 of the Turkish Penal Code

21) ABDÜLMÜTALLİP BOZYEL, the son of MEHMET and ADALET, born in 19/10/1972, [information redacted] with the address Sarıyer District Police Department, Sarıyer, Istanbul

Defense Lawyer: AYHAN GÜNAY, Istanbul with the address [information redacted]

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: Four times application of the articles of 96/1, 53 of the Turkish Penal Code

22) ALİYE UÇAK, the daughter of HALİL and ELİFE, born in 12/08/1986, [information redacted] Sarıyer District Police Department, Istanbul

Defense Lawyer: AYHAN GÜNAY, Istanbul with the address [information redacted]

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: The articles of 96/1, 53 of the Turkish Penal Code

23) MUSTAFA KÖSE, the son of İBRAHİM and HATİCE, born in 26/11/1981,
[information redacted] Ş.M. Bodur Police Station, Sarıyer

Defense Lawyer: AYHAN GÜNAY, Istanbul with the address *[information redacted]*

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: Double application of the articles of 96/1, 53 of the Turkish Penal Code

24) ERHAN ERKOÇ, the son of ÜNAL and SEVİM, born in 20/03/1981,
[information redacted] with the address Sarıyer District Police Department,
Istanbul

Defense Lawyer: AYHAN GÜNAY, Istanbul with the address *[information redacted]*

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: Double application of the articles of 96/1, 53 of the Turkish Penal Code

25) CENGİZ AKBULUT, the son of ENVER and HATİCE, born in 27/12/1981,
[information redacted] Ş,M Police Station, Sarıyer, Istanbul

Defense Lawyer: AYHAN GÜNAY, Istanbul with the address *[information redacted]*

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: The articles of 96/1, 53 of the Turkish Penal Code

26) ÖMER DEMİR, the son of ALİ and BEHİYYE, born in 11/09/1980,
[*information redacted*] Ş,M Police Station, Sariyer, Istanbul

Defense Lawyer: AYHAN GÜNAY, Istanbul with the address [*information redacted*]

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: The articles of 96/1, 53 of the Turkish Penal Code

27) MURAT ÇİŞE, the son of MEHMET and EMİNE, born in 05/10/1962,
[*information redacted*] Working in Metris Prison, Istanbul.

Defense Lawyer: EMİNE GEÇİM, Istanbul with the address Cevizlik Mah.
Istanbul Cad. Dantelacı Sk Velioglu İşhanı No:15/5

Offense: Torment, Deprivation of Exercising Certain Rights, Deductions

Date of the offense: 01/10/2008, 07/10/2008

Date of arrest: 03/11/2008 the decision of the Bakırköy Magistrate Criminal
Court dated 03/11/2008 number 2008/231.

Propelling charge: Triple application of the articles of 96/1, 53, 63 of the Turkish
Penal Code

28) SAMİ ERGAZİ, the son of ŞEVKİ and HATİCE, born in 10/03/1971,
[*information redacted*] Serves as Protection in Execution official in Metris
Prison, Istanbul. Still in detention due to the accusation.

Defense Lawyer NURŞEN ALKAN, with the address [*information redacted*]

Offense: Aggravated Torture on Account of its Consequences, Deductions, Failure
by a Public Officer to Report an Offense, Deprivation of Exercising
Certain Rights, Reference to Principle Involvement

The date of offense: 06/10/2008, 07/10/2008

Date of arrest: 03/11/2008 the decision of the Bakırköy Magistrate Criminal
Court dated 03/11/2008 number 2008/231.

Propelling charge: The articles of 95/4, 53, 63, 279/1, 53 of the Turkish Penal Code with reference to article 37

29) NİHAT KIZILKAYA, the son of NEVZAT and SALATİN, born in 24/02/1965, [information redacted] Official in Metris Prison, Istanbul. Still in detention due to the accusation.

Defense Lawyer: EMİNE GEÇİM, Istanbul with the address [information redacted]

Offense: Aggravated Torture on Account of its Consequences, Misuse of Public Duty, Deductions, Deprivation of Exercising Certain Rights, Reference to Principal Involvement

Date of the offense: 01/10/2008, 07/10/2008

Date of arrest: 03/11/2008 the decision of the Bakırköy Magistrate Criminal Court dated 03/11/2008 number 2008/231.

Propelling charge: The articles of 95/4, 53, 63, 257/2, 53 of the Turkish Penal Code with reference to article 37.

30) MEHMET BAYRAKÇI, the son of HALİL and SEVİM, born in 10/08/1985, [information redacted] Sariyer District Police Department, Istanbul

Defense Lawyer: AYHAN GÜNAY, Istanbul with the address [information redacted]

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: The articles of 96/1, 53 of the Turkish Penal Code

31) ÜMİT REMZİ ATASUN, the son of ŞEMSETTİN and MÜNCİBE, born in 01/01/1986, [information redacted] Sariyer District Police Department

Defense Lawyer: AYHAN GÜNAY, Istanbul with the address [*information redacted*]

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 28/09/2008, 29/09/2008

Propelling charge: The double application of the articles of 96/1, 53 of the Turkish Penal Code

32) MURAT İŞLER, the son of MEHMET and FATMA, born in 01/08/1980, [*information redacted*] with the address Directorate of Metris Prison, Istanbul

Offense: Intentional Injury, Deprivation of Exercising Certain Rights, Reference to Excessive Use of Force

Date of offense: 29/09/2008

Propelling charge: The triple application of the articles of 86/2-3/d, 53 of the Turkish Penal Code with reference to 256/1

33) TAYLAN GÖK, the son of SEBAHATTİN and HACER, born in 01/03/1988, [*information redacted*] Metris Gendarmerie Protection Commandership, Bakırköy/ Istanbul

Offense: Intentional Injury, Deprivation of Exercising Certain Rights, Reference to Excessive Use of Force

The date of offense: 29/09/2008

Propelling charge: The articles of 86/2-3/d, 53 of the Turkish Penal Code with reference to 256/1

34) YILMAZ AYDOĞDU, the son of SABRİ and NAZİFE, born in 01/01/1966, [*information redacted*] The principal official for the Protection in Execution of Metris Prison, Istanbul.

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

35) MEHMET POLAT, the son of ABDULKADİR and ASİYE, born in 05/02/1982, *[information redacted]* Metris Prison Protection in Execution Department, Istanbul

Offense: Intentional Injury, Deprivation of Exercising Certain Rights, Reference to Excessive Use of Force

Date of offense: 06/10/2008

Propelling charge: The articles of 86/2-3/d, 53 of the Turkish Penal Code with reference to 256/1

36) ÖMER ATASEVEN, the son of KAMİL and ZEYNEP, born in 01/02/1960, *[information redacted]* with the address Metris Prison Protection in Execution Department, Istanbul.

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 07/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

37) KUBİLAY KOÇALI, the son of ALLAHVERDİ and GÜLÜ, born in 30/11/1960, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

38) TURAN ASLAN, the son of AHMET and FATMA, born in 02/08/1973, [information redacted] with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 07/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

39) AZİZ BARAN, the son of ALİ and HİKMET, born in 02/04 1966, [information redacted] with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

40) KAMAL TUNA, the son of AHMET and EMİNE, born in 01/02/1966, [information redacted] with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 01/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

41) OSMAN ÜLKER, the son of KAHRAMAN and GÜLİSTAN, born in 01/03/1964, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 07/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

42) SABAHATTİN GÜRBÜZ, the son of FAHRETTİN and NAGİHAN, born in 01/08/1964, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 07/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

43) CANSEVER YEŞİLKAYA, the son of CEMAL and ZAHİDE, born in 05/05/1962, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 07/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

44) HAKAN KAYAOĞLU, the son of HACI ALİ and DUDU, born in 16/06/1981, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

45) ADEM ÖZBEK, the son of SÜLEYMAN and HAYRİYE, born in 20/07/1985, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 07/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

46) SERDAR GÖKKAYA, the son of ALİ and NAZLI, born in 19/12/1981, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

47) ÖNCAY BOZO, the son of FEYYAZ and ÇİÇEK, born in 01/02/1969, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Defense Lawyer: *[information redacted]*

Offense: Torment, Deprivation of Exercising Certain Rights

Date of offense: 01/10/2008

Propelling charge: Triple application of the articles of 96/1, 53 of the Turkish Penal Code

48) SEYDİ ÖMER ERDAL, the son of İBRAHİM and MÜRÜVVET, born in 01/03/1953, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

49) NURİ ATALAY, the son of HAKKI and AYİŞE, born in 01/01/1963, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Misuse of Public Duty, Deprivation of Exercising Certain Rights

Date of offense 06/10/2008

Propelling charge: The articles of 257/2, 53 of the Turkish Penal Code

50) MEHMET IŞIK, the son of ZEYNEL and ELİF, born in 24/02/1977, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

51) ADEM ERDUR, the son of SIRRI and AYŞE, born in 05/03/1964, [*information redacted*] with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 01/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

52) ŞENOL YAVUZ, the son of NAZIM and CEZMİNUR, born in 10/09/1971, [*information redacted*] with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

53) ALİ ARSLANTÜRK, the son of MUSTAFA and FATMA, born in 12/03/1969, [*information redacted*] with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 01/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

54) TURHAN DEVECİ, the son of AHMET and CEMİLE, born in 01/09/1972, [*information redacted*] with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 01/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

55) HASAN YOLCU, the son of ESET and NİŞAN, born in 10/03/1959, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 01/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

56) MUHARREM ÇELİK, the son of SALİH and SERVİ, born in 01/01/1966, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Misuse of Public Duty, Deprivation of Exercising Certain Rights

Date of offense: 29/09/2008

Propelling charge: The articles of 257/1, 53 of the Turkish Penal Code

57) TURAN GÜNAYDIN, the son of ARİF and SÜHEYLÂ, born in 20/04/1962, *[information redacted]* with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Misuse of Public Duty, Deprivation of Exercising Certain Rights

Date of offense: 29/09/2008

Propelling charge: The articles of 257/1, 53 of the Turkish Penal Code

58) MUHARREM KOÇALI, the son of ALLAHVERDİ and GÜLÜ, born in 01/01/1966, [information redacted] with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 01/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

59) YEMLİHA SÖYLENMEZ, the son of MUSTAFA and HATUN, born in 05/01/1954, [information redacted] with the address the doctor of the Department Metris Prison, Istanbul

Offense: Documents Presumed to be Official Documents, Successive Offenses, Deprivation of Exercising Certain Rights

Date of offense: 30/09/2008

Propelling charge: The articles of 210/2, 43/1, 53 of the Turkish Penal Code

60) MEHMET ŞENEL, the son of ŞÜKRÜ and EMİNE, born in 03/05/1972, [information redacted] with the address Protection in Execution Department Metris Prison, Istanbul

Offense: Failure by a Public Officer to Report an Offense, Deprivation of Exercising Certain Rights

Date of offense: 06/10/2008, 07/10/2008

Propelling charge: The articles of 279/1, 53 of the Turkish Penal Code

Places of the offense:

- 1) Sarıyer District, Derbent Neighborhood, Akgün Stree
- 2) İstinye Şehit Muhsin Bodur Police Central Station
- 3) Metris T type Closed Prison number 1 and 2

Evidence: statements of complainants, defence statements of suspects, Forensic doctor's report of deceased. Post mortem report of Forensic Laboratory and death examination report, forensic doctors' reports and Forensic Laboratory reports of complainants Özgür Karakaya, Cihan Gün and Aysu Baykal, CC camera footage from Metris Prison and photographs obtained from this footage, witness statements, safe custody receipt, birth certificates and criminal records, contents of investigation documents no. 2008/8411 of the Sarıyer Public Prosecutor's Office.

Investigation Documents Examined:

It has been established that a group of 10 persons, among them the deceased and complainants Özgür Karakaya, Cihan Gün and Aysu Baykal, the identity details of whom are above, gathered on Akgün street in Derbent neighbourhood of Sarıyer district at 1400 on 28/09/2008 for the purpose of carrying out a meeting and demonstration without permission. 12 security officers, amongst them suspects Mesut Yavuz, Abdulmuttalip Bozyel and Erhan Erkoç, arrived at the scene; on ascertaining that there were search and arrest warrants issued regarding the deceased Engin Çeber and complainants Özgür Karakaya and Aysu Baykal, as a result of resistance to the implementation of these warrants the deceased and above named complainants were injured by kicks, punches and blows from a blunt instrument from suspects Mesut Yavuz, Abdulmuttalip and Erhan Erkoç as recorded in the reports nos. 5080, 5078, 5077 and 5880 of 28/09/2008 regarding the above complainants; the arrested deceased and abovementioned complainants were taken to the İstinye Sehit Muhsin Bodur Police Centre, where, until 1500 on 29/09/2008 when they were taken to the Sarıyer Public Prosecutor's Office on a charge of Resisting an Officer Preventing his carrying out his Duty, as a result of resistance to the fingerprinting, taking of photographs and required administrative procedures such as sending to hospital, additional injuries to those suffered at the scene of the incident were sustained, as detailed in report nos. 5090, 5093, 5089 and 5859 of 29/09/2008 as follows:

Complainant Cihan Gün:

- 2 cm long redness in the form of a line on the left side of the forehead
- Swelling 5 by 5 cm under the left collarbone
- Redness on left ear
- Redness on left knee

Complainant Özgür Karakaya:

- 2 cm scratch on left cheek
- Both eyes swollen and red
- 2 by 1 cm cut inside left cheek

- 4 cm bruise above left shoulder blade
- 6 x 4 cm swelling and bruising on right flank (blunt instrument)
- 3 x 3 cm bruising in middle on left shoulder
- 20 x 20 cm bruising from left shoulder over collarbone
- Redness on right side of chest

Complainant Aysu Baykal:

- 1 x 1 cm redness on left earlobe
- Redness thought to have been caused by finger or nail on front and back of neck
- 1 x 1 cm graze on right elbow
- multiple bruising on front of both legs

Deceased Engin Çeber :

- 5 x 5 cm bruising on right eyelid
- Swelling on right frontal (forehead)
- Swelling on right temporal (above ear)
- Hyperemi on both wrists (redness caused by handcuffs)

The above injuries having been sustained by complainant Cihan Gun from kicks, blows and strikes with a blunt instrument from suspects Mesut Yavuz, Abdulmuttalip Bozyel, Erhan Erkoç, Mehmet Bayrakçı, Ümit Remzi Atasun, Mustafa Kirgil, Yusuf Ay and Mehmet Pek, by complainant Özgür Karakaya from kicks, blows and strikes from a blunt instrument from suspects Abdulmuttalip Bozyel, Erhan Erkoç, Mehmet Bayrakçı, Ümit Remzi Atasun, Tuncay Ayan, Mehmet Pek, Mustafa Köse and Ömer Demir, by complainant Aysu Baykal from blows, kicks and strikes with a blunt instrument from suspects Abdulmuttalip Bozyel, Mesut Yavuz, Mustafa Kirgil, Mehmet Pek and Aliye Uçak and by deceased Engin Çeber from kicks, blows and strikes with a blunt instrument from suspects Abdulmuttalip Bozyel, Cengiz Akbulut, Mehmet Bayrakçı, Mustafa Kirgil, Tuncay Ayan, Mehmet Pek and Mustafa Köse, as detailed in the above judicial reports.

The acts of the security officers that are the subject of the investigation are of the character laid down in article 3 of the European Convention on Human Rights:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

This, being a provision of constitutional law due to the hierarchy of legal norms, articles nos. 94 and 96 of the Turkish Penal Code are appropriate for implementation, regarding these there have been the following cases at the European Court of Human Rights:

-Gunaydin vs Turkey

Application no. 27526/95 13 ----- October 2005

-Soner and Others vs Turkey

Application no. 40986/98 ----- 27 April 2006

-Hazirci and Others vs Turkey

Application no. 57171/00 ----- 29 November 2007

-Akdogdu vs Turkey

Application no. 57171/00 ----- 29 November 2007

-Mustafa Akbulut vs Turkey

Application no. 40803/02 ----- 20 November 2007

-Guzel Sahin and Others vs Turkey

Application no. 68263/01 ----- 21 December 2006

-Kurnaz and Others vs Turkey

Application no. 366721/97 ----- 24 July 2007

When factors in these verdicts which have become principles and criteria recognised as International Legal Norms, such as the aggressive, armed nature of the deceased and the above named complainants, their conditions of detention, the positive obligation of protecting an individual against another and the administration, behaviour that might engender disproportionate fear and a feeling of weakness in victims, the use of minimum force, the nature of injuries, the number of officers involved in an intervention, the officers being caught unawares, the seriousness of incidents, the lack of signatures of the deceased and complainants on records of the incident are evaluated in their entirety it is apparent that the offence of ill treatment took place.

Following the formal arrest of the deceased Engin Çeber and complainants Cihan Gün and Özgür Karakaya on the offence of resistance preventing an officer carrying out his duty, the subject of investigation no.2008/8335 of the Sarıyer Public Prosecutor's Office they were taken to the Prison admittance and search section of the Metris Prison Protection Company Command where, as a result of their opposing the body search in the form of peaceful resistance and threatening words, complainant Özgür was kicked, punched and hit with a truncheon by suspects of officers Murat İşler and Hüseyin Arslan and head butted once by suspect Abdulkadir Öztekin, who also attempted to strike him with his knee, while complainant Cihan Gün was punched in the stomach and punched by suspect Murat İşler, while the deceased Engin Çeber was punched, kicked and struck with truncheons by suspects Murat İşler, Hüseyin Arslan and Taylan Gök, however, since the duration, violence and area of the blows could not be ascertained and evidence and judicial reports after these searches in the search room do not exist the statement of Mustafa Köse has been accepted as a witness, the footage from cameras showing the truncheon taken to and from the search room, and the footage of complainant Özgür Karakaya walking with difficulty when emerging from the search room establish

the fact that the acts described constitute the offence of deliberate causing of injury through excessive use of force (despite doing their duty as regards the searching of these suspects and the administrative tasks such as keeping records the investigation, as mentioned in many Court of Cassation judgments, has been carried out in accordance with article 165 of the Law regarding Criminal Court Procedure). Subsequently the deceased and above mentioned complainants were surrendered to the officials of the Metris no.1 and no. 2 T Type Closed Prison at around 21.55 on 29/09/2008. On that date suspect Yusuf Gayır was duty governor, Cuma Kaçar was chief prison officer, Turan Günaydın was responsible for the left corridor of T-1 Block where the admittance procedure took place, and Muharrem Çelik was the officer responsible for receiving the prisoners. It has been established that despite the deceased and complainants having marks of blows and coercion a doctor was not called or sending to a health centre was not done, thereby the offence of abuse of office was committed, this being proved by the statement of prison doctor Yemliha Söylemez, institutional records and testimony of the suspects.

It has been established that the deceased and complainants were then admitted to the transitional no. D-3 dormitory, where the doctor, suspect Yemliha Söylemez drew up records of examination without seeing and examining the deceased, complainants and the other persons in the dormitory, Murat Bolgülmüş, Gazi Arı, Adem Cimşit, Hüseyin Keleş, Cemal Peksoy, Erdal Laçın, M. Kenan Kutay, Fatih Hansu and Cem Çelebi, thereby committing the same offence of false documentation several times over, as established by the indirect admission of the suspect and the testimony of witness Alp Çetiner.

The deceased and complainants Cihan Gün and Özgür Karakaya, from the first day they arrived at the Metris nos. 1 and 2 T Type Closed Prison they did not participate in the roll call on the grounds this was degrading for them as political offenders, behaving in contravention of article 12 of the Metris Nos 1 & 2 Closed Prison Regulations starting: 'Roll call...' approved by the General Inspectorate of Prisons and based on the provision in article 46/8 of the Prison Administration and Security Regulations: 'the form of roll call.....shall be determined by the administration', not standing up and behaving in a manner contravening the rules of the institution, whereupon, at around 0800 on 01/10/2008 for the majority of the 14 minutes and 37 seconds during which the roll call continued the deceased and complainants were beaten and punched by suspects Yavuz Uzun, Murat Çise and Öncay Bozo, and injured by a wooded club which suspect Murat Çise brought into the dormitory, meanwhile suspect Yavuz Uzun poured sufficient water on the deceased and complainants, resulting in their bodies being completely soaked, institutional camera footage and photographs obtained from these cameras established that they had been injured by the suspects in the above mentioned manner; the fact that the statements of suspect Öncay Bozo and forensic reports dated 09/10/2008, 10/10/2008 and 03/11/2008 regarding the complainants and autopsy report regarding the de-

ceased contained evidence of injuries not recorded in the forensic report after detention of 29/09/2008, there is also the testimony of witnesses Murat Boğulmuş and Hüseyin Keleş regarding the floor of the dormitory being wet and that they heard the sounds of beating; regarding the acts of suspects Yavuz Uzun, Murat Çise and Öncay Bozo being appropriate as regards the violence, duration and the manner in which it was carried out (in particular the wetting by pouring water) for the application of article 3 of the European Convention on Human Rights, correspond to the offence of ill treatment, in particular regarding the following judgments:

-Guzel Sahin and Others vs Turkey

Application no. 68263/01 ----- 27 December 2006

-Yucel vs Turkey

Application no. 6686/03 ----- 8 April 2008

-Kurnaz and Others vs Turkey

Application no. 36672/97 ----- 24 July 2007

It has been ascertained that suspects Turan Deveci, Seydi Ömer Erdal, Muharrem Koçali, Kadem Karadeniz, Adam Erdur, Kemal Tuna, Nerman Akkılıç and Ali Arslantürk, who participated in the roll call mentioned in these incidents, were witnesses, but that they also committed an offence by not informing the authorities despite learning of the commission of an offence from the officials, this being established from the camera footage of the D-3 dormitory corridor and entry door.

The roll call of 01/10/2008 was carried out in the charge of suspects Fuat Karaosmanoğlu, Nihat Kızılkaya and Yavuz Uzun, it has been established from the institutional records that, apart from Yavuz Uzun the suspects committed an offence of neglect of duty, as duty governor and chief warder, and that when deceased Engin Çeber was sent to dormitory no. B-8 the duration of the morning roll call was 7 minutes 43 seconds, that when for the above reasons the deceased did not participate he was hit in the face and punched twice on the shoulders by suspect Nevzat Kayım, kicked once on the left leg by suspect Mehmet Polat, established by the witness and accused statements of Yılmaz Aydoğdu, the statements and identification of witnesses Şükrü Zeren and Kıyasettin Şakiroğlu relating to the length of time of their acts and the fact they were not violent, when evaluated within the framework of the above mentioned European Court of Human Rights judgments it has been established that the offence of deliberate wounding by use of excessive force was committed.

Despite the fact that suspects Kubilay Koçali, Cuma Kaçar, Hakan Kayaoğlu, Salim Geniş, Aziz Baran, Serdar Gökkaya, Yılmaz Aydoğdu, Sıddık Güngör, Sami Ergazi, Şenol Yavuz, Mehmet Şenel and Mehmet Işık witnessed this incident they did not report it, thus committing an offence, which was established through footage of institutional cameras, which also ascertained that during these roll calls duty gover-

nor Nuri Atalay and chief warder and warder responsible for the corridor Erdoğan Coşarderalioğlu committed the offence of neglect of duty.

On 07/10/2008 the roll call in dormitory B-8, where the deceased was, began at 08.15.43 and ended at 08.18.20. The deceased did not participate in the roll call for the above mentioned reasons, whereupon suspects Nihat Kızılkaya, Selahattin Apaydın and Sami Ergazi struck blows with feet and fists in the head and neck region of the deceased. At that time suspect Selahattin Apaydın held the deceased and struck the back of his head against the wall of the dormitory and several times against the iron door of the exercise yard; suspect Yılmaz Aydoğdu first removed Nihat Kızılkaya and then Selahattin Aydoğan from the dormitory. Meanwhile suspect Sami Ergazi dragged the motionless deceased out into the dormitory garden and continued to strike him in the way described, until suspect Yılmaz Aydoğdu, after removing the other two suspects from the dormitory, returned and removed Sami Ergazi, too. As a result of these acts there were symptoms such as irregular breathing and muscle spasms and the deceased was in a coma when taken initially to the Bayrampaşa State Hospital and from there to the Şişli Etfal Training and Research Hospital, where he was admitted on the diagnosis of a brain haemorrhage and died on 10/10/2008. As a result of a post mortem carried out by the Forensic Laboratory Morgue Department on 04/11/2008 report no. 210/13.12008/59447/3280 it was established that: '5-7 days prior to death a 30x17 cm bruise from the left hip to the thigh occurred while the other injuries described, including the brain haemorrhage that was the cause of death, occurred 4-5 days prior to death', being the result of the acts of suspect Selahattin Apaydın described above, striking the back of the deceased's head against the wall and iron door, the acts of suspects Nihat Kızılkaya and Sami Ergazi being of the character of abetment in the acts of Selahattin Apaydın, the legal status of these acts being quantified as follows:

Article 94 of law no. 5237 defines torture thus: *'the term torture is an act that gives physical or psychological pain to a person, or a third person, with the consent or permission of a public servant for the purpose of punishment for an offence committed or thought to have been committed by this person or a third person, or for the extraction of information or a confession, or for any discriminatory reason.'*

Regarding article 3 of the European Convention on Human Rights which is the main provision on which law no. 5237 is based, the following cases:

- Ozgur and Camli vs Turkey
Application no. 40986/98 ----- 27 April 2006
- Yucel vs Turkey
Application no. 6686/03 ----- 8 April 2008
- Kurnaz and Others vs Turkey
Application no. 36672/97 ----- 24 July 2007

Are instructive and in particular, regarding as it does an allegation of torture suffered on account of refusing to stand up and answer to one's name at roll call in prison:

-Diri vs Turkey

Application no. 68351/01 ----- 31 July 2007

The form of ill treatment which was the subject of this judgment, designed to break physical and psychological resistance to the prison administration and to inflict punishment by the prison warders, is within the definition of torture as defined in article 3 of the European Convention, and even if this ill treatment was inflicted without the motive of obtaining a confession, or punishment, or in a discriminatory way as defined in article 94 of law no. 5237, the fact that it caused death and extreme pain and distress means it can be accepted as torture independent of motive in accordance with international norms and that the acts of torture of the suspects have been established by means of the witness and suspect testimony of Yılmaz Aydogdu and witness statements of Kıyasettin Şakiroğlu, Murat Gevrek, Fahrettin Demir, İbrahim Kılıç and Şükrü Zeren and the autopsy report, again referring to the following judgment of the European Court of Human Rights:

-Haci Ozen vs Turkey

Application no. 46286/99 ----- 12 April 2007

From an evaluation of the above evidence it is apparent that sufficient evidence has been gathered in accordance with the principle of proof 'beyond reasonable doubt'.

It has been established from the witness statement of Şükrü Zeren that the duty governor on 07/10/2008, suspect Fuat Karaosmanoğlu, despite there being a legal obligation to intervene and prevent the acts of torture of suspects Selahattin Apaydın, Nihat Kızılkaya and Sami Ergazi inflicted on deceased Engin Çeber in front of the entry door to dormitory B-8 in block T-2, he made no verbal or physical intervention, and, as ascertained by the institutional cameras and photographs obtained from this footage, said: 'from now on anyone who does not stand up and answer to his name will be punished in this way.' It has also been established when the suspect was in front of the door and that he was there when suspect Nihat Kızılkaya left the dormitory and from the statement of witness/suspect Yılmaz Aydođdu, who said: '.....first I took Nihat Kızılkaya out, the others were continuing their acts.....', this statement accords with the others and is of the character of an admission that the acts of torture took place due to his neglectful behaviour.

On the morning of 07/10/2008 when the above incident of torture took place suspects Turan Aslan, Nuri Keleş, Sebahattin Gürbüz, Osman İlker, Ömer Ataserver, Mehmet Şenel, Cansever Yeşilkaya, Hasan Yolcu, Adem Özbek, Mustafa Eraslan

and Mehmet Polat participated in the roll call in dormitory B-8 and, while witnessing the offence of torture, did not inform the relevant authorities, this offence of non-notification by public servant of an offence being recorded by the institutional cameras and thus ascertained.

Although the remanded suspects have been formally arrested for different offences both the evidence gathered following their remand and the general classification of these offences according to international norms and principles indicates they are in accordance with the offence in the indictment;

Therefore it is requested that suspect Fuat Karaosmanoğlu be remanded in custody, prosecuted and sentenced on the offence of aggravated torture as a result of neglectful behaviour, suspect Selahattin Apaydın be remanded, prosecuted and sentenced for the offence of aggravated torture, and suspects Nihat Kızılkaya and Sami Ergazi be remanded, prosecuted and sentenced for the offence of abetting the committing of aggravated torture.

17/11/2008

Cevdet Doğan
Bakırköy Public Prosecutor
37324

Note:

1- A supplementary decision of no case to answer has been made with regard to the offences of ill treatment, abuse of authority and non-notification of offence by public servant concerning Osman Karar, Halil İbrahim Uçar, İsmail Cengiz Keskin, Orhan Cansever, Gökhan Bekleyiş, Cevdet Balcı, Murat Kaya, Hüseyin Kandemir, Serdar Sirki, Halil Telli, İbrahim Genç, Eba Muslim Bazan, Mustafa Doğan, Feryas Yıldız, Serhat Kızılca, Altan Uzunca, Selçuk Erol, Mahmut Ulu-soy, Türker Demircan, Salih Özdemirler, Elaattin Gürbüz, Lokman Bilim, Ercan Toğrul, Hüseyin Akbulut, Ramazan Bulduk, Abdulaziz Serdar Eryılmaz, Serkan Turut, Ertuğrul Şengün, Selahattin Fındık, Mehmet Refik, Aydın Uzunca, Enis Balaban, Abdulhamit Alagöz, Yakup Aydoğan, Halil İbrahim Demir, Ömer Kaygusuz, Rasim Aydın, Necdet Çalkap, Ahmet Aydoğdu, İlhan Civelekoğlu, İsmail Yurt, Mezlum Keskin, Ali Akmaz, Ali Avşar, Sadık Ede, Abdulkadir Büyükgüroğlu, Temel Acar and Selahattin Apaydın.

- 2- An investigation has been launched by Bakırköy Public Prosecutor's Office investigation no. 2008/105565 regarding the report of an offence of resisting and preventing the carrying out of duty by the Metris Prison Protection Unit concerning deceased Engin Çeber and complainants Özgür Karakaya and Cihan Gün.
- 3- An investigation into the offence of resisting and preventing the carrying out of duty by officers of the Sarıyer District Security Directorate concerning deceased Engin Çeber and complainants Özgür Karakaya, Cihan Gün and Aysu Baykal is being carried out by the Sarıyer Public Prosecutor's Office investigation no. 2008/8335.

APPENDIX 2: RELEVANT ARTICLES OF THE TURKISH PENAL CODE

Article 43: Successive Offences

- (1) Where a person commits the same act, more than once, against a person, at different times in the course of carrying out a decision to commit an offence, a single penalty shall be given. However, the penalty to be imposed in respect of that offence shall be increased by one quarter to three quarters. The basic version and qualified versions, which require higher or lesser penalties, of an offence shall be deemed to be one offence. The provisions of this section shall also apply to offences where the victim is not a specifically identifiable person.
- (2) The provisions of section one shall apply where an offence has been committed against more than one person through a single act.
- (3) The provisions of this article shall not apply to intentional homicide, intentional wounding, torture and robbery.

Article 53: Deprivation of Exercising Certain Rights

- (1) Where a person is sentenced to a penalty of imprisonment for an intentional offence the legal consequence of such shall be his prohibition from:
 - (a) becoming a member of the Turkish Grand National Assembly or undertaking employment as, or in the service of, an appointed or elected public officer (permanently, temporarily, or for a fixed period of time) within the administration of the state, a province, municipality or village, or institution or entity under their control or supervision;
 - (b) voting or being elected and exercising other political rights;
 - (c) acting as a guardian or being appointed in the role of guardianship and trustee;

- (d) being the administrator or inspector of a legal entity namely, foundation, association, labour union, company, cooperative or political party;
 - (e) conducting any profession or trade, which is subject to the permission of a professional organization (which is in the nature of a public institution or organization), under his own responsibility as a professional or a tradesman.
- (2) A person shall not exercise these rights until the completion of the term of his penalty of imprisonment.
- (3) The provisions in the above section shall not be applicable to an offender whose sentence of imprisonment has been suspended, or who has been conditionally released, in respect of acting as a guardian or being appointed in the role of guardianship and trustee. Where an offender has been subject to a suspended prison sentence the prohibition defined in section 1(e) may not apply.
- (4) The provision of section one shall not be applicable to persons whose short term sentence of imprisonment have been suspended or to persons who were under eighteen years old at the time when they committed the offence.
- (5) Where a sentence of imprisonment has been imposed for an offence related to the abuse of one of the rights or authority defined in section one, the offender shall be prohibited from exercising such right for a period of one half to two times the length of imprisonment imposed, such to come into effect after the prison term is served. Where only a judicial fine has been imposed for an offence related to the abuse of one of these rights or authority the exercise of this right shall be prohibited for a period of one half to double the number of days stated in the judgment. The relevant time relating to the start of the prohibition (once the judgment is finalised) is that when the judicial fine has been completely executed.
- (6) Where an offender is convicted of a reckless offence on the grounds of failing to discharge a duty of care and attention while performing a certain profession or trade, or while observing the necessities of traffic safety, it may be determined that the offender shall be prohibited from performing such profession, or trade, or that his driver's license be suspended for a period of not less than three months and not more than three years. The prohibition or the suspension shall be enforced once the judgement is finalized and such period starts once any sentence is completely served.

Article 63: Deductions

Any period of custody served in any of the circumstances occurring prior to final judgement shall be deducted from the sentence. Where a judicial fine is to be imposed, a reduction shall be made with the assumption that one day corresponds to one hundred Turkish Lira.

Article 86: Intentional Injury

- (1) Any person who intentionally causes another person physical pain or who impairs another person's health, or ability to perceive, shall be sentenced to a penalty of imprisonment for a term of one to three years.
- (2) Where the effect of an intentional injury upon a person is minor and can be cured by a simple medical treatment then, upon the complaint of the victim, a penalty of imprisonment for a term of four months to one year, or a judicial fine shall be imposed.
- (3) Where an intentional injury is committed:
 - (a) against a direct antecedent, direct descendent, spouse or sibling;
 - (b) against a person who cannot defend himself physically or mentally
 - (c) against a person because of his duties as a public officer;
 - (d) on account of a public officer misusing his influence; or
 - (e) by using a weapon, the penalty to be given shall be increased by one half and shall not require a complaint.

Article 94: Torture

- (1) A public officer who performs any act towards a person that is incompatible with human dignity, and which causes that person to suffer physically or mentally, or affects the person's capacity to perceive or his ability to act of his own will or insults them shall be sentenced to a penalty of imprisonment for term of three to twelve years.
- (2) If the offence is committed against:
 - (a) a child, a person who is physically or mentally incapable of defending himself or a pregnant woman; or

- (b) a public officer or an advocate on account of the performance of his duty, a penalty of imprisonment for a term of eight to fifteen years shall be imposed.
- (3) If the act is conducted in the manner of sexual harassment, the offender shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years,
- (4) Any other person who participates in the commission of this offence shall be sentenced in a manner equivalent to the public officer.
- 5) If the offence is committed by way of omission there shall be no reduction in the sentence.

Article 95: Aggravated Torture on Account of its Consequences

- (1) Where the act of torture causes (of the victim)
 - (a) a permanent impairment of the functioning of any one of the senses or an organ,
 - (b) a permanent speech defect;
 - (c) a distinct and permanent scar on his face,
 - (d) a situation which endangers a person's life, or
 - (e) the premature birth of a child, where the victim is a pregnant woman the penalty determined in accordance with the above article shall be increased by on half.
- (2) Where the act of torture causes (of the victim)
 - (a) an incurable illness or if it has caused the victim to enter a vegetative state,
 - (b) the complete loss of functioning of one of the sense or organs,
 - (c) the loss of the ability to speak or the loss of fertility,
 - (d) a permanent disfigurement of the face, or

- (e) the loss of an unborn child, where the victim is a pregnant woman the penalty determined in accordance with the above article shall be doubled.
- (3) Where an act of torture results in the breaking of a bone, the offender shall be sentenced to a penalty of imprisonment for a term of six years according to the effect of the broken bone on his ability to function in life.
- (4) Where an act of torture causes the death of the victim, the penalty to be imposed shall be aggravated life imprisonment.

Article 96: Torment

- (1) Any person who performs any act which results in the torment of another person shall be sentenced to a penalty of imprisonment for a term of two to five years.
- (2) Where the acts falling under the above paragraph are committed against:
 - (a) a child, a person who is physically or mentally incapable of defending himself or a pregnant woman; or
 - (b) a direct ascendant, direct descendant, adoptive parent or spouse, a penalty of imprisonment for a term of three to eight years shall be imposed.

Article 210: Documents Presumed to be Official Documents

- (1) The provisions relating to Counterfeiting Official Documents shall be applied where the subject of the offence of Counterfeiting Private Documents is a commercial bill made out to the holder (or to a specific person therein or a person to be nominated by such person), document representing merchandise, share certificate or bond will.
- (2) Any physician, dentist, pharmacist, mid-wife, nurse or person providing health services who issues a counterfeit document shall be sentenced to a penalty of imprisonment for a term of three months to one year. If such document is issued to secure unjust benefit for the issuer, or causes damage to persons or to the public the penalty shall be imposed according to the provisions relating to the Counterfeiting of Official Documents.

Article 256: Excessive Use of Force

- (1) Any public officer, having the authority to use force, who uses an amount of force in the course of his duty which exceeds that required by such duty, shall be subject to the provisions relating to intentional injury.

Article 257: Misuse of Public Duty

- (1) Excluding any situation defined elsewhere as a separate offence in law, any public officer who secures an unjust financial gain for another or causes any loss to the public or an individual by acting contrary to his duty shall be sentenced to a penalty of imprisonment for a term of one to three years.
- (2) Excluding any situation defined elsewhere as a separate offence in law, any public officer who secures unjust financial gain for another or causes any loss to the public or an individual by failing to discharge his duty, by omission or delay, shall be sentenced to a penalty of imprisonment for a term of six months to two years.
- (3) Any public officer who secures financial benefit for himself, or another, in return for fulfilling the requirements of his duty shall be sentenced according to section one, provided such act does not constitute the offence of extortion.

Article 279: Failure by a Public Officer to Report an Offence

- (1) Any public officer who fails to report an offence (which requires a public investigation and prosecution), or delays in reporting such offence, to the relevant authority, after becoming aware of such offence in the course of his duty, shall be sentenced to a penalty of imprisonment for a term of six months to two years.
- (2) Any person who fails to notify the relevant authority of any offence, which has been committed but where it is still possible to limit its consequences, shall be sentenced according to the provisions of the aforementioned section.
- (3) Where the victim is a child (not having yet attained his fifteenth year), a person physically or mentally impaired or a pregnant woman who cannot defend herself as a result of her pregnancy, the penalty to be imposed according to aforementioned sections shall be increases by one half.

ISBN 978-1-905592-24-1



9 781905 592241