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Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

Turkey: Treatment of detainees in police custody; recourses available to detainees to file complaints against the police and their effectiveness

1. Treatment of Detainees

The Council of Europe and the UN Committee Against Torture both indicate that there has been a decrease in reports of "torture and ill-treatment" in official places of detention (UN Nov. 2010, 3; Council of Europe 31 Mar. 2011, para. 14). However, an Amnesty International (AI) report dated May 2012 indicates that "very little progress has been made with regard to combating torture and impunity" (AI May 2012, 1). The European Commission 2011 report also states that "no progress" has been made on tackling impunity (EU 12 Oct. 2011, 23).

Several sources report cases of "torture" and abuse of persons in police custody (US 24 May 2012, Sec. 1; AI 2009; UN Nov. 2010, para. 7). The report of the Council of Europe on the 2009 visit to Turkey by the European Committee delegation for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment states that the Committee heard a number of allegations of excessive use of force, such as kicks or blows when an apprehended individual had already been brought under control, and the use of threats or verbal abuse during police questioning (Council of Europe 31 Mar. 2011, para. 14).

According to the US Department of State's *Country Reports on Human Rights Practices for 2011* and Human Rights Watch, the alleged torture and abuse largely occurred while victims were in police custody but outside of detention centers (Human Rights Watch 5 Dec. 2008; *ibid.* 2012; US 24 May 2012, Sec. 1), "in more informal venues where it was harder to document" (*ibid.*). For instance, according to Human Rights Watch, incidents of police ill-treatment have taken place in the street, in police cars, during apprehension, out of the sight of cameras or witnesses, during demonstrations, and during or following identity checks (Human Rights Watch 5 Dec. 2008).

In 2011, the Turkish Human Rights Association (HRA), an Ankara-based NGO that monitors human rights violations in Turkey (HRA n.d.), documented 310 cases of torture and ill-treatment in detention, as well as 517 cases outside of detention and 724 cases in prisons (*ibid.* 2011, 2). According to the HRA report dated 11 April 2012, the number of allegations of torture and ill-treatment in prisons and social areas in 2011 was 3,252 (11 Apr. 2012, 3). The HRA also reported 36 deaths recorded in prison and 5 deaths in detention in 2011 (HRA 2011, 1).

For example, in October 2008 a political activist who was detained in Istinye police station and Metris prison in Istanbul died of a brain haemorrhage due to blunt trauma (AI 2009; BBC 5 Dec. 2008) caused by blows to the head (AI 2009). The Justice Minister acknowledged that the death may have been caused by "torture" (*ibid.*). Three other activists who were arrested on the same day reported that they suffered "ill-treatment" at the police station and in Metris prison (BBC 5 Dec. 2008). As a result of these incidents, 19 police officers were suspended from duty (AI 5 Dec. 2008), and 60 police and prison officials faced trial (BBC 5 Dec. 2008). The BBC reports that four prison guards were charged with torture (5 Dec. 2008). According to *Country Reports 2011*, they were sentenced to life imprisonment, but by the end of 2011 the case was pending retrial in a local court (US 2012 Sec. 1). Further information on the result of the retrial could not be found among the sources consulted by the Research Directorate.

The Council of Europe report on the 2009 visit to Turkey indicates that alleged instances of ill-treatment occurred in parts of the premises of the police headquarters that were

outside of cameras' view (Council of Europe 31 Mar. 2011, note 8). The delegation indicated that most complaints came from the Diyarbakir area (ibid., para. 14). For instance, several prisoners "gave consistent accounts of beatings during transportation in a police vehicle, blows with batons and threats of sodomy in police establishments and, in a few cases, of cigarette burns" (ibid.). Although Section 148 of the Turkish Code of Criminal Procedure and Section 24 of the Detention Regulation prohibit sleep deprivation practices (ibid., para. 15, note 10), the Committee received complaints that criminal suspects detained in the Anti-Terror department in Diyarbakir Police Headquarters "had repeatedly been subjected to sleep deprivation during their stay in police custody" (ibid., para. 15).

A May 2010 report, prepared by London-based Kurdish Human Rights Project (KHRP), an independent, non-political NGO, provides examples of physical, mental and sexual abuses of Kurdish women by Turkish state agents, including police, security forces, and village guards (KHRP May 2010, 14). Amnesty International reports that in January 2010, an individual died after being held in police custody (AI 2011). In May 2010, seven police officers were "charged with causing his death through torture" (ibid.).

The Council of Europe reports that

[i]n virtually all the law enforcement establishments visited, a custody register only existed for the recording of persons who were physically placed in a custody cell. Thus, no record was usually kept of persons who had been deprived of their liberty without being formally detained (e.g. for identification purposes). (Council of Europe 31 Mar. 2011, para. 30)

The UN Committee Against Torture also indicates that it received reports of suspects who were held in police custody without being officially registered (UN Nov. 2010, para. 18). KHRP notes that 99 percent of detentions were not recorded in 2009 (KHRP May 2010, 16). It also indicates that a lack of proper recording of detentions prevents Kurdish women from bringing to justice state agents responsible for the torture and ill treatment of female detainees (KHRP May 2010, 15-16).

Sources report cases in which detainees did not always have access to a lawyer (HRFT 15 Oct. 2010, 2; Council of Europe 31 Mar. 2011, para. 21), particularly in Diyarbakir (ibid.). According to the Human Rights Foundation of Turkey (HRFT), when incidents involve torture and ill-treatment and a suspect asks to see a lawyer, his or her request is generally rejected by the law enforcement officers (HRFT 15 Oct. 2010, 2).

2. Recourses Available to Detainees to File Complaints Against the Police

A representative of HRFT indicated that complaints about torture or ill-treatment by the police can be submitted to the prosecutor's office (HRFT 30 May 2012). According to the UN Human Rights Council, the prosecutor, who is in charge of the investigation, is assisted by the police or the gendarmerie (UN 7 Feb. 2007, para. 45). According to the HRFT report, it is the duty of a prosecutor to launch an investigation as soon as he or she receives a complaint about torture (HRFT 15 Oct. 2010, 19). Further, the prosecutor is required to examine the scene of the incident and collect the evidence (ibid.). It is his or her duty to supervise the units where detainees would be placed and interrogated (ibid.).

The UN Committee Against Torture and the European Commission indicated that investigations into police abuse and misconduct are commonly carried out by other law enforcement officers (EU 12 Oct. 2011, 22; UN Nov. 2010, para. 8) and not by the public prosecutor (ibid.). Both the UN Committee and the European Commission expressed concerns about the absence of impartial mechanisms to conduct effective, prompt, and independent investigations into allegations of torture and ill-treatment committed by law enforcement officers and security forces (UN Nov. 2010, para. 7; see also EU 12 October 2011, 22). The UN Committee also emphasized the "lack of clarity surrounding the current system of administrative investigation into allegations of police abuse which lacks impartiality and independence" (UN Nov. 2010, para. 8).

According to *Country Reports*, the Human Rights Presidency (HRP), which includes provincial human rights councils in 81 provinces, is authorized to monitor the implementation of legislation and to coordinate the work of government agencies in the field of human rights (US 24 May 2012, Sec. 5). However, the HRP "was generally accorded little or no credibility by human rights organizations" (ibid.). The report further indicates that, according to the same human rights organizations, "official human rights mechanisms did not function consistently and failed to address grave violations" (ibid.).

Country Reports 2011 states that amendments to the Constitution in 2010 called for the establishment of an independent human rights commission, as well as an ombudsman's office (US 24 May 2012, Sec. 5). However, by the end of 2011, neither institution had been established (ibid.). *Country Reports 2011* further states that in 2011, courts investigated allegations of torture and abuse by the police officers, but rarely punished or convicted the offenders (ibid., Sec. 1).

2.1 Effectiveness of the Complaint Mechanisms

Several sources report that complaints of torture and ill-treatment by law enforcement officials are not adequately investigated (Human Rights Watch 5 Dec. 2008; AI May 2012; Council of Europe 31 Mar. 2011, para. 17; US 24 May 2012, sect. 5).

For instance, the report of the Council of Europe states that several detainees, who were interviewed by the Committee, indicated that "they had verbally complained to a prosecutor and/or judge about instances of ill-treatment by law enforcement officials, but that their interlocutors had shown little interest and had taken no further action on the matter" (Council of Europe 31 Mar. 2011, para. 17).

The Amnesty International report also states that in most cases investigation of human rights abuses is "not effective" and "the chances of bringing law enforcement officials to justice remain remote" (May 2012, 1). For instance, in October 2011, the prosecutors did not to open a case after three transgender activists in Ankara lodged a complaint alleging that police officers dragged them out of a car, subjected them to ill-treatment and arbitrarily detained them in June 2010 (ibid.).

According to *Country Reports*, "[a]uthorities typically allowed officers accused of abuse to remain on duty during their trial" (US 24 May 2012, 5). Human Rights Watch also notes that there is

a pattern of police interference with investigations, including attempts to conceal, contaminate, or plant evidence. Investigations by prosecutors last many months and even years, often with no result. Where a prosecution is commenced, trials also last for years and the rate of conviction is extremely low. Convictions rarely lead to prison sentences. (5 Dec. 2008)

The UN Committee Against Torture and the European Commission reports that law enforcement officers found guilty of ill-treatment receive only short or suspended sentences (EU 12 Oct. 2011, 22; UN Nov. 2010, para. 7). The UN Committee Against Torture further explained that

prosecutions into allegations of torture are often conducted under article 256 ("excessive use of force") or article 86 ("intentional injury") of the Penal Code, which proscribe lighter sentences and the possibility for suspended sentences, and not under articles 94 ("torture") or 95 ("aggravated torture due to circumstances") of the same Code[□] (ibid., para. 7)

Further, the HRFT reports that Article 83 of the Criminal Procedure Code allows judges to visit the crime scene during the prosecution of torture and ill-treatment allegations

(HRFT 15 Oct. 2010, 19). However, according to the HRFT, in practice, penal judges "had never visited a detention place to determine the place of violation" (ibid.).

2.2 Counter-charges

Amnesty International and the UN Committee Against Torture both expressed concern that police often "counter-charged" individuals who said that they had been ill-treated by law enforcement officials (AI 2009; UN Nov. 2010, 6). The UN Committee Against Torture further explained that these charges were brought

against individuals and family members of alleged victims complaining of police ill-treatment, in particular under article 265 [of the Penal Code] on "using violence or threats against a public official to prevent them from carrying out their duty," article 125 on "defaming the police," article 301 on "insulting Turkishness," and article 277 on "attempting to influence the judicial process." □ [S]uch charges are reportedly employed to deter, and even intimidate, alleged victims of abuse and their relatives from filing complaints□. (ibid.)

For instance, an Ankara-based Human Rights Association reports that 22,195 cases in 2009 and 25,497 cases in 2010 were launched against Turkish citizens on charges of resisting law enforcement under Article 265 of the Penal Code (HRA 11 Apr. 2012, 3). The report states that "these numbers □ clearly demonstrate the sustained impunity culture" (ibid.). According to *Country Reports 2011*, Turkish human rights organizations claimed that the police practice of filing counterclaims "deterred victims of abuse from filing complaints" (US 24 May 2012, Sec. 1).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Oral sources: Attempts to contact representatives from the following organizations were unsuccessful: Istanbul University Center for Research and Practice, Human Rights Watch, McGill University Islamic Studies Institute, Women Solidarity Network. Attempts to contact a lawyer in Turkey were unsuccessful.

Internet sites, including: Asian Human Rights Commission; *Daily News*, Turkey; European Stability Initiative; Factiva; Habervesaire.com; International Crisis Group; International Press Institute; Mersin University, Turkey; Istanbul University Center for Research and Practice in Human Rights Law; Radio Free Europe/Radio Liberty; Reporters Without Borders; Support for Improvement in Governance and Management; *Today's Zaman*; Transparency International; *Turkish Weekly*.

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