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3/3-05

AMNESTY INTERNATIONAL

Public Statement

AI Index: EUR 44/037/2004 (Public)
News Service No: 289
16 November 2004

Turkey: Insufficient and inadequate -- judicial remedies against torturers and killers

Amnesty International is concerned by recent developments in the trials of police officers charged in connection with the torture, and subsequent death in custody, of trade unionist Suleyman Yeter. While the Turkish government has declared a policy of "zero tolerance for torture", Turkish courts appear unable or unwilling to bring appropriate sanctions against torturers. These latest decisions – which centre on a pattern of torture and ill-treatment at the Anti-Terror Branch of Istanbul Police Headquarters in the late 1990s – show the ways that police officers, who have carried out torture, can enjoy impunity despite recent legal reforms.

On 10 November the Turkish Court of Appeals upheld the conviction of police officer Mehmet Yutar for his involvement in the death of trade unionist Suleyman Yeter who died in detention at the Anti-Terror Branch of Istanbul Police Headquarters after being tortured in March 1999 (See Urgent Action 57/99, AI Index: EUR 44/28/99). On 1 April 2003, police officers Mehmet Yutar and Ahmet Okuducu (who is on the run) were found guilty by the Istanbul Heavy Penal Court No. 6 in Istanbul of "the unintentional killing" of Suleyman Yeter and sentenced to 10 years' imprisonment. However, Mehmet Yutar's sentence was reduced by the court to five years' imprisonment because the offence was carried out by two or more people and the principal perpetrator had not been identified. The court further reduced his sentence to four years and two months' imprisonment because of his "good conduct" of which, under the Law on the Execution of Sentences, he will only have to serve one year and eight months. A third police officer was acquitted on the grounds of insufficient evidence.

The lawyers and family of Suleyman Yeter appealed against the low sentence given to Mehmet Yutar and the Chief Prosecutor of the Court of Appeal subsequently requested that the low sentence be overturned. The lawyers and family had also requested in their appeal that the investigation be widened to look at the responsibilities of other police officers including senior officers who may have been ultimately responsible for the death. However, the Court of Appeal rejected the appeal and on 10 November 2004 upheld the original decision.

Meanwhile, cases against nine police officers from the same Anti-Terror Branch of the Istanbul Police Headquarters who were charged with torturing Suleyman Yeter and 14 others in another incident in 1997 were dropped on 11 November, because they had reached the time limit for such proceedings, known as the "statute of limitations". Amnesty International believes that the detention in which Suleyman Yeter died in 1999 may have taken place to impede this court case. Suleyman Yeter had reportedly been detained and threatened several times already because of this trial before he was detained and killed.

In this case, Istanbul Heavy Penal Court No. 7 had decided on 2 December 2002 to acquit five police officers and handed down sentences of 11 months 20 days each to four others. However, these sentences were suspended by the court because it was of the opinion that the defendants "would not carry out another crime" – despite the fact that several of them were defendants or had been convicted in other trials for their involvement in torture and had had their sentences similarly postponed by the same court. This decision was appealed by the lawyers of the tortured victims and the Court of Appeal subsequently overturned the decision on 1 April 2004 and ruled that the suspects should be charged again in separate trials. However, the case reached the statute of limitations and the Istanbul Heavy Penal Court No. 7 ruled on 11 November 2004 that proceedings against the police officers should therefore be dropped.

Asiye Guzel had also been detained in the same operation in 1997 as the fourteen victims and was subjected to torture at the Anti-Terror Branch of Istanbul Police Headquarters including rape and hanging by the arms. This torture was documented by independent medical reports and was mentioned in the above trial by the torture victims who had witnessed it. The court therefore decided to file a formal complaint on 2 March 1999 about this torture – however, the prosecutor issued a decision not to proceed against the alleged perpetrators on 17 October 2000.

In another trial that has concluded recently, Istanbul Heavy Penal Court No 7 acquitted three police officers on 30 September 2004 on charges of torturing three individuals detained at the Anti-Terror Branch of Istanbul Police Headquarters on 11 November 1998. The court decided to acquit on the basis that there was "insufficient evidence" despite the existence of expert, independent, medical forensic reports that confirmed the detainees' allegations that they had been subjected to torture techniques while in detention including being beaten, suspended from the arms, and given electric shocks. The court's decision stated that: "paying attention to the statements of the defendants that the bruising and markings on the faces and bodies reported in the medical reports were already present and to the failure to obtain evidence that the suspects perpetrated this crime, it is the opinion of conscience of the court that it is

necessary to favour the defendants in this case which is composed of an abstract claim". One of the acquitted defendants is the convicted police officer Ahmet Okuducu, who was also charged with the death of Suleyman Yeter.

The present government has introduced reforms and measures against the overwhelming impunity that torturers have enjoyed. However, it is clear that much still needs to be done; these legal proceedings illustrate the ways that torturers can still go unpunished thanks to ineffective judicial mechanisms and bodies which resist reform. Failures to adequately investigate complaints, lengthy extensions of trials and their subsequent collapse through reaching the statute of limitations, insufficient and reduced sentences are all ways in which impunity in Turkey continues.

Amnesty International notes that the new Penal Code passed by the Parliament on 26 September 2004 redefines the crime of torture in terms that are closer to those found in international law, lays down heavier penalties to individuals convicted of torture and further extends the statute of limitations in such crimes. However, in the light of the above cases, Amnesty International is concerned that torture trials can still be dropped because of the statute of limitations and draws attention to the fact that the status of torture as a peremptory norm of general international law suggests that there should be no statute of limitations for the crime of torture.

Most importantly, the persistent complaints of torture and ill-treatment which were reported from the Anti-Terror Branch of Istanbul Headquarters in the late 1990s and which often the same alleged perpetrators demonstrate why it is necessary to suspend from active duty police officers or gendarmes under investigation or trial for ill-treatment and torture and dismiss them from the force if they are found guilty. While some of the sentences handed down by courts in the cases above also suspended the convicted police officers from public service for brief periods (for example, three years), these suspensions came far too late. Amnesty International also believes that the roles and responsibilities of commanding officers in cases of torture and ill-treatment should be examined.

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