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Closing Ranks Against Accountability

Barriers to Tackling Police Violence in Turkey

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I. Summary

Turkey's well documented endemic problems of torture and its notoriously violent policing culture ought to be a thing of the past. Motivated to meet conditions attached to its prospective European Union accession, within the past five years Turkey has made important changes in law and in detention regulations, providing better safeguards for those held in places of detention. Over that period there was a recorded decrease in allegations of torture or ill-treatment of detainees held in the anti-terror departments of police stations.

There are, however, signs of continuing problems of police violence, and a reported rise in overall complaints of torture and police violence since the beginning of 2007. At the core of the persistence of these phenomena is the culture of impunity. Historically, law enforcement officials were rarely if ever held to account, and still less often in a manner that reflected the gravity of the violations committed. Today, despite increased legal safeguards, law enforcement officers who flout them can still enjoy effective impunity when they are alleged to have abused or even unlawfully killed victims.

Police abuse is regularly reported as taking place both outside formal police custody as well as in custody. Of concern too is the implementation of revised laws pertaining to police powers and the use of force, with a continuing pattern of police shootings, some of them fatal. Investigations of complaints continue to be mired with difficulties, to lack independence, thoroughness, and effectiveness, and to proceed in most cases very slowly.

In this report Human Rights Watch looks at allegations of police violence with a focus on the obstacles to investigation of abuses, and the resulting impunity enjoyed by police officers. The report provides evidence of a continuing culture of police violence in a range of areas: fatal and non-fatal shootings by the police; policing of demonstrations involving ill-treatment and excessive use of force; and ill-treatment during or subsequent to identity checks. Torture or ill-treatment in police custody is a

feature of some of the cases too, but not the main focus of this study. We also examine the issue of counter-charges against those who file complains.

When Human Rights Watch interviewed 21-year-old Gulşah Aslan in April 2008 she was recuperating at home in Van after police shot her using a rubber bullet that embedded in her shoulder. In Van on March 22 police took action against people celebrating the Newroz spring festival in defiance of a local government order. By Aslan's account she was a passer-by whose path took her face-to-face with police firing indiscriminately at stone-throwing youths, before one of the police took aim at her. As she fled the scene, injured, police pursued her to a relative's house, broke the windows, threw teargas canisters, and beat Aslan and other members of her family.

Muammer Öz was with a family group at the seafront in Kadıköy, Istanbul, one afternoon in July 2007 when they were approached by two uniformed police officers who asked for his brother's ID. When Muammer Öz, a lawyer, challenged the grounds for the police request, he was manhandled, punched, and sprayed with pepper gas. He was beaten further and threatened while being taken to a police station. Two police officers are now on trial for excessive use of force, defamation, and intentional injury of Muammer Öz, but Öz is himself on trial for "using violence or threats against a public official to prevent them from carrying out a duty", an offense carrying a prison sentence of between six months and three years. Öz's case moved to trial much faster than that of his alleged attackers. It has become a routine occurrence for those who complain of police ill-treatment to find themselves in court for "violently resisting the police" before the outcome of a prosecutor's investigation into their own complaint of ill-treatment by the police has even been concluded.

A particular feature of some of the cases covered is the handling of evidence. Examination of the conduct of the police following alleged incidents of torture, ill-treatment, or shootings demonstrates a pattern of misconduct, attempts to conceal, contaminate or plant evidence, and to obstruct the prosecutor's investigation. For example, Nigerian asylum seeker Festus Okey died of a single gunshot wound on August 20, 2007, while in police custody in Istanbul, having been stopped, searched, and detained that day. At the time of the shooting Festus Okey had been

alone with a police officer who would later claim that Okey had made to grab his gun and that in the ensuing struggle the gun had gone off accidentally. In the hours that followed, the conduct of the police demonstrates such grave failings in following investigative procedures and to collect evidence as to compel the conclusion that there was a concerted attempt to cover up the incident. Instead of being called immediately, the public prosecutor was called to the scene some three hours after the shooting. Amongst those who signed off on the police record of the incident was the police officer who had himself been alone with Festus Okey at the time of the shooting and would later be tried for his killing. Thus the individual implicated in the shooting incident had apparently also been given the duty of joining in the police investigation of the very same incident. Later, key evidence in the form of the vest and t-shirt that Okey was wearing—and which would have helped determine the firing distance—were mysteriously lost.

The cases surveyed represent problems that are not new, but some recent legislative changes—in particular a revised Law on the Powers and Duties of the Police—have contributed to the persistence of a violent policing culture and represent an obstacle to efforts of police reform in Turkey. That law’s provision on “use of force and arms” fails to build in the proviso in international standards that use of lethal force must be a last resort and only permissible in order to protect life. Although in practice police already used stop and search powers, the revised provision provided a basis in law for them for the first time. By law, officers may stop people in order to prevent crime if “there is a reasonable ground based on the experience of the police and the impression he gets from the current circumstances.” This vague criteria poses a risk that stop and search powers may be invoked in an arbitrary manner.

Public statements by the offices of provincial governors on incidents that are the subject of criminal investigation often prejudice the outcome of the investigation by providing an account based on a one-sided police report. The influence and comments of state authorities represent an obstacle to ensuring an impartial prosecutor’s investigation. Individuals, families, and supporters of those who have complained of police violence and publicly discussed their complaint or raised concerns over whether they will see justice may also find themselves prosecuted for

“attempting to influence a judicial process,” or “insulting the judiciary or the security forces.”

The conduct of flawed investigations into allegations of police abuse remains an entrenched problem. The absence of independent and effective investigation mechanisms to enquire into incidents of abuse of force is a serious obstacle to tackling that problem. In general, cases of police violence—ranging from ill-treatment and torture to shootings—still result in a low rate of criminal prosecution. Investigations by prosecutors proceed at a snail’s pace, generally taking many months and even years, with the result often being a decision that there is no case to answer. There are still too many cases where prosecutors fail to initiate investigations despite ample public evidence (such as widely broadcast TV footage) of violent police assaults on individuals. Where there is a prosecution, trials, just as investigations, last for years and the rate of conviction is extremely low. Finally, prison sentences for such crimes still remain rare and fail to be commensurate with the gravity of the crime. Aside from criminal prosecution, disciplinary measures against law enforcement personnel for crimes such as ill-treatment are rarer still.

Victims of police violence interviewed in the course of this research frequently told Human Rights Watch that the police have conveyed to them a feeling of being untouchable. The fact that law enforcement feel and in effect are unaccountable is the most significant reason for the continuing culture of police abuse in Turkey including the persistence of torture and ill-treatment.

Key Recommendations

To the Turkish Government

- Introduce a system to monitor and review the implementation of the Law on the Powers and Duties of the Police in particular the use of stop and search powers and resort to use of force.
- Introduce mandatory reporting for when stop and search powers are invoked, to help safeguard against human rights violations occurring in the context of using these powers. Police officers should be required to supply a form to individuals stopped which sets out officers’ name and number, the reason for stopping the person and the outcome of the stop and search.

- Revise appendix article 2 of the Law to Fight Terrorism and article 4 (article 16 of Law no. 2559) of the Law on the Powers and Duties of the Police to ensure that the use of force by law enforcement officials is compatible with relevant international standards that provide that lethal force be used only as a last resort when absolutely necessary to protect life.
- As a matter of urgency establish an effective independent police complaints authority with adequate resourcing and a robust mandate to carry out prompt, impartial and thorough investigations into allegations of police misconduct, that are capable to leading to the identification and prosecution of offenders.
- Pending the functioning of such an authority, when allegations of misconduct are made against a police officer, the unit to which s/he belongs should be immediately excluded from any role in conducting the police investigation of the incident, beyond that of providing witness statements. Authority should be immediately handed over to the prosecutor assisted as necessary by police teams from different stations.
- Ensure that video and audio recording in police stations of all interviews of suspects in custody and of all locations in police stations is operational at all times, cannot be tampered with or erased, and is promptly and routinely made available to public prosecutors for purposes of investigating allegations of human rights violations in custody.
- Securing evidence in the immediate aftermath of a crime is critical. Therefore where incidents involving use of force and resulting injury or death to a detainee or civilian occur, ensure that all physical evidence is left in situ until the arrival of the prosecutor. Prosecutors should immediately proceed to ensure that the evidence is complete, has not been tampered with or been lost. Courts should treat the possibility that evidence has been spoiled as a central factor in a trial, rather than as a peripheral matter of negligence.
- Ratify the Optional Protocol to the Convention against Torture, and implement the Protocol through the creation of an independent national body to carry out regular and ad hoc unannounced visits to all places of detention.
- Ensure that trial hearings of law enforcement officials facing prosecution take place without undue delay by introducing regulatory timeframes for the provision of evidence, an improved and sustainable regulatory framework for

trial hearings, and by improving the mechanisms for thorough pretrial preparation.

Methodology

This report is based on Human Rights Watch research in Turkey from February to June 2008. It focuses on Istanbul, Izmir, and Van, but with reference also made to cities such as Diyarbakır and Hakkari. While the first section of the report assesses progress and setbacks in the combating of torture and ill-treatment, the bulk of the report discusses cases with a view to examining the implementation of laws. Most of the cases discussed in this report are considered in some detail, not simply to document the original allegation of police ill-treatment or torture and what it entailed, but to examine the subsequent handling of the case and investigation. It was not possible to provide a quantitative survey of the problem, so our approach has been to examine in detail a sample of complaints and then the subsequent handling of the case by the prosecutor and—where legal proceedings were underway—the court.

Thirty-seven interviews were conducted in the course of the research, 18 of them with victims and 17 with lawyers. Extensive reference is also made to written complaints to prosecutors, police records, indictments, records of court hearings, and petitions submitted to courts by lawyers. The report documents cases where individuals have lodged official complaints of police violence and therefore does not refer to the many more cases where victims have made allegations but failed to seek a remedy by lodging a complaint. The highest proportion of cases were collected in Istanbul, Turkey's largest city with a population of around 12 million. In subsequent months follow up on some cases will be conducted and findings conveyed to the Turkish government in the form of open letters.

The report's focus is on the police and since research was confined to cities only occasional mention is made of the gendarmerie responsible for policing functions in rural areas. No reference in this report is made to the situation of refugees and migrants, some of whom are held in Foreigners' Guesthouses which are also operated by the Aliens' Department of the Security Directorate (police), as this subject would merit separate and distinct treatment.

All interviews were conducted by a Human Rights Watch researcher who is fluent in Turkish.

II. Introduction

Festus Okey died of a single gunshot wound on August 20, 2007, while in police custody in Istanbul. The Nigerian asylum seeker had been stopped, searched, and detained at the Beyoğlu district police headquarters in the late afternoon. CCTV footage from the police station shows Festus Okey being led into the station, only to be carried out 15 minutes later—he was rushed to hospital where he died. At the time of the shooting Festus Okey had been alone with a police officer who would later claim that Okey had made to grab his gun and that in the ensuing struggle the gun had gone off accidentally, killing the Nigerian detainee.

In the hours that followed, the conduct of the police demonstrates such serious failings in following basic investigative procedures and preservation of evidence as to compel a conclusion that there was a concerted attempt to cover up the incident, to rewrite the story of Festus Okey's death, and to pervert the course of justice. Instead of being called immediately, as criminal procedure law requires, the public prosecutor was called to the scene some three hours after the shooting. Amongst those who signed off on the police record of the incident was the police officer who had himself been alone with Festus Okey at the time of the shooting and would later be tried for his killing. Thus the individual implicated in the shooting incident had apparently also been given the duty of joining in the police investigation of the very same incident.¹

Later, key evidence in the form of the vest and shirt that Festus was wearing at the time of the shooting, was mysteriously lost in the hospital where he died, as the defendant and police witnesses would later testify in court. The loss is significant because forensic examination of clothing carrying bullet hole burn marks is an important means of determining the distance from which a shot was fired. This was

¹ Human Rights Watch interview with Taylan Tanay and Naciye Demir from the Contemporary Lawyers Association (Cağdaş Hukukçular Derneği, ÇHD), Istanbul branch, December 3, 2007. The two lawyers had petitioned for the ÇHD to be an intervening party in the case, but no lawyer has been accepted to intervene on behalf of the deceased in this case (see footnote 5, below).

not the first time such evidence had been lost after a police shooting.² The prosecutor's preliminary investigation into the loss of Okey's clothing was concluded on March 28, 2008, with a decision that there was no case to answer given that it was not clear who had lost it.³

Mysteriously, as the defendant would also testify, there was no camera footage of the shooting available because it had occurred in a room on the fifth floor of the police station that allegedly did not have cameras.⁴ To date the court has not conducted an onsite visit to the police station to see the site of the shooting, or requested an inventory that would have shown whether there had been a camera in the room where Okey died and thus raise the issue of whether there might have been film of the incident that might later have been deliberately erased. There were cameras in all other interrogation rooms in the station and one police witness had alleged early on that he had watched the incident via CCTV. The court also failed to query why hand swabs of the police officer implicated in the shooting of the victim had failed to show up any sign of gunpowder traces. The court has not to date pursued the question of whether the police officer might have washed his hands before hand swabs were taken. The case, which was originally to be tried as manslaughter before a court of first instance, was transferred to the Heavy Penal Court pursuant to a prosecutor's request to increase the charge to murder.⁵

Violence by law enforcement officials in Turkey and the conduct of seriously flawed investigations of such allegations are long standing problems and apparently remain

² Human Rights Watch knows of at least three other cases where the loss of clothing of a victim of a police or gendarmerie shooting has prevented determination of the firing distance and thus full investigation of the circumstances of the incident. These are the fatal shooting of Şiar Perinçek in Adana on May 28, 2004; the fatal shooting of Bülent Karataş near Hozat, Tunceli, on September 28, 2007; and the shooting resulting in paralysis from the waist down of Ferhat Gerçek in Yenibosna, Istanbul, on October 17, 2007, discussed in Chapter III, below.

³ Had there been a lawyer intervening in this case, they would have been informed of the prosecutor's decision not to pursue investigation into the loss of clothing and would have been able to appeal against a decision absolving the police (and hospital) of any responsibility for the loss of crucial evidence that they had a duty to deliver to the prosecutor.

⁴ Testimony of defendant police officer Cengiz Yıldız in first hearing at Beyoğlu Heavy Penal Court No. 4 on February 14, 2008, attended by a Human Rights Watch representative. The defendant is charged with murder under article 83 of the Turkish Penal Code.

⁵ To date, all bids to intervene in the case on behalf of the victim have been refused because efforts to contact Festus Okey's family to secure from them a power of attorney, and efforts also to secure the intervention of the Nigerian embassy, have been unsuccessful. This has meant that cross-examination of witnesses and the defendant has been very limited, and there has been no possibility of petitioning the court on matters pertaining to the flawed investigation (including the failure of the police to follow correct procedures and to ensure that evidence—the clothing—was handed over promptly to the prosecutor).

entrenched. In general, cases of police violence—ranging from ill-treatment and torture to shootings—still result in a low rate of criminal prosecution. Festus Okey's alleged killer is facing trial, but in other cases investigations by prosecutors proceed at a snail's pace, generally taking many months and even years, often ending with a decision that there is no case to answer. There are still too many cases where evidence of police officers' wrongdoing is tampered with or lost. However, even in the presence of sufficient evidence (such as widely broadcast TV footage) of violent assaults on individuals by police, prosecutors may still fail to initiate investigations, despite clear obligations under human rights law to undertake an investigation whenever they receive credible information of abuse, from any source.⁶

Identifying individual police officers caught on film committing offences during public order policing has also been a difficult task for prosecutors. Dressed in riot gear, with faces often hidden by gas masks, their uniforms in recent years have carried no ID numbers or means of identification. This practice has correctly been condemned by human rights bodies, precisely because it protects alleged abusers, and is prohibited in many Council of Europe countries.⁷ After the May 1, 2008, incidents described later in this report, a new project was introduced to number police helmets to permit identification.⁸ This practice should be rapidly implemented throughout the police service so that it is required by law to display ID numbers when partaking in public order activities.

Where there is a prosecution, trials last for years and the rate of conviction is extremely low. Prison sentences for such crimes still remain rare and fail to be commensurate with the gravity of the crime. Aside from criminal prosecution,

⁶ See for example, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), The CPT standards: "Substantive" sections of the CPT's General Reports CPT/Inf/E (2002) 1 - Rev. 2006, p. 82.

⁷ The CPT standards p. 85. The Northern Ireland Police Ombudsman in 2003 called on the Police Service in Northern Ireland to implement a regulation that requires all police officers to ensure identification markings on helmets are always visible.

⁸ In June 2008, it was announced that a pilot project to introduce numbering to police helmets would be introduced, with each helmet carrying three numbers marking unit, group and team on the front of the helmet and the province number on the back. This scheme was introduced in Sivas, Kayseri, Kocaeli and Eskişehir, though will only become meaningful if introduced in cities like Istanbul, Ankara, Diyarbakir, Van, Adana and Izmir. Police officers who wrote in to a police online news website (www.polis-haber.com) have generally responded defensively and with hostility to this plan: see "Issuing of numbered helmets badly upsets the police," <http://www.haberturk.com/haber.asp?id=94174&cat=110&dt=2008/08/29> (accessed September 4, 2008). See also the discussion on the police news website: http://www.polis-haber.com/article_view.php?aid=23739 (accessed September 4, 2008).

disciplinary measures against law enforcement personnel for crimes such as ill-treatment are rarer still.

Alper Turgut, is a senior reporter with the newspaper *Cumhuriyet*. His quest for accountability illustrates clearly how Turkish officialdom closes ranks against complaints of police violence. Unlike other cases featured in this report, his case is closed.

Serious police violence that took place against demonstrators, trade unionists, journalists, and others in Istanbul on May 1, 2008 (described in detail in Chapter V, below) was in fact only a more violent version of the May 1 celebrations a year earlier. On May 1, 2007, at least eight journalists had been beaten as they attempted to report events on the streets of Istanbul. Alper Turgut's case was typical. He recounted that as police approached him he had produced his press card, to which a police officer had responded "very good" and preceded to spray pepper gas directly into his face, kick him in the testicles, and beat him with a truncheon. Two other journalists, Aynur Çolak and Beraat Günçikan, witnessed the incident.⁹

Turgut viewed the treatment of journalists as evidence of a deep antipathy to the press among the police from top to bottom, commenting, "The fact is, given their very hierarchical structure, if the police don't get the order from above, they can't behave like this."¹⁰

Turgut immediately lodged a complaint with the public prosecutor against the Istanbul governor, the chief of the Istanbul Security Directorate, the head of the rapid deployment force, and those (unidentified) police officers responsible, including a medical report recording signs of ill-treatment. Ten months later he learned that there were to be neither criminal proceedings nor disciplinary measures against a single police officer.

The Law on Trials of Civil Servants makes it obligatory to secure permission in order to investigate public officials for misconduct (except in cases of torture or ill-

⁹ Human Rights Watch interview with Alper Turgut, Istanbul, February 25, 2008.

¹⁰ Human Rights Watch interview with Alper Turgut, Istanbul, February 25, 2008.

treatment).¹¹ Because of the seniority of those named in the complaint (the governor, etc.), permission to investigate was referred to the Court of Cassation. The Court of Cassation's chief prosecutor refused to give permission for criminal investigation of the governor, head of police, and head of the rapid deployment force on the grounds of insufficient evidence of misconduct. Turgut and the two witnesses to the attack were interviewed by Ministry of Interior inspectors. On January 10, 2008, Alper Turgut learnt that, on the advice of the Istanbul Security Directorate, permission to investigate the (unidentified) police officers who attacked him had also not been granted by the Governor's office, and that the decision had been made without him being informed over five months earlier, on July 27, 2007. On March 12, 2008, the Istanbul Chief Public Prosecutor separately reached the decision that there was no case to answer in 38 complaints of police ill-treatment—including that of Alper Turgut—and that, among other reasons, in no case was there “sufficient, sure, and convincing” evidence of disproportionate force by the police.¹²

However, Istanbul's Ninth Administrative Court reached a different verdict on April 21, 2008, judging that there was “no doubt that [Alper Turgut] had been ill-treated by the security forces”, and awarded him the symbolic sum of 1000 Turkish lira (US\$820), for which he had applied as token compensation.¹³

¹¹ The law was amended to allow prosecutions for ill-treatment and torture without permission, but in practice authorisation is still sometimes sought. The Committee of Ministers of the Council of Europe has called on Turkey, as part of its obligations to implement judgments of the European Court of Human Rights, to remove any requirement that permission be obtained to prosecute state agents accused of serious crimes.

¹² Human Rights Watch interview with Tora Pekin, lawyer for *Cumhuriyet* newspaper, Istanbul, February 26, 2008. Documentary evidence supplied to Human Rights Watch.

¹³ Erol Önderoğlu, “Interior Ministry convicted over last year's ‘1 May violence’” (İçişleri Bakanlığı geçen yılki ‘1 Mayıs şiddeti’nden mahkum”), *Bianet*, May 16, 2008, <http://www.bianet.org/bianet/kategori/bianet/107005/icisleri-bakanligi-gecen-yilki-1-mayis-siddetinden-mahkum> (accessed June 1, 2008).

III. Progress and Setbacks in Legal Protections against Police Violence

Legal Reform Going in the Right Direction

The AK Party's commitment to "Zero tolerance for torture"

After its parliamentary election victory in November 2002, the Justice and Development Party (Adalet ve Kalkınma Partisi, AK) government repeatedly avowed its commitment to a "zero tolerance for torture" policy and to the protection of human rights. Moves were made to introduce better safeguards than in the past to protect suspects against ill-treatment during their detention and interrogation. Thousands of law enforcement officials were offered training programmes in human rights as well as in aspects of policing in cooperation with the Council of Europe, the European Commission, and also with EU member state national police forces.

With a view to fulfilling the criteria for eventual European Union membership, the AK Party government and its direct predecessor instituted an ambitious legal reform program. Reforms pertaining to the strengthening of human rights protection were mainly introduced in the form of large mixed reform packages—known as "Harmonization" laws—containing changes to a variety of laws in different areas. A new Turkish Penal Code and Criminal Procedure Code were also introduced in 2005.¹⁴

The reforms described below are a step in the right direction, but the impact in the areas they cover is more mixed: omissions, loopholes, and a lack of follow-through in key areas undermine the government's delivery on its avowed commitment.

New legal safeguards for detainees

Among the gains of this whole process were measures that provide greater safeguards for individuals in detention, as incorporated into the Criminal Procedure Code and into the new Regulation on Apprehension, Detention and Statement

¹⁴ The new Turkish Penal Code as (Türk Ceza Kanunu) as Law no. 5237 and the Criminal Procedure Code (Ceza Muhakemesi Kanunu) as Law no. 5271, entered into force on June 1, 2005.

Taking.¹⁵ Significant reductions were made in maximum permitted detention periods before being brought before a judge and being charged.¹⁶ Detainees were granted the right to immediate access to legal counsel and the legal aid provided by bar associations was extended to cover most detainees (article 150 of the Criminal Procedure Code).¹⁷ It was stipulated that police must inform detainees of their rights and that detainees' relatives should be informed promptly of their detention. Other safeguards included the right to medical examination without a law enforcement officer being present; the requirement that medical reports be prepared on admission to, any prolongation of, and exit from police custody; and that copies of medical reports be sent by the doctor in a sealed envelope to the prosecutor. It was also stipulated that the law enforcement officer bringing the detainee before a doctor for medical examination should not be the same individual conducting the interrogation. Most importantly of all, the new law provided that to be admissible in court formal statements by detainees had to be made in the presence of a lawyer. Any statements made to the police without legal counsel being present were deemed inadmissible if they were not repeated before a judge or as sworn evidence before a court.

Safeguards not fully delivered: Falling short of the Istanbul Protocol

Despite promises, there has been little progress towards implementing the terms of the Istanbul Protocol (the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).¹⁸ For example, despite it being a basic right in the Protocol, access to an independent medical examination and the admissibility of independent medical reports in court are still not recognized by the Turkish legal system. Health institutions authorized to conduct medical examinations on individuals who, for

¹⁵ Regulation on Apprehension, Detention and Statement Taking (Yakalama, Gözaltına Alma ve İfade Alma Yönetmeliği), published in the *Official Gazette*, June 1, 2005.

¹⁶ Maximum permitted detention periods prior to release, formal release pending prosecution or transfer to prison pending prosecution, were progressively reduced. Detention periods are now as follows: for normal crimes: 24 hours; for crimes punishable under anti-terrorism legislation and organized crime: 48 hours (with possible denial of access to legal counsel for the first 24 hours); and for crimes punishable under terrorism laws and organized crime where there are several people detained: four days.

¹⁷ Obligatory legal aid for minors was introduced back in 1992.

¹⁸ See full text of the Istanbul Protocol, <http://www2.ohchr.org/english/law/investigation.htm> (accessed September 4, 2008).

example, allege torture are all official institutions subject to government control. While the Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı, TİHV) and the Association of Forensic Experts (Adli Tıp Uzmanlar Derneği, ATUD) have developed methods for preparing alternative reports, these have only very rarely been accepted by courts in Turkey.

New legal aid provisions scaled back

The legal aid provisions in the Criminal Procedure Code were changed in December 2006, simply because local bar associations providing this legal aid service were under-resourced and unable to secure a higher budget to support such a service. As introduced in 2005, a detainee had automatic access to free legal counsel while in custody if suspected of committing crimes carrying a *maximum* sentence of five years or more. As now amended, legal counsel would be provided free only to those suspected of committing crimes carrying a *minimum* sentence of five years.¹⁹ The effect of this is to exclude from legal aid eligibility the entire category of detainees suspected of most common crimes (theft, etc) punishable with sentences of under five years.

Access to a lawyer in detention and particularly during interrogation is a key basic safeguard against ill-treatment.²⁰ For years the European Committee on the Prevention of Torture (CPT) had been calling on Turkey to guarantee such a regime in law, and welcomed the introduction of this.²¹ Lawyers interviewed by Human Rights Watch considered that the presence of lawyers offering legal counsel to detainees in police and gendarmerie stations had in practice constituted an important means of

¹⁹ The change to article 150/3 of the Criminal Procedure Code was made in article 21 of Law no. 5560, dated December 6, 2006.

²⁰ The CPT standards p. 6: The CPT attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities)¹ They are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty..”.

²¹ The CPT also recommended that all necessary steps to be taken to ensure that the right of access to a lawyer for persons in police/gendarmerie custody, as guaranteed by law, is fully effective in practice as from the outset of custody (paragraph 23). European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “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” CPT/Inf (2006) 30, Strasbourg, September 6, 2006, para 23.

reducing the likelihood of law enforcement personnel resorting to coercion, or otherwise abusing their position or failing in their duty toward detainees. Several lawyers with direct experience of working on torture cases expressed concerns that the change in the law represented the removal of an important safeguard against ill-treatment of detainees.²² It certainly means that Turkey is failing to implement one of the basic rights identified under human rights standards as fundamental to protection against ill-treatment.

Revised penalties for torture and ill-treatment

The new Turkish Penal Code now contains three distinct articles that codify the offence of ill-treatment: article 94, torture, article 95, aggravated torture, and article 96, the crime of torment (*eziyet*). According to the new law, torture is defined as actions by a public official toward an individual that are “incompatible with human dignity and cause physical or mental pain, that affect the perception or the ability to exercise will, that are humiliating.” The maximum penalties were significantly increased, with heavier sentences under both articles 94 and 95 if the victim is a minor, a vulnerable person, or a pregnant woman, or where the crime involves sexual abuse. A minimum sentence of three years was introduced where there was previously none for the crime of torture (and previously a minimum sentence of only three months for ill-treatment). Article 95 on aggravated torture applies a scale of sentences commensurate to the level of damage inflicted on the body, lasting health conditions as a result of torture, and up to life imprisonment for causing death by torture.

The crime of torment (article 96) is defined as any “actions by an individual that cause another individual to be tormented”, and is thus not worded in such a way to make it clearly applicable to public officials. Convictions for “torment” are based on a two to five year prison sentence, with three to eight year sentences provided for when the victim is a minor, a vulnerable person, a pregnant woman, or a relative.

²² This view was expressed, for instance, by Nalan Erkem, an Izmir lawyer: Human Rights Watch interview, Istanbul, April 5, 2008. Nalan Erkem was one of the founders of the now-dissolved Working Group on Torture Prevention, set up by Izmir Bar Association in 2001 and dissolved by a new bar administration in 2004. The group offered legal aid to torture victims, did pioneering and effective work on the identification, recognition and documentation of torture, developing techniques for communicating with victims and promoting the effective use of all legal procedures to combat impunity.

Efforts at combating or mitigating the effects of lengthy trials have also been made, but not all have been sustained. In the past, many prosecutions for torture have run out of time and consequently been dropped when they exceeded the statute of limitations. Defendants in torture prosecutions and their lawyers, would deliberately exploit the statute of limitations to avoid conviction. The new Penal Code increased the statute of limitations for the crime of torture to 15 years, and in cases of aggravated torture to 20 years and 30 years respectively (articles 95/2 and 95/4). However, the application of the statute of limitations to the crime of torture in any circumstances is inconsistent with Turkey's obligations as a party to the UN Committee Against Torture.²³ The UN Committee on CAT has noted that, "taking into account the grave nature of acts of torture, the Committee is of the view that acts of torture cannot be subject to any statute of limitations."²⁴ Turkey should repeal the statute of limitations for the crime of torture.

According to a reform introduced in 2003, trial hearings in the prosecution of torture or ill-treatment were to take place at intervals of no more than 30 days.²⁵ This, however, reportedly proved difficult for some courts to abide by—above all because of their enormously heavy workload—and it was left out of the new Criminal Procedure Code in 2005. Hence there can be lengthy delays between hearing dates resulting in long drawn out trials that may ultimately fail to secure a conviction.

Revised penalties undermined by options for leniency

A number of the allegations of violent assault by the police described in this report could fall within the definition of torture in article 94 of the Turkish Penal Code. However, the pattern of prosecution shows that prosecutors often opt not to apply article 94, but choose to apply other articles of the Penal Code such as article 86, "intentional injury". When "intentional injury" is committed by a public official it carries an increased sentence—the standard range of one to three years is increased by half again to range from 1.5 to 4.5 years. (The Turkish Penal Code also penalizes

²³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46, as of December 10, 1984, entry into force June 26, 1987, ratified by Turkey on August 2, 1988.

²⁴ Conclusions and recommendations of the Committee against Torture on Denmark, CAT/C/DNK/CO/5, July 16, 2007, para. 11

²⁵ This was introduced as a provision of the so-called "Seventh Harmonization law package" (Law no. 4963), a series of changes to various laws which entered into force on August 7, 2003.

excessive use of force by public officials, article 256, typically applicable in situations such as intervention against demonstrators, and applies the same penalty system as for the provision on “intentional injury”). Article 87 which penalizes “aggravated injury” doubles or triples the sentence according to the level of damage inflicted on the body, permanent injury and damage to health, and death.

The serious concern about article 86 lies in the fact that a public official sentenced to the lowest penalty of a 1.5-year prison sentence under this article would be able to benefit from a suspended sentence applicable to all prison terms of two years and under (article 51, Turkish Penal Code). This opens the possibility that some public officials, even if convicted, may escape prison terms for torture or ill-treatment. In the past the few who were convicted also often benefited from suspended sentences.

It was beyond the scope of the research for this report to look through court registers to identify how many cases had been opened under article 94 (torture). However, it was striking that in the course of the research no lawyer interviewed could point to a case. On August 11, 2008, in answer to a parliamentary question on statistics for the number of complaints, prosecutions and convictions for torture and ill-treatment, Minister of Justice, Mehmet Ali Şahin, provided figures for 2006 and 2007.²⁶ According to press reports of the figures provided by Minister Şahin, in 2006, 3,962 individuals had lodged complaints against 6,018 members of the security forces (5,256 of them police officers). In 2006 prosecutions had been opened against 135 members of the security forces for torture (articles 94, 95) and against 396 for excessive use of force (article 256). In 2007, 4,719 individuals had lodged complaints against 6,735 members of the security forces (6,023 of them police officers). In 2007, prosecutions had been opened against 108 members of the security forces for torture (articles 94, 95) and against 784 for excessive use of force (article 256). The number of individuals complaining had thus risen in 2007, and almost double the number of members of the security forces had been put on trial for

²⁶ For full text of Ayla Akat Ata’s parliamentary question to the Minister of Justice on torture and ill-treatment statistics, see: <http://www.tbmm.gov.tr/d23/7/7-2887s.pdf> (accessed September 29, 2008).

excessive use of force (article 256) compared with the year before.²⁷ There is no mention in these statistics of the crime of “intentional injury” i.e. assault (article 86) under which some prosecutions may be opened.

Combating torture promoted, but still room for improvement in oversight

Ministries have issued a series of circulars emphasizing certain points about the new laws and their implementation. A series of circulars to prosecutors and judges drafted by the General Directorate of Penal Affairs in the Ministry of Justice emphasized the importance of combating torture and ill-treatment, recalling the particular shortcomings identified by the European Court of Human Rights in its judgments and emphasizing the requirements of national and international law. Particular emphasis in circulars was placed on the need for criminal investigations into abuses by police to be carried out speedily and effectively, and for decisions of non-prosecution not to be taken without the necessary investigation being carried out into the facts; the need to address discrepancies between autopsy reports and other forensic reports; and the requirement that the chief public prosecutor or their appointee carry out investigations into torture or ill-treatment rather than members of the security forces.²⁸

Although the Code of Criminal Procedures provides for an institution of “judicial police” responsible only for criminal investigations, which would be supervised by the prosecutor, progress in this area has been limited. Circulars issued by both the Ministry of Interior and Ministry of Justice on the subject of the judicial police attest to conflict in reporting lines and the difficulties in situating such a unit, which is part of the Security Directorate but works under the authority of the prosecutor.²⁹

The absence of an independent authority that can carry out the prompt, independent, impartial, and thorough investigations that are required when there are allegations of police abuse, is a serious obstacle to combating impunity. Turkey,

²⁷ For a fuller breakdown of the figures provided, see the news report “Those tortured don’t shut up and sit down any more” (“İşkence gören artık susup oturmuyor”), in *Sabah* newspaper, <http://www.sabah.com.tr/2008/08/11/haber.705723799E6C4CA4B6417820BC793A39.html> (accessed September 29, 2008).

²⁸ For a full list of the circulars issued by the Ministry of Justice from January 1, 2006, onwards, see <http://www.adalet.gov.tr/duyurular/genelgeler/genelgeler.html> (accessed March 11, 2007).

²⁹ See Ministry of Interior, Regulation 2005/115, and Ministry of Justice, Regulation no. 98.

like all states, has an obligation to carry out an effective investigation into credible allegations that police have committed offences, in particular engaged in acts of ill-treatment. These investigations need to be effective in so far as they are capable of leading to the identification and prosecution of those responsible. The system in operation in Turkey has however historically allowed investigations and decisions on prosecution to be the primary responsibility of administrative authorities that are not independent (See below: Legal shielding of state employees from prosecution). This seriously discredited system, even with amendments, is incompatible with Turkey's legal obligations, and discussions have commenced about the establishment of a proper independent police complaints authority with the authority to conduct effective investigations. Such an authority should be based on international human rights standards and draw on models of best practice that have emerged from police reform in other countries.³⁰

Monitoring mechanisms

Custody records and places of detention are in theory monitored by public prosecutors, but the reports on such visits are not publicly accessible nor is there any public reporting on these visits.³¹

Provincial and municipal Human Rights Boards, reporting to the Prime Ministry Human Rights Presidency, also bear responsibility for monitoring places of detention and have a mandate to carry out announced and unannounced visits to places of detention.³² This was explicitly affirmed in a March 24, 2008 circular issued by the Prime Ministry Human Rights Presidency, and issued in the name of Deputy Prime Minister Cemil Çiçek, who is concurrently state minister responsible for human

³⁰ Of particular relevance may be the work of the Independent Commission on Policing for Northern Ireland which examined models of accountability based on human rights, and has been used as a guide for police reform in several countries. See *A New Beginning: Policing in Northern Ireland - The Report of the Independent Commission on Policing in Northern Ireland* [Patten Report]. Belfast: Independent Commission on Policing in Northern Ireland; September 9, 1999.

³¹ Noting that infrequent visits by public prosecutors "mostly involved perusal of the custody register and a brief tour of the premises," the European Committee for the Prevention of Torture remarked, "More robust on-the-spot checks of law enforcement establishments are required." European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "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 16 to 29 March 2004," CPT/Inf (2005) 18, Strasbourg, December 8, 2005, <http://www.cpt.coe.int/documents/tur/2005-18-inf-eng.pdf> (accessed August 19, 2008), para 21.

³² See Regulation on the Establishment, Duties and Working Principles of Provincial and Sub-provincial Human Rights Boards, November 23, 2003.

rights. The 2008 circular also stipulates that steps must be taken to facilitate the membership on the boards of civil society groups working in the area of human rights and suggests that the governorate and the offices of district governors (*kaymakam*) provide the boards with administrative capacity and facilities (no budgetary considerations are mentioned in this circular). Currently some human rights groups are considering whether to participate in this proposal. To date most of the main human rights NGOs in Turkey have regarded the fact that the vice-governor heads the boards as indicative of the lack of independence of the boards and as a real obstacle to their effective functioning.³³

As far back as 1999 the UN special rapporteur on torture recommended to the Turkish government that “a system permitting an independent body, consisting of respected members of the community, representatives of legal and medical professional organizations and persons nominated by human rights organizations, to visit and report publicly on any place of deprivation of liberty should be set up as soon as possible.”³⁴ Such a body has not yet been established. However, in September 2005, Turkey signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which specifically requires the establishment of a national independent monitoring mechanism that can conduct visits to places of detention. Human rights NGOs in Turkey continue to campaign for Turkey to ratify the Optional Protocol and for the establishment of this visiting mechanism by independent bodies.³⁵

³³ The European Committee on the Prevention of Torture (CPT) has noted that the compliance monitoring procedure which the Human Rights Boards implement needs to be more robust: See CPT/Inf (2001) 25/59; CPT/Inf (2002) 8 para. 49; CPT/Inf (2004) 16, para. 40; CPT/Inf (2005) 18, para. 21). For previous discussion of the monitoring role of the boards, see Human Rights Watch, “Turkey: First Steps Towards Independent Monitoring of Police Stations and Gendarmeries,” March 6, 2006, <http://hrw.org/backgrounder/eca/turkey0306/>.

³⁴ United Nations Committee on Human Rights, Report of the Special Rapporteur on Torture on his 1998 visit to Turkey, E/CN.4/1999/61, 113 (I), January 27, 1999. The European Committee on the Prevention of Torture has also been calling on Turkey since 1999 to have effective independent inspections. The CPT has repeatedly told Turkey that “Effective complaints and inspection procedures are basic safeguards against ill-treatment in prisons. The CPT attaches particular importance to regular visits to all prison establishments by an independent body with the authority to inspect the premises, to interview prisoners in private and to receive (and, if necessary, take action on) complaints.” CPT/Inf (2005) 18, para. 92. See also CPT/Inf (99) 2, para. 164; CPT/Inf (2001) 25, para. 53; CPT/Inf (2002) 8, para. 122.

³⁵ Both the Human Rights Foundation of Turkey and the Foundation for Society and Legal Studies (Toplum ve Hukuk Araştırmaları Vakfı) are actively campaigning for Turkey to ratify the Optional Protocol. The Izmir Independent Prison Monitoring Group (Izmir Bağımsız Cezaevi İzleme Grubu), made up of a number of human rights NGOs and professional associations, is also pushing for the right to monitor prisons.

Legal Reform Going in the Wrong Direction

In addition to the mixed impact of the government's reform agenda described above, there have been a number of setbacks in the process of strengthening protection for human rights.

Problematic provisions in the revised Law to Fight Terrorism

No immediate right to legal counsel

In June 2006 revisions to the Law to Fight Terrorism (Law no. 3713) were introduced.³⁶ Some of these measures represent a roll-back of gains made toward introducing safeguards against torture. The revised law now allows for the detainee's right to legal counsel from the first moments of detention to be deferred by 24 hours at the request of a prosecutor and on the decision of a judge (article 10/b). Since the introduction of this provision, some of those detained under suspicion of committing terrorist offenses have been denied access to legal counsel for the first 24 hours, though it has not to date become standard practice to apply this measure.

The immediate right to legal counsel has been one of the major gains of the reform process in Turkey and is set out in the Code of Criminal Procedures (article 149). The fact that incommunicado detention was effectively brought to an end through such a provision is of particular significance in a country in which allegations of torture and ill-treatment in police custody have been widespread and where there are serious concerns about the extent to which individuals accused of terrorist offenses can receive a fair trial. There are clear risks that a restriction on the right to immediate legal counsel for those suspected of terrorist offenses may reverse the progress made in this area. The European Court of Human Rights has long made clear that access to a lawyer at the initial stages of police interrogation is critical to safeguarding a detainees' rights. This is particularly so in sensitive areas such as prosecution for terrorist offences, where the Court has held that to deny access to a lawyer in the initial stages could irretrievably prejudice the rights of the accused and

³⁶ Revisions were introduced as the "Law amending the Law to Fight Terrorism" (Terörle Mücadele Kanununda değişiklik yapılmasına dair kanunu), Law no. 5532, published in the *Official Gazette*, July 18, 2006.

would be incompatible with the right to a fair hearing, “whatever the justification for such denial”³⁷

Key restrictions absent in the permitted use of lethal force

Among the other serious setbacks in the revised Law to Fight Terrorism is the provision relating to the use of lethal force. The law now specifies that in operations carried out against terrorist organizations, “in cases where attempts are made to use firearms or where the order to surrender is disobeyed, the security forces have the authority to use arms directly and unhesitatingly against the target proportionate to rendering the danger ineffective.” The inclusion of this wording constitutes restoration (in a slightly amended version) of a provision previously included in the Law to Fight Terrorism but repealed in 1999 after Turkey’s Constitutional Court ruled that, so worded, the provision violated the right to life.³⁸ Failing to build in the proviso that the use of force must be absolutely necessary and proportionate to the aim, and that the use of lethal force is only permissible when “strictly unavoidable to protect life,” the revised Law to Fight Terrorism ignores international standards on these issues.³⁹ Taking its cue from this law, the revised Law on the Powers and Duties of the Police also incorporates similar wording (see below).

The revised Law on the Powers and Duties of the Police

In June 2007, at great speed, revisions to an old law, the law on the Powers and Duties of the Police (Law no. 2559), were passed by parliament and entered into force.⁴⁰ The reasoning for revising the law focused strongly on the need for police

³⁷ *Murray v United Kingdom*, judgment of February 8, 1996, Reports 1996-I, para. 66. The Court held that a provision which allowed a suspect detained pursuant to anti-terror legislation to be denied access to a lawyer for the first 48 hours of his detention was incompatible with due process rights.

³⁸ See the ruling of Turkey’s Constitutional Court, 1996/68E; 1999/1K (final decision).

³⁹ Among the standards are the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990), notably principle 9; and the United Nations Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979). As the Special Rapporteur on Extrajudicial, summary or arbitrary executions points out in his interim report, “principle 9 of the Basic Principles reflects binding international law”, Doc. A/61/311, September 5, 2006, para. 35. See also the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Doc. A/HRC/4/26, January 29, 2007, para. 77.

⁴⁰ The revisions entered into law as the “Law amending the law on the powers and duties of the police” (Polis Vazife ve Salahiyet Kanununda Değişiklik Yapılmasına Dair Kanun), Law no. 5681, approved by the Turkish Parliament on June 2, 2007, and published in the *Official Gazette* on June 14, 2007.

powers to be broadened so that preventive measures could be taken to pre-empt security threats and criminal acts. Following this reasoning, previous reforms to the law were criticized for their focus on investigative powers following a crime and lack of emphasis on preventive measures. The recommendation to broaden police powers to include more so-called preventative powers, was presented as being informed by similar moves “in Europe and other developed countries” and intended to introduce conformity with EU standards.⁴¹ The revised law for the first time gave the police powers to carry out identity checks, to establish a bank of fingerprints and photographic identification of individuals, and to carry out preventive searches of public places. In cases where a delay might prove an obstacle, this power was granted without the need for judicial authorization.⁴² Although in practice some of the stop and search powers were already used by the police, this was the first time such provisions had been formally codified in the police law.

The law also incorporated new provisions on the use of force and lethal force.

The revised law has been much criticized in Turkey by human rights groups for the way in which it has strengthened police powers and opened the way to their arbitrary exercise without building in sufficient restraints on when the powers can be used or guarantees of judicial scrutiny.⁴³ When the Parliamentary Justice Commission

⁴¹ See the General Explanation (Genel Gerekçe) in “Proposal on a Law revising the Law on the Powers and Duties of the Police by Member of Parliament for Sivas Selami Uzun and three other members of parliament, and Justice Commission Report” (“TBMM Sivas Milletvekili Selami Uzun ve 3 Milletvekilinin; Polis Vazife ve Salahiyet Kanununda Değişiklik Yapılmasına Dair Kanun Teklifi ve Adalet Komisyonu Raporu”), 2/1037, http://www.tbmm.gov.tr/develop/owa/kanun_teklifi_sd.onerge_bilgileri?kanunlar_sira_no=54050 (accessed March 3, 2008).

⁴² Provision included in article 1 of Law no. 5681, and inserted as article 4/A in Polis Vazife ve Salahiyet Kanunu (Law on the powers and duties of the police), Law no. 2559, July 14, 1934.

⁴³ See reports (in Turkish) on the new law, for example Human Rights Agenda (İnsan Hakları Gündemi Derneği, İHGD), “In democracies rights and freedoms cannot be left to whim!: HRA: an assessment of law 5681” (“Demokrasilerde Hak ve Özgürlükler Keyfiyete Bırakılamaz!: İHGD: 5681 PSVK Değerlendirmesi”), June 18, 2007, <http://www.rightsagenda.org/main.php?id=204> (accessed September 5, 2008), and “The use of excessive force by the police: a tragedy that could be prevented!” (“Polisin Aşırı Güç Kullanımı: Önlenebilir Bir Felaket!”), İHGD press release listing 13 cases attributed to the existence of the new law, November 28, 2007, <http://www.rightsagenda.org/main.php?id=249> (accessed September 5, 2008). The Human Rights Foundation of Turkey website presents a critical and longer commentary on the new law by a team at the Human Rights Center of the Department of Political Science at Ankara University, dated August 18, 2007, at http://www.tihv.org.tr/index.php?option=com_content&task=view&id=1332&Itemid=36, and a September 28, 2007 statement linking an increase in cases of torture and ill-treatment in Izmir to the new law, at http://www.tihv.org.tr/index.php?option=com_content&task=view&id=1363&Itemid=31 (both accessed August 18, 2008). The Human Rights Shared Platform (İnsan Hakları Ortak Platformu), comprising the Human Rights Association, Helsinki Citizens Assembly, Amnesty International – Turkey, and Mazlum Der, lobbied members of parliament on their concerns about

reviewed the proposed revisions to the law on May 27-28, 2007, and proposed some amendments, five members of parliament and members of the commission opposed the revised law altogether. In opposing the new law, they expressed the concern that turning over certain powers to the police, “partially bypassing” judicial supervision, “eroded” the constitutionally enshrined principle of the state being founded on the rule of law. While acknowledging “serious public order issues in our country,” they viewed the proposed law as “upsetting the delicate balance that needed to be found between the fundamental rights and freedoms enshrined in our constitution and the bodies taking public security measures.”⁴⁴

It is a concern that the new law widens the police’s stop and search powers without the safeguard of judicial scrutiny in a context in which there have been regular reports of police ill-treatment and abuse of authority. Some allegations of police ill-treatment in the course of the past fifteen months have occurred during routine identity checks carried out according to article 4/A of the revised law (for illustrative cases see Chapter VI, below).

The revised police law also incorporates in substance the troubling provision in the Law to Fight Terrorism relating to use of lethal force. Once again the provision on “use of force and arms” fails to build in the proviso in international standards that use of lethal force must be a last resort and only permissible in order to protect life. The revised law provides for a “gradually increasing level of bodily force, material force [handcuffs, batons, teargas, etc.] and, where the legal conditions are in place, arms may be utilized.” On the use of arms, the law stipulates that the police can use a firearm in self-defense, “vis-a-vis resistance which cannot be rendered ineffective by way of using bodily physical and material force, with the objective of and proportional to breaking such resistance,” and “in order to capture people for whom there is an arrest warrant, a decision to detain, forcibly capture or apprehend; or in order to capture the suspect in cases of being caught while a crime is being

the new law—see http://ihop.org.tr/index2.php?option=com_content&task=view&id=92&pop=1&page=0&Itemid=1 (accessed February 12, 2008).

⁴⁴ See “Statement of those who voted against” (“Karşı Oy Yazısı”) attached to the Justice Commission Report (Adalet Komisyonu Raporu), appended to “Proposal on a Law revising the Law on the Powers and Duties of the Police ...” 2/1037, May 29, 2007,

http://www.tbmm.gov.tr/develop/owa/kanun_teklifi_sd.onerge_bilgileri?kanunlar_sira_no=54050 (accessed March 3, 2008).

committed, and the extent proportional for that purpose.” In the case of the last quoted provision, the law stipulates that the police must warn the suspect to “freeze” before shooting. The police may shoot “for warning purposes,” and then if the person ignores the warning and attempts to escape “firearms may be shot in a proportional extent to ensure that he/she is caught.” The resort to arms “without hesitation ... in order to render [the suspect] ineffective in his/her attack” is reserved to incidents where the suspect attempts to offer armed resistance to the police.⁴⁵

This was followed by a spate of reports of police violence (mainly occurring in Istanbul) which became the focus of press coverage,⁴⁶ and on December 2 the Ministry of the Interior published a circular sent out to the security directorates in each province concerning the importance of upholding human rights in the context of policing duties outlined under the revised police law, and emphasizing that there would be no tolerance of policing errors.⁴⁷

Legal shielding of state employees from prosecution

Turkish law has for a long time provided for special procedures for the prosecution of civil servants, procedures that have acted to shield violators from prosecution and being held accountable. The original law governing the prosecution of civil servants, dated from 1914 and required that whenever an allegation is made that a civil servant has committed an offence “acting in the course of their duties or in their official capacity” the case be handed over to an Administrative Council who conducts an investigation and decides whether there should be a prosecution. The councils routinely refused permission to prosecute even in cases of very serious human rights violations, and the European Court of Human Rights consistently held

⁴⁵ “Use of force and arms,” revised article 16 of Law no. 2559, included as amended article 4 of Law no. 5681.

⁴⁶ Typical were the editorial “End police violence!” (“Polis şiddeti son bulmalı”), *Milliyet* (Istanbul), November 28, 2007, <http://www.milliyet.com.tr/2007/11/28/guncel/gunoo.html> (accessed June 5, 2008), and columns such as Türker Alkan, “Faultless police” (“Kusursuz polisler”), *Radikal* (Istanbul), November 27, 2007, <http://www.radikal.com.tr/haber.php?haberno=239958> (accessed June 5, 2008).

⁴⁷ Full text cited by *Bianet* online news website, December 3, 2007, <http://www.bianet.org/bianet/kategori/bianet/103311/icislerinin-polis-genelgesinin-tam-metni> (accessed March 11, 2008).

that this procedure was incompatible with the right of a victim of human rights violations to an effective remedy.⁴⁸

In December 1999 Law no. 4483 was adopted, repealing the provisions of the 1914 Law, but preserving the need to get administrative permission to prosecute a civil servant. This power is now vested in the highest administrative authority in the area where the state employee is working. Before referring the file to the authority the public prosecutor can only collect such evidence which, because of its nature, might be lost, altered, or destroyed.

An important amendment to the law was introduced in January 2003 stating that no permission to prosecute be required if there was an allegation that a civil servant were responsible for torture or ill-treatment.⁴⁹ Furthermore, the 2005 Criminal Procedure Code (in articles 160 and 161) gives public prosecutors the authority to conduct direct investigations against anyone apart from governors and judges (Article 161/5) and thus seems to render the Law on the Trials of Civil Servants redundant.

Nevertheless permission is still routinely invoked to prevent investigations into police abuse, perpetuating the problem of impunity. A case that has highlighted the problem of the law most starkly is that of the murder on January 19, 2007 of the Turkish-Armenian journalist and human rights defender Hrant Dink. Most investigations into members of the police and gendarmerie in Istanbul and Trabzon for negligence in failing to prevent Dink's murder, despite repeated reports that it was planned, and for possible collusion, have been blocked because administrative permission has not been granted.

Most recently, on September 18, 2008 the Council of Ministers of the Council of Europe, in the context of examining the implementation of European Court of Human

⁴⁸ There are more than 50 cases reaching this conclusion on the procedure for example *Güleç v. Turkey*, no.21593/93, para. 80, Reports 1998-IV, *Oğur, v Turkey*, para. 91, ECHR 1999-III, *Kılıç v. Turkey*, ECHR 2000-III, para. 72, *Kurt v. Turkey*, Dec. June 12, 2003, *Yöyler v. Turkey*, July 24, 2003, para. 93, *İpek v. Turkey*, February 17, 2004, para. 207, and *Kurnaz and Others v. Turkey*, no. 36672/97, July 24 2007, para. 62. The Court consistently held that the investigation carried out by the administrative councils could not be regarded as independent since they are chaired by the governors, or their deputies, and composed of local representatives of the executive, who are hierarchically dependent on the governors.

⁴⁹ The amendment was included in the so-called fourth harmonization law package (no. 4778), which entered into force on January 11, 2004.

Rights judgments concerning Turkey, had called on Turkey to “to take the necessary legislative measures to remove any ambiguity regarding the fact that the administrative authorisation is no longer required to prosecute not only for torture and ill-treatment but also any other serious crimes and to ensure that members of security forces of all ranks could be prosecuted without an administrative authorization.”⁵⁰

A Rise in Reports of Police Violence from 2007

There have been positive signs in Turkey over the past few years of a significant reduction in the incidence of torture and ill-treatment in police custody of those suspected of crimes punishable under counterterrorism legislation. Several lawyers interviewed in the course of research for this report, including in Istanbul, Izmir, Ankara, and Diyarbakır, reported that they had not encountered allegations of ill-treatment in anti-terror departments.⁵¹

In general, however, lawyers and human rights groups received allegations that ill-treatment of victims had taken place at the moment of apprehension, during transfer to formal detention sites (whether anti-terror departments or other), or in the open when the victims were not under formal detention.⁵² These loci are characterized as the “blind spots” in the system, the places where there was least possibility of regulating the conduct of law enforcement officials, in the absence of cameras or lawyers. Groups also receive reports of torture or ill-treatment which had taken place in regular police custody (that is, those areas of police stations that were not

⁵⁰ See Council of Europe Council of Ministers, Interim Resolution CM/ResDH(2008)69 Execution of the judgments of the European Court of Human Rights: Actions of the security forces in Turkey: Progress achieved and outstanding issues, [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH\(2008\)69&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH(2008)69&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75) (accessed September 30, 2008).

⁵¹ However, in 2006 the Human Rights Foundation determined that by far the highest number of reports of torture or ill-treatment during detention in 2006 came from the anti-terror department in Adana: a total of 67 cases in 2006. See Human Rights Foundation of Turkey, “2006 Report on Treatment and Rehabilitation” (“Tedavi ve Rehabilitasyon Raporları 2006”), April 2006, http://www.tihv.org.tr/data/Yayinlar/Tedavi_ve_Rehabilitasyon_Merkezleri_Raporu/Ra_2006_Tedavi_ve_Rehabilitasyon_Merkezleri_Raporu.pdf (accessed February 28, 2008).

⁵² The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Turkey from 7 to 14 December 2005, to assess whether the new legal safeguards “combined with the Turkish Government’s message of “zero tolerance” of torture and ill-treatment, is having the desired impact on the ground.” On September 6, 2006, it published its report (CPT/Inf (2006) 30)). While it concluded that “the facts found during the visit in the Provinces of Adana, Istanbul and Van are encouraging” (para. 16) it also found “a number of complaints were heard of physical ill-treatment at the time of apprehension and/or in the context of public demonstrations; indeed, there would appear to be a continuing problem of the disproportionate use of force on such occasions” (para. 18).

reserved for the detention of suspects held under counter-terror legislation), and gendarmerie stations. The European Committee on the Prevention of Torture has also expressed concern about more instances of torture and ill-treatment taking place in irregular detention settings. It noted that “more than one person interviewed by the delegation alleged that they had been taken by law enforcement officials to a forest area and threatened (e.g. a gun pointed to the head); according to certain of the delegation’s interlocutors, there was an increase in such instances of ill-treatment being inflicted outside of law enforcement establishments.”⁵³ The Committee warned that care should be taken to ensure that enhanced safeguards against ill-treatment in custodial settings, does not “engender illegal practices of the kind described above”.⁵⁴

The Human Rights Foundation of Turkey reported that 320 of the 452 individuals who applied to them in 2007 for treatment at their rehabilitation centres reported having been tortured or ill-treated in the course of that year. This was a significant increase on 2006, where 252 individuals out of a total of 337 who applied to them for treatment reported torture or ill-treatment in 2006.⁵⁵ Individual branches of the Foundation gave a more detailed breakdown of these figures. The Istanbul branch reported a rise in reports of police ill-treatment sustained in that year from 81 in 2006 to 152 in 2007. The Izmir branch reported that in 2007 it had also seen a rise in applications, with 48 reports of police or gendarmerie torture or ill-treatment in 2007 as opposed to 19 in 2006; of these 48 reports, in 24 cases the ill-treatment was reported to have taken place in the street or in an open space, and in 19 cases the location was a police or gendarmerie station. The cases reported in 2007 seemed to demonstrate a pattern of greater violence with more severe injuries to victims (including severe damage to internal organs from repeated beating, and fractured bones).⁵⁶ The trend was not uniform, however: the Diyarbakır branch of the Human Rights Foundation of Turkey recorded a significant decrease in reports of ill-treatment reported to them in 2007 over 2006.

⁵³ Ibid. para. 20.

⁵⁴ Ibid.

⁵⁵ See Human Rights Foundation of Turkey press release with these figures at http://www.tihv.org.tr/index.php?option=com_content&task=view&id=1493&Itemid=69 (accessed June 2, 2008).

⁵⁶ Human Rights Watch interview with representatives of the Izmir branch of the Human Rights Foundation of Turkey, March 7, 2008.

It is important to note that in addition to non-governmental sources, the Prime Ministry's Human Rights Presidency has also reported a rise in the number of complaints of ill-treatment received by its provincial human rights boards. According to its figures, the number of complaints of ill-treatment received in the first six months of 2008 exceeds the total number received in 2007. Thus while 133 complaints of ill-treatment were received in 2007 (and 29 complaints of torture), in the first six months of 2008, the provincial boards received 178 complaints of ill-treatment (and 26 complaints of torture).⁵⁷

As mentioned previously, with the change in the Criminal Procedure Code to limit compulsory legal aid to those suspected of committing crimes with a minimum five-year sentence, a whole swathe of suspects fell off the radar. If unable to afford a lawyer, they now had no access to a legal aid lawyer visiting them and in a position to identify possible ill-treatment. Yet it is widely admitted by both the Human Rights Association and the Human Rights Foundation, and many lawyers we interviewed, that those suspected of common crimes such as theft, which carry lower sentences, are a vulnerable group when it comes to police ill-treatment. They may have little knowledge of their rights and little idea of where to complain in the eventuality of police abuse, or expectation that there would be anything to gain by lodging a complaint.

In general, victims drawn from this group are still highly unlikely to apply to organizations like the Human Rights Foundation of Turkey. In 2007 the Foundation reported only 65 applications from this group as opposed to 387 applications from those with a "political" profile.

The case of Mustafa Kükçe, detained on suspicion of theft on June 14, 2007, provides the most striking reminder. Kükçe, age 24, had no access to a lawyer. He had been questioned in two different police stations in Istanbul and was observed to have great difficulty in walking when brought before a court before being remanded to

⁵⁷ Source: Human Rights Presidency Human Rights Bulletin "Numerical findings relating to applications claiming human rights violations", no. 2008/1, October 2008 (T.C. Başbakanlık İnsan Hakları Başkanlığı İnsan Hakları bülten, "İnsan Hakları ihlal iddiası Başvurularına ilişkin Sayısal Veriler" sayı 2008/1, Ekim 2008), http://www.ihb.gov.tr/istatistikler/insan_haklari_istatistikleri_2008_ilk6ay.doc (accessed November 2, 2008).

prison. A day later he was taken to hospital and died. His family believe he was tortured in custody, and have described seeing signs of injuries to his body in the morgue. Shockingly, for fourteen months there was no progress in investigating his death. The public prosecutor waited six months before applying to the forensic medical institute for an expert opinion on whether Kükçe had died as a result of torture or ill-treatment. The Forensic Institute took another eight months to reply.⁵⁸ The cause of death was stated to be a brain haemorrhage, possibly sustained as a result of falling, and injuries on his body commensurate with ill-treatment had been recorded in the last medical examination he underwent while in police custody. However, the police had at the very start of the investigation informed the prosecutor that Kükçe had never been recorded as having been in police custody and that camera footage from the police station was not available as the cameras in the station were out of order.⁵⁹

Failure to Prosecute, Entrenched Impunity

The persistence of police violence in Turkey, despite legal changes, despite knowledge on the part of authorities, international monitoring, and detailed advice and recommendations from bodies such as the European Court of Human Rights and the European Committee on the Prevention of Torture as to what needs to be done, is particularly concerning. However, at the heart of the persistence of the phenomenon is that those who perpetrate ill-treatment can reasonably expect that they will not be held accountable not because the law does not say that they shouldn't be, but because over an extended period Turkey's criminal justice system has institutionalized a system of impunity. Knee-jerk denials, flawed investigations, biased attitudes amongst law enforcement and prosecutors, and ultimately a studious failure to take on board the calls for reform of practices from bodies such as those mentioned above has ensured that for decades the chances of being held to account for acts of ill-treatment or torture have been remote.

⁵⁸ Human Rights Watch interviews with Eren Keskin, lawyer for Mustafa Kükçe's family, Istanbul, June 17 and October 6, 2008.

⁵⁹ This is stated in the expert report by the First Special Council of the Forensic Institute, reference: 1. İhtisas Kurulu A.T.No:Bo31ATK0060001-2008/346/2339 Decision no. 2997 (copy on file with Human Rights Watch). See İsmail Saymaz, "Kükçe's 'killer' unknown", ("Kükçe'nin 'katil'i Sarı Çizmeli Mehmet Ağa"), *Radikal* newspaper, October 25, 2008, <http://www.radikal.com.tr/Default.aspx?aType=HaberDetay&ArticleID=905051&Date=11.11.2008>, (accessed November 11, 2008).

For years, Turkey denied that torture was an issue, preferring to suggest that any allegations were isolated incidents.⁶⁰ In 1997, Turkey was advised that “it is axiomatic that one of the most effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by the relevant authorities of all complaints of such treatment and, where appropriate, the imposition of a suitable penalty. This will have a very strong deterrent effect.”⁶¹ Yet this was ignored again and again.

In 1999 the then European Commission on Human Rights, which after investigating in depth over 50 cases against Turkey reached the following conclusion: “These cases have disclosed that investigations into deaths or alleged ill-treatment involving the security forces or police have frequently been superficial and inadequate, undermined by failures to seek evidence or witnesses, flawed forensic and medical examinations and a reluctance to pursue any lines of enquiry into any alleged wrongdoing by members of the security forces or police force.”

They had a long of defects in practices and procedures that had been commonly found, and they included:

- A failure by public prosecutors to question, or take statements from law enforcement officials with regard to allegations of misconduct.
- A failure by public prosecutors to verify documentary materials e.g. custody records or to pursue any contradictions, inconsistencies or gaps in the information provided by law enforcement officials.
- A failure by public prosecutors or police to seek evidence, including eye-witnesses or forensic evidence at the scene of the incident, such as fingerprints or testing for gunpowder traces.

⁶⁰ In a rare public statement back in 1996, referring to a claim by the then Prime Minister, the European Committee on Torture told Turkey: “The information at the CPT’s disposal demonstrates that resort to torture and other forms of severe ill-treatment remains a common occurrence in police establishments in Turkey. To attempt to characterise this problem as one of isolated acts of the kind which can occur in any country - as some are wont to do - is to fly in the face of the facts. Public statement on Turkey, CPT/Inf (96) 34, (issued on December 6, 1996).

⁶¹ European Committee on the Prevention of Torture, CPT/Inf (99) 2, para. 44, published February 23, 1999; see also CPT/Inf (2002) 8, para. 37, published April 24, 2002; CPT/Inf (2004) 16, para 41, June 18, 2004; CPT/Inf (2005) 18, para. 22, December 8, 2005. Reports are only published with the consent of the government concerned, therefore publication dates may be some time after the report is actually provided to the relevant government.

- A failure by police properly to record evidence or take photographs at the scenes of incidents.
- Delays in seeking for evidence, or statements from victims or witnesses.
- A failure by public prosecutors to react to visible signs of ill-treatment or complaints of ill-treatment.
- The lack of jurisdiction of public prosecutors to prosecute certain categories of offences committed by State officials, jurisdiction being vested in non-legal, administrative bodies, which were not independent.
- A tendency in public prosecutors to show no interest in pursuing the investigations into allegations of misconduct and instead to prosecute the apparent victim of the misconduct.
- A deferential or blinkered attitude by the public prosecutors towards law enforcement officials, with a tendency to ignore or discount allegations of wrongdoing on their part.
- Inadequate forensic medical examinations of detainees, including lack of examination by appropriately qualified medical professionals.
- Brief, undetailed medical reports and certificates which do not include a description of the applicant's allegations or any conclusions.
- Inadequate forensic examinations of deceased persons, including reports which do not include thorough descriptions of injuries; failure to take photographs or make analyses of marks on the body or examinations carried out by doctors with insufficient expertise.
- The issuing of decisions not to prosecute or non-jurisdiction without waiting for all the evidence to be received.
- A lack of accessibility of victims to the structures of remedies, including a failure to give information as to the progress of any proceedings or the results of investigations and a lack of information, or delay in information, being passed on to relatives of persons involved in incidents.

Since then the European Court of Human Rights has recorded these same defects in at least 50 other cases. The cases documented by Human Rights Watch in this report demonstrate that the exact same patterns and failings continue to exist within the system.

It is quite clear that legislative safeguards and directives from government avowing to have a zero tolerance policy can only have so much impact. As long as individuals, with good cause, believe that they can get away with abuse of power—ill-treatment or unlawful use of force—and not be held to account, it will persist. As long as officials are allowed to flout the law, it does not matter what the law says. Failure to enforce the rule of law and effectively to permit those amongst the police, gendarmes and security forces who commit abuses to operate as if they are above the law, has been detrimental to Turkish society, democracy, and international relations. Concerted effort has to be focused on putting an abrupt end to the practices and culture which have left victims powerless, emboldened perpetrators and seen ill treatment and police violence prevail.

IV. Police shootings: Concealing Evidence and Obstructing Investigations

Since the passing of the revised Law on the Powers and Duties of the Police in June 2007, there have been cases of police shootings—some fatal—that demonstrate that the unwarranted use of firearms still remains a key problem in Turkey. Three cases are examined here to demonstrate how obstruction to investigations compounds the problem. (Chapter V, below, also mentions cases of police shootings, in the context of violence during demonstrations.)

In the first of the cases described here, it has taken diligence by prosecutors, family, and lawyers to begin to get past what appear to have been concerted police efforts to prevent a court from determining whether excessive or disproportionate force has been used in a fatal shooting. In the second, police obstruction included representing the victim—who survived the shooting—as a criminal suspect rather than a victim, and attempts at intimidation. In the third, a prosecutor delayed investigations despite substantial indication of irregular police conduct.

In the introduction to this report we presented another case of police shooting, involving Festus Okey from Nigeria. Elements from the cases presented below bear close similarities to Festus Okey's death and what happened afterwards, including characterizing the victim as criminal perpetrator, a delay of several hours in informing the prosecutor, the absence of residue on the hands of the police officer suspected of the killing, and the disappearance of important forensic evidence in the form of the victim's clothing.

Case of Baran Tursun

Baran Tursun, age 20, died in hospital, five days after being shot in the head by a police officer in Izmir on November 25, 2007.

Police allegedly signalled to Tursun to stop the jeep he was driving, with two friends as passengers. When he failed to obey the warning, one officer opened fire, Tursun

lost control of the jeep, and it collided with a tree and an electricity post. The circumstances of the shooting and whether or how many warnings were given to stop the car are contested.

Following a prompt investigation, a police officer is now on trial for Baran Tursun's murder (article 81, Turkish Penal Code). The indictment, prepared by the Karşıyaka prosecutor, argues that the use of firearms was not merited in this case: the context for firearms use laid out in the police law did not apply and nor was there a question here that the police officer had acted out of "legitimate self defense."⁶² The trial began on January 14, 2008, and at this writing five court hearings have taken place.

The case proceeded swiftly to trial despite strong indications that the police contaminated evidence or disposed of evidence, and its outcome may yet be compromised by this. Ten police officers are currently on trial for "falsifying an official document, failing to inform the judicial police of a crime, destroying, concealing or altering evidence of a crime,"⁶³ in a trial which has been transferred to Izmir Heavy Penal Court.

Baran Tursun, a student, was the son of a successful Diyarbakır businessman, Mehmet Tursun. The family settled in Izmir in the early 1990s. Mehmet Tursun is determined to secure justice for his son and has been most active in pursuing the case, including by lodging a complaint over the police's handling of the investigation. Mehmet Tursun's lawyers have emphasized the following among the many striking aspects of the investigation that mark it as flawed:

- Although the incident occurred at around 3:15 a.m., the police only informed the public prosecutor of the incident at 6:46 a.m, despite the stipulation that

⁶² Reported in the press and confirmed by laws for the family of Baran Tursun: see "Demand for 25-year sentence for policeman who shot Baran" ("Baran'ı vuran polise 25 yıl hapis talebi"), *Sabah* (Istanbul), January 3, 2008, <http://arsiv.sabah.com.tr/2008/01/03/haber,60Co4536F53044F1B3046CF7177C7C61.html> (accessed March 22, 2008); and "Prosecutor's surprise for the police" ("Polise savcı sürprizi"), *Radikal*, January 3, 2008, <http://www.radikal.com.tr/haber.php?haberno=243365> (accessed March 22, 2008).

⁶³ See "10 police on trial for concealing evidence" ("10 polise delil gizleme davası"), *Radikal*, June 18, 2008, <http://www.radikal.com.tr/Default.aspx?aType=Detay&ArticleID=883894&Date=18.06.2008&CategoryID=77> (accessed August 18, 2008).

prosecutors should be “immediately informed” and there be no delay in their assuming control of the investigation.⁶⁴

- The police report of the incident recorded it first as a traffic accident. Subsequently, the police abandoned this and claimed that the jeep Baran Tursun and his friends were travelling in had failed to obey a police warning to stop and that the warning shot had killed Tursun. The main suspect himself recorded that he collected up the empty bullet cartridges (*mermi kovanları*) and the jeep Baran Tursun had been driving was removed from the scene before it and the evidence inside it could be examined in situ. While police photographs showed a fragment of a bullet case on the front passenger seat, press photographs taken earlier did not show this raising suspicions that the fragment may have been planted in an attempt to suggest that the police bullet that killed Tursun had not been aimed directly at him but that he had died after the bullet ricocheted.
- Hand swabs from the police officer, Oral Emre Atar, who is now on trial for Tursun’s murder were taken only after significant delay (at 6 a.m) and no residue of explosives found (*barut izleri*); and no firearms were handed over until around six hours after the incident.
- All the statements made by the police officers to the security department were identical in wording suggesting that one statement had been prepared for all. CCTV footage taken from a petrol station and copied, presumably by the police, onto a CD for submission as evidence omitted a three-minute period from 3:17 to 3:21 a.m., which seemed to indicate that the footage had been tampered with.⁶⁵

It is striking to note here that Baran Tursun’s father Mehmet Tursun and other family members were put on trial under article 301 for insulting the judiciary and attempting to influence the judiciary (article 277), after they raised concerns that they would not see justice for Baran’s killings.⁶⁶ (See also Chapter VII, below.)

⁶⁴ Criminal Procedure Code, art.161/2, on the prosecutor’s duty and powers.

⁶⁵ Human Rights Watch interview with Bahattin Özdemir and Aysun Koç, lawyers acting for Mehmet Tursun and the family of Baran Tursun, Izmir, March 7, 2008. Full grounds for complaint by Mehmet Tursun against 36 police officers handling investigation submitted to the Karşıyaka Public Prosecutor, January 22, 2008 (copy on file with Human Rights Watch).

⁶⁶ The first hearings of two trials against them in separate courts took place on June 13 (in the Karşıyaka 5th court of first instance) and July 15 (in the Karşıyaka 3rd court of first instance). According to the revisions to article 301 passed by the

Case of Kemalettin Rıdvan Yalın

On January 19, 2008, Kemalettin Rıdvan Yalın, age 52, was shot just below the knee during a police operation to disband a group of demonstrators who had gathered in central Istanbul to mark the anniversary of the killing of Armenian-Turkish journalist and human rights defender Hrant Dink.⁶⁷

Yalın, who has worked on the state railways for 30 years, claims that he was not part of the group of much younger people demonstrating on the street. After he had been shot—he claims without any warning being given—he was taken to hospital but included in the list of those the police took into detention on suspicion of violently resisting the police, of damaging public property, and of other threatening behaviour. The police placed emphasis on the fact that Yalın was carrying the newspaper *Birgün*, which is a left-leaning daily paper, stating that the paper was confiscated from him by the police and thus implying that the fact of possessing it was significant and evidence of his participation.⁶⁸

Yalın told Human Rights Watch that after being taken to Taksim First Aid Hospital he was repeatedly visited over the five days he remained there by police officers, who questioned, swore at, and threatened him. When he reminded them of his rights as a citizen, an officer shouted at him, “You are not a citizen! You have no rights!” A police officer was stationed permanently nearby and attempts were made to prevent visitors from meeting with Yalın.⁶⁹ There were also attempts made to deny Yalın his legal right to meet in private with his lawyer, and his lawyer told Human Rights Watch

Parliament in April, permission to proceed with investigation under this article has to be sought by prosecutors from the Ministry of Justice. In the case of the Tursun family, both trials were halted, and the cases referred to the Ministry. On November 6, 2008, the Ministry announced that permission for prosecution to proceed under article 301 had not been granted: see ‘Ministry does not give permission on 301 for the Tursun family’, (“Bakanlık Tursun ailesi için 301 izni vermemiş”), CNN Türk television news website: <http://www.cnntrk.com/2008/turkiye/11/06/bakanlik.tursun.ailesi.icin.301.izni.vermemis/499469.0/index.html> (accessed November 6, 2008). However, the Tursun family are still on trial for attempting to influence members of the judiciary (article 277). For a discussion of article 301, see Human Rights Watch press release “Turkey: Government amendments will not protect free speech”, April 17, 2008, <http://hrw.org/english/docs/2008/04/17/turkey18591.htm>

⁶⁷ Human Rights Watch interview with Kemalettin Rıdvan Yalın, Istanbul, June 25, 2008.

⁶⁸ This fact was recorded in the police report, “Incident – record of apprehension and conversation with prosecutor” (“Olay – yakalama ve savcı görüşme tutanağı”), signed by nine police officers and dated January 19, 2008, 19:30 hrs (copy on file with Human Rights Watch).

⁶⁹ Human Rights Watch interview with Kemalettin Rıdvan Yalın, Istanbul, June 25, 2008.

that she was forcibly removed from the room where Yalın was.⁷⁰ By these means, for five days Yalın was effectively placed under detention, although by law he could only have been detained for 24 hours before the police would have had to apply to the prosecutor for an extension. Yalın's lawyer had to apply to the prosecutor to verify that there was no legal basis for his de facto detention, and on January 24 the prosecutor issued an instruction to the Beyoğlu security directorate that Yalın be "immediately released."⁷¹

A month after the shooting, on February 25, Yalın's home in Kadıköy was searched by three police officers, under a warrant prepared by the Üsküdar 2nd Criminal Court of Peace.⁷² The search, which lasted two hours, was based on an alleged tip-off the police claimed to have received stating that Yalın was in possession of hand grenades. Following the search, the Üsküdar public prosecutor issued a decision that there was no need for further investigation since hand grenades had not been discovered.⁷³ Yalın is certain that the search was simply another attempt to intimidate him and influence the ongoing investigation into his shooting by the police.⁷⁴

As a result of the shooting, Yalın's right knee was shattered and he spent months confined to his home and unable to work, his leg in a plaster cast.

A group of individuals—mostly students—who were detained for allegedly participating in the demonstration during which Yalın was shot also claim to have been ill-treated while being transferred in a police bus to the Taksim Police Centre and during the time they were held in custody there. A group of lawyers who went to the police station were denied access to the detainees and were pushed and sworn

⁷⁰ Full details are outlined in the complaint against the police for "injury, illegal detention, ill-treatment, defamation, being sworn at and threatened" to the Beyoğlu Public Prosecutor by Kemalettin Rıdvan Yalın (copy on file with Human Rights Watch). Human Rights Watch interview with Sinem Uludağ, lawyer, Istanbul, March 6, 2008.

⁷¹ Directive to Beyoğlu district security directorate issued by Beyoğlu Public Prosecutor's office, ref: soruşturma no: 2008/1388, January 24, 2008 (copy on file with Human Rights Watch).

⁷² Üsküdar 2nd Court of Peace decision, dated February 24, 2008 (reference: değişik iş no. 2008/351). Copy on file with Human Rights Watch.

⁷³ Üsküdar Public Prosecutor's Office (investigation ref: 2008/3664; decision ref: 2008/3528). Copy on file with Human Rights Watch.

⁷⁴ Human Rights Watch interview with Kemalettin Rıdvan Yalın, Istanbul, June 25, 2008.

at by police as they attempted to discharge their professional duty and enforce their entitlement to meet with the detainees.⁷⁵ All those detained were released after 24 hours. Medical reports document injuries consistent with the demonstrators having been beaten. Demonstrators and lawyers alike have lodged formal complaints and there are ongoing prosecutor's investigations. To add insult to injury, Kemalettin Rıdvan Yalın stood trial with nine others for violating the law on public meetings and demonstrations (no. 2911) by using weapons, violently resisting being dispersed by the police, and for injury to three police officers. To date two hearings have taken place.⁷⁶ Meanwhile the investigation into the shooting of Yalın by police officer Muhammet Gişi continues.

Reflecting on the whole incident, Yalın told Human Rights Watch,

I believe that in Turkey there is no rule of law. As a citizen in Turkey, you feel like you are part of the audience watching a play; you either like it and applaud or you don't like it and leave without applauding. Either way, you cannot intervene in any way ... When the police wanted to take me to hospital in a police car after shooting me, I refused to get in and shouted at them, "After shooting me, who knows where you'll take me. How can I trust you?" In hospital the police endlessly questioned me and even asked if I was Turkish, as if that was relevant to a man who had been shot! I said, "I'm a citizen of the world" ... What happened to me has made me very angry. I believe my home was searched in order to intimidate me. I don't believe I will see justice ... If I get compensation, I have dreams of using the money to load up a van of bird seed, with a sign on the side of the van saying, "This is the bird seed bought by Kemalettin Rıdvan Yalın out of the compensation paid

⁷⁵ Human Rights Watch interview with Can Atalay, lawyer, Istanbul, June 26, 2008. The statements of several lawyers regarding ill-treatment of their clients and themselves were reported by the *Bianet* online news service, see "Police used violence against those detained and against lawyers in Beyoğlu" ("Beyoğlu'nda Polis Gözaltına Alınanlara da Avukatlara da Şiddet Uyguladı"), January 21, 2008, <http://www.bianet.org/bianet/kategori/bianet/104303/beyoglunda-polis-gozaltina-alinanlara-da-avukatlara-da-siddet-uyguladi> (accessed May 26, 2008).

⁷⁶ Copies of the following documents are on file with Human Rights Watch: Beyoğlu Public Prosecutor's Office, indictment against Yalın and others, (Ref. E. 2008/1878), February 28, 2008; and records of the first court hearing on June 6, 2008, and a second hearing on November 7, 2008 which was attended by a Human Rights Watch representative.

by the state after he was shot by the police. With this compensation, I am feeding the birds.”⁷⁷

Case of Ferhat Gerçek

Ferhat Gerçek (age 19) is now paralysed from the waist down and may have to spend his life in a wheelchair. He was shot in the back by police at around 2 p.m. on October 7, 2007, in the Yenibosna district of Istanbul, where he was with a group selling the left-wing journal *Yürüyüş*, a lawful publication. According to Gerçek the group was approached by a police car and the police wanted to detain them, claiming they were selling an illegal publication. The shooting appears to have occurred when a quarrel broke out, some youths threw stones at the police and Gerçek attempted to run away. The police maintain that Gerçek and others violently resisted a police order to disperse and attacked them, and have deemed Gerçek and those with him as “suspects.”

For around seven months after the shooting no investigation was undertaken by the public prosecutor into the shooting of Gerçek. On the contrary, in initially following up the episode police treated Gerçek’s as a suspect rather than his shooting as an offence to be investigated: police interviews recorded Gerçek as a “suspect,” and people who had been with him also as “suspects” rather than witnesses, while the police witnesses and those who opened fire were interviewed as “victims.” The prosecutor however failed to take any statements from those involved in the incident: Ferhat Gerçek, those with him who witnessed the shooting, police witnesses to the incident, or the officers who fired the weapons. Had he made any attempt to investigate the prosecutor might have read the medical reports of three men who attempted to assist Gerçek as he lay on the ground after being shot. These reports record evidence which corroborates their account that they were forcibly removed and beaten by the police. The prosecutor, moreover, failed to inspect the site of the incident, to request any CCTV footage of the area from nearby buildings, or to inquire into why the police failed to hand over a key piece of evidence—the t-shirt that Ferhat Gerçek was wearing bearing the burn mark from the bullet.

⁷⁷ Human Rights Watch interview with Kemalettin Rıdvan Yalın, Istanbul, June 25, 2008.

Finally, seven months after the shooting, Ferhat Gerçek was summoned to give a statement to the public prosecutor on May 6, 2008. Gerçek was also able to identify three police officers from among those involved in the incident in an identity parade⁷⁸ Finally, on June 16, 2008, seven police officers were indicted both as suspects and as the injured party (*mağdurşüpheli*) and will stand trial for excessive use of force (article 256, Turkish Penal Code) and “causing aggravated injury”. They face a possible nine-year prison sentence. The paralysed Ferhat Gerçek is also listed as an injured party and as a suspect alongside the police, but faces a possible prison sentence of fifteen years and four months on four counts of participating in an illegal demonstration, using violence to prevent a public official from carrying out his duty, insulting a public official and intentionally damaging public property. Four others were prosecuted on the same charges.⁷⁹

⁷⁸ Human Rights Watch interviews with lawyers Taylan Tanay and Naciye Demir, Istanbul, December 3, 2007, and May 14, 2008.

⁷⁹ Indictment prepared by Bakırköy Chief Public Prosecutor (Office for Public officials’ crimes), ref. 2007/170949; E. 2008/27662, June 16, 2008 (copy on file with Human Rights Watch).

V. Police Violence against Demonstrators

Disproportionate use of force against demonstrators remains a regular occurrence in Turkey, and was in evidence once again in the first half of 2008.⁸⁰ The policing of demonstrations is undoubtedly a challenging task in contexts where some, most often a minority, of demonstrators may resort to violence, as is the case in some demonstrations in Turkey. However, recent instances indicate that the police response is still heavy handed and disproportionate, and often targeted at peaceful demonstrations. There is considerable evidence of a deterioration in the standard of policing of demonstrations in the past two years, and harsh intervention by police against peaceful demonstrators often seems to encourage a minority of demonstrators to engage in running battles. In the period February to April 2008, six unarmed individuals died as a result of injuries sustained during public meetings and demonstrations in the southeast and eastern regions of Turkey.

Cizre, Şırnak province, February 15

At a demonstration on February 15 marking the ninth anniversary of the capture of Kurdish Workers' Party (PKK) leader Abdullah Öcalan, Yahya Menekşe, age 16, died when he was crushed under a police vehicle (panzer) in the southeast town of Cizre in Şırnak province. In contrast to witness accounts, initial police accounts of his death attempted to conceal the circumstances by claiming that he had died as a result of being hit with a stone. The autopsy reports revealed otherwise.⁸¹ Despite this, permission to investigate the police was refused by the district governor's office in Cizre. An appeal against this decision lodged by the lawyer acting for Yahya Menekşe's family was upheld, and criminal proceedings have been launched against

⁸⁰ For example, see *Şimşek and others v Turkey*, Judgment July 26, 2005, *Oya Ataman v Turkey*, Judgment of December 5, 2006; *Balcık and others v Turkey*, Judgment of November 29, 2007.

⁸¹ Mesut Hasan Benli, "Forensic Institute: He was caught under vehicle" ("Adli Tıp: Araç altında kalmış"), *Radikal*, February 22, 2008, <http://www.radikal.com.tr/haber.php?haberno=248192> (accessed April 24, 2008). Human Rights Watch telephone interview with Rojhat Dilsiz, lawyer representing Menekşe family, Cizre, April 28, 2008.

seven police officers to identify the driver of the police vehicle which crushed Menekşe.⁸²

Furthermore, the chair of the Diyarbakır branch of the human rights group the Association for Human Rights and Solidarity for the Oppressed (İnsan Hakları ve Mazlumlar için Dayanışma Derneği, Mazlum Der) described to Human Rights Watch having seen around 20 of those who had been detained at the demonstration during which Yahya Menekşe died and facing possible criminal charges waiting in the corridors of the court to testify before the public prosecutor and bearing clear indications that they had been beaten whilst in the custody of the police.⁸³

Erciş, Van province, March 5

In the town of Erciş in Van province, following a March 5, 2008 theatre performance held a few days in advance of International Women's Day at a public venue used to celebrate weddings, a group walked towards the town centre shouting slogans. The security forces reportedly intervened to disperse the group using disproportionate force. Scores of people were injured and at least four witnesses afterward reported that they had seen Mehmet Deniz, age 58, being beaten with truncheons by a group of policemen.⁸⁴ Mehmet Deniz was reportedly detained at around 12:30 p.m. and held along with many others for around seven hours. He was transferred to hospital in Erciş and then on to Van in the early evening and died in Van state hospital in the early hours of the next morning, March 6. An initial autopsy report recorded trauma to the brain leading to a haemorrhage.⁸⁵ Mehmet Deniz was buried but, after efforts by lawyers representing his family who argued that the first autopsy report had not been conducted properly in the presence of the legally required minimum contingent of medical personnel, his remains were shortly afterward disinterred for a second autopsy report by the Istanbul Forensic Medical Institute.

⁸² Human Rights Watch telephone interviews with Rojhat Dilsiz, September 26 and November 12, 2008.

⁸³ Human Rights Watch telephone interview with Selahattin Çoban, lawyer and chair of Diyarbakır branch of Mazlum Der, March 11, 2008.

⁸⁴ See report authored by a delegation representing the Van bar association, Van branches of the Human Rights Association, and Mazlum Der, "Special report on the allegations of use of disproportionate forces during the Erciş demonstrations and on the killing of Mehmet Deniz" ("Ercişteki gösterilerde orantısız güç kullanımı iddiaları ve Mehmet Deniz'in yaşamını yitirmesine ilişkin özel rapor"), March 14, 2008.

⁸⁵ Human Rights Watch interview with Baran Bilici, lawyer representing Mehmet Deniz's family, Van, April 18, 2008.

This much fuller autopsy report recorded blows to the body and cracked ribs as well as head injuries, and thus provides further corroborating evidence that Mehmet Deniz died as a result of being beaten. The prosecutor's investigation continues. A lawyer representing Deniz's family expressed to Human Rights Watch his concern that the police were showing signs of failing to cooperate with the enquiry; for example, the police had supplied a list of police officers on duty that day in Erciş, but scrutiny of video film taken during the incidents shows that list to be incomplete.⁸⁶

One hundred and eight people were detained during the Erciş incident on March 5, with 70 people being released without being brought before a prosecutor, and 38 being brought before a prosecutor. Of those 38, the prosecutor released around half pending trial and remanded around 16 to prison. The lawyer interviewed by Human Rights Watch expressed the view that most of those detained had been beaten by the police. He also said that the police violence was completely indiscriminate, often targeting bystanders and shopkeepers as well as those who shouted slogans or, later on as the tension escalated, had lobbed stones at the police. This lawyer gave the example of another client, Abdurrahman Güler, a shopkeeper in Erciş, who had reportedly been apprehended as he attempted to escape from the teargas to splash water over his face in a nearby café. Güler claimed to have been repeatedly beaten in the head and face and sworn at as he was taken to the police station. He says he was beaten and trampled on by police officers while made to lie face down handcuffed in the police station. A medical report documented injuries consistent with his account, such as serious bruising to his face, mouth, and a broken tooth.⁸⁷

Güler's account was similar to that provided by those interviewed by the Van bar, Human Rights Association, and Mazlum Der, who also reported the presence of police officers during medical examinations and a failure by doctors in some cases to record the evidence of beating or to provide treatment. Some individuals reported to representatives of the above organizations that they were sworn at while being beaten with formulations that demonstrated anti-Kurdish sentiment ("Leave this country, you bastards!").

⁸⁶ Human Rights Watch interview with Baran Bilici, lawyer representing Mehmet Deniz's family, Van, April 18, 2008.

⁸⁷ Abdurrahman Güler's injuries were recorded in full in a report prepared by the forensic medical department of Van Yüzüncü Yıl University, report ref: 09.03.2008/172-3, March 9, 2008 (copy on file with Human Rights Watch).

Van and elsewhere, Newroz/Nevruz⁸⁸ 2008

The traditional Newroz/Nevruz celebrations, mainly celebrated by the Kurdish population in Turkey and taking place around March 21, were marred by violence in some cities when police used excessive force to break up demonstrations. While the celebrations passed successfully and without incident in cities such as Diyarbakır, the cities of Van, Hakkari, and Siirt were not so peaceful.⁸⁹ In the course of forcibly dispersing demonstrators and onlookers, police fired plastic bullets and live rounds. There were four fatalities in all. In Yüksekova, Hakkari, İkbâl Yaşar died of chest wounds on March 23 sustained at the Newroz celebrations and Fahrettin Şedal died in Van hospital on April 11 from gunshot wounds in the stomach sustained at İkbâl Yaşar's funeral on March 24. In Van, Zeki Erinç died on March 23 of gunshot wounds sustained in the stomach on March 22 at the Van Newroz celebrations, and Ramazan Dal died of gunshot wounds on April 1, 2008 in Van Yüzüncü Yıl University Hospital also sustained on March 22 in Van.⁹⁰ As of the end of September 2008, investigations into these deaths were reportedly continuing.

In Van, where detailed research and interviewing was carried out following the incidents, Human Rights Watch repeatedly heard the view expressed by local shopkeepers, members of human rights groups, and lawyers that the town had not experienced such a level of police violence in the past 10 years or more. The last Newroz at which demonstrators had been shot dead had reportedly been in 1992. There was a wide consensus that the force use had not been solely targeted at demonstrators but that the police had used excessive force against bystanders, including women and children. There was a general view too that a number of those

⁸⁸ Newroz (Kurdish)/ Nevruz (Turkish) is the traditional festival of New Year in the Persian calendar which celebrates the arrival of spring at the March 21 equinox and which is celebrated especially by the Kurdish community in Turkey.

⁸⁹ See Van Bar, Van Human Rights Association branch, Mazlum Der Van branch, İnsan-Der, Contemporary Lawyers' Association Van branch (Van Barosu, İHD Van Şubesi, Mazlumder Van Şubesi, İnsan-Der, ÇHD Van Şubesi), "A research and investigative report on the the 2008 Nevroz events in Van" ("2008 Yılı Van Nevroz Olaylarını Araştırma İnceleme Raporu") April 9, 2008, http://www.ihd.org.tr/index.php?option=com_content&task=view&id=727&Itemid=90 (accessed September 4, 2008); Human Rights Association, "A research and investigative report on the human rights violations and cases of extrajudicial execution which occurred following the banning by the Governor and District Governor's offices in the province of Van on 22 March 2008 and in Yüksekova" ("22 Mart 2008 Tarihinde Van Ölinde ve Yüksekova'da Newroz Kutlamalarının Valilik ve Kaymakamlıkca yasaklanmasının ardından meydana gelen hak ihlallerini ve yargısız infaz vakalarını araştırma-inceleme raporu"), March 28, 2008, http://www.ihd.org.tr/index.php?option=com_content&task=view&id=725&Itemid=90; and Mazlum Der, "Report on Van, Hakkari, Yüksekova Newroz 2008 Events" ("Van – Hakkari – Yüksekova 2008 Newroz Olayları Raporu," April 10, 2008, http://www.mazlumder.org/haber_detay.asp?haberID=135 (all websites accessed May 11, 2008).

⁹⁰ Human Rights Watch interview with the family of Zeki Erinç, Hacıbekir neighbourhood, Van, April 18, 2008. Information on deaths supplied by representatives of the Van and Hakkari branches of the Human Rights Association.

severely injured by the police, including some with plastic bullet wounds, had not gone to hospital in Van for fear of finding themselves under police investigation. Around 190 people were detained at the time of the incidents, with around 40 remanded to prison pending trial. Van lawyer Bekir Kaya reported nearly a month later that there was still a tense atmosphere in the town as police were continuing to examine footage of the incidents and to detain individuals on charges of participation in an illegal demonstration, damage to public property, violently resisting the police, and for serious crimes carrying aggravated prison sentences falling under the remit of terrorism legislation (propaganda, aiding and abetting an illegal organization, etc.). “They watch film and detain people but this is fairly random because it’s not always clear that people were actually doing anything,” Kaya remarked.⁹¹ It was repeatedly reported by all lawyers interviewed in Van that many people would choose not to file a formal complaint of police ill-treatment with the prosecutor because it would bring them to the attention of the police and work against them.

Precursor to the events in Van was a short-notice decision by the governor’s office to ban the holding of Newroz celebrations arranged by an organizing committee at an assigned location on Saturday, March 22. The organizing committee had planned a program, invited outside speakers and singers for that day, and begun setting up a stage and finalizing arrangements at an agreed venue. The governor’s office however insisted that the celebrations take place one day earlier, March 21, Newroz itself, which fell on a Friday and was therefore not favored by the organizers as it would be a day on which there would be reduced participation.

It would seem that the arbitrary decision to ban Newroz celebrations on March 22 was the beginning of a disastrous course of events, but one that the authorities apparently expected to head off by threats rather than conciliation. On the afternoon of March 20, the police chief of Van, Salih Kesmez, gave a press conference (also reportedly broadcast on a local television station news program) at which he announced that special firearms firing plastic bullets (F303 firearms), imported from Belgium, had just been delivered to the security directorate in Van. He was reported as remarking, “We made efforts for our directorate to have guns that can be used to

⁹¹ Human Rights Watch interview with Bekir Kaya, lawyer, Van, April 17, 2008.

render demonstrators ineffective before Newroz. But I hope there won't be a situation in which we have to use these guns.”⁹²

After being presented with the ban, the Democratic Society Party (DTP) announced its decision to read out a press statement in front of its Van provincial party offices on March 22 to mark Newroz, to condemn the ban, and then to disperse.⁹³ A number of people collected there that morning. It was reported by both a delegation present that morning from the Human Rights Association and a separate delegation from Mazlum Der that the first police intervention to disperse the group of around 250 people who had collected in front of the party building took place without warning and while officials of the DTP, local groups, and observers were still engaged in negotiation with officials of the security forces.⁹⁴

A number of individuals were (to use police chief Salih Kesmez's words) “rendered ineffective” in Van on March 22. In addition to Zeki Erinc and Ramazan Dal, whose autopsy reports reportedly stated that they died from bullet wounds incurred from live ammunition,⁹⁵ many others were badly injured by plastic bullets. Among them was Gulşah Aslan, age 21. Nearly a month after the Newroz incidents Gulşah was resting in bed in her home when a Human Rights Watch researcher interviewed her and her younger sister, Evindar. Gulşah had been shot in the chest and the rubber bullet had embedded in her shoulder; Evindar had been beaten with a truncheon. Gulşah recounted the following:

I left our house at about 10:30 or 11 and was on my way to visit my mother in hospital. I had just turned the corner to be faced with a

⁹² “Göstericileri etkisiz hale getirmek amacıyla kullanılacak silahların Nevruz'dan önce müdürlüğümüzde olması konusunda çaba sarf ettik. Ama umarım bu silahları kullanacak bir durum olmaz.” Van Security Chief Salih Kesmez's press conference was reported on local television and in the local press: see “Van Security has introduced plastic bullet guns to Turkey” (Van emniyeti 'plastik mermili' silahı Türkiye'ye tanıttı), <http://www.gazetevan.com/detay.asp?hid=1559> (accessed May 11, 2008).

⁹³ Reports by the Human Rights Association, “A research and investigative report on the human rights violations and cases of extrajudicial execution which occurred following the banning by the Governor and District Governor's offices in the province of Van on 22 March 2008 and in Yüksekova,” http://www.ihd.org.tr/index.php?option=com_content&task=view&id=725&Itemid=90; and Mazlum Der, “Report on Van, Hakkari, Yüksekova Newroz 2008 Events”: http://www.mazlumder.org/haber_detay.asp?haberID=135 (all websites accessed May 11, 2008).

⁹⁴ Ibid.

⁹⁵ Information regarding autopsy reports supplied to Human Rights Watch by Van lawyer and member of the Van branch of the Human Rights Association, Bedia Özgökçe Ertan, July 7, 2008.

police vehicle with masked special team men in it. They were firing indiscriminately and then one turned and aimed directly at me. [Evindar reported that some children had been throwing stones at the vehicle and had run away when it came towards them.] I thought I had been hit by a stone at first and then I remember saying to myself, “They’ve killed me.” I was taken to a neighbor’s house, but the special team men got out of the vehicle and followed us, broke the windows, and threw in a teargas bomb [canister]. My face was burning. When my sister Evindar rushed to open the door to the Special Team men fearing they would otherwise break it down, she was beaten with a truncheon and they threw her into the room where I was. We are all relatives, they beat everyone. There was blood everywhere.⁹⁶

Gulşah was taken to hospital by car, had the bullet removed and had to have a blood transfusion. She spent 13 days in hospital. She filed a complaint to the prosecutor; at this writing the investigation is ongoing.

The Van Bar, Human Rights Association, Mazlum Der, Contemporary Lawyers’ Association and Insan Der delegation interviewed nine individuals who had gunshot wounds (most assessed as being from plastic bullets).

A Human Rights Watch researcher visited Husnu Abi, a Van shopkeeper, at his home in the Hacibekir quarter of Van. He reported being shot in the head as he walked to his shop in the centre of town: “It was about 10 a.m. The police prevented us from passing. Everyone was gathering there and then a teargas cannister was shot from an armoured vehicle and the sound of shooting came. I suddenly fell down and I can’t remember any more than that.”⁹⁷ At the time of our interview, x-rays in Abi’s possession showed fragments of what was either a plastic bullet case or a teargas canister still lodged in the back of his head, and a large wound in the back of his head was visible. Commenting that many people had not dared go to hospital because of the fear of reprisals from the police, he added that the police had wanted him to “give a statement” while he was in hospital but that his condition was so bad

⁹⁶ Human Rights Watch interview with Gulşah Aslan, Akköprü neighborhood, Van, April 18, 2008.

⁹⁷ Human Right Watch interview with Husnu Abi, Hacibekir neighborhood, Van, April 18, 2008.

that he could not. Abi was preparing to lodge a formal complaint but, besides the x-ray film, did not have in his possession a medical report, despite having spent three weeks in hospital.

Human Rights Watch interviewed M.K. (born in 1992, name withheld), employed as an assistant on the Van-Hakkari minibus route. M.K. reported that when police officers entered the bus station in Van, he was chased by a group of around 10 officers and beaten with truncheons and the butts of firearms. He fell to the ground, attempted to get up, and was again repeatedly beaten. He was finally taken into the bus station office by some bus drivers and then sent home, where he stayed for some days. “I have difficulties sleeping, I keep seeing myself being beaten again and again, and I have had severe stomach pains,” he told us.⁹⁸ The beating of M.K. was caught on amateur footage from a nearby location.⁹⁹

M.K. and his father, Esat K. (full name withheld), a construction worker who returned from his work in Milas in western Turkey on hearing of the incident involving his son, filed a complaint to the prosecutor. At this writing an investigation is ongoing. Human Rights Watch was informed by Esat K. on May 29 that his son’s psychological state and inability to “come to himself” and to return to work had prompted a decision to transfer him temporarily to the psychiatric ward of a local hospital for psychiatric treatment.¹⁰⁰ In subsequent months he spent further spells in a psychiatric hospital in Ankara and remains unable to resume work.¹⁰¹

Some of those who reported being severely beaten in Van chose not to file official complaints with the prosecutor. A member of the Human Rights Association mentioned as an example the case of one male student who had been kicked in the testicles, necessitating surgery to remove one testicle.¹⁰² One possible motivating factor in him not pursuing a complaint was a desire to complete his studies at Van

⁹⁸ Human Rights Watch interview with M.K., Van, April 17, 2008.

⁹⁹ Amateur footage of the beating of M.K. supplied to Human Rights Watch by Dicle News Agency. Copyright © Dicle News Agency 2008.

¹⁰⁰ Telephone call from Esat K. to Human Rights Watch, May 29, 2008.

¹⁰¹ Human Rights Watch telephone interview with Esat K., November 12, 2008.

¹⁰² Information confirmed by the student in conversation with Human Rights Watch (name withheld), April 18, 2008, Van.

Yüzüncü Yıl University and avoid possible disciplinary investigation by the university authorities or criminal investigation by the police for participation in an unauthorized demonstration.

Human Rights Watch has not conducted the same close examination of the events at Newroz in Hakkari. However, we have followed one case, after television footage was widely broadcast of a plainclothes police officer in the street in Hakkari violently twisting the arm of a 15-year-old youth, C.E. (name withheld) behind his back.¹⁰³ Following this incident, C.E. was released, then on orders of the prosecutor re-arrested and remanded to the children's ward at Bitlis E Type prison, to be bailed on April 11 pending trial for participation in the demonstration.¹⁰⁴ An investigation by the public prosecutor into the incident in which his arm was twisted behind his back ended in late April with a decision that there was no case to answer (*takipsizlik kararı*). C.E.'s lawyer appealed against this decision to Van Heavy Penal Court No. 2. When the Van court turned down the appeal, the lawyer decided to bring a case to the European Court of Human Rights.¹⁰⁵

The Parliamentary Human Rights Investigative Commission visited Van and Hakkari at the end of April to conduct their own investigation into the Newroz events, and released a report in November. Amongst other recommendations, the commission's report emphasized the need for effective investigation of the fatal shootings, and of allegations of ill-treatment and excessive use of force. The commission recommended further training of the police in public order policing and the wearing of helmets and uniforms with identifying ID visibly displayed.¹⁰⁶

¹⁰³ Footage of various scenes of police violence during Newroz in Van and Hakkari appeared on websites, including images of a member of the security forces twisting C.E.'s arm. See for example http://www.dailymotion.com/related/x4vdol_newroz-tragedy-2008-better-version_news/video/x4uyy2_hakkari-kolu-krlan-cocuk-video-byis_news?from=rss (accessed May 11, 2008).

¹⁰⁴ Amnesty International issued an urgent action about the case, calling for C.E. to receive proper medical examination and treatment in Bitlis E-type prison. See Amnesty International UA 90/08, April 9, 2008, and follow up information, <http://www.amnesty.org/en/library/info/EUR44/007/2008/en> and <http://www.amnesty.org/en/library/info/EUR44/008/2008/en> (both accessed May 11, 2008). On March 31, 2008, the Hakkari Governor's Office had provided a different account of the incident, suggesting that the press had provided incorrect information and had targeted the security forces apprehending C.E. See http://www.hakkari.pol.tr/bsn_CE.asp (accessed May 11, 2008).

¹⁰⁵ Human Rights Watch telephone interviews with Fahri Timur, Hakkari lawyer representing C.E. and his family, June 2 and September 26, 2008.

¹⁰⁶ Parliamentary Human Rights Investigative Commission, "An investigation into incidents during the 2008 Nevruz celebrations in Siirt, Van and Hakkari, and in the Yuksekova district of Hakkari province", ("2008 yılı Nevruz Kutlamaları ile

Istanbul, May 1, 2008

The spectre of violent policing was to reappear a few weeks later, in Istanbul, on the occasion of the traditional May 1 International Workers' Day. While the occasion generally passed well in cities like Ankara where a workers' rally was permitted, the Istanbul governor and the AKP government took the decision to ban any celebration of the occasion in Taksim Square. Celebration of May 1 has usually been banned in Taksim for the past 30 years, after the tragic incidents of May 1, 1977, when unknown perpetrators opened fire on the crowd, resulting in 34 deaths.¹⁰⁷ Statements made by the government and the Istanbul governor about the ban, and by the main trade union organizers of May 1 in Istanbul who emphasized that they would assemble and march to Taksim, have been well documented in the press. The governor in particular emphasized that the police would resort to force if necessary to disperse an illegal demonstration if demonstrators went ahead and attempted to convene in Taksim.¹⁰⁸

The build up to the day itself was tense, yet it is unlikely that anyone would have been able to predict the serious turn in events, which effectively on May 1 saw the police prevent groups from assembling in Istanbul and launch direct attacks on the main trade union involved in organizing the march and gathering. At 6:30 a.m. the police began to disperse a crowd assembled outside the Şişli headquarters of the Revolutionary Workers Trade Unions Confederation (Devrimci İşçi Sendikaları Konfederasyon, DİSK), using water canons, teargas, and batons. They then proceeded to raid DİSK's offices. In the course of the day the DİSK offices were reportedly raided several times between 6:30 and 10 a.m., with the police throwing teargas canisters into the building and beating people with truncheons. DİSK and the other trade union confederations Türk-İş and KESK announced that they would launch legal proceedings on the grounds that the government had violated the fundamental principles of the right to assembly, in contravention of International Labour Organization (ILO) standards and Turkey's obligations under international

ilgili olarak Siirt, Van ve Hakkâri illeri ile Hakkâri İli Yüksekova ilçesinde meydana gelen olayların incelenmesi"), November 3, 2008: <http://www.tbmm.gov.tr/komisyon/insanhak/insanhaklari.htm> (accessed November 12, 2008).

¹⁰⁷ On May 1, 1977, five people died of gunshot wounds fired by perpetrators (who have never been identified) positioned at a location above the crowd and possibly in cars, 28 were crushed to death in a stampede down Kazancı Yokuşu, and one woman was crushed to death under a police armoured vehicle (referred to as "panzer" in Turkish).

¹⁰⁸ "Taksim showdown" ("Taksim restlesmesi"), *Radikal*, April 29, 2008, <http://www.radikal.com.tr/haber.php?haberno=254285> (accessed August 19, 2008).

law. Having decided that the investigation into the incidents was ineffective, DİSK and KESK started a case before the European Court of Human Rights on August 14.¹⁰⁹

One journalist also told Human Rights Watch that in a separate incident he had witnessed a police officer throw a teargas canister into the entrance of the canteen at the Şişli Etfal Hospital and that this had badly affected patients, relatives, and those working in the hospital. In an official press conference on May 1, the governor of Istanbul had strongly refuted this allegation—and many other allegations that the police had used excessive force—without examining the evidence or hearing witnesses.¹¹⁰

Focusing in particular on the use of force by the police, Human Rights Watch interviewed a number of those who attempted to celebrate May 1 and alleged that they were attacked by the police and beaten.

Gürol Şimşek, an official for the trade union Tarım Orkam-Sen (Tarım ve Ormancılık Hizmet Kolu Kamu Emekçileri Sendika, the union for agricultural and forestry workers), and his nephew Rahmi Yılmaz (born 1981) described how they were attacked and beaten by a team of five or six plainclothes police officers whom they passed on Tarlabaşı boulevard at around 12:30 p.m. Şimşek and Yılmaz were on their way back from attending speeches by a delegation including parliamentarians gathered outside the Republican People's party headquarters in Şişli. Rahmi Yılmaz, who works in a pizza restaurant, reported that he was beaten on the back of the shoulders and head with a cudgel, lost his balance and fell to the ground. Gürol Şimşek was hit with a truncheon or cudgel on the head and on the right ear and when he had fallen over was kicked in the mouth. Neither of the two were detained after

¹⁰⁹ See "Complaint from the trade unions about May 1" ("Sendikalardan 1 Mayıs için suç duyursu"), *Sabah*, May 5, 2008, <http://www.sabah.com.tr/2008/05/05/haber,61875541C65644C3BCF91D6E8A72969C.html> (accessed May 26, 2008), and "DİSK and KESK bring the state terror of 1 May 2008 to the European Court of Human Rights!" (DİSK ve KESK 1 Mayıs 2008'de yaşanan devlet terörünü insan hakları avrupa mahkemesi gündemine taşıyor!) DİSK website, <http://www.disk.org.tr/default.asp?Page=Content&ContentId=578> (accessed September 27, 2008).

¹¹⁰ Human Rights Watch interview with Ahmet Şık, Istanbul, May 22, 2008. See also Ahmet Şık, "Why did a police officer express shock, Governor Güler?" ("Polis niye 'Oha' dedi Vali Güler?"), *Medyakronik* online news service, <http://www.medyakronik.com/haber/584/> (accessed August 19, 2008). For a full account of Governor Muammer Güler's press conference concerning the incidents on May 1 see "Governor Güler: 530 detained" ("Vali Güler: 530 gözaltı"), *Sabah*, May 1, 2008, <http://www.sabah.com.tr/2008/05/01/haber,6AF02D721B384017859F960060DC08Co.html> (accessed August 19, 2008).

this reportedly unprovoked attack and, with Şimşek bleeding profusely from the mouth, the two made their way to the Taksim First Aid hospital where Şimşek received five stitches to the lip and further stitching inside his mouth, and Yılmaz was given a tomography scan. Yılmaz reported to us that he had problems with his sense of balance and temporary loss of feeling in the left arm, and Şimşek reported experiencing flashbacks to the moment when he was kicked in the mouth.¹¹¹

After they had been forcibly dispersed with teargas and water canon, some demonstrators and journalists reporting on May 1 took refuge in the garden of offices of the newspaper *Cumhuriyet* in Şişli. Two *Cumhuriyet* journalists were beaten. Ali Deniz Uslu, a reporter on *Cumhuriyet*'s Sunday supplement, was beaten with a truncheon as he entered the newspaper's premises. He had his right arm broken as he attempted to shield his face, later had to undergo surgery, and with an arm in plaster for weeks was, at the time we interviewed him in June, severely impeded from carrying out his work at the newspaper.¹¹² Esra Açıkgöz, another *Cumhuriyet* Sunday supplement reporter, told us that she was beaten by several police officers in turn in the street near the newspaper. She recounted that she had attempted to escape the beating, produced her press card and shouted to the police, "I'm a journalist," but that this achieved nothing and she was struck on the head several times more by passing police officers.¹¹³ The journalists informed us that on May 5 they had lodged formal complaints with the prosecutor's office complaining of "intentional injury" (Turkish Penal Code article 86/1) and violation of the liberty to work (article 117/1). They had directed their complaints not only against the officers directly responsible but also against senior officers, the Istanbul governor, the Interior Minister and the Prime Minister.

However, there is currently no criminal investigation into the police for the ill-treatment of either of the two journalists. A decision dated August 13 issued by the Bahçelievler district governor's office withheld permission for criminal investigation

¹¹¹ Human Rights Watch interview with Gürol Şimşek and Rahmi Yılmaz, Istanbul, May 10, 2008.

¹¹² Human Rights Watch telephone interview with Ali Deniz Uslu, June 2, 2008. See also interview with Uslu in Ayçin Kırbas and Duygu Ertürk, "Cumhuriyet newspaper reporter: Police shoot to kill" ("Cumhuriyet muhabiri: 'Polis, öldürmek için vuruyor'"), *Medyakronik*, <http://www.medyakronik.com/haber/588/> (accessed June 1, 2008).

¹¹³ Human Rights Watch telephone interview with Esra Açıkgöz, June 3, 2008.

of two police officers. Permission was withheld on the grounds of a July expert report that stated there was not proof that the named officer had been responsible for breaking the arm of Ali Deniz Uslu and that neither of the two journalists had come forward to give statements to the prosecutor.¹¹⁴ As discussed previously, the Law on the Trials of Civil Servants and other Public Officials (Law no. 4483) is still being used to block investigation into allegations of police violence, and it is disgraceful that it should be invoked yet again in this instance. It is clear from the many rulings of the European Court of Human Rights that this is a blatant violation of Turkey's obligations under the European Convention on Human Rights, and in particular its obligation to carry out independent and effective investigations into allegations of ill-treatment.

Elsewhere that day, members of the rapid deployment force of the police (known as the *Çevik Kuvvet*) attacked the Istanbul provincial headquarters of the socialist Freedom and Solidarity Party (Özgür ve Dayanışma Partisi, ÖDP) and a group of people who had gathered outside the building. Around 300 people were in the building or had gathered outside it at around 1 p.m. At around 2;15 p.m., a team of around eight members of the police rapid deployment force launched an attack on the group, approaching from steps from a neighboring street, beating members of the crowd with truncheons, and throwing three teargas canisters into the building and firing at least two plastic bullets.¹¹⁵ District chair of the ÖDP Sinan Tural described the effect inside the building as overpowering: "Teargas filled the entire building. Everyone was on their knees. Some people were throwing up. Our friends broke the windows of the upper floors, and this may have saved us." Behçet Ertaş, an ÖDP member who runs a café in the Esenyurt district of Istanbul, reported that he was beaten and kicked in the street outside the building: "I fell over and I think fainted when I was beaten by a police truncheon. I raised my head to see a police officer turn back to kick me in the face." Ertaş suffered a broken nose and heavy

¹¹⁴ Reported by Erol Önderoğlu, "This year again police officers who used violence on 1 May are not prosecuted" ("1 Mayıs'ta şiddet uygulayan polisler bu yıl da yargılanmıyor"), Bianet Online news service, September 18, 2008, <http://www.bianet.org/bianet/kategori/bianet/109799/1-mayista-siddet-uygulayan-polisler-bu-yil-da-yargilanmiyor> (accessed September 30, 2008).

¹¹⁵ The attack was caught on amateur video camera from the window of a nearby building. Human Rights Watch obtained a copy of the film. ÖDP officials reported that they later handed over a large, round teargas canister, two smaller teargas canisters, and two plastic bullets to the public prosecutor who conducted an on-site inspection after the incident.

bruising to the body and was taken by ambulance to the Taksim First Aid hospital, where he had surgery to correct the broken nose the following day.¹¹⁶

On July 28, 2008, Minister of Justice Mehmet Ali Şahin responded to a parliamentary question tabled by Republican People's Party deputy group chair Kemal Anadol on the progress of criminal and administrative investigations into police violence on May 1 in Istanbul. Justice Minister Şahin reportedly responded that to date, nearly three months after the incidents, the investigation by the Beyoğlu Public prosecutor was continuing, and that, "The statement of one police officer was taken, and no public official has been brought before a court." The minister also stated that the administrative investigation carried out by the General Security Directorate was continuing and that to date no police officer had been suspended from duty.¹¹⁷

¹¹⁶ Human Rights Watch interview with Sinan Tatal and Behçet Ertaş, Istanbul, May 10, 2008.

¹¹⁷ For Justice Minister Mehmet Ali Şahin's full written response to the parliamentary question see <http://www.tbmm.gov.tr/d23/7/7-3476c.pdf> (accessed September 30, 2008).

VI. Police Violence in the Context of Identity Checks

The practice of police conducting identity checks, asking people to produce ID on demand and checking it against information held in a central data bank (the General Information Bank—*Genel Bilgi Toplama*, GBT) is not a new one in Turkey. However, the practice was given a legal basis for the first time in the June 2007 revised law on the powers and duties of the police (detailed above in Chapter III). For the first time it was provided for by law that the police “can exercise the authority to stop [an individual] provided that there are reasonable grounds based on the experience of the police officer and the impression he gets from the prevailing circumstances.” It is also stated immediately afterward that this power cannot be used “on a continuous basis in an arbitrary fashion.”¹¹⁸ The law states that the person stopped will be informed by the police officer of the reason for being stopped and the police officer will demonstrate that he is a police officer by showing his own police ID before requesting the ID of the individual who has been stopped.

Numerous individuals have reported that they have been physically assaulted and/or threatened in the course of police officers carrying out these ID checks.¹¹⁹ Often, it appears, it was when an individual asked to see an officers’ police ID, that the officer would resort to violence or threats of violence. Complaints lodged against the police often result in retaliation in the form of counter-charges of violently resisting or obstructing the police (the issue of counter-charges regularly brought by police against those who allege they have been mistreated will be discussed in greater detail in Chapter VII, below).

Among the cases of police violence arising from ID checks reported to Human Rights Watch are the following:

¹¹⁸ “Law amending the law on the powers and duties of the police” (Polis vazife ve salahiyet kanununda değişiklik yapılmasına dair kanun), law no 5681, art. 1.

¹¹⁹ The Documentation Centre of the Human Rights Foundation of Turkey conducts daily press scans and has collected many such reports from news reports since the implementation of the new law: see their website www.tihv.org.tr (accessed September 26, 2008).

Case of Feyzullah Ete

Feyzullah Ete, age 26, died after being kicked in the chest by a plainclothes police officer in the context of a routine ID check by police in the Avcılar area of Istanbul on November 21, 2007. A medical report from a special department of the Forensic Medical Institute did not document conclusively the cause of death and in May 2008 the lawyer representing Ete's family commissioned a further expert report from Istanbul University's Forensic Medical Department, which recorded "commotio cordis" (cardiac arrest as a result of sudden impact to the precordial region) as the cause of death.¹²⁰

Feyzullah Ete, a worker in a clothes factory and the main breadwinner for his parents, wife, and two little girls, had been about to go watch a Turkey-Bosnia football match at a local café when his encounter with the police occurred. At around 8:30 p.m. he and Ali Oturakçı, a friend of many years, were sitting in a park in the neighborhood where they both lived, when four police officers approached them. During a meeting with Ete's family and Ali Oturakçı, including a visit to the area where the incident occurred, Ali Oturakçı described to a Human Rights Watch researcher how the police, identifiable by their walkie-talkies, had entered the small open area with children's swings and some picnic tables and benches, overlooked by flats, and approached the two to demand their ID.

Feyzullah told them, "But we live here, we're from this neighbourhood." They punched me in the face and then one officer who stood on a slightly raised area over there aimed a kick directly at Feyzullah's chest on his left side. He fell back and I tried hard to revive him. We got him into the car but I realized that by the time we were on the way to the hospital he had no pulse. The whole thing happened in a matter of minutes.¹²¹

¹²⁰ Dr. Coşkun Yorulmaz, Istanbul University Cerrahpaşa Medical Faculty, Forensic Medicine Department, "Scientific investigation [to establish cause of death of Feyzullah Ete]," ("Bilimsel mutalaa"), June 20, 2008. Copy on file with Human Rights Watch.

¹²¹ Human Rights Watch interview with Ali Oturakçı and Ete family, Avcılar, Istanbul, March 5, 2007.

Ali Mutlu, the police officer who reportedly kicked Ete, was released after giving a statement to the prosecutor. He was later arrested and remanded to prison pending trial, charged with “intentional injury resulting in death” (article 87/4, Turkish Penal Code).¹²²

The Istanbul Security Directorate issued a statement which appeared the day after the incident, and claims that the police responded to a complaint that Ete and his companion were causing a public disturbance, drinking alcohol and being rowdy. It claims that the police went to warn them and to check their IDs, and were then attacked by the two. Ete is said to have fallen to the ground and was unable to get up, and the cause of his death not known.¹²³ This statement remains on their website and has not been updated to take account of the fact that a police officer is on trial for killing Feyzullah Ete.

At the first hearing of the trial of the police officer on June 24, 2008, the court took the decision to hold the trial in closed hearing. Only two family members of the deceased were allowed to be present, Ete’s mother and older brother.¹²⁴ The family of the defendant were also not admitted, and nor were members of the press, or a representative from Human Rights Watch. The court cited a provision in the Criminal Procedure Code (article 182/2) allowing for closed hearings in cases where there were “public security” considerations—there was no explanation of what the particular public security risk was in this case.

In order to heighten the public perception that members of the security forces and public officials will be held accountable for abuses committed in the course of their professional duties and to increase confidence in the justice system and government that serious efforts are being made to tackle such abuses, it is imperative that courts demonstrate their impartiality and do not seem to be protecting members of the security forces. Human rights violations committed by members of the security forces

¹²² Indictment issued by the Bakırköy Chief Public Prosecutor, Ref: E. 2008/16520, April 7, 2008. Copy on file with Human Rights Watch.

¹²³ The statement can be found on the Istanbul Security Directorate website, at http://www.iem.gov.tr/iem/?menu_id=1&detay_id=153 (accessed June 23, 2008).

¹²⁴ The court took the arbitrary and discriminatory decision to expel Feyzullah Ete’s widow Necla from the courtroom, on the grounds that she had not been officially married to him.

and public officials are clearly a matter of great public interest and there should be compelling reasons to restrict information about such cases.

In the Feyzullah Ete murder trial, Ali Oturakçı is the main witness testifying against the police. However he also faces trial in the same courtroom for “violently resisting the police” (article 265/1), thus appearing in the trial as both an injured party and a suspect. A second closed hearing of the case involving the main defendant Ali Mutlu and Ali Oturakçı was held on 16 September, 2008 and a third on November 6, at which Mutlu was granted bail. Following the hearing, Adil Ete, the elder brother of the deceased Feyzullah Ete, was detained when he reacted angrily to the news of Mutlu being bailed and reportedly threw a cigarette lighter at the court door. Human Rights Watch was informed that Adil Ete was remanded to prison to await trial on charges that are likely to be insulting the court, and forcibly resisting a public official (articles 125 and 265, Turkish Penal Code). Given the relatively low level nature of the disturbance and that there is no suggestion that Adil Ete is a flight risk, or would interfere with any evidence or witnesses, the decision to place him in pre-trial detention, which could last several months, would appear to be harsh and unnecessary.¹²⁵

Case of Sinan Tekpetek

Sinan Tekpetek’s ID was checked as he was returning home from his brother’s wedding party at around 11:15 p.m. on July 26, 2007. He was stopped in Taksim, Istanbul, and his ID was checked by police and his details relayed by telephone to a police station. His ID was given back and he walked on down a quiet road leading to a bus (dolmuş) stop. Tekpetek (aged in his mid 20s) was approached by a police car from behind and forcibly bundled into it. He recounted to Human Rights Watch what happened next:

Pepper gas was immediately sprayed into my face. My head was pushed down so I couldn’t work out where I was being taken to but it seemed like we drove for about 15 minutes to a place around the city walls. We

¹²⁵ Human Rights Watch interview with lawyer Murat Nas, Istanbul, October 6, 2008.

arrived at an empty lot and I was taken out and beaten and beaten with other police officers who arrived in two more police cars joining in.¹²⁶

Tekpetek claims that his ordeal ended when he was thrown from the moving car, dumped in the Karaköy area of the city. He later secured a medical report from the Siyami Ersek hospital in Kadıköy, which identified two broken ribs and bruising and cuts to his face and body. He was certified as unfit to work for 20 days. Photographs of Tekpetek taken after the incident show severe bruising to his body including double-lined bruising on his back, consistent with being beaten with a truncheon.

Tekpetek works on an anarchist publication called *%52 Öfke!* He is also a defendant in a trial that began some years earlier arising from an incident when he and a friend attempted to intervene to help someone whom they say was being beaten by the police; Tekpetek was charged in that incident with violently resisting a police officer. The case continues but, to Tekpetek's mind, raises the possibility that he was deliberately targeted because he was known to one of the police officers. However, he reports that while being beaten, he was not directly verbally threatened other than being sworn at.

Abductions by officials, which can include inhuman treatment and torture have been reported in Turkey for many years. This was the only case reported to Human Rights Watch in 2007 which occurred in Istanbul, though the Diyarbakır branch of the Human Rights Association reported to Human Rights Watch that they continued to receive allegations of this practice persisting in Diyarbakır.¹²⁷ The investigation of such allegations proves highly problematic because it is generally very difficult for victims to identify perpetrators or to discover witnesses able or willing to testify that an "abduction" occurred.

The investigation of such incidents should involve a concerted effort to examine all CCTV footage available from the location where an incident is alleged to have occurred, and for the police themselves to make available records of all personnel

¹²⁶ Human Rights Watch interview with Sinan Tekpetek, Kadıköy, Istanbul, February 15, 2007.

¹²⁷ Human Rights Watch telephone interview with Ali Akıncı, chair of the Diyarbakır branch of the Human Rights Association, March 11, 2007.

on duty at the relevant time and their whereabouts. Strengthening chain of command control and more detailed supervision of police teams' activities and whereabouts are also urgently needed in order to safeguard against the risk that such gross abuse of authority can occur.

Case of Muammer Öz

Muammer Öz, his brother, sister-in-law, her brother and cousin, were sitting on the grass verge on the Moda seafront, in the Kadıköy district of Istanbul, on the afternoon of July 29, 2007, when they were approached by two uniformed police officers. Muammer Öz, age 27, recounted,

One of them said to my brother, "You look like someone, show me your ID." At that moment my phone rang. The police officer became very angry and shouted, "How dare you talk on the phone in front of me when I am addressing you." I answered that there was no grounds for showing our IDs in a public place in this way when we were sitting together as a family, and told him I was a lawyer. At that, he grabbed my collar and started to push at me. We showed our IDs but the other police officer joined in and they punched me. One sprayed pepper gas right into my face. Then other police officers arrived.¹²⁸

A photograph of the incident taken by someone who happened to witness the scene shows a police officer beating Öz with a long wooden truncheon and his headscarved sister-in-law hopelessly attempting to prevent it.¹²⁹

Muammer Öz was then taken to the police station in the police car of the first two officers, handcuffed and continuously beaten and threatened on the way to the station. Öz's relatives were brought to the station in another car. He told us,

¹²⁸ Human Rights Watch interview with Muammer Öz, Istanbul, February 11, 2007.

¹²⁹ The photograph was later published in the local paper, *Gazete Kadıköy*, in August 2007.

As they beat me, one of them said, “We’ve been in the police for 15 years. Nothing will happen to us. We’ve done over a lot of lawyers like you and we’ll do you over too.”¹³⁰

Öz later obtained a medical report from the Forensic Medical Institute, which recorded bruising and cuts to his body and that his nose was broken, for which he later required surgery.

Two police officers are now facing prosecution for excessive use of force, defamation, and intentional injury of Muammer Öz.¹³¹ Neither officer attended their first trial hearing, which took place on June 26, 2008, eleven months after the original incident. Their trial was postponed till December 25, 2008. However, Muammer Öz will by then have faced at least three trial hearings as defendant in a case brought against him by the police. After the July 2007 incident he found himself promptly charged with “using violence to prevent public officials from performing their duty” (article 265/1, Turkish Penal Code), an offense carrying a prison sentence of between six months and three years. As in the case of Feyzullah Ete discussed earlier, the Istanbul police directorate rapidly put out a statement about the July 29, 2007 incident, describing how Öz had violently resisted the police ID check, had claimed that the police did not have the authority, had attacked the police officers who had sustained injuries as a result, and had been injured himself through falling as he tried to escape.¹³² The police’s statement to the press asserted that Öz “was not beaten, and that the officers were faced with resistance as they performed their duty and for this reason progressively increasing force was used.”¹³³

¹³⁰ Human Rights Watch interview with Muammer Öz, February 11, 2007

¹³¹ Charges include “exceeding the limit in the use of force” (article 256 of the Turkish Penal Code), “intentional injury” (articles 86/3-d and 87/3) and “defamation” (article 125): Indictment issued by Kadıköy Chief Public Prosecutor, Ref: E 2007/11401, dated November 5, 2007. Copy on file with Human Rights Watch.

¹³² See the incident and the police directorate’s own statement as reported in Timur Soykan and İsmail Saymaz, “Lawyer: Torture; Polis: A Fall” (“Avukat : İşkence; Emniyet: Duşme”), *Radikal*, August 3, 2007, <http://www.radikal.com.tr/haber.php?haberno=228817> (accessed March 12, 2008); and August 3, 2007, <http://hursiv.hurriyet.com.tr/goster/haber.aspx?id=7018152&p=2> (accessed March 12, 2008).

¹³³ Quoted in “Security Directorate’s statement about lawyer beaten by police,” (Polislerden dayak yiyen avukat için açıklama), *Hurriyet* (“dövülme olmadığı, memurların görevini ifa ederken mukavemetle karşı karşıya kaldıkları, bu yüzden kademeli zor kullanma yapıldığı”); see <http://hursiv.hurriyet.com.tr/goster/haber.aspx?id=7018152&p=2>. This statement appears to have been carefully worded to portray how the incidents of July 29 unfolded as conforming to article 4 of the revised law on the powers and duties of the police, which also refers to “progressively increasing use” of force.

Allegations centering on police stations in Beyoğlu, Istanbul

The Beyoğlu district of Istanbul—off Tarlabası Boulevard near Taksim Square—is perhaps the most centrally located area of the city that is predominantly poor, inhabited by a mixed population including Kurdish migrants from the southeast of Turkey who were forcibly displaced when their villages were evacuated in the early 1990s, a long-standing local Roma population, and more recently asylum seekers from various countries. The area borders the main commercial shopping and entertainment district of Beyoğlu, and unsurprisingly is associated too with prostitution and drug dealing. Human rights groups and lawyers have recorded a high number of allegations of police violence occurring in the Beyoğlu area in the past year, and the particular focus of complaints has been on the police force working from two police stations.¹³⁴

Case of Mehmet Nezir Çirik

Mehmet Nezir Çirik, age 30, sustained severe internal bleeding from a ruptured spleen that he alleges was the result of injuries sustained when he and a friend, Arif Kılınç, were beaten by police after being stopped for a routine ID check/stop and search, including in a police car while handcuffed, and then when detained at a police station.

On leaving the home of Çirik's father in the Beyoğlu area at about 10:30 p.m. on August 10, 2007, Çirik and Kılınç met a group of plainclothes police officers who demanded their IDs. Çirik told Human Rights Watch,

Immediately on seeing our places of birth [Çirik is from Mardin, Kılınç from Diyarbakır, both areas of Turkey, with a predominantly Kurdish population], they searched us. When we asked them what the problem was, the answer was “Shut up” and a punch. Arif was getting very edgy and I tried to calm him but he kept asking what this was about. They

¹³⁴ The Istanbul branch of the Human Rights Association reported 60 applications to them in the period April-June 2007. See “There is torture in Beyoğlu” (“Beyoğlu’nda işkence var!”), June 2007, <http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=9&ArsivAnalID=39824>. See also Ismail Saymaz, “A hit team is roaming around Beyoğlu,” (“Beyoğlu’nda dayak kolu geziyor”), *Radikal*, June 30, 2007, <http://www.radikal.com.tr/haber.php?haberno=225521> (accessed March 18, 2008).

beat him heavily ... We were put in the car, handcuffed, and taken to hospital. We were led in by the police who remained with us; a doctor asked us if there was any problem. We said “no” and were then taken to the station. At the station I tried to explain to them that Arif’s mental state wasn’t good and that he had had therapy. Arif kept asking for a cigarette and I told them to give him one as it would settle his nerves. With Arif continually asking for a cigarette and me refusing to sign the police record of the incident which totally wrongly stated that we had disobeyed them and had resisted having our IDs checked, two or three officers suddenly just attacked us. They beat me with a truncheon, punched me and kicked me and I fell to the ground. Then it seemed like all of the police joined in. Pepper gas was also sprayed into my face.¹³⁵

Kılınç’s wife and brother-in-law arrived at the station to find them, and the brother-in-law alleges, according to Çirik, that at that point he was also beaten by the police. All of them were then taken in a police minibus and ordered to get out at a quiet spot by the side of the road near the Bilgi University Dolapdere campus. Soon afterwards Çirik began to feel severe internal pain, “as if something had broken inside me.”¹³⁶ They went to hospital, where Çirik lay down on a bench in agony. While waiting, a police officer on the door of the hospital asked what was wrong with them. Çirik stated that they had been violently attacked at the police station. Some time afterwards police from the station arrived, spoke to the doctor, and Çirik and his companions were then told to leave the hospital immediately. Çirik and Kılınç went on to a private clinic hospital where Çirik’s condition was immediately identified as serious and he was referred to the Vatan Hospital and then on to Istanbul University Hospital (Çapa), where he underwent surgery to remove his ruptured spleen.¹³⁷

A statement by the Istanbul Security Directorate one week after the incident straightforwardly refuted a press report that Çirik had undergone surgery and had his spleen removed as a result of being beaten, and stated that an investigation into the

¹³⁵ Human Rights Watch interview with Mehmet Nezir Çirik, Istanbul, February 27, 2008.

¹³⁶ Human Rights Watch interview with Mehmet Nezir Çirik, February 27, 2008.

¹³⁷ Human Rights Watch interview with Mehmet Nezir Çirik, February 27, 2008.

incident had revealed that the two men were found to be carrying knives, that they had violently resisted the police, and that their routine medical reports from Taksim İlk Yardım Hospital (taken prior to detention at the station) showed they had no signs of injuries. On December 11, 2007, Çirik and Kılıncı were formally indicted for “using violence or threats against a public official to prevent them from carrying out a duty” (article 265/1, Turkish Penal Code). The indictment states that they were stopped because the police suspected them, knives were discovered on their persons, and they attempted to escape and resisted being put in the police vehicle.¹³⁸ No mention is made of the fact that Çirik was subsequently hospitalized as a result of his injuries. It would seem that the prosecutor was willing to take at face value the police’s version of the incident.¹³⁹ Meanwhile, some fourteen months after the incident, the prosecutor’s investigation into Çirik and Kılıncı’s complaint of torture—resulting in life-threatening internal injury to Çirik—is not yet complete.¹⁴⁰

Mehmet Nezir Çirik has now returned to his former job as a private chauffeur. He reflected on the situation:

In my neighbourhood most people wouldn’t bother to complain of being beaten up by the police, if they even knew who to complain to. After all, they’d just assume it would go nowhere and the consequences would be worse for them or turn against them. In any case some people can’t read or write and many don’t know their rights.¹⁴¹

Case of Esmeray

In the course of a police identity check on May 25, 2008 on people in a street off the main İstiklal Street in Beyoğlu, Esmeray (aged 34), a transgender member of the NGO Lambda Istanbul, was stopped and a police officer demanded to see her ID.

¹³⁸ Indictment prepared by Beyoğlu Public Prosecutor: ref.: E. 2007/9077, December 11, 2007.

¹³⁹ “Beating by the police cost me my spleen” (“Polisin dayağı dalağımdan etti”). The police statement quoted the title of the news article from Radikal newspaper, and is at http://www.iem.gov.tr/iem/index.php?menu_id=20&kat_id=1&detay_id=93&sayfa_no=1 (accessed March 17, 2008).

¹⁴⁰ Human Rights Watch telephone interview with Eren Keskin, lawyer for Mehmet Nezir Çirik, October 6, 2008.

¹⁴¹ Human Rights Watch interview with Mehmet Nezir Çirik, February 27, 2008.

Esmeray, who works as a street seller selling stuffed mussels (*midye dolmas*) and is also a performance artist regularly performing at a local venue her own show based on her life story, reported to Human Rights Watch that she had complied with this request:

I told them that I lived right there [Esmeray lives in the street where this happened] and that they had to be acting on clear suspicion that they were preventing a crime to justify doing this. What was that suspicion? The police officer then demanded to search my handbag and I said I'd only accept such a search by a woman police officer. At that the police officer seized me, grabbed my bag and emptied its contents into the street. Everything was strewn everywhere. I told them this was against the law, and at that together with some traffic police they came at me and pushed me. One traffic police officer kicked me in the shin. I told them I'd file a complaint. "Complaint to who you want! We have all the powers!" they said. It could have been a lot worse if I hadn't told them I'd go to the media, that I knew my rights, that I'd been beaten by the police before and that that time one of them had even apologised to me afterwards.¹⁴²

Esmeray alleged that she was severely beaten and kicked by police officers on June 6, 2007 when she walked past a police station on her way home. She filed a complaint with the public prosecutor, as she has done again after the latest incident, and over a year later in July, 2008 learnt that two police officers will be tried for injuring and insulting her, and for misconduct. The first trial hearing will take place on March, 2008.¹⁴³

A May 2008 Human Rights Watch report on lesbian, gay, bisexual and transgender (LGBT) rights in Turkey, "*We Need a Law for Liberation*,"¹⁴⁴ features Esmeray's other experiences of police harassment and violence. That report also describes how, after

¹⁴² Human Rights Watch interview with Esmeray, Istanbul, May 28, 2008.

¹⁴³ Human Rights Watch telephone conversation with Esmeray, November 13, 2008.

¹⁴⁴ Human Rights Watch, *We Need a Law for Liberation: Gender, Sexuality, and Human Rights in a Changing Turkey*, May 2008, 1-56432-316-1, <http://hrw.org/reports/2008/turkey0508/> .

the passing of the revised police law in June 2007 Lambda Istanbul documented raids on gay bars in Beyoğlu in which individuals expelled from such bars were beaten with truncheons and had pepper gas sprayed in their faces.¹⁴⁵

Lambda Istanbul twice in 2007 (in April and again in December) submitted a file of complaints to the Istanbul Provincial Human Rights Board,¹⁴⁶ including complaints received from transgender people about police harassment including ill-treatment, some occurring in the course of police ID checks. In answer to the April submission the then deputy governor wrote to inform Lambda Istanbul that information had been sought from the Provincial Security Directorate, the Şişli and Beyoğlu district governor's offices (*kaymakam*), and it had been reported back that "in records and in the districts the allegations and complaints mentioned in connection with incidents had not been encountered."¹⁴⁷

¹⁴⁵ Lambda Istanbul, "The police's arbitrary treatment must end" ("Polisin keyfi uygulamaları son vermeli"), June 19, 2007, <http://www.lambdaistanbul.org/php/main.php?menuID=5&altMenuID=5&icerikID=2946> (accessed August 19, 2008).

¹⁴⁶ The Istanbul Provincial Human Rights Board is chaired by the deputy governor of Istanbul and is one of 81 provincial human rights boards reporting to the Human Rights Presidency in Ankara, which is attached to the office of the Prime Minister. According to its own statistics for 2007, the Istanbul Board received 56 complaints of torture or ill-treatment; statistics can be found on the Istanbul Provincial Human Rights Board's website at <http://www.istanbul.gov.tr/?pid=11113> (accessed August 19, 2008). While this is a figure far higher than in previous years, it is difficult to interpret: rather than representing a rise in complaints by individuals, it may indicate that human rights groups and NGOs like Lambda Istanbul are now forwarding some of the complaints they receive. The board is made up of local representatives of political parties in parliament, members of the bar associations, the medical chambers, chambers of commerce, and NGOs, among others, and meets to consider complaints of human rights violations submitted to it and to undertake human rights promotion initiatives and education. It does not have investigatory powers. The regulation on the human rights boards can be found in English at <http://www.iib.gov.tr/ENGLISH/legislation.htm#boards> (accessed March 18, 2008). For previous discussion of the monitoring role of the boards, see Human Rights Watch, "Turkey: First Steps Towards Independent Monitoring of Police Stations and Gendarmeries," March 6, 2006, <http://hrw.org/backgrounder/eca/turkey0306/>.

¹⁴⁷ Letter to Lambda Istanbul from Mehmet Seyman, then deputy governor of Istanbul and chair of the Istanbul Provincial Human Rights Board, September 18, 2007 (copy on file with Human Rights Watch): "Yapılan incelemede; iddia ve şikayetleriniz ile ilgili olarak İl Emniyet Müdürlüğü'nden, Şişli Kaymakamlığı'ndan, Beyoğlu Kaymakamlığı'ndan bilgi istenilmiş, İl Emniyet Müdürlüğü ve Şişli Kaymakamlığı'nın cevabı yazılarında; kayıtlarında ve ilçe dahilinde sözkonusu iddia ve şikayetler ile ilgili olaylara rastlanılmadığı bildirilmiştir." See also "We are witness to police human rights violations but the governor's office doesn't see them" ("Polisin İnsan Hakları İhlallerine Biz Tanıyız Ama Valilik Görmüyor"), Lambda Istanbul press release, December 8, 2007. <http://www.lambdaistanbul.org/php/main.php?menuID=5&altMenuID=5&icerikID=4156> (accessed February 12, 2008). Other extracts from the letter and comments made by the governor's office to Human Rights Watch on these issues are quoted in Human Rights Watch's report "*We Need a Law for Liberation: Gender, Sexuality, and Human Rights in a Changing Turkey*, May 2008, 1-56432-316-1, <http://hrw.org/reports/2008/turkey0508/>.

Human Rights Watch was provided in May 2008 with a copy of the dossier containing all the allegations submitted by Lambda Istanbul in 2007 to the Istanbul Provincial Human Rights Board.

VII. Counter-charges and Criminal Investigation for Complaining or Protesting

Accusing the Accusers

The frequency with which police officers accused of ill-treatment file counter charges against those who have complained is striking. The charge they generally resort to is that of “using violence or threats against a public official to prevent them from carrying out a duty” (article 265/1 of the Turkish Penal Code). This is a charge that suggests that a person has violently resisted apprehension or arrest or, for example, responded violently to a lawful request by a public official to see ID.

It is not uncommon that individuals who resist arrest by police may, in the course of being restrained, sustain injuries. In all such cases the central question is whether the response of the law enforcement officer to any violent resistance was proportionate, and any use of force was strictly justified by the circumstances. Whether a response was proportionate will take into account all the circumstances including the behaviour and threat posed by the individual being arrested. However in no circumstances can an individual’s behavior justify resort to physical force amounting to inhuman treatment or torture.

In Turkey, in practice, when the police claim that an individual was injured while resisting arrest, no proper enquiry is made into whether the claim is true, or the police response was justified and proportionate. On the contrary, investigations are carried out and prosecutions speedily initiated against individuals for violently resisting a police officer, while in contrast investigations into allegations of police ill-treatment are carried out at a much slower and leisurely pace and prosecutions are often initiated over a year later, if at all. In several cases individuals featured in the chapters above, for example, Kemalettin Rıdvan Yalın, Muammer Öz, and Mehmet Nezir Çirik, found themselves on trial and proceeding with hearings against them before the investigation into their own complaint of ill-treatment by police had even been concluded by the prosecutor. In some cases two trials may run in parallel, though invariably the one concerning the police ill-treatment will lag behind. The

counter-charges documented through the cases in this report provide a disturbing indication of a common pattern of the police having recourse to the law in an attempt to cover up abuses they commit and to intimidate individuals who see fit to complain. The words of Mehmet Nezir Çirik, quoted at length earlier on, sum up a common feeling about the police: “It’s their word against yours, isn’t it, and who do you think a judge would believe?”

Case of Murat Babur

A striking further example of the police lodging counter-charges when they have themselves been accused of mistreating an individual is the case of Murat Babur. Murat Babur, age 20, and his father Çerkez Babur, age 62, allege that on December 12, 2007, at around 4:30 p.m., they were mistreated by uniformed police conducting an ID search at the internet café where Murat had been opposite their home in Diyarbakır.¹⁴⁸ Murat Babur alleges that he explained that he had left his ID at home and offered to go home to fetch it or for a police officer to accompany him if necessary, and that in response an officer began to search him roughly and seized his wallet. Murat asked whether the officer had permission to search him which triggered the series of events during which both Murat and his father allege that they were ill-treated. In answer to his question, Murat was put in a police minibus. Çerkez Babur, who had served as *muhtar* (elected local official at village level) in his Lice village for some 28 years, was hit in the chest and forcibly prevented from accompanying his son to the local police station. In the police vehicle and during detention at the station Murat was allegedly repeatedly beaten and kicked by three officers, including being pushed hard against an iron doorframe. His father, who arrived at the station looking for his son, was made to wait and was then himself detained.

Two days later the two men were brought to court and charged with “using violence or threats against a public official to prevent them from carrying out a duty” (article

¹⁴⁸ There was a similar report of ill-treatment of four individuals (including two minors) following an incident at an internet café in the Bağlar district of Diyarbakır on June 15, 2008. The four had been taken into police custody to testify as witnesses to a police ID check at the café during which a youth had been beaten and then escaped. The medical report of one detainee, Mehmet Şirin Doğan (age 53), who applied to the Diyarbakır Branch of the Human Rights Association, stated that he was unfit to work for 15 days as a result of having been beaten. See “Witnesses were tortured at police station” (“Karakolda şahitlere iskence yapıldı”), Gundem Online news service, June 16, 2008, <http://www.gundemonline.net/haber.asp?haberid=53206> (accessed September 4, 2008).

265/1, Turkish Penal Code), damaging public property (the police vehicle) (article 152/1a), and defaming the police (article 125/3a), charges that could result in a prison sentence. The police claim that a knife was found on Murat's person—a charge he denies—and that he attempted to attack them with it. Murat was remanded to prison and his father released pending trial. The complaint of police ill-treatment by three police officers filed by Çerkez Babur with the prosecutor was rejected: the prosecutor decided that there was no case to answer, relying on a strangely and vaguely worded report from the Forensic Medical Institute which suggested, without referring to witness testimonies, that Murat Babur's injuries might have been inflicted prior to detention either by himself or someone else (his injuries included a black eye and swollen and cut lip).¹⁴⁹ An appeal against the decision not to prosecute the police was lodged but was also rejected.

Murat Babur remained in Diyarbakır prison for one-and-a-half months, before being bailed at his first trial hearing on January 31, 2007. The trial of father and son continues at the Diyarbakır Criminal Court of First Instance No. 1. A third trial hearing took place on October 7, 2008.¹⁵⁰

Case of Mustafa Rollas

An İzmir lawyer and former head of the İzmir branch of the Human Rights Association, Mustafa Rollas, was reportedly subjected to ill-treatment and detention in September 2007 while attempting to carry out his role as a lawyer at a police station in the İzmir fairground, the site of an annual international trade show. A year on from the original incident, Mustafa Rollas is under investigation by the public prosecutor for using violence or threats to forcibly prevent the police from carrying out their duty (article 265/1, Turkish Penal Code) and for insulting police officers. Although under the Lawyers' Law permission to initiate legal proceedings against lawyers suspected of abuse of duty in the course of their profession has to be

¹⁴⁹ The report prepared by Dr. Ersin Baysal for the forensic medical institute on the subject of Babur's injuries stated that "because it could have been with any type of object or instrument, and could have happened in case of falling or being made to fall, or colliding, it is possible that it happened through the person's own action or that of someone else" ("her tür cisim veya aletle olabileceği gibi, düşme-düşürülme, çarpma durumlarında da oluşabileceği, kişinin kendi eylemiyle olabileceği gibi bir başkasının eylemiyle de oluşmasının mümkün olacağı"). Because Murat Babur was remanded directly to prison, there was no possibility of securing an independent medical report in the available time. Copy of report on file with Human Rights Watch.

¹⁵⁰ Human Rights Watch telephone interviews with Hasan Dağtekin, lawyer for the Babur family, March 14 and July 8, 2008.

secured from the Ministry of Justice, in this case the ministry has permitted a prosecutor's investigation on the basis that no permission is needed since Rollas was deemed not to be discharging his professional duties.¹⁵¹

The alleged ill-treatment of Mustafa Rollas is one of the most alarming cases involving an attack on a lawyer by the police reported to Human Rights Watch. From the start of his encounter with the police to the time of his release from police custody multiple violations of procedure and abuses of police authority were committed. The account supplied by Mustafa Rollas and a witness is summarized here, though there is not space here to provide a complete account of this case.¹⁵²

Mustafa Rollas arrived at the fairground's police station (known as the Fuar Asayış Ekipler Amirliği) at around 19:30 on September 9, 2007, to visit two clients who had reportedly been detained for having disturbed the public peace. Mustafa Rollas was first prevented by a senior police officer from meeting with his clients, in violation of the law (Criminal Procedure Code article 154/1), and shoved in the chest by that officer when he pointed this violation out. He reported that he was then attacked and beaten by around 10 other police officers and was detained on the order of the senior police officer, made to stand for one- and-a-half hours in a corridor with his head bowed and his hands handcuffed behind his back, and at intervals sworn at and insulted by police officers. Rollas's detention was later justified by claiming that he had prevented a public official (in this case, the police) from performing their duty through violence or threats (article 265/1) and had insulted them. In fact, according to Rollas's account it was Rollas himself who had been prevented from performing his professional duty by violence and threats, an offense punishable under the second paragraph of the same article of the Turkish Penal Code (265/2).

¹⁵¹ Human Rights Watch telephone interview with Aysun Koç, lawyer for Mustafa Rollas, May 30, 2008. Aysun Koç is herself under investigation for the same offense, following a complaint lodged by the prison guards, after a January 12, 2007 visit she undertook with other lawyers to meet with two inmates of İzmir Kırklar F-type prison who had alleged in a letter that they had been tortured (İzmir Chief Public Prosecutor, investigation ref 2007/96124).

¹⁵² Human Rights Watch was provided with a copy of Mustafa Rollas's complaint to the prosecutor (İzmir Chief Public Prosecutor investigation ref. 2007/5827). See also the untitled press release by the Headquarters of the Contemporary Lawyers's Association, http://www.cagdashukukculardernegi.org/basin_bultenleri/basin_bultenleri/genel_merkez_basin_aciklamasi_21.09.2007.html (accessed August 19, 2008).

Fellow lawyers who came to look for Rollas were informed he was not in detention and reportedly only saw him by complete chance as they were leaving the police station. Attempts were made forcibly to prevent these lawyers from meeting with Rollas.¹⁵³ Rollas was then transferred to the Basmane police station and later released from there.

There were serious irregularities in the police records kept of his detention, with the police record prepared at the first station being destroyed. In a routine medical examination ordered by the police, the doctor stated that he did not believe Rollas and did not record details of ill-treatment in a medical report. An independent medical examination was later carried out under the auspices of the Izmir branch of the Human Rights Association of Turkey: this examination recorded signs of bruising to his body and a neck injury. Subsequent to this Rollas had to wear a collar for a few days to support a muscular injury to the neck. Rollas lodged a complaint, and the prosecutor's investigation into his ill-treatment and the multiple violations in connection with his detention, like the case brought against Rollas, is ongoing at this writing.¹⁵⁴

Counter-charges can also take the form of legal proceedings against those who publicly protest or complain about ill-treatment, torture or fatal shootings by the police. Cases have frequently been opened against human rights defenders who report on violations. As mentioned above, the family of Baran Tursun escaped trial for insulting the judiciary (article 301, Turkish Penal Code), but are still on trial for attempting to influence members of the judiciary (article 277) because, in the midst of their grief over the killing of Baran Tursun, they vocally expressed their doubts about whether they would ever get justice and protested against the police.¹⁵⁵

¹⁵³ Human Rights Watch interview with Bahattin Özdemir, one of the lawyers who attempted to meet with Mustafa Rollas during his detention on September 9, 2007, Izmir, March 3, 2008.

¹⁵⁴ Human Rights Watch interview with Mustafa Rollas and Aysun Koç, Izmir, March 3, 2008.

¹⁵⁵ The decision of the Ministry of Justice not to grant permission for prosecutions to proceed under article 301 is discussed in footnote 65).

Prejudicial statements

The security directorate in several cases examined elsewhere in this report made public statements on incidents where there were allegations of police misconduct to absolve the police of responsibility or to indicate the guilt of the other party. Where there are ongoing investigations, such public statements by the police authorities demonstrate an unwillingness to suspend judgement on cases pending a prosecutor's investigation and indicate to the public that the police will close ranks and provide institutional impunity to officers when faced with allegations of human rights abuse.

VIII. Detailed Recommendations

To the Turkish Government

Enhance mechanisms to prevent human rights violations by law enforcement officials

- Ratify the Optional Protocol to the Convention against Torture, and implement the Protocol through the creation of an independent national body to carry out regular and ad hoc unannounced visits to all places of detention.
- Prior to ratification, urgently take steps to permit independent visiting of places of detention by representatives of NGOs, lawyers, medical professionals, and members of local bar associations.

Monitor policing functions and conduct

- Closely monitor the implementation of the Law on the Powers and Duties of the Police.
- Introduce mandatory reporting by police on the use of stop and search duties, article 1 of the revised law (incorporated as article 4/A in Law no. 2559), and article 3 of the revised law (incorporated as revision to article 9 in Law no. 2559). Police should be required by law to provide any individual stopped with a form setting out the name and identity number of the officer carrying out the stop and search, the reason for the stop and search, and the outcome.
- Introduce strict monitoring of when pepper gas and teargas are used in public order policing and ensure that the police are trained appropriately in the use of such substances for crowd control and in other policing. Initiate prompt, independent and thorough enquiries into reported misuse of pepper gas and teargas (in particular reported use in confined spaces) and excessive or arbitrary use.

Monitor police investigations

- As a matter of urgency establish an effective independent police complaints authority with adequate resourcing and a robust mandate to carry out prompt,

- impartial and thorough investigations into allegations of police misconduct, that are capable of leading to the identification and prosecution of offenders.
- Pending the functioning of such an authority ensure that police units against whom there are allegations of misconduct are immediately excluded from any role in conducting the investigation of such incidents, beyond that of providing witness statements. Authority should be immediately handed over to the prosecutor, assisted as necessary by police teams from different stations.
 - Where there are allegations of police misconduct subject to investigation, prohibit the security directorate from making public statements that absolve the police of responsibility or suggest the guilt of the other party. Such public statements demonstrate an unwillingness to suspend judgment on cases pending a prosecutor's investigation and send the signal that police officers benefit from institutional impunity when they commit human rights abuses.
 - Similarly, prohibit police and governor's offices from issuing statements that prejudice the outcome of investigations.

Improve effectiveness of criminal investigations

Evidence

- Ensure that video and audio recording in police stations of all interviews with suspects in custody, and of all locations in police stations, is operational at all times, cannot be tampered with or erased, and is promptly and routinely made available to public prosecutors for purposes of investigation of allegations of human rights violations in custody.
- Ensure that all physical evidence is left *in situ* until the arrival of the prosecutor. Prosecutors should immediately proceed to ensure that evidence is complete, and has not been tampered with or been lost. Courts should treat the possibility that evidence has been spoiled as a central factor in a trial, rather than as a peripheral matter of negligence.

Chain of command

- Ensure that prosecutors investigate the responsibility of commanding officers where law enforcement officials are alleged to have perpetrated serious human rights violations. Commanding officers who know or should have

known of such acts, and who fail to take action to prevent and punish them, should be included in prosecutors' investigation and, where appropriate, face sanctions.

Address flawed trial proceedings against police officers

- Ensure hearings take place without undue delay by introducing regulatory timeframes for the provision of evidence; an improved and sustainable regulatory framework for trial hearings; and by improving the mechanisms for thorough pretrial preparation.
- Ensure sanctions are imposed against law enforcement officials who flout summonses to appear in court as witnesses or defendants.
- In cases where courts decide to hold closed hearings for reasons of "public security," courts should state clearly what those security concerns are and why it is defensible to withhold information about the trial. Human rights violations committed by members of the security forces and public officials are clearly a matter of great public interest and there should be compelling reasons to restrict information about such cases.

Impose disciplinary sanctions

- Ensure that effective and meaningful disciplinary sanctions are imposed on law enforcement officials who commit serious human rights violations.
- Commanding officers who know or should have known of such acts, and who fail to take action to prevent and punish them should also face disciplinary sanctions.
- Suspend from active duty officers under investigation for torture and other ill-treatment and ensure their dismissal if convicted.

Introduce centralized data collection

- Ensure centralized, efficient, up-to-date, disaggregated data collection on serious abuses by law enforcement officials in order to reach a clear picture of the effective operation of the law.
- Introduce measures to ensure improved medical reporting of torture or ill-treatment and improved forensics.

- Make the Forensic Medical Institute independent both functionally and formally of the Ministry of Justice.
- Take urgent steps to promote the acceptance as evidence by courts of medical and psychiatric reports from university research and teaching hospitals, and other expert bodies.

Introduce legal reforms

- Prevent a return to incommunicado detention by repealing revised article 10b of the Law to Fight Terrorism, which permits the right of a detainee suspected of terrorism offenses to legal counsel from the first moments of detention to be delayed by 24 hours at the request of a prosecutor and on the decision of a judge.
- Revise appendix article 2 of the Law to Fight Terrorism, revised in June 2006, and article 4 of the Law on the Powers and Duties of the Police, to ensure that the use of force by law enforcement officials is compatible with relevant international standards that provide that lethal force be used as a last resort where necessary in order to protect life.
- Revise Law 4483 on the Trials of Civil Servants and other public officials, and take any other necessary legislative measures to ensure that civil servants, including police and other law enforcement officers of all ranks, can be prosecuted without administrative authorization for all serious crimes or abuse of power.
- Repeal the statute of limitations for the crime of torture.

To Turkey's International Partners and Monitoring Bodies

- The European Commission, Parliament and European Union member states should highlight the problem of police violence and impunity in their dialogues with Turkey, and make full use of Turkey's accession process to help advance the recommendations outlined in this report.
- The Council of Europe Commissioner for Human Rights and the Committee for the Prevention of Torture should make full use of their mandates to take on the issue of police violence and impunity in Turkey and help advance the recommendations outlined in this report.

- United Nations human rights mechanisms, in particular the United Nations Special Rapporteurs on Torture and on the Independence of Judges and Lawyers, the Working Group on Arbitrary Detention, the Committee Against Torture, and the Human Rights Committee should make full use of their mandates to scrutinize the problem of police violence and the accompanying impunity for it in Turkey, and help advance the recommendations outlined in this report.

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