

**Türkiye İnsan Hakları Vakfı - Human Rights Foundation of Turkey**  
**UPR Submission for the 8<sup>th</sup> Session**  
**Turkey**

1. In accordance with the General Guidelines for the Preparation of Information under the Universal Periodic Review, the Human Rights Foundation of Turkey (HRFT) provides
- (a) Information on the methodology and the broad consultation process followed nationally for the preparation of information provided to the UPR by the country under review;
  - (b) Information on the current normative and institutional framework of the country under review for the promotion and protection of human rights;
  - (c) Information on the state of implementation of human rights obligations;
  - (f) And recommendations with regard to the deficiencies identified.

2. Between 1999 and 2005, in the run-up for the EU accession negotiations, the human rights situation in Turkey improved positively as well in practice as in terms of reformed legislation compliant with international human rights standards. However, four years after the opening of the negotiations it seems that the momentum is lost, that the activity and zeal to really bring about changes in this country have worn out. In fact, when evaluating the general human rights situation and issues such as torture and freedom of expression, one cannot fail to see that, on whole, the positive trends and improvements that had characterised the early 2000s have by now been reversed by new security regulations, changes and problems in the implementation of e.g. the Anti-Terrorism Law, the new Turkish Criminal Code and the Law on the Powers and Duties of the Police. These legal changes conferred new and more authorities to the police; provided them with more legal protection and thus resulted in more police brutality. They also reduced the rights and protection of detainees. The armed conflict and the security issues surrounding it have been used to legitimise other recent legal amendments restricting human rights such as freedom of expression or freedom of assembly. These amendments have also led to the re-emergence of some patterns of abuse, e.g. torture and ill-treatment, and persecution of human rights defenders.

**(a) The Consultation Process**

3. At the time of the writing of this report no invitation to a broad consultation process including civil society had been made by the Government. Though it is entirely possible that the Government did consult with some NGOs, it has not done so in an open and transparent manner including NGOs from all layers of society. Nor does it seem that the public is aware of the UPR mechanism and Turkey's obligation to submit its report soon.

Furthermore, the HRFT would like to recall that the Human Right Advisory Board to the Prime Ministry which had been established consultancy unit and platform for a state – civil society dialogue and which should meet three times a year has not been convened since February 2005.

**(b) The Normative and Institutional Framework**

**Judicial Changes after 2005 and Human Rights Obligations**

4. In 2005 the Turkish Criminal Code (TCC) and the Code of Criminal Procedure (CCP) and in 2006 the Anti-Terrorism Law (ATL) were amended. In 2007 the Law on the Powers and Duties of the Police (LPDP) was also amended. Again in 2007, a regulation preventing the deputies from visiting the prisons was prepared (Regulation on Visiting the Sentenced and Detainees).

5. Especially with the amendment of the ATL the rights of detainees were limited to a great extent, thus increasing the risk and probability of torture. For instance many limitations are put on the right to access a lawyer. Accordingly, a suspect detained under this law can enjoy the legal assistance of only one lawyer and this assistance can be delayed up to 24 hours upon the request of the prosecutor and decision of the judge (Art. 10 (b) of 29 June 2006). Again according to the same law, meetings with lawyers can be limited to “controlled meetings, i.e. in

the presence of a police officer, upon the decision of a judge, and the documents of the lawyer may be confiscated and investigated (Art. 10 (d)). Furthermore, with the amendment introduced the possibility to prosecute children under the ATL (Art. 9).

6. Art. 20 ATL provides law enforcement officers with a large margin of appreciation in the use of firearms. They might exercise this right even if they are not on duty. The definition of terrorism in Art. 1(1) is very wide and vague, allowing for an overly broad application of the term terrorism.

7. The amendment of the LPDP increased the powers of the police as well as their legal protection and thus the impunity for torture and ill-treatment, thus causing an increase of torture and ill-treatment cases (*see para.11 and 15*). Furthermore, the amendment of the LPDP authorised the police to stop people and control their identity cards as well as to search any suspected person in places that are under protection of the police without the permission of any superior authority or judge (Art. 4).

8. In 2003 articles of the CCP relating to torture and heavy torture were amended. Accordingly, the hearings of torture and ill-treatment cases could not be postponed more than 30 days and a hearing would go on during the judicial vacations. Furthermore, with the changes in Art. 245 old TCC, sentences for torture and heavy torture could not be postponed or converted into a fine. However, when Parliament introduced the new TCC and CCP neither code contained the positive changes mentioned above; they disappeared with the new codes.

9. Although Turkey has signed the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2005, it has still not ratified it, thus preventing the establishment of a National Preventive Mechanism capable of effectively monitoring detention places and preventing torture/ill-treatment in these places.

### **(c) Implementation of Human Rights Obligations**

#### **Torture and Ill-treatment**

10. Although the Government has long been advocating a “zero tolerance for torture” policy, the data and facts listed below indicate that this policy has not yet been effectively implemented and that torture and ill-treatment cases are ongoing and serious in nature.

11. The ever pressing security concerns succeeded in the amendment of the laws mentioned above and the visible result is an increasing number of torture and ill-treatment allegations during the past years. The data gathered by the HRFT confirms these allegations<sup>1</sup>. The HRFT also observed that torture and ill-treatment practices are more brutal and violent than in previous years resulting in heavy physical injuries and psychological traumas.

12. These developments have been confirmed by the Government and Parliament. The response of 30 July 2008 by the then Minister of Justice Mr Şahin to a question by DTP (Democratic Society Party) Deputy Ayla Akat Ata relating to the number of torture cases and persons sentenced for torture in the past years indicated that in 2006 and 2007 6,234 people claimed to have been tortured/ill-treated, 471 of whom were children. The Parliament’s Human Rights Investigation Commission stated in a report on the Security Directorate Beyoğlu that instead of following the legal procedures for arrests, it seems to have become common administrative practice to put suspects into a police car for questioning and sometimes even punishing<sup>2</sup>.

13. While various safeguards have been introduced to prevent torture in detention centres and prisons, this has not significantly reduced torture as it is increasingly being applied in places other than official detention places, e.g. outdoors, in cars, and other places. While torture in security centres is applied by specially trained police officers, outdoors the police involved are often plain-clothes police officers. Furthermore, the use of force against demonstrators,

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<sup>1</sup> The number of HRFT applicants rose from 337 in 2006 to 452 in 2007. In 2008 there were 425 applicants, 269 of whom had been tortured/ill-treated during the same year (320 in 2007 and 222 in 2006). During the first 10 months of 2009 the numbers were 404 and 231 respectively.

<sup>2</sup> Human Rights Inquiry Commission of the Parliament, Report of 09 June 2009, p. 34 (in Turkish)

directly, pervasively, systematically and without detention, reached a peak during the 2008 Newroz incidents and on Labour Day in 2008. In 2009 the Newroz festivities passed less violent, both in terms of violence and persons affected, but this might be due to the then upcoming local elections at the end of March 2009. Labour Day 2009 in Istanbul was again marked by much police violence.

14. Furthermore, an analysis of the torture methods, the diagnoses of the patients (especially physical), and the data on the places of torture as a whole indicates that the main reasons for the use of torture are to scare, threaten, punish or establish authority, rather than to obtain information.

15. Although the definitions of torture and ill-treatment in the TCC are larger than the definition provided by the UN Convention against Torture, the implementation of the law remains deficient. Impunity in particular is one of the most serious problems. Thus;

- Torture is increasingly being applied in places other than official detention places, without any formal registration or release procedure, i.e. arbitrary detention.
- Investigation into torture allegations are conducted by the very same police forces who are being accused. Most of these investigations are carried out only half-heartedly.
- Prosecutors do not show enough diligence in torture cases and courts often remain indifferent to torture allegations and do not file criminal complaints with the prosecutors.
- The new defence of filing a counterclaim against the torture survivor for having resisted to the police, damaged public property, or opposed to the Law on Meetings and Demonstration, has emerged over the past years. Indeed, the response of the Ministry of Justice (*see para. 12*) shows that the number of complaints against the torture victims for having opposed the security forces (Art. 265 TCC) in 2006 and 2007 was 6,368, whereas in the same years the number of torture complaints against security forces was 614.
- Impunity might also result from the statute of limitation, reduction for sentences for goodwill, or amnesty due to a good employment record. According to the response of the Ministry of Justice to the question mentioned above while 2,761 investigations were launched in 2006 against public officials under Art. 94, 95 and 256 TCC, proceedings were initiated in only 236 cases. In 1,216 cases a prosecution was not found to be necessary and in 262 cases other decisions were given. 1,047 of the investigations were carried over to 2007. Similarly, while 2,948 investigations were launched out under Art. 94, 95 and 256 TCC in 2007, proceedings were initiated in only 378 cases. In 1,438 cases a prosecution was not found to be necessary and in 439 cases other decisions are given. 693 investigations were carried over to 2008.
- Medical reports for detecting and documenting torture are often deficient and inadequate. Psychological findings are as important as physical findings, but the medical personnel who provide the medical reports unfortunately lacks training in forensic medicine techniques to detect physical and psychological traces of torture.
- Moreover, the Forensic Medicine Institution is not autonomous and independent, this which constitutes a serious obstacle to independent and objective scientific evaluation and damages its reliability.

### **Freedom of Expression**

16. In 2008 the TCC's infamous Art. 301 was amended. The term "Turkishness" was replaced with "Turkish Nation" and the term "Republic" replaced with "The Republic of Turkey". The upper limit of the sentenced was dropped from three years to two years of imprisonment and the public prosecutors now have to obtain an authorisation from the Ministry of Justice to open an investigation. Though the number of cases and of people prosecuted under Art. 301 dropped rapidly, it seems that prosecutors now begin to use Art. 7 of the ATL ("making propaganda of an illegal organisation") instead of Art. 301.

17. Of course the amendment introduced is far from satisfactory. Only in the TCC there are at least 15 other articles that can be used as alternatives to limit the freedom of expression (Art.

84, 125, 132, 133, 134, 215, 216, 218, 220, 285, 286, 288, 299, 301, 305, and 318 TCC). Other articles used to limit the freedom expression can be found in the Anti-Terrorism Law, the Law on the Protection of Atatürk, the Law on Media, and the Law on Political Parties. Indeed, before the amendment of Article 301, the Minister of Justice assured the public that “other articles might be used to reach the same result”.

**18.** In 2008 the number of newspaper confiscations or sentences of prohibition to print for one month was 52<sup>3</sup>, the number of books for which the authors have been tried was 47 and the number of the website access restrictions was 39<sup>4</sup>.

### **Right to Life**

**19.** Although international human rights treaties and conventions are directly applicable in domestic law, the protection of the right to life and right to security remains weak. Legal provisions are ineffective and unable to check and limit the security forces actions. In 2008 alone 37 people were killed as a result of extra-judicial killings, stop warnings and random firing incidents. The number of people killed under such circumstances in 2007 was 24.

**20.** Similarly, in 2008 the number of people killed by unknown assailants rose to 30 – the highest number in last eight years. While these numbers are certainly not as high as during the state of emergency in the 1990s, they should certainly be understood as a warning that the human right situation in Turkey is not continually improving.

**21.** Furthermore, in 2008 47 people have died in detention or in prison. While 39 of them died in prisons for various reasons such as torture, riot, and suicide in prisons and the remainder, eight people, were killed in detention. Worryingly, it looks like the situation is not improving. Between January and October 2009 the number of deaths in prison already reached 30. We also observed serious problems concerning right to health of prisoners: in 2008 there were at least 18 prisoners who should have been medically treated in prisons but were not treated for arbitrary reasons. This year 39 critically ill prisoners were not allowed to receive specialist treatment outside the prison.

### **Kurdish Issue**

**22.** The ongoing Kurdish issue is still the most important issue in Turkish political, social and cultural life. Although it seems that the Government is now more willing to find a peaceful solution to the Kurdish issue, the large range of issues this entails as well as a lack of sincere commitment by all political actors and some extend by the population, make it extremely difficult to reach such a solution. On the other hand, serious human rights violations continue to be committed on a daily basis, counteracting the effort to solve the issue in a peaceful and democratic way. So, it remains to be seen if the Government is really up to the task.

**23.** In the mean time, clashes between the Turkish security forces and the Kurdistan Workers’ Party’s (PKK) armed wing, the People’s Defence Forces (HPG) continue, security forces still interfere violently with meetings and demonstrations, and the Turkish General Staff declares “temporary security zones” once every three months and security forces are being provided with unlimited search authorities once every two weeks. The result of these practices is the return, albeit under a new form, of the state of emergency.

**24.** A positive step taken by the Turkish Government in January 2009 was the launch of *TRT 6 Şeş*, a public TV channel exclusively broadcasting in Kurdish. On the other hand, a DTP group meeting broadcasted on TV on 2 March 2009 was stopped because the politicians had been

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<sup>3</sup> The names of the newspapers and how many times they were confiscated: *Toplumsal Demokrasi*: 2, *Yedincigün*: 3, *Çoban Ateşi*: 2, *Haftaya Bakış*: 2, *Yaşamda Demokrasi*: 2, *Azadiya Welat*: 3, *Yürüyüş*: 8, *Mavi ve Kent*: 1, *Mücadele Birliği*: 1, *Öteki Bakış*: 1, *Yeni Bakış*: 1, *Halk Gerçeği*: 1, *Devrimci Demokrasi*: 1, *Alternatif*: 3, *Özgür Halk*: 2, *Gelecek*: 3, *Gerçek*: 2, *Özgür Ülke*: 1, *Ülkeye Bakış*: 1, *Atılım*: 1, *Analiz*: 2, *Liseli Dev Genç*: 1, *Politika*: 2, *Denge Welat*: 1, *Yeni Mezopotamya*: 1, *İşçi Köylü*: 1, *Kızılbayrak*: 2, *Ayrıntı*: 1.

<sup>4</sup> The websites with restricted access: *Youtube*: 9, *Gergirim.com*: 1, *Bianet.org*: 1, *Kurdish media*: 11, *Leftist sites*: 3, *Personal websites, forums and discussion groups*: 9, *Video*: 3, *Vatan Newspaper*: 1, *Eğitim Sen*: 1.

speaking Kurdish. Furthermore, prisoners regularly receive disciplinary measures for speaking Kurdish with their family members over the phone or during visiting hours and newspapers are being confiscated and regularly sentenced with a prohibition to print.

**25.** Furthermore, the closure case against the DTP, the largest Kurdish party, is still pending before the Constitutional Court. Additionally, shortly after the local elections of March 2009 gendarmerie detained more than 300 people and 150 of whom were for allegedly being in contact and/or supporting the PKK. Among the detained are members of the KESK trade union, human rights defenders, and many DTP-chairpersons, vice-chairpersons and mayors. Although, the DTP Members of parliament are protected by parliamentary immunity, they are regularly and openly threatened by prosecutors and politicians with proceedings and the lifting of their immunity. It is understood that judicial principles were seriously violated during the apprehension and detention process, not to speak of the detention conditions. These operations constitute another blow to the rights and freedoms of the Kurdish minority, especially their right to political participation and to the hopes of a peaceful solution of the Kurdish issue.

### **Children**

**26.** Hundreds of children are being arrested and prosecuted under the ATL and other laws as if they were members of an illegal organisation for offences such as participating in or throwing stones at demonstration. Worryingly, many of these children are being prosecuted in Special Heavy Criminal Courts, a practice violating international law.

### **(f) Recommendations with regard to the deficiencies identified**

**27.** With regard to the deficiencies identified the Human Rights Foundation of Turkey recommends the following measures;

**28.** Absolute prohibition of torture

- Ratification of the OPCAT and establishment of a National Preventive Mechanism in accordance with the Paris Principles;
- Torture allegations should always be investigated immediately, independently, neutrally, and comprehensively in accordance with the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and an effective complaints mechanism should be established;

**29.** Freedom of expression

- The obstacles and limitations to the freedom of expression described above should be abolished or amend in order to comply with international human rights standards;

**30.** Right to Life

- Efficient investigations into all the murders by unknown assailants, extrajudicial killings, deaths in prisons, and political assassinations that took place especially during the state of emergency period should be carried out; perpetrators should be prosecuted and the State should apologise to the victims;

**31.** Kurdish issue

- Judicial, administrative and other *de facto* obstacles that restrict the freedom of thought and speech and prevent the teaching of minority languages should be removed;
- Prosecutions against the detained DTP members should be carried out in accordance with the rule of law; if convincing evidence exists, charges should be brought immediately against them, otherwise they should be released immediately;

**32.** Freedom of Assembly and Association

- Legal and administrative measures should be taken to regulate the use of force by security forces in line with international standards thus preventing the use excessive power. Additionally, an independent and effective complaints mechanism covering all security forces should be established.