



THE TURKISH LEGISLATION AND PRACTICE AS REGARDS TORTURE AND ILL-TREATMENT

It should be mentioned at the outset that Turkey's policy of zero tolerance for torture continues all the same under the state of emergency conditions; all kinds of allegations in this respect are investigated and where the truth of such allegations is established, necessary actions are taken.

1. The Legislative Provisions on Fight against Torture and Ill-treatment

a) General Provisions

In the Turkish law system, it was stipulated that *"No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity."* in paragraph 3 of Article 17 of the Constitution which governs the prohibition of torture and ill-treatment.

Furthermore, with the amendment made to Article 90 of the Constitution in 2004, it was prescribed that in case of conflict between international treaties, duly entered into force, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international treaties shall prevail.

Moreover, the term of penalty prescribed for the offence of torture, which was regulated under Article 243 of the former Turkish Criminal Code ("Law no. 765"), was increased by the new Turkish Criminal Code ("Law no. 5237") which entered into force in 2005. While the lower limit of the penalty was not set out and a penalty of imprisonment up to 8 years was prescribed in Article 243 of the Law no. 765, a penalty of imprisonment from 3 years to 12 years was prescribed in Article 94 of the Law no. 5237 in respect of the public officials established to have committed the offence of torture. For the qualified forms of the offence, the penalty was gradually increased, and imposition of a penalty of imprisonment from 8 years to 15 years was enabled. Furthermore, by a paragraph added to Article 94 of the Law no. 5237 in 2013, it was stipulated that statute of limitations shall not apply to offences of torture.

In addition to these, the regime for execution of penalties was changed by the Law no. 5275 and differently from the repealed Law no. 647, it was stipulated that those who are convicted to a

definite term of imprisonment shall be entitled to conditional release if they have spent two-thirds of their sentences in a penitentiary institution. However, pursuant to the Law no. 647, those who were convicted to a definite term of imprisonment were entitled to conditional release if they had spent half of their sentences in a penitentiary institution.

In Article 256 of the Law no. 5237, the offence of exceeding the limit of the authority to use force was defined and reference was made to the legislation on intentional injury. In the circumstances, the upper limit was not limited to 5 years as it was the case in Article 245 of the Law no. 765 and the penalty to be imposed on the perpetrator can go up to 16 years depending on the nature of the injury.

In addition to these points, it was stipulated in Article 148/1 of the Code of Criminal Procedure (“the CCP”), which governs the prohibited procedures in statement-taking and questioning, that the suspect or accused shall not be subjected to physical or mental interventions such as maltreatment, torture, administration of drugs, exhaustion, deception, use of force or threat or use of certain tools in a manner preventing his submissions from being based on his own free will. Furthermore, in paragraphs 3 and 4 of the same article, it was prescribed that statements taken via prohibited procedures (*including torture and ill-treatment*), shall not be used as evidence even if they were given with consent, and that statements taken by the law-enforcement officers in the absence of a lawyer shall not be taken as basis for judgment unless they are confirmed by the suspect or accused before a judge or court.

In the paragraph added to Article 2 of the Law no. 4483 in 2003, it was clearly stipulated that authorization for investigation shall not be sought for investigations and proceedings to be initiated into the offences of torture and that the investigation shall be directly carried out.

Furthermore, the same sensitivity of the Turkish State continues in the course of the state of emergency as well. By paragraph b of Article 9 of the Decree Law no. 682, a new regulation, which envisages that public officials who have inflicted torture shall be dismissed from public service, was also introduced.

b) Regulations on the measures taken with respect to prevention of torture under custody

It is considered useful to point out the following points within the scope of the measures taken with respect to prevention of torture under custody:

b.1) Medical Examination

Obtaining medical reports prior to placement into custody and during release from custody is one of the main preventive mechanisms employed within the framework of “the policy of zero tolerance for torture” (see Article 99 of the Law no. 5271, and Article 9 of the Regulation on Arrest, Custody and Statement-Taking). Pursuant to these regulations, the health status of a

person taken into custody shall be established by a doctor report before his location is changed for any reason, his custody period is extended or he is referred to judicial authorities. In addition, the law-enforcement officer who takes the statement of a person placed into custody, the officer who carries out the inquiry and the officer who takes the relevant person to medical examination must not be the same person.

In addition to these points, it should also be emphasised that the reports drawn up by health institutions are communicated in the fastest way possible inside a closed and sealed envelope to the relevant Chief Public Prosecutor's Office.

Moreover, the facts that during the medical examination, the doctor is alone with the person undergoing medical examination, that the examination is performed within the framework of doctor-patient relationship and that the medical reports issued are communicated to the relevant Public Prosecutor's Office without being read by the law-enforcement officers are also significant guarantees.

b.2) Legal Assistance

Within the scope of suspected persons' right to receive the assistance of a lawyer and right to defence in general, no restrictive regulation has been introduced. As regards the right to choose a lawyer, there is no impediment to the right of suspects and their legal representatives, if any, to receive the assistance of one or more lawyers of their own choosing at all stages of the investigation and proceedings pursuant to Article 149 of the CCP.

Besides, in consideration of the severity of the offences imputed to suspects, appointment of a defence counsel by the authorities in charge of investigation and prosecution was made mandatory regardless of the suspect's request pursuant to Article 150 of the CCP. Furthermore, with the amendments to the relevant Regulation, the circumstances which may potentially lead to non-fulfilment of the defence counselling were removed.

Moreover, as per Article 154/2 of the CCP, in respect of certain offences, the right of a suspect in custody to meet the defence counsel may be restricted for up to twenty-four (24) hours by the order of a judge; nevertheless, the suspect shall not on any account be questioned during this time period. This practice is also in parallel with the recent judgments delivered by the European Court of Human Rights ("the Court" or "the ECtHR") (see *İbrahim and Others v. the United Kingdom* [GC], no. 50541/08, 50571/08, 50573/08 and 40351/09, 13 September 2016; *Simeonovi v. Bulgaria* [GC], no. 21980/04, 12 May 2017).

b.3) Video Surveillance at Custody Centres

In addition to the guarantees of medical examination and legal assistance, it should be noted that a large majority of the custody centres in the country are equipped with cameras and video surveillance systems.

2. National Monitoring Mechanisms

All custody centres and interview rooms, states of the persons in custody, reasons and periods of their detention, all records and actions taken in relation to their arrest and placement into custody are subject to regular monitoring by the Chief Public Prosecutor's Offices and executive authorities. The Ombudsman Institution, the National Human Rights and Equality Institution of Turkey (established as national preventive mechanism within the scope of Optional Protocol to the Convention Against Torture (OPCAT)), and the Grand National Assembly of Turkey Human Rights Inquiry Commission or commissions of investigation may also conduct examinations, inquiries, and inspections at such centres.

In addition to these monitoring mechanisms, it should be indicated that within the framework of the Law on Monitoring Boards of Penitentiary Institutions and Detention Houses, reports may be drafted in respect of the said facilities with the participation of members who may also be elected amongst the civilian citizens.

3. International Monitoring Mechanisms

Any facility used for detaining persons deprived of their liberty, including penitentiary institutions and custody centres, are open to control by international mechanisms such as the European Committee for the Prevention of Torture (CPT) and the United Nations Subcommittee on Prevention of Torture (SPT).

In this regard, it is essential to note that 21 applications with request for an interim measure have been lodged with the ECtHR since 15 July 2016 with allegations concerning threats against the right to life or torture and ill-treatment with respect to conditions of detention and accommodation, and they were communicated to our Government to request relevant information and documents. Out of these 21 applications, all of those examined so far have been rejected by the Court. As to the related requests for an interim measure, the Court examined the information and documents presented by the Government and rejected the applicants' requests for an interim measure as they were unjustified.

4. The Constitutional Court as a National Mechanism

Our judicial system allows for individual applications with the Constitutional Court concerning allegations of torture and ill-treatment. As it does with other fundamental rights and freedoms, in the cases where the Constitutional Court finds deficiencies with respect to the substantive or procedural aspects of this subject in the applications it examines, it establishes guiding principles within our domestic law by resolving them based on the pieces of national as well as international legislation to which we are a party. Indeed, the ECtHR emphasised on many occasions that filing an application with the Constitutional Court is an effective remedy.

In this regard, taking into consideration some of the latest judgments delivered by the Constitutional Court (see, *inter alia*, the applications nos. 2014/12302; 2013/2438; 2013/3262;

2013/7812; 2013/293), its sufficiency, effectiveness, accessibility, and practicality as a remedy were also recognised by the ECtHR (see *Hasan Uzun v. Turkey*, no. 10755/13).

In some of the numerous applications concerning the allegations of torture and ill-treatment, the Constitutional Court found deficiencies with respect to the substantive or procedural aspects and delivered judgments to remedy them. Hence, our judicial system has once again shown that it possesses within itself the mechanisms which can identify and remedy its potential deficiencies.

Conclusion

In conclusion, the Republic of Turkey is determined to fight with foresight and tenacity against the extensive and multidirectional threats it faces. Having inherited an entrenched tradition of justice across the geography under its rule, our State is adamant to serve justice by redressing the grievances of victims and imposing the necessary punishment on perpetrators. Within this scope, our judicial practice, our legislation, the international treaties to which we are a party, and the judicial approach we have adopted is governed by the guiding principle of moving from the evidence towards the accused, not the other way around. Therefore, it should be noted that each and every one of the allegations concerning torture and ill-treatment are, beyond any doubt, investigated by independent and impartial authorities of the judiciary.

As required by the policy of zero tolerance for torture, judicial and administrative authorities scrupulously examine any allegation of torture and ill-treatment and proceed to take the necessary actions against those who are responsible when they find such allegations as justified.