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HUMAN RIGHTS NETWORK,
KURDISH HUMAN RIGHTS PROJECT &
THE WORLD ORGANISATION AGAINST TORTURE

OBSERVER MISSION REPORT
October 2001

THE F-TYPE PRISON CRISIS
AND THE REPRESSION OF
HUMAN RIGHTS DEFENDERS
IN TURKEY

Report from a
Fact-Finding Mission
to Istanbul and Ankara
on 5-11 May 2001
with Updates

OMCT
OPERATING THE EURO-MEDITERRANEAN NETWORK

KHRP
Kurdish Human Rights Project



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**THE F-TYPE PRISON CRISIS
&
THE REPRESSION OF HUMAN RIGHTS
DEFENDERS IN TURKEY**

OCTOBER 2001

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FOREWORD

To date, the death toll in Turkey's current F-type prisons crisis stands at 72 dead with hundreds more either seriously wounded or tortured during and since the December 2000 military actions which took place in 20 prisons throughout Turkey. Added to these numbers are an estimated 200 or more either close to death or in acute states of mental and physical deterioration – both in prison and in the “death fast houses” of a small Istanbul neighbourhood – who have been on prolonged hunger strikes and death fasts against Turkey's new isolation cells for what is exactly one year now. In addition, there are the related deaths of six people who were killed in two suicide bomb incidents in protest against the F-type prisons in January 2001 and September 2001 in Istanbul.

Despite the pleas from concerned human rights groups and medical associations from around the world as well as from international monitoring bodies including the UN Special Rapporteur on Torture and the Council of Europe's Committee for the Prevention of Torture (CPT), it appears that a solution that will stop the growing death toll in this crisis is remote at the current time.

Given the urgency of the rising numbers of dead and the severe and potentially permanent physical and mental damage being wreaked on those undergoing death fasts and hunger strikes, the Euro-Mediterranean Human Rights Network, the Kurdish Human Rights Project and the World Organisation Against Torture sent an observer mission to Ankara and Istanbul in May 2001 in order to investigate the extent of the crisis and explore ways in which this crisis could be effectively mediated and resolved as quickly as possible.

Sadly, as this report documents, offers to help mediate that have been put forward by human rights groups and sympathetic professional organisations of doctors, lawyers and journalists in Turkey have not been taken up by the Turkish Government. On the contrary, rather than being employed as ideal negotiators in the crisis, these groups have instead faced State repression in many forms, including office raids, seizures of documents, individual harassment of lawyers and indictments for alleged “support of an illegal organisation”.

While many who have been observing the prison crisis are quick to criticise what is seen to be the prisoners' blind drive against the F-type prisons, few seem as willing to point towards the Turkish Government's continued refusal to negotiate with the prisoners following the December 2000 prison operation or to address the serious violations of human rights that are taking place. And so the stand-off continues.

The final section of this report offers a detailed list of the observer missions' urgent recommendations in the F-type prison crisis - a crisis which has already claimed so many young lives and looks bound on a course to claim many more in the months ahead unless the Government agrees to sit and negotiate with protesting prisoners. It is our sincerest hope that the international community, and the Turkish Government in particular, will seriously consider the information and recommendations provided in this report.

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Euro-Mediterranean
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October 2001

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INTRODUCTION

In the early morning hours of 19 December 2000, over 10,000 members of the Turkish security forces commenced a simultaneous military raid into twenty prisons across Turkey. “Operation Return to Life”, as this planned military intervention was called, aimed to enforce the transfer of over a thousand prisoners into Turkey’s newly-constructed “F-type” prisons and to halt the widespread hunger strikes and “death fasts” of political prisoners who had been protesting against the introduction of F-type prisons since October 2000.¹ By the time this operation was over, 30 prisoners lay dead alongside two dead prison gendarmes.

Since the 19 December operation, a total of 40 death fasters – all of them young prisoners and family members of prisoners between the ages of 19 and 45 – have also died, bringing the current total death toll of the Turkish prison crisis to 72 dead with many others seriously wounded, victim to torture or left with devastating mental and physical damage due to prolonged hunger striking.²

Between 5 – 11 May 2001, the Euro-Mediterranean Human Rights Network, in conjunction with its member groups, the Kurdish Human Rights Project, the World Committee Against Torture and the Tunisian League for Human Rights, sent a fact-finding mission to Istanbul and Ankara to investigate the events of the “Return to Life” prison operation and the repression of human rights defenders - including medical doctors, journalists and lawyers - in the context of Turkey's current F-type prison crisis.

The mission interviewed many individuals and organisations – both governmental and non-governmental – involved in the prison crisis including: relatives of political prisoners; a political prisoner from the Bayrampaşa Prison who survived the “Return to Life” operation; the Ministry of Justice’s Director General of Prisons and Detention Centres, Ali Suat Ertosun; and a wide range of independent human rights organisations including associations of lawyers, medical doctors, human rights defenders and journalists. On 7 May 2001, the mission observed a hearing in a case against the headquarters of the Human Rights Association (IHD) at the State Security Court in Ankara.

The key issues of concern which came out of this mission are:

1. Overwhelming and disproportionate force was used during the operations of December 2000, when Turkish police and military conducted large-scale raids of twenty prisons in order to forcibly transfer more than a thousand prisoners into Turkey's new F-type prisons; in this process, fundamental rights including the right to life and to personal integrity were violated.
2. The F-type prison regime introduced by the Turkish Government fails to guarantee essential and internationally recognised rights of prisoners such as the rights of association with others and access to lawyers. It has also made prisoners more vulnerable to torture and ill-treatment. The F-type prison regime violates international standards and has been severely criticised by international bodies such as the CPT.

¹ At the time “Operation Return to Life” began, 204 of the 1,000 hunger strikers were actually on death fasts. Unlike the hunger strikes which are often done in week-long “relays” with fellow prisoners, the death fasts are marked by the complete refusal of all food with the exception of sugared or salted water and vitamins that prolong the fast.

² A complete list of death fasters who have passed away appears in Appendix A.

3. Torture and ill-treatment is prevalent in Turkish prisons generally, a fact that has been established by the European Court of Human Rights as well as other international human rights bodies. Torture and ill-treatment, including beatings, rape and the denial of medical treatment, is occurring in the F-type prisons and during the transfer of prisoners to them. There is a culture of impunity that allows this situation to continue.
4. The Turkish Government has handled the hunger strike and death fast in a manner that further violates human rights and is an affront to human dignity, while prolonging the suffering by refusing to seek a resolution.
5. The Turkish authorities have intimidated, persecuted and initiated criminal cases against human rights defenders, journalists, lawyers and others who voice criticism of the Government's handling of the prison crisis, also violating human rights standards that Turkey has committed itself to uphold such as the rights of freedom of expression and association.

After a brief introductory background section, this report sets out the main applicable human rights standards. Following this, the mission's findings are presented in two main sections. The first deals with the prison crisis itself, while the second looks at the repression of human rights defenders. The mission's conclusions and recommendations follow.

The members of the mission were:

Nazmi Gür, Executive Committee member of the Euro-Mediterranean Human Rights Network (EMHRN)

Elsa Le Pennec, International Relations Liaison Officer at the World Organisation Against Torture (OMCT)

Sally Eberhardt, Public Relations Officer at the Kurdish Human Rights Project (KHRP)

Naziba Boudhib, a Tunisian lawyer with the Tunisian League for Human Rights (Ligue Tunisienne des Droits de l'Homme - LTDH)

* * *

Euro-Mediterranean Human Rights Network (EMHRN)

The Euro-Mediterranean Human Rights Network is a network of human rights organisations from more than 20 countries in the Euro-Mediterranean region. Its objectives are to support and publicise universal principles of human rights as expressed in the Barcelona Declaration of November 1995; to strengthen, assist and co-ordinate the efforts of its members; to monitor the partner states' compliance with the provisions of the Declaration; and to support the development of democratic institutions, promote the rule of law and strengthen civil society in the Euro-Mediterranean region.

World Organisation Against Torture (OMCT)

The World Organisation Against Torture is today the largest international coalition of NGOs fighting against torture, summary executions, forced disappearances and all other forms of cruel, inhuman and degrading treatment in order to preserve human rights. It has at its disposal a network – SOS Torture – consisting of some 240 non-governmental organisations

that act as sources of information. Daily, OMCT urgent interventions reach more than 90,000 governmental and intergovernmental institutions, non-governmental associations, pressure and interest groups.

Kurdish Human Rights Project (KHRP)

The Kurdish Human Rights Project is an independent, non-political, non-governmental human rights organisation founded and based in London, England. It is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions of Turkey, Iran, Iraq, Syria and the former Soviet Union, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its projects include human rights advocacy and training; trial observations and fact-finding missions; research and publications; and public awareness, education and communication initiatives. To date, the KHRP has assisted over 400 applicants in a wide range of cases brought against Turkey before the European Court of Human Rights.

Tunisian League for Human Rights (Ligue Tunisienne des Droits de l'Homme - LTDH)

The Tunisian League for Human Rights (LTDH), established in 1978, is the oldest independent human rights organisation in Africa and the Arab World, and constitutes a democratic stronghold in present-day Tunisia. LTDH works for the protection and safeguarding of human rights and for popularising human rights culture and education through monitoring, documentation, seminars and regional and international co-operation. It has faced harassment from the Government on several occasions, lately in relation to the results of elections during its 5th Congress in October 2000, which were declared invalid after a civil case (see the report, *Trial Observation: Freedom of Expression, Freedom of Association, and Unfair Trials in Tunisia*, published by Bar Human Rights Committee of England and Wales, Euro-Mediterranean Human Rights Network, Kurdish Human Rights Project, the Observatory for the Protection of Human Rights Defenders, and the Union Internationale des Avocats).

BACKGROUND

The current prison crisis in Turkey first began to develop in October 2000 when over one thousand political prisoners began hunger strikes in protest against both the conditions of their detention and the introduction of 1- and 3-person isolation cells which characterise Turkey's newly-constructed "F-type" prisons. In contrast to the relative "security in numbers" provided by Turkey's traditional "dormitory-style" prisons, protesting prisoners feared the increased likelihood of isolation, ill-treatment and torture posed by the F-type prisons' solitary confinement and small group cells. On 19 November 2000, the 39th day of the hunger strike, over 200 of the protesters, in reaction to State plans to begin the transfer of prisoner into smaller cells, converted their hunger strikes into death fasts.

In addition to the generally poor conditions of detention inside Turkey's prisons, rape, torture and ill-treatment in custody have remained key problems in Turkey since the 1980s. Following the military overthrow of the Turkish Government in 1980, left-wing movements, including Kurdish movements for minority and cultural rights, have been systematically and brutally repressed and Turkey's prison system has been flooded with thousands of political prisoners. Beginning in 1989, a growing trend of prisoners being tortured during forced transfers into smaller cells commenced. In reaction, throughout the 1990s, increasing numbers of prisoners' protests were organised in the form of large-scale hunger strikes. The military operations which were conducted to put down these prison protests during the past ten years have been notably bloody. Since 1995, these major military operations have included the events of: January 1995 at the Umraniye prison (Istanbul) in which 3 prisoners were killed; September 1996 at the Diyarbakir prison in which 10 prisoners were killed; September 1999 at the Ulucanlar prison in Ankara in which 10 political prisoners were killed and 28 were wounded; and 5 July 2000 at the Burdur high security prison, in which 61 prisoners were seriously wounded.

However, despite the fact that prisoners protests in Turkey are not new, the prisoners' struggle has been amplified in the past year and a half due to the growing threats posed not only by the introduction of F-type prisons, but also by the accelerated deterioration of the conditions of prison detention and the continued impunity offered to prison officials responsible for the ill-treatment and torture of prisoners.

In addition to the genuine threat of increased ill-treatment and torture posed by the F-type prisons, it is important to note that the F-type's introduction of isolation can itself be seen as a form of cruel, inhuman or degrading treatment or punishment and has been criticised by the Council of Europe's Committee for the Prevention of Torture (CPT), the body set up to monitor prison conditions in Europe.³

Such treatment is also particularly inappropriate in relation to the cultural background of the majority of Turkey's political prisoners. The definition of the terms "cruel, inhuman or degrading treatment or punishment" in the Convention can be subjectively defined, as Professor Sir Nigel Rodley has pointed out with regard to a "*notion of a sort of cultural relativity [that] may enter into the determination of what acts may amount to degrading treatment.*"⁴ Sir Nigel explains this further, stating that:

"It has been pointed out, for example, that forcing a devout Muslim to fall on his knees and kiss the cross might well fall within the prohibition, whereas similar

³ See the following section on Turkey's Human Rights Obligations below.

⁴ Rodley, NS, *The Treatment of Prisoners under International Law: Second Edition*, (Oxford 1999), p. 104.

*behaviour towards prisoners who have no profound philosophical or religious aversion to the procedure would have no comparable significance. The point must be made, of course, that to be an offence against the prohibition an act must be one which the victim finds, or may be expected to find, degrading...*⁵(emphasis in original)

For the most part, Turkey's political prisoners come from Turkish and Kurdish working-class and peasant communities where daily social life evolves from one's "extended family". Unlike the situation in most European prisons where 1- and 3-person cells are welcomed as appropriate for prisoners' privacy and mental well-being, for the majority of Turkish and Kurdish political prisoners, living in a cell isolated from others amounts to a particular form of mental torture. If one adds to that the wholly justified fear of ill-treatment and torture in isolation, it becomes easy to understand the motivation behind what has been seen as the prisoners' blind determination against the solitary confinement system introduced by the F-type model.

⁵ *Ibid.*

TURKEY'S HUMAN RIGHTS OBLIGATIONS

By signing and ratifying a number of international human rights treaties, Turkey has taken on obligations to promote and protect human rights including the right to life, prohibition on torture, and freedom of expression and association.

Right to life

The right to life is among the fundamental human rights provisions protected by international law. Article 2 of the European Convention on Human Rights (ECHR), of which Turkey is a party,⁶ provides:

1. *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
2. *Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*
 - a. *in defence of any person from unlawful violence;*
 - b. *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - c. *in action lawfully taken for the purpose of quelling a riot or insurrection*

As this Article makes clear, death resulting from use of lethal force by State agents will only be lawful if carried out for one of the permitted purposes, *and* is absolutely necessary in the circumstances. The European Court of Human Rights has found in a number of cases that Turkey has violated Article 2 during operations by its security forces or following detention.⁷

In cases against Turkey, the European Court of Human Rights has emphasised the need for proper planning of operations, given the fundamental importance of protecting civilian lives. A number of cases brought to the Court involved military or security operations that resulted in deaths. In the case of *Ergi v. Turkey*, where a woman was shot dead during a security operation, the Court held that the State has a responsibility under Article 2 to take all possible precautions when choosing the means and methods of a security operation, to avoid and minimise loss of life.⁸

Two key principles that should guide State officials are necessity and proportionality. According to the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Code of Conduct for Law Enforcement Officials, law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The use of force and firearms is considered to be an extreme measure and is subject to both principles of necessity and proportionality. The notion of necessity limits the use of force to situations where other non-violent means are likely to remain inefficient, and when there is a real and immediate threat to life. However, even in case of real and immediate danger to life, indiscriminate shooting at civilians is still prohibited. The principle of proportionality requires

⁶ Turkey ratified the ECHR on 18 May 1954.

⁷ For example *Kaya v. Turkey*, Case no.158/1996/777/978, *Cakici v. Turkey*, Case no. 23657/93, *Timurtaş v. Turkey*, Case no.23531/94, Judgment of 13 June 2000; *Salman v. Turkey*, Case no. 21986/93, Judgment of 26 June 2000. See also the KHRP's Case Reports on *Kaya v. Turkey* (January 1999), *Cakici v. Turkey* (May 2000) and *Timurtaş v. Turkey* (June 2001).

⁸ *Ergi v. Turkey*, Case no. 66/1997/850/1057, Judgment of 28 July 1998, para. 79. The Court cited the case of *McCann & Others v. UK* (1996) 21 EHRR 97.

that the use of force be proportional to both the threat and the desired outcome. Such a requirement, by circumscribing the use of lethal force to certain precise and limited conditions, challenges the legality of the methods used by the Turkish security forces on 19 December 2000.

Furthermore, the use of chemical substances and explosive bullets is forbidden even in times of warfare by international laws of war because they cause extreme and unjustified suffering. During times of peace, their use is seen as a form of torture or cruel, inhuman and degrading treatment under international customary law and is thus forbidden by the UN Convention Against Torture to which Turkey is party.

One of the mission's concerns was whether Turkey would institute adequate and effective investigations into the deaths that have resulted from the F-type prison crisis. The European Court of Human Rights has also held on many occasions that Turkey has failed to carry out adequate and effective investigations into alleged violations of the right to life, and that given the fundamental importance of protecting this right, this in itself constitutes a separate violation of Article 2 of the Convention.⁹

Prohibition on Torture

One of the most fundamental human rights obligations placed on Turkey is the obligation to prevent torture and other inhuman or degrading treatment or punishment, carry out effective investigations into any alleged acts of torture, bring to justice those responsible and provide an effective means of redress for victims.

For instance, Article 3 of the European Convention on Human Rights states:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Turkey has ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)¹⁰ and the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW).¹¹ Turkey also recently signed the International Covenant on Civil and Political Rights 1977 (ICCPR).¹² At the regional level, in addition to being party to the European Convention on Human Rights, Turkey is party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT), which provides a system for independent inspection and monitoring of prisons within member states.¹³ In addition to its treaty obligations, Turkey is bound by Customary International Law which also prohibits torture.

Torture is considered to be among the most serious violations of human rights, and its prohibition is absolute. For instance, Article 2(2) of the CAT provides:

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.”

⁹ See the cases cited in footnote 7 above.

¹⁰ Turkey ratified the UNCAT on 2 August 1988.

¹¹ Turkey ratified CEDAW on 20 December 1985.

¹² Turkey signed the ICCPR on 15 August 2000.

¹³ Turkey ratified the ECPT on 26 February 1988.

The status of international treaties in Turkish law is clear. According to Article 90 of the Turkish Constitution: *“International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to those agreements on the ground that they are unconstitutional.”*

These international human rights norms are reflected in Turkish domestic law. Article 17 of the Turkish Constitution provides that:

“No one shall be subjected to torture or ill-treatment incompatible with human dignity.”

The Penal Code criminalises torture. Article 243 establishes that an official who

“tortures an accused person or resorts to cruel, inhuman or degrading treatment in order to make him confess his offence shall be punished by heavy imprisonment for up to five years and shall be disqualified from the civil service either temporarily or for life.”

Article 245 applies to ill-treatment by the police, and provides that:

“those authorized to use force and all police officers who, while performing their duty or executing their superiors’ orders, threaten or treat badly or cause bodily injury to a person or who actually beat or wound a person in circumstances other than prescribed by laws and regulations, shall be punished by imprisonment for three months to three years and shall be temporarily disqualified from the civil service.”

Despite this plethora of international and domestic provisions that are applicable in Turkey, the country has been severely criticised for its record on torture. The European Court of Human Rights has several times held Turkey to account for torture committed by its officials. In the landmark case of *Aksoy v. Turkey*, the Court ruled that the “Palestinian hanging” used on the applicant had been deliberate, and was of such a serious and cruel nature that it amounted to torture.¹⁴ In *Aydin v. Turkey* the Court held that rape by a State official amounted to torture, and that other forms of ill-treatment to which the applicant had been subjected (being blindfolded for three days, beaten, paraded naked, and pummelled with high pressure water while being spun around in a tyre) also amounted to torture.¹⁵

The above examples show that Turkey has been found responsible for practising torture and other forms of ill-treatment in the course of or soon after the taking of people into State custody, particularly during interrogation. However, Turkey has also faced international criticism for its treatment of prisoners more generally, once they have been formally committed to prison whether pre-trial or after being sentenced by a court.

¹⁴ *Aksoy v Turkey*, case no. 100/1995/606/694, Judgment of 18 December 1996. See also the KHRP Case Report, *Aksoy v Turkey & Aydin v Turkey: Case Reports on the Practice of Torture in Turkey*, vols. I and II (December 1997).

¹⁵ *Aydin v Turkey*, case no. 57/1996/676/866, Judgment of 25 September 1997. See also the KHRP Case Report, *Aksoy v Turkey & Aydin v Turkey: Case Reports on the Practice of Torture in Turkey*, vols. I and II (December 1997).

For example, the Council of Europe's Committee for the Prevention of Torture (CPT) has made several visits to inspect Turkish prisons in recent years, and has continued to criticise conditions it has found there in the strongest terms.¹⁶

A matter of particular concern is the phenomenon of isolation of prisoners that has been introduced through the F-type prisons. The international mechanisms that monitor States' compliance with human rights have specifically considered the question of isolation of prisoners and the effect of a lack of communication with other prisoners, lawyers and family. Internationally, it has been generally acknowledged that the use of solitary confinement endangers a prisoner's mental and physical health and must only be applied with extreme caution. Under certain conditions, it has been considered to constitute inhuman treatment.

The Committee Against Torture (CAT) has expressed repeated concerns about the use of isolation and in certain instances has recommended its abolition.¹⁷ So too in the final observations of the United Nations Committee on Human Rights on the Report of Denmark, the Committee on Human Rights states its conviction that "*solitary confinement is a severe punishment having grave psychological side effects and is only justified in extreme cases: solitary confinement, except in exceptional circumstances and for a limited duration, is contrary to paragraph 1 of Article 10 of the International Covenant on Civil and Political Rights*".¹⁸ In its General Comment 20, the Committee also stated that prolonged solitary confinement may lead to violations of Article 7 (inhuman treatment) of the International Covenant on Civil and Political Rights.¹⁹

In 1992, the CPT stated that, "*Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.*"²⁰ Following from this and the UN's jurisprudence, the CPT's statement on the system imposed by Turkey's F-type prisons declared that "*...the de facto isolation system currently in operation is not acceptable and must be ended quickly*".²¹

¹⁶ In its "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 5 to 17 October 1997" [(CPT/Inf (99) 2 (EN)], published in February 1999, the CPT noted, "*The existence and extent of the problem of torture and other forms of ill-treatment of criminal suspects by law enforcement officials - and more particularly by police officers - has been established beyond all doubt in the course of previous CPT visits to Turkey during the period 1990 to 1996.*" In following visits in 1999 and 2000, the CPT continued to criticise the persistence of torture in Turkey's detention centres and raised concerns about the need for Turkey to respond to the CPT's recommendations.

¹⁷ The Committee Against Torture (CAT) expressed concern on the use of isolation in its reports: *Finland*, 12 November 1999, A/55/44, para. 54; and also *Luxembourg*, 11 May 1999, A/54, para. 174(a). CAT recommended that the use of solitary confinement be abolished except in exceptional cases in its report: *Norway*, 27 May 1999, A/53/44, paras. 149-156. CAT recommended the abolition of the automatic period of solitary confinement for persons convicted of terrorist offenses in its report: *Peru*, 15 November 1999, A/55/44, para. 61 (c).

¹⁸ *Denmark*, CCPR/CO/70/DNK, 15/11/2000. In the case of Jorge Manera Lluberas (*Jorge Manera Lluberas v Uruguay*, 6 April 1984, Communication No. 123/1982), the Committee also found that solitary confinement together with other conditions of detention (lights kept on continuously, unsanitary conditions, small cells) constituted a violation of paragraph 1 of Article 10 of the ICCPR.

¹⁹ CCPR General Comment 20, 10 April 1992, para. 6. This position was recalled by the Committee in its report: *Israel*, 18 August 1998, CCPR/C/79/Add.93, para. 20. For further violations of Article 7 and Article 10(1) in cases of solitary confinement, see the following Committee Communications: *Antonio Viana Acosta v Uruguay*, 29 March 1984, Communication No. 110/1981; *John Wright v Madagascar*, 1 April 1985, Communication No. 115/1982; and *Hiber Conteris v Uruguay*, 17 July 1985, Communication No. 139/1983.

²⁰ Second General Report on the Committee for the Prevention of Torture's Activities Covering the Period 1 January 1991 to 31 December 1991, Council of Europe doc. CPT/Inf. (92)3, para. 56.

²¹ Letter from the President of the CPT to Mr H. Kemal Gür, Deputy Director General for the Council of Europe and Human Rights, Ministry of Foreign Affairs, Ankara, Turkey on 29 January 2001.

In addition, Article 78 of the UN Standard Minimum Rules for the Treatment of Prisoners which deals with the need for prisoner recreation clearly states, “*Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.*”

Right to freedom of expression and association

The rights to freedom of expression and association are, like the prohibition on torture, protected by a number of international human rights treaties to which Turkey is party or a signatory, including the ICCPR and the ECHR. These provisions are specifically designed to protect citizens against arbitrary interference by public authorities, and the European Convention, for instance, lays down limitations on the ability of States to restrict these freedoms on grounds such as the needs of national security or public safety, or the need to prevent crime and protect the rights of others. As Article 10 of the ECHR states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

While Article 11 of the ECHR provides:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

However, any such limitation of freedom of expression or freedom of association must be prescribed by law and “necessary in a democratic society.” The European Court of Human Rights has held that this means that there must be a “pressing social need”, and will look to see if the measures used are proportionate to the aim pursued. The Court applied these principles, which are well established in its case law, in the case of *Özgür Gündem v. Turkey*, and found Turkey to have violated Article 10 of the Convention when it carried out an unremitting campaign of violence and intimidation against journalists and others connected

with the newspaper *Özgür Gündem*.²² The State's brutal campaign against *Özgür Gündem* included the unlawful murder of seven people associated with the newspaper; the torture and detention of dozens more; violent attacks on individual journalists, editors and newsmen; raids on the *Özgür Gündem* office; and finally criminal prosecution of the newspaper and its employees, which resulted in the closure of *Özgür Gündem* in 1994.

It is important to note that Turkey has committed itself to respect the Human Rights Defenders' Declaration (The Declaration of the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, adopted by the UN General Assembly on 9 December 1998), Article 5 of which states that:

“For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or inter-governmental organizations.”

and Article 8 of which states that:

“1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.”

By adopting the Barcelona Declaration in November 1995, Turkey also committed itself to act in accordance with the United Nations Charter and the Universal Declaration of Human Rights, as well as other obligations under international law, to respect human rights and fundamental freedoms and to guarantee the effective legitimate exercise of such rights and freedoms, including freedom of expression and freedom of association for peaceful purposes.

In the legally binding Association Agreement with the European Union signed in June 1995, Article 2 states that:

“Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement.”

Various forms of attack on those who express opinions that go against Government policy in Turkey are not new. As just one key example, since it was established in 1986, the Human Rights Association (IHD) has been the target of persistent State campaigns of harassment and intimidation which have continued to the present. These campaigns have included the

²² Case no. 23144/93, Judgment of 16 March 2000. See also the KHRP Case Report, *Özgür Gündem v Turkey: Violations of Freedom of Expression* (December 2000).

repeated closures of various IHD branches across Turkey and the prosecution (which in some cases has led to conviction) of many IHD officers and individual members for expressing their views on Turkey's human rights situation and for attempting to campaign against Turkey's human rights abuses. The number of such proceedings runs into the hundreds.²³

²³ See also the April 2000 report "*Peace is not difficult*"...*Observing the Trial of Nazmi Gür, Secretary General of the Human Rights Association of Turkey* by the Kurdish Human Rights Project, the Bar Human Rights Committee of England and Wales, the Norwegian Bar Association, the Euro-Mediterranean Human Rights Network and the Danish Centre for Human Rights; and the May 1999 report, *Policing Human Rights in Turkey: The Trial of the Human Rights Association of Turkey – Diyarbakir Branch* by the Kurdish Human Rights Project and the Bar Human Rights Committee of England and Wales.

PART I: TURKEY'S F-TYPE PRISON CRISIS

Increasingly over the last twenty years, the conditions of detention in Turkey's prisons have been a focus of concern not only for human rights groups within Turkey but also for international governments and non-governmental organisations (NGOs) world-wide. The December 2000 opening of Turkey's newly constructed F-type prisons has particularly increased the urgency of these concerns, given that the F-types' arrival has coincided with Turkey's growing attempts to move forward in its European Union Accession process.²⁴

In his report of 25 January 2001, UN Special Rapporteur on Torture Sir Nigel Rodley observed that despite a reported reduction in the most severe methods of torture in Turkey in recent times, the number and consistency of allegations continuing to reach him bound him to conclude that "*torture and similar ill-treatment are still a common occurrence in Turkey and can be expected to continue to remain so, as long as the main recommendations of the Special Rapporteur, as well as the Committee for the Prevention of Torture (CPT), especially in respect of prolonged incommunicado detention, continue to be ignored.*"²⁵ Given this continued resistance to proposals put forward not only by domestic human rights groups but also by the Special Rapporteur and the CPT – in particular the recommendations put forward by the CPT following their 10-16 December 2000 and 10-16 January 2001 missions to investigate the prison crisis – the prospect that the ever-growing death toll of death fasting prisoners and the continued use of torture will be brought to a halt seems remote at the present time.

1. Background on prison conditions in Turkey

i. Discrimination in the treatment of detainees: Legal and systematic isolation of political prisoners and increased prisoner vulnerability during transfer

The situation of prison detainees remains worrying in Turkey. Article 78/3 and Article 78/4 of the Official Prison Regulations, adopted in 1983, introduced the category of "political prisoner" as well as the category of "terrorists and anarchists." However, Turkey has failed to fully respect the category of "political prisoner" which is undefined in Article 78/3. The categorisation of "terrorists and anarchists" in Article 78/4, however, brought with it new instances of discrimination in the treatment of detainees. Today, those subject to the most alarming examples of this discrimination are prisoners who are charged and sentenced under the Anti-Terror Law which was adopted by Turkey in 1991.²⁶

Article 1 of the Anti-Terror Law defines the boundaries of terrorism very widely and includes non-violent political activities, including the expression of thought, as forms of terrorist action. Within Article 1, terrorism is defined as:

"Any kind of action conducted by one or several persons belonging to an organisation with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging to the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental right

²⁴ Three F-type prisons were brought into use ahead on 19 December 2000 - Sincan (in Ankara), Kandira, and Edirne. On 23 February 2001, Tekirdag F-Type Prison was opened. Six additional F-type prisons are planned.

²⁵ Report of the Special Rapporteur on Torture, Sir Nigel Rodley, E/CN.4/2001/66, 25 January 2001, para. 1139.

²⁶ Law No. 3713 of 12 April 1991.

and freedoms, or damaging the internal or external security of the State, public order or general health by any method of pressure, force and violence, terrorisation, intimidation, oppression or threat..."

Article 8 of the Anti-Terror Law as amended by Law No. 4126 also prohibits the dissemination of separatist propaganda by written or oral means as it states:

"No one may engage in written and oral propaganda aimed at disrupting the indivisible integrity of the State of the Turkish Republic, country, and nation. Meetings, demonstrations and marches with this aim may not be engaged in."

It is Article 16 of the Anti-Terror Law, however, which constitutes the legal basis for discrimination in the treatment of political prisoners as well as the legal basis for solitary confinement. This Article introduced the new model of 1- to 3-person isolation cells to Turkey. In practice in Turkey, the allocation of these kinds of cells under the Anti-Terror Law has been used as an effective way of cutting off prisoner communication and correspondence. As reported over the past few years, the Anti-Terror Law has brought with it a situation in which communication between political prisoners is increasingly forbidden, conditional release has been made more difficult, prisoner visits - except those from immediate family - are not permitted and transfer to open or semi-open prisons has been rendered impossible.²⁷

Over and above these deprivations and restrictions *within* prison, prisoners have continued to be regularly attacked and beaten by guards during their transfers to court, to hospital or to other prisons. As a result, detainees repeatedly refuse to be taken to hospital for fear of violence on the part of gendarmes and security forces.

ii. The persistence of torture and ill-treatment and on-going impunity for prison officials

In the report from his visit to Turkey in November 1998, the UN Special Rapporteur on Torture Sir Nigel Rodley stated,

*"The practice of torture in prisons and use of excessive force to terminate disturbances are also alleged to be widespread. Prisoners are currently held in wards, but there is talk of introducing a cell system. Political prisoners and some human rights organizations are against the cells because they fear that these will become torture chambers. With the ward system, torture is more difficult because inmates protect each other and, generally, torture or ill-treatment occurs when a prisoner is being transferred to court or to another prison."*²⁸

Since this visit by the Special Rapporteur, national and international NGOs and Turkey's own Parliamentary Commission on Human Rights have continued to issue reports which reveal that torture has become a regular practice in Turkish detention centres over the years.²⁹ Most

²⁷ Article 16 of the Anti-Terror Law states, *"The sentences of those convicted under the provisions of this Law will be executed in special penal institutions built on a system of rooms for one or three people. In these institutions, open visits shall not be permitted. Contact and communication between convicted prisoners will be prevented."* Article 40 of the Tripartite Protocol of January 2000 adds further limitations, as it states, *"any prisoner wishing to be transferred to another prison must pay his own costs and the per diem of the escorts."*

²⁸ Report of the Special Rapporteur on Torture Sir Nigel Rodley, E/CN.4/1999/61/Add.1, 27 January 1999, para.24.

²⁹ Most notably, the report by Mrs Sema Piskinsüt, former President of the Parliamentary Commission on Human Rights, confirming the use of torture in temporary prisons and detention centres in 14 provinces (Turkish Parliament Human Rights Commission, 26 September 1999 Ulucanlar Prisons Report, June 2000).

of these cases of torture are not reported to the authorities, primarily because those responsible for torture are seldom brought to trial. This state of impunity has been confirmed repeatedly in judgments handed down by the European Court of Human Rights.³⁰ In the extremely rare cases where there has been a trial and a sentence passed, the punishment handed down has generally been insignificant and entirely incommensurate with the gravity of the offence, as reported by the UN Special Rapporteur on Torture.³¹

The project to create F-type prisons was first started by the Turkish authorities in 1991. In the ensuing decade, prisoners have continued to engage in major protests and hunger strikes to denounce the many ill-conditions of their detention that range from the practice of torture of prisoners held in solitary confinement to the problems of individual prisoner intimidation in large dormitories. These protests have systematically resulted in violent interventions by State security forces in which dozens of prisoners have been killed and wounded. Since 1995, these military operations in the prisons have included the events of: January 1995 at the Umraniye prison (Istanbul) in which 3 prisoners were killed; September 1996 at the Diyarbakir prison in which 10 prisoners lost their lives; September 1999 at the Ulucanlar prison in Ankara in which 10 political prisoners were killed and 28 were wounded; and 5 July 2000 at the Burdur high security prison, in which 61 prisoners were seriously wounded. Repeatedly, Turkey has failed to duly investigate instances of alleged use of excessive force, torture and ill-treatment against prisoners and has yet to convict even one prison guard, gendarme or army service member within the prison system. The resulting atmosphere of clear impunity for prison officials has created a justifiable state of alarm within Turkey's prisoner population.

Following the events of 26 September 1999 in the Ankara Central Closed (Ulucanlar) prison, the UN Special Rapporteur on Torture advised the Turkish authorities about his concerns in this prison where an excessive use of force by law enforcement officials had been used.³² According to the Special Rapporteur's report, the circumstances of the ten prisoners' deaths in the Ulucanlar prison were reportedly disputed and lawyers and relatives of the dead were excluded from the autopsy.

In Autumn 2000, Turkey stated its intention to establish prison monitoring and supervisory judges. However, the powers given to these bodies as well as their makeup is crucial. Domestic monitoring and investigations of prison violence in Turkey have failed to be effective. In June 2000, the Turkish Parliamentary Human Rights Commission issued a press statement on its report on the Ulucanlar killings and concluded that excessive use of force had been used. However, there has been no follow-up to date. As detailed above, the European Court of Human Rights has frequently pointed to the inadequacy of Turkey's investigation of human rights violations.³³

More recently, on 5 July 2000 in the Burdur high security prison, State security forces were alleged to have thrown smoke bombs, tear gas and nerve gas into prison wards and to have started to break down cell walls with bulldozers. Security forces reportedly attacked prisoners

³⁰ The European Court of Human Rights has held that Turkey has failed to conduct a thorough and effective investigation into torture or ill-treatment capable of leading to the identification and punishment of those responsible for the act, violating the right to an effective remedy in Article 13 of the Convention, in numerous cases including *Berktaş v. Turkey*, case no.22493/93, judgment of 1st March 2001.

³¹ See the Report of the Special Rapporteur on Torture Sir Nigel Rodley, E/CN.4/1999/61/Add.1, 27 January 1999, para. 72.

³² Annual Report of the Special Rapporteur on Torture, E/CN.4/2001/66.

³³ See previous section, Turkey's Human Rights Obligations (above), regarding European Court of Human Rights judgments holding Turkey responsible for violations of Article 2 (right to life) of the European Convention on Human Rights due their repeated failure to carry out adequate and effective investigations into alleged violations of the right to life.

with iron poles, truncheons, roof tiles and stones, dragged unconscious prisoners out of the wards with long-handled hooks, and sexually assaulted unconscious female prisoners.³⁴ Lawyers permitted to meet some these prisoners on 8 July stated that all had visible signs of severe injuries on their bodies and had difficulty breathing and speaking.³⁵ However, in April 2001 - nearly a year after this attack - the prosecutor's request to open an investigation into the 405 security officers against whom a formal complaint had been lodged was rejected by the Governor of Burdur.³⁶

2. Operation “Return To Life”: The introduction of F-type prisons and State security force actions in Turkish prisons in December 2000

i. Excessive and disproportionate use of force during Operation “Return to Life”

In relation to the possible threat to security posed by the death fasters, the attempts by security forces to smother the hunger strikes on 19 December 2000 were seriously disproportionate.

During the operation, many prisoners who were already weakened as a result of their hunger strike were allegedly sprayed with inflammable liquid and burned alive. In the case of Bayrampaşa prison, sporadic gunshots were reportedly heard as well as helicopters used to transport police directly inside the prison. In Umraniye prison, it was reported that bulldozers were used to destroy walls and enter the prison. Within both of these prisons, reports have indicated the use of gas bombs and special explosive bullets by State security forces. Similar operations were undertaken in prisons in Ankara (including the Ulucunlar prison), Ceyhan, Bursa, Aydin, Buca, Usak, Canakkale, Kirsehir, Nigde and Cankiri.

1. Use of chemical substances and explosive bullets against prisoners in the Bayrampaşa prison

In a letter dated 29 January 2001 to Mr H. Kemal Gür at the Ministry of Foreign Affairs in Ankara, the European Committee for the Prevention of Torture (CPT) requested an immediate independent inquiry into both the methods employed by the security forces during the intervention against dormitory C1 at Bayrampaşa Prison and Detention House in Istanbul and into the exact causes of deaths and injuries inflicted on prisoners in this dormitory. Following the CPT's most recent visits to Turkey in April and May 2001, it appears to date that there has been no clear response to these requests from Turkey.

a. Revelations of the official Turkish forensic experts' report published on 30 June 2001

In a statement made at noon on 19 December 2000, Prime Minister Bülent Ecevit staunchly defended the “Return to Life” operation, stating, “All our security forces are performing their duties in harmony and patience. They do whatever they can to ensure that lives are saved without killing anyone. For this reason, it may take some time in certain prisons, especially in Bayrampaşa and Umraniye, since the problem is dealt with as peacefully as possible, without resorting to violence.”

³⁴ *Ibid.*

³⁵ Amnesty International Report, “Turkey – F-Type Prisons: Isolation and allegations of torture of ill-treatment” (April 2001), p. 6.

³⁶ *Ibid.*

However, in a report published on 30 June 2001 by official Turkish forensic experts responsible for the investigation into the killings at the C1 women's dormitory at Bayrampaşa, the Government's version of the "Return to Life" operation was roundly contradicted. This official forensic report confirmed prisoners' allegations that chemical gasses had been used during the "Return to Life" intervention.³⁷ In addition, conclusions from the forensic pathology report show that traces of inflammable solvents were discovered on the skin and clothes of the dead female prisoners. Autopsy reports reveal that traces of organic solvents such as xylene, methanol and toluene were found on the corpses and further conclude that one inmate died from carbon dioxide poisoning. The report as a whole contradicts Justice Minister Hikmet Sami Turk's claims that inmates used rifles and fired upon security forces as well as his allegations that female prisoners had set themselves on fire. Indeed, far from a situation in which prisoners shot at security forces, forensic evidence revealed that shots had been fired from outside the prison. According to the report, "...police used numerous tear and nerve gas grenades in an enclosed space measuring 30 square metres (yards), which apparently caused a fire and subjected the inhabitants of the (women's) dormitory C1 to a very high threshold of chemicals and smoke."³⁸ Furthermore, the same forensic experts conclude that the gas and nerve bombs used at the C1 dormitory were improperly employed as there were clear warnings on the grenades stating that they should not be used indoors.³⁹

b. Interview in Ankara on 7 May 2001 with Mr H. Selim Açıan, a political prisoner held in the Bayrampaşa prison on 19 December 2000 and recently released from the Edirne F-type prison

Former political prisoner H. Selim Açıan was imprisoned for being a member of a leftist organisation and was released on 5 April 2001, after six years in prison including time served at the Bayrampaşa prison where he was being held when the 19 December operation began.

During an interview on 7 May 2001 with the mission, Mr. Açıan, just one month out of prison, confirmed the excessive and disproportionate use of force in the Bayrampaşa prison. Mr. Açıan's testimony included the following description of the early morning events at the prison:

"On 19 December 2000 towards the dawn, we jumped down from our beds upon hearing the sounds of bombs and alarm which were coming from the ground corridor...I started to feel the smell and my eyes started to shed tears....We were unable to see the opposite ward C-4 (about 8-10 metres away) because of the gas and smoke... we were almost unable to breathe....The attack had focused on the wards C 13-14 and C 15-16, located at the far end of the prison relative to the main entrance where death fasters were staying. Even though they had concentrated on these wards, they were also targeting our ward C 3-4 and Ladies' wards (C 1-2), right behind our ward. Gas bombs were being thrown at regular intervals... This situation carried on until sunrise. In the meantime, by means of radios and televisions we had, we learnt that similar operations had started in 20 other prisons... After the day broke, the intensity of the attack had decreased relatively, but by this time we started to hear sounds of construction machines, drillers, sledge hammers, etc. ...By seeing dark smoke mixing with white smoke of gas bombs, we understood that the wards over there were on fire.

³⁷ See "Gergege Donuş (Return to Reality)," *Radikal*, 2-5 July 2001; "Pathologists blast Government account of prison crackdown deaths," *Agence France Presse*, 3 July 2001; and "Suspicion falls on 'Operation Return to Life,'" *Turkish Daily News*, 3 July 2001.

³⁸ "Pathologists blast Government account of prison crackdown deaths," *Agence France Presse*, 3 July 2001.

³⁹ "Suspicion falls on 'Operation Return to Life,'" *Turkish Daily News*, 3 July 2001.

In the midst of all these noises and voices, we were hearing intensive firing sounds of heavy weapons. Around 11 a.m., the attack was intensified towards our area. Heavy gas bombing and bulleting (firing) were coming from various points...Bullets were especially coming into the windows from which we were throwing the gas bombs back in order not to be affected by them and to the areas where we hung soaked blankets to reduce the effects of gases. I think some special weapons were being used apart from the well-known G-3's and MP-5's, because bullets passing nearby were breaking into too many pieces after hitting the walls, like grapeshots. In the afternoon at 3 p.m., I was wounded in my right shoulder by a reflected bullet piece of that kind, even though I had four layers of clothing on me. Another piece of the same kind of bullet hit my comrade Turan Tarakçi, under the eye, who was beside me. ...In spite of all protective measures, such as covering our faces with soaked towels and pressing our mouths to the concrete slab when taking a breath, we had come to a stage that we could not breathe... Some of our friends, who inhaled too much gas, were unable to move. While our eyes and lungs were burning bitterly, almost all of us were either coughing or retching.... When the fire was ceased, we again started to look around and saw that a big fire had started at the entrance of the dormitory of C-4 ward. It was 11:40 a.m. The fire grew and spread so quickly as if a firebomb was used. After a while, 2 firemen started to spray water and foam on the flames by means of a ladder elevated from outside behind the walls. Shouting at them, we said, "We did not start the fire. At first, they tried to suffocate us by using gas and now they are trying to burn us. If we can not get out of this place alive, please tell this truth to the Turkish public". While this was happening, some military personnel were making video recording and taking photographs from the Watching Tower N°7....It was just after 1 p.m. when we heard screams from the female ward and some were shouting as "They are burning us, they are burning us!" They were throwing the firebombs through the holes made on the walls purposely close to the exit points, such as doors and stairs. C-4 dormitory has been burnt down in front of our eyes likewise. In the evening, this time, our place was to put on fire in the same manner".⁴⁰

2. Torture and ill-treatment during the operation and transfer of prisoners to F-type prisons

In January 2001, the Turkish authorities were asked by the CPT to report on allegations that prisoners were beaten and submitted to intrusive or humiliating search techniques by members of the gendarmerie and prison staff either during the transfer into the F-type prisons or upon admission into the new prisons. According to key human rights organisations on the ground in Turkey, in particular the Human Rights Association (IHD), prisoners transferred during the 19 December operation were allegedly subjected to wide-ranging ill-treatment and torture including incidents at the Edirne and Kandira F-type prisons in which prisoners were reportedly raped with truncheons, beaten, and forced to eat their own hair after having it forcibly shaved off.⁴¹ To date, Turkey has yet to report back on these allegations.

In his testimony to the observer mission, former prisoner H. Selim Açıan reported that he and other prisoners transferred to Edirne F-type prison were subjected to a series of forms of torture and ill-treatment during their transfer.⁴² As they retreated out of their cells at the Bayrampaşa prison, Mr Açıan and his fellow prisoners were beaten with implements by gendarmes whose commanding officers did nothing to stop their attacks. Inside the transfer

⁴⁰ See Appendix B for H. Selim Açıan's full written statement.

⁴¹ Human Rights Association of Turkey (IHD)-Istanbul Branch report, *19 Aralık Katliam Raporu*, (2001).

⁴² See also Appendix B for H. Selim Açıan's full written statement.

truck, the prisoners were tightly handcuffed and were not allowed to go to the toilet nor were they given water or badly needed medical treatment. The trip began at 10:00 p.m. on the evening of 19 December and though they were told the trip would take 2 hours, it actually took 12 hours during which time many men suffered from the serious wounds they had received during the prison attack. Once they arrived at Edirne F-type prison, the prisoners were not allowed out of the transfer truck and were forced to wait during a protracted “check-in” procedure. Mr Açıan was not received into the new prison until 2:00 p.m. on the afternoon of 20 December. As he writes in his statement,

“Our hands were swollen like logs, new wounds happened on our wrists and our arms became insensible as if broken away from the shoulders....my hair and beard were cut and shaved by using force...I was forced to become completely naked under the presence of soldiers, including two who had plastic surgery gloves and who forced me to undergo a rectal search. Anybody who would stand against this humiliating act was being violently beaten. I had seven ribs broken or smashed because of the beating I received here. In an unconscious state I was dragged to a 3-person cell. Under those conditions and in that situation a number plate was placed in front of me and my photograph was taken. Finally, I was dragged by numerous guards and thrown into a cell....I had fallen down when I was beaten and while I was on the floor I was kicked in the abdomen and groin so badly that I had urinated involuntarily without feeling it...during this time I was taken only once to the infirmary....where they just put a cream (Algesol) on my body and sent me back.”

During the transfer, Mr Açıan also stated that he and other prisoners were subjected to psychological intimidation and threats which included on high-level official telling Mr Açıan, “We’ll show you how terrible it is to be against the army.” Following the transfers of prisoners, Mr Açıan, as well as the mother of an F-type prisoner who the observer mission met with in Istanbul, reported that loud music and artificial light was imposed 24 hours a day in the new F-type prisons. For the first 10 days at Edirne, Mr Açıan stated that prisoners were not allowed to receive letters or newspapers and were forced to sit up at 12-hour intervals, with those who resisted being beaten. Mr Açıan stated that because the prison was so new, there were no medicines or proper facilities in the infirmary to adequately treat wounded prisoners.

Mr Açıan, as well as all of the family members of prisoners who the observer mission spoke with in Istanbul, reported that immediate family members and lawyers who were finally allowed into the F-type prisons were subjected to humiliating strip searches that included women being forced to take off all of their clothes including bras and other underwear.⁴³ Mr Açıan also stated that a female lawyer who was strip-searched was forced to remove her tampon and sanitary pad, which caused significant personal distress and humiliation.

3. Conditions of detention within the F-type prisons, threats to prisoners’ health and safety and obstacles to medical practice including the harassment of doctors by Turkish authorities

As detailed above in the section on Turkey’s Human Rights Obligations, there has been general acknowledgement internationally that the use of solitary confinement endangers a prisoner’s mental and physical health and must only be applied with extreme caution. As

⁴³ See Part II, section iii, Harassment of the Prisoners’ Relatives, below.

described in the introduction to Section I above, the alarming frequency of torture in Turkish detention centres, as witnessed and reported by many Turkish and international human rights bodies and NGOs, underlines the urgent need for prisoners in the F-type prisons to have access to independent and impartial doctors. This is particularly critical given the repeated excessive and disproportionate use of force employed in Turkish prisons since 1995.

During the current prison crisis, both death fasting prisoners and prisoners on solidarity hunger strikes have been forcibly transported to hospital where many have refused treatment. In some cases, these prisoners have been reportedly segregated from all other patients in the hospital.⁴⁴ The mission remains concerned about the practices of the Turkish authorities that weaken the relationship between doctor and patient and often cause doctors to engage in conduct contrary to medical ethics.

Many doctors have signed, or been persuaded to sign, false medical certificates refuting the occurrence of torture.⁴⁵ Moreover, certain doctors have been made to impose medical treatment on hunger strikers against their will.⁴⁶ Since the beginning of current hunger strike, the authorities have tried several times to end the hunger strikes by obliging doctors to force feed those prisoners refusing food.⁴⁷ These actions are contrary the guidelines of the Malta Declaration, adopted by the General Assembly of the World Medical Association in 1991 for doctors treating hunger strikers.⁴⁸ According to this Declaration, no doctor should exert pressure on a hunger striker to end his or her fast. It is essential that doctors treating torture victims be protected from all forms of threats or reprisals. Doctors must be able to practice without fear of harassment or persecution.

4. Limits of the amendment to Article 16 of the Anti-Terror Law and on-going concerns

The conclusions of the European Committee for the Prevention of Torture (CPT), following a series of recent visits in Turkey since December 2000, are a reminder of the absolute necessity for prisoners to be able to spend a reasonable amount of time each day in open-air activities.⁴⁹ Without reasonable access to communal activities, the detainees' physical and psychological health remains in danger alongside their increased risk of facing torture or ill-treatment in 1- and 3-person isolation cells.

On 2 May 2001, the Turkish Parliament ratified an Amendment to Article 16 of the Anti-Terror Law which had previously provided for the isolation of all political prisoners.⁵⁰ With this Amendment, the ban set on political prisoners' ability to engage in communal activities was lifted. Though Turkey's decision to amend Article 16 marked a positive step forward in the struggle for penal reform, the Amendment falls far from international standards and fails to provide for an unconditional right to communal activities for prisoners in accordance with

⁴⁴ Interviews with political prisoners relatives in Istanbul section of IHD, Istanbul, 6 May 2001.

⁴⁵ OMCT, the Europe-Third World Centre and the International Centre for the Rehabilitation of Torture Victims, *Joint Submission on Civil and Political Rights to the 57th Session of the UN Commission on Human Rights*, 19 March 2001.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ www.wma.net/e/policy/17-fff_e.html

⁴⁹ See "Hunger strikes in Turkey: Further visit by a delegation of the European Committee for the Prevention of Torture," CPT press release, 24 April 2001.

⁵⁰ See the following page, Box 1: Article 16 of Turkey's Anti-Terror Law and the Amendment to Article 16.

international provisions like Article 78 of the UN Standard Minimum Rules for the Treatment of Prisoners.⁵¹

Box 1

ARTICLE 16 OF THE ANTI-TERROR LAW & THE AMENDMENT TO ARTICLE 16

Article 16 of Turkey's Anti-terror Law No. 3713 of 12 April 1991:

"Sentences of those convicted of offences within the scope of the provisions of this law shall be served in special penal establishments, constructed according to a system of one-person and three-person cells.

No open visits shall be permitted in such establishments. Communication between inmates and with other convicts shall be prevented.

Those convicts who complete at least a third of their sentence with good behaviour may be transferred to other closed prisons.

Those who are remanded in custody charged with offences within the scope of this law shall also be confined in the prisons constructed as indicated in paragraph one. The provisions of paragraph two shall also apply to those on remand."

The Amendment to Article 16, ratified by Turkish Parliament on 2 May 2001:

"Article 1 - *The second and third paragraphs of Article 16 of the Anti-terror Law No. 3713 of 12.4.1991 have been amended as follows:*

'In these institutions convicts shall be classified according to offences they have committed, their conduct within the institution, and areas of interest and capabilities, and will participate in education, sports, vocational training and work home programs and other social and cultural activities within a framework of rehabilitation and education programs developed for such convicts. The duration of such programs and the number of convicts who will participate in such programs shall be determined by reference to the nature of each specific program, security conditions and facilities that can be provided by the institution. Such rehabilitation and education programs may be discontinued or revised in the event it has been observed their effects on convicts were inconsistent with the objectives thereof. Any convict who has been subjected to a disciplinary punishment, other than a reprimand, shall not be permitted to meet his or her visitors without any physical barriers until such punishment has been lifted.

Any convict who has behaved well during at least a third of his or her term of imprisonment, or is entitled to benefit from the Law no. 3419 of 25.3.1988 on Provisions Applicable to Persons Who Have Committed Certain Offences, may be transferred to other penitentiaries.'

Article 2 - *This Law shall come into effect on the date of promulgation hereof.*

Article 3 - *provisions of this Law shall be executed by the Council of Ministers."*

⁵¹ Previously, Article 16 declared that "No open visits shall be permitted ...Communication between inmates and other convicts shall be prevented." Though allowing for the possibility of communal activities, the Amendment states that activities may be "discontinued or revised in the event it has been observed their effects on convicts were inconsistent with the objectives thereof." See Box 1.

As worded, the Amendment offers only limited amelioration of F-type confinement and fails to effectively protect all prisoners against isolation or to guarantee an acceptable level of association. Although the Amendment to Article 16 provides for prisoner participation in education, sports, vocational training and other social and cultural activities, participation in these activities can only take place within the framework of certain rehabilitation and educational programmes. These rehabilitation and educational programmes are to be developed with specific categories of prisoners in mind. The categorisation of prisoners is to be based upon the nature of the offence committed, the prisoner's conduct and the prisoner's areas of interest and capabilities. In effect then, rather than offering objective criteria against which prisoners' participation in communal activities can be monitored, this Amendment offers instead highly subjective criteria for these programmes which is open to abuse by prison authorities. In addition, while there may be some programmes which may be unacceptable to some prisoners (e.g., those programmes with a political content), making it a condition for prisoners to participate in these programmes in order to gain access to communal areas may result in a situation where those prisoners who refuse to participate are left in solitary confinement.

Furthermore, the duration and objective of the programmes, as well as the number of participants allowed to participate in them, are all made subject to the security conditions and facilities within the institution. Thus, if for security reasons or due to lack of facilities, educational and rehabilitation programmes are not established, prisoner access to recreational and communal activities will be limited.

In this regard, the amended Article 16 does not provide objective criteria for the establishment of such programmes, thereby leaving the decision to the discretion of the individual institution administrators. Under the UN Standard Minimum Rules for the Treatment of Prisoners,⁵² the State bears the responsibility to ensure that facilities for recreation and education are provided for within institutions. However, the amended Article 16 fails to impose an obligation on the State to create such facilities or provide interim measures where they are lacking, thereby once again making room for an arbitrary implementation of the Amendment done in a non-discretionary manner.

As called for by the European Committee for the Prevention of Torture (CPT), the State must provide for unconditional access to recreational and cultural activities for all prisoners. This was made clear by the CPT following its visits to Turkey in December 2000 and January 2001. In its 24 March 2001 Press Release, the CPT confirmed that there was growing concern over how and to whom the activity programmes envisaged by the amendment to Article 16, were to be offered. The provision for such activities should be closely monitored by independent external monitoring bodies and should not be left to the discretion of the individual institutions.

Whilst the steps taken by Turkey to establish prison monitoring and supervisory judges to review the management of prisons are welcomed, such supervising bodies should be independent, external and free to monitor, inspect and report on the implementation of Article 16 and conditions within places of detention. In addition, these monitoring bodies should be composed of independent experts, doctors, psychologists and representatives of civil society including lawyers and independent and impartial NGOs working on the specific question of prison systems.

⁵² UN Standard Minimum Rules for the Treatment of Prisoners, Articles 77 and 78. See Turkey's Human Rights Obligations section above.

To date, isolation has not been lifted in the F-type prisons, and no prisoner placed under isolation by application of Article 16 of the Anti-Terror Law has been able to benefit from communal activities, as enunciated in the Amendment. Turkey must live up to its responsibility to ensure the right of prisoners to spend a reasonable part of the day outside their cells. In an open letter addressed to Lord Russell Johnston (President of the Parliamentary Assembly of the Council of Europe) on 20 May 2001, Mr Hüsni Ondül, President of the Human Rights Association (IHD), stated that, *“Isolation has not been lifted in the F-type prisons, and reports are now coming in from other prisons of isolation and ill-treatment. The prisoners in these facilities have been under conditions of intense isolation for 5 months; moreover, there are serious reports of torture and ill-treatment”*. The mission is deeply concerned by the inadequacy of the Amendment which has failed to address such key concerns from leading Turkish and international human rights organisations. These concerns include repeated fears that continued isolation continues to leave prisoners particularly vulnerable to torture and other forms of ill-treatment.

5. The State’s Perspective: Interview at the Ministry of Justice in Ankara on 7 May 2001 with Mr Ali Suat Ertosun, General Director of Prisons and Places of Detention

On 7 May 2001, the observation mission met with Mr Ali Suat Ertosun, General Director of Prisons and Places of Detention at the Ministry of Justice in Ankara. At the outset of his interview with the observer mission, Mr Ertosun stressed that the Ministry of Justice did not accept the label of “isolation” in relation to the F-type prison’s 1- and 3-person cells. For Mr Ertosun, Turkey’s F-type prisons follow European Union recommendations in which prisoners can be grouped from groups of 20 down to groups of 3. When pressed about the whether the differences between conditions of detention in Turkish prisons versus conditions in European prisons affected the appropriateness of 1- and 3-person cells in Turkey, Mr Ertosun remained firm in his belief that the F-type prisons fell within European standards and were therefore satisfactory.

Despite his expressed desire to implement European standards, Mr Ertosun stated, however, that the concept of “independent monitoring” was a new one for Turkey and was seen as inappropriate for the Turkish State as Turkey views such monitoring as “our own problem.” However, when asked to identify when a report on the actions of 19 December 2000 was to be issued by Turkey (in and of itself, a form of self-monitoring), Mr Ertosun responded merely, “Soon.” To date, such a report has yet to be released.

In response to the question of CPT concerns regarding prisoners being allowed to participate in out-of-unit activities for a “reasonable part of the day,” Mr Ertosun failed to provide a clear definition of “reasonable time” and similarly failed to identify the criteria and procedures for determining who would be allowed to benefit from educational and recreational activities. Instead, Mr Ertosun claimed that the Amendment to Article 16 (which went into effect just two days before the observer mission’s interview with Mr Ertosun) would work to solve the problems of prisoner isolation, although he added that the final text of the regulation rules for the administration of F-type prisons had still to be produced. With regard to the lack of communal meals, Mr Ertosun confirmed that prisoners in the F-type prisons are being brought their food in their rooms rather than being allowed into a communal eating hall. Mr Ertosun also added that those individuals in 1-person cells are there because they “want to be by themselves.”

When asked about the hunger strikes, Mr Ertosun claimed that the Ministry's main goal was "to ensure human rights" and that in the old "dormitory-style" there was no capacity for human rights because terrorist groups ran the dormitories. Declaring that, "Turkey lost 30,000 people to terrorism," Mr Ertosun stated that the hunger strikers simply wanted to return to the former dormitory-style prisons so they could resume their work of giving fellow prisoners a "terrorist education."

The creation of a new Sentence Execution Judge has been perceived by the human rights community as a positive development that could eventually have an impact on abuses by prison personnel. Unfortunately however, these developments have apparently still not been implemented, and Ministry officials have failed to clearly identify the actual powers and tasks of this judge. According to Mr Ertosun the new judge will simply "control prisoners' complaints."

PART II: REPRESSION OF HUMAN RIGHTS DEFENDERS

Over the past twenty years, human rights defenders in Turkey have been repeatedly subjected to prosecution and imprisonment as a result of their position on sensitive issues that include the actions of the Turkish Army, the Kurdish question, human rights abuses on part of the State and, most recently, the introduction of the F-type prison system in Turkey.⁵³ Added to the obstacles caused by Turkey's lack of judicial independence and the political power of Turkey's military through the National Security Council, human rights defenders have faced increased difficulties following recent moves toward nationalist politics that emerged during the elections of April 1999.

1. Harassment of Human Rights Organisations: Freedom of Association and Expression under threat

During its investigation into the persecution and harassment of human rights defenders who have been vocal during the course of the F-type prison crisis, the observer mission spoke with a wide range of human rights organisations and human rights defenders who have suffered from recent repression including members of the Turkish Medical Association, lawyers groups, professional journalists associations as well as the relatives of hunger striking prisoners. In addition, the observer mission attended the 7 May 2001 trial against the Human Rights Association (IHD) Headquarters at the State Security Court in Ankara.

Since the beginning of the crisis, the Government has chosen to increase pressure on all non-governmental organisations that have voiced concerns about "Operation Return to Life" and have expressed their disapproval of the F-type prison's regime of isolation and the increased likelihood of torture and ill-treatment in these new prisons. The IHD, in particular, has not only been prevented from directly monitoring what is happening in the prisons, they have also been relentlessly harassed and face criminal charges over their involvement in the crisis.

i. Repression against the Human Rights Association of Turkey (IHD): Observer mission interview in Ankara on 7 May 2001 with Hüsnü Ondül, IHD President

In interviews on 7 May 2001, Hüsnü Ondül, President of the IHD, and other IHD members reported that freedom of association in Turkey continues to be violated especially in the regions under State of Emergency. Mr Ondül cited Article 5 of the Associations Law from 1983 which forbids the founding of an association for the purpose of:

"putting forward the proposition that there are minorities within the Turkish Republic based on differences of class, race, language, religion or region, or creating minorities by protecting, promoting or spreading languages or cultures separate from the Turkish language and culture, or making people from any region or race or class or any religion or sect dominant over or privileged above others..."

As the IHD pointed out, the Associations Law actively restricts freedom of association in Turkey, as it provides for wide-ranging powers against associations that include: the ability to restrict both the right of membership in associations (Article 16) and the areas of activity in which associations are allowed to be involved (Article 37); provisions that empower the police to apply pressure on associations (Article 48); provisions that facilitate the closure of

⁵³ See section on Turkey's Human Rights Obligations above.

associations (Article 54); and provisions that give authority to the Governor to suspend activities of associations (Article 58).

The IHD stressed the necessity of an amendment to the Associations Law which might end what has become the systematic violation of the right to form, join and participate in organisations and the right to communicate with NGOs and international non-governmental organisations.⁵⁴ These violations have included the harassment and intimidation of individual members of human rights groups whose private life becomes targeted as much as their public activities.

Turning to the specific case of repression of human rights defenders during the current prison crisis, Mr Ondül explained that beginning in December, the IHD had initiated a strong mobilisation in reaction to the F-type prison crisis by using its extensive network of branch offices across Turkey. It was this mobilisation, in turn, which prompted police raids and searches of the IHD headquarters in Ankara as well as several branch offices of the IHD.

On 23 December 2000, State security forces stormed into the IHD headquarters in a raid authorised by the Criminal Court of Ankara. During this operation, many members of the IHD were apprehended and kept in custody before they were released. The IHD's computers, archives and documentation were all searched, and some documents were seized. One month later, on 25 January 2001, on the basis of what turned out to be a mistaken 19 January 2001 article about IHD money received from the Greek Ministry of Foreign Affairs, the police performed another raid of the IHD headquarters and took all of the association's computer hard drives, as well as many legal papers and documents. All of these items were returned 15 days later. However, following these two raids, a criminal prosecution was opened against the IHD in which the prosecution has demanded the closure of the IHD headquarters. This case continues at the Civil Court of First Instance No. 24 in Ankara with the next hearing set for 22 October 2001. In addition, investigations into the IHD Board members were opened at the State Security Court in Ankara and have continued to date.

Other branches of the IHD have been subjected to similar measures, and a number of IHD members in these branches were also kept for several hours in police custody and interrogated in December 2000 and January 2001. A brief list of the repression faced by branches of the IHD includes the following:

- Members of the Istanbul branch of the IHD were detained on three different occasions following the publication of an IHD press release and an accompanying march held in Istanbul on 17 December 2000.
- On 19 December 2000, the IHD branch in Van was closed by the Governor's bureau who claimed they had broken the Associations Law by sheltering people on hunger strike on their premises.
- On 22 December 2000, the Konya section of the IHD was closed for 45 days.
- The police raided the offices of the Kayseri IHD branch after they published a press release about the F-type prisons. During this raid, the police detained the branch President and the President of the Trade Union of Public Employees in Education Services.

⁵⁴ Article 5b and 5c and 9.4 of the International Declaration on Human Rights Defenders.

- On 1 January 2001, a team from the Anti-Terror branch of the Department of Security went to the headquarters of the Bursa IHD, and took away four IHD members, two of whom were on hunger strike. Four other members of the branch were taken to the offices of the Department of Security and a preliminary investigation was started.
- On 2 January 2001, the Izmir IHD office was closed because 16 non-members of the IHD were found in the branch office during a search carried out under the direction of the Prosecutor of the State Criminal Court.
- On 20 January 2001, the Mersin IHD was raided under the direction once again of the Prosecutor of the State Criminal Court and all of their documents were seized.
- On 11 January 2001, the Bureau of the Prosecutor of the Criminal Court initiated proceedings against the IHD Ankara branch office,⁵⁵ charging its members with, “supporting an illegal organisation.” The charges mention that a detailed list of prisoners that included information on individual prisoner’s health was found on the IHD premises during the December police raid. Press releases that included statements against the building of an F-type prison and expressed support of the prisoners on hunger strike were also found. These statements also mentioned that during IHD demonstrations, pictures of deceased prisoners had been displayed and posters of illegal organisations had been waved. The Prosecutor considered that the IHD’s continuing “actions whose purpose is similar to that of prisoners’ organisations” constituted a sufficient element of proof for formally charging the Ankara IHD office. The Prosecutor further requested the closure of the Ankara IHD under Article 7/4 of the Anti-Terror Law 3713 which makes it an offence to engage in “activities which support terrorism”. Charges under the Article 169 of the Penal Code were also made against the following individuals at the Ankara IHD branch office: Mr Lutfi Demirkapi, President of the branch office; office members Mr İlhami Yaban, Mr İsmail Boyraz, Mr Erol Direkçi, Mr Mesut Cetiner, Mr Zeki İrmak, and Mr Rıza Resat Cetinbas; Prisoners’ commission members Mr Ali Rıza Bektas, Mr Saniye Simsek, Mr Ekrem Erdin, Gökçe Otlı and Mr Selim Necati Ort. This trial opened on 13 February 2001 at the State Criminal Court. The next hearing is set for 10 October 2001 at which time a decision is expected.

ii. Retaliatory measures against other Turkish non-governmental organisations and concerned professional organisations

In addition to the prosecutions that have been brought against the IHD headquarters in Ankara and several IHD branches, many other Turkish NGOs and concerned professional organisations have faced State repression due to their involvement in the prison crisis.

According to the testimony of other NGOs interviewed by the observer mission, the range of intimidation and harassment waged against human rights groups has included office raids, indictments for “support of illegal organisations,” threatening phone calls and e-mails, and confiscation of papers.

The Turkish Medical Association (TMA), which represents some 66,000 of Turkey’s 80,000 doctors country-wide, has remained deeply concerned about its ability to monitor the situation of the hunger strikers and death fasters since the hunger strikes first began. As early as November 2000, the TMA issued flyers detailing its position on the hunger strike situation.

⁵⁵ There are two IHD offices in Ankara, the IHD headquarters and a branch office.

These flyers included information about the TMA's recent experience with hunger strikers in Turkey in 1996 and information about appropriate types of medical treatment in the situation. In turn, Turkey has issued a case against the Turkish Medical Association (TMA) claiming that TMA statements about the December 2000 prison operation were "activities in breach of its statute" and that TMA doctors who examined prisoners at Bursa prison had "disobeyed the order of authorised officers."

Many groups interviewed by the observer mission expressed deep concern about the state of freedom of expression in relation to the prison crisis. Pointing to what appears to have been the active manipulation by the State of the media to blackout their coverage of the December prison raids, interviewees repeatedly described the State Security Courts' actions in December as organised censorship. One week after the raids, a media ban against reporting on the prison operations was placed upon newspapers and other media outfits. Papers that defied the ban and reported on the events of 19 December were confiscated. Considering the concentrated ownership of Turkey's media in the hands of the three central Turkish media conglomerates - the Uzan, Doğan and Sabah groups - who control 70% of the country's media, it was relatively easy for the State to implement this ban. One of the few major newspapers to defy the ban in the winter, *Radikal*, has found itself facing court indictments for reporting on the prison raids. As in the cases opened against human rights organisations, the State frequently relies on the Anti-terror Law to prosecute journalists and editors who, under the terms of the law, are not to use the names of "illegal organisations" or write about the "activities of illegal organisations".

Journalist Can Dundar, who wrote two articles about the prison raids in the daily newspaper *Sabah*, - the first published on 20 December 2000 and the second on 25 December 2000 - was indicted by the Istanbul DGM prosecutor on 19 March 2001.⁵⁶ According to his indictment, Mr Dundar, who is also a member of the Contemporary Journalists Association of Turkey, was responsible for writing "propaganda [that] was disseminated for illegal terror organisations." In turn, his indictment indicates that in writing the articles "assistance has therefore been rendered to illegal terror organisations." Mr Dundar's case is currently on-going.

iii. Harassment and intimidation of prisoners' family members⁵⁷

Relatives of political prisoners with whom the observer mission spoke also identified a range of harsh measures suffered during visits to see their family member in prison. Types of harassment and intimidation have included prolonged denial of access to their family members following the December 2000 operation, videotaping and tape-recording of conversations and humiliating strip searches.

2. Harassment of Human Rights Lawyers: The right to offer and provide judicial support to political prisoners under threat

The treatment suffered by political prisoners in Turkey, which has worsened over the course of the last decade, is similarly faced by the lawyers who defend them. Since December 2000, the harassment and intimidation of the lawyers of political prisoners has risen acutely.

⁵⁶ See Appendix C for a translated version of Can Dundar's 20 December 2000 article, "Bayrampaşa Records"; Appendix D for his 25 December 2000 article, "'We couldn't make them understand'; and Appendix D for a copy of his 19 March 2001 indictment in both Turkish and in English translation.

⁵⁷ See also Part 1, section 2-i-2, Torture and ill-treatment during the operation and transfer of prisoners to F-type prisons, above.

Lawyers from the Contemporary Lawyers Association in Ankara have documented the systematic and worrying violation of the right to offer and provide legal counsel since the December prison transfers. Since December, many lawyers have either been banned from seeing or attending to their clients or have been given only limited access into the F-type prisons. In the current crisis, the range of harassment faced by human rights lawyers includes systematic and humiliating body searches at the new prisons, confiscation of legal files, threats from prison staff and office raids.

Both the United Nations Committee on Human Rights and the Committee Against Torture, in criticising the practice of incommunicado detention, have stressed that detainees must be given an opportunity to consult with lawyers.⁵⁸ In spite of these conclusions, on 14 January 2000, Turkey's three Ministries of Justice, the Interior and Health adopted the so-called "Tripartite Protocol" that provides a legal basis for the harassment of lawyers making prison visits. Over and above the violation of lawyer-client confidentiality (Articles 1, 4, and 6 of this Protocol), though protected by Article 144 of the Turkish Code of Criminal Procedure which states that "correspondence between the accused and his defence can, under no circumstances, be checked," the "Tripartite Protocol" not only permits the searching of lawyers' briefcases but also allows for restrictions on lawyers' visits and eavesdropping on private conversations between prisoners and lawyers.

Lawyers with whom the observer mission met described the behaviour of different prison administrations as strangely arbitrary. In addition there appears to be a lack of uniformity in the procedures implemented from prison to prison. For example, lawyers described situations in which they were kept for random lengths of time before being allowed to see their clients. In one instance, although a lawyer had 5 clients to see, he was able to see just one before being told that this was all he would be allowed for the day. At Edirne prison, lawyers are allowed to meet their clients only between the hours of 3:00 p.m. and 5:00 p.m., however on Fridays, although they can go to the prison from 8:00 a.m. until 5:00 p.m., they are allowed just 30 minutes to meet their client.

In this context, the delegation recalls the Recommendation of the Committee of Ministers of the Council of Europe to Member States on the Freedom of Exercise of the Profession of Lawyers which states that lawyers should enjoy freedom of belief, expression, movement, association and assembly and should have access to their clients, including in particular to persons deprived of their liberty, to enable them to counsel in private and to represent their clients according to established professional standards.⁵⁹

⁵⁸ See CAT reports: *Libyan Arab Jamahiry*, 11 May 1999, A/54/55, para. 182(a) and 197; *Czech Republic*, 14 May 2001, CAT/C/XXVI/Concl. 5/Rev.1, para. 9(d); *Kazakhstan*, 17 May 2001, CAT/C/XXVI/Concl. 7/Rev. 1, para 9(f); *China*, 9 May 2000, A/55/44, para. 12; and *Germany*, 11 May 1998, A/53/44, para. 179-195. Also United Nations Committee on Human Rights, CCPR General Comment 20, 10 April 1992, para. 11.

⁵⁹ Council of Europe, Rec (2000) 21 of the Committee of Ministers to Members States on the Freedom of Exercise of the Profession of Lawyers, adopted on 25 October 2000.

CONCLUSIONS

The atmosphere of fear that continues to be generated by the genuine threat of torture and ill-treatment in custody in Turkey has had a devastating effect on the relationship between the citizens of Turkey and the State. The absence of independent and impartial enquiries to apportion responsibility for deaths in detention which have resulted from torture or armed interventions by the security forces demonstrates the lack of will on the part of the Turkish authorities to combat impunity and bring its Constitution and penal laws in line with the European and international standards to which the Turkish State has committed itself.

Many prisoners, including the recently-released political prisoners the delegation met in Ankara, have submitted formal complaints about the excessive and disproportionate violence and ill-treatment they suffered in the course of the December 2000 prison intervention and their transfer to F-type prisons. The Turkish authorities indicated that they would provide an update on the investigations being carried out by public prosecutors in relation to the prison interventions of December 2000. However, rather than initiating investigations into the actions of the security forces, the Turkish State has instead commenced investigations against the prisoners themselves.

In light of this failure, the repeated excessive and disproportionate use of force by the Turkish authorities against prisoners since 1995 calls for a firm reaction on the part of all international and European organisations, and perhaps most importantly by the European Union which is in a position to urge Turkey to take the necessary measures to put a stop to this ongoing state of impunity.

Turkish detention centres continue to be dangerously closed to the outside world. Torture in custody will continue unless Turkish law is changed to ensure that the right of access to lawyers is guaranteed for all detainees. To be truly transparent and just, the supervision of prisons by local governors and prosecutors must be accompanied by monitoring via independent bodies unconnected with the State.

The impact of international and national prison monitoring visits in helping to prevent prison abuses has been recognised in recent recommendations by international bodies including the European Union. As stated in the guidelines regarding torture and other cruel, inhuman or degrading treatment or punishment adopted on 9 April 2001 by the General Affairs Council of the European Union, "*The European Union will urge third countries to take, inter alia, the following measures: 'Allow visits by suitable qualified representatives of civil society of places where persons deprived of their liberty are held'*".⁶⁰ So too has the UN Special Rapporteur on Torture Sir Nigel Rodley noted in his annual report issued in January 2001, that he "...consistently recommends external supervision of all places of detention by independent officials, such as judges, prosecutors, Ombudsmen and national or human rights commission, as well as by civil society."⁶¹ The CPT too has proposed similar recommendations, urging that the prison monitoring boards and supervisory judges to be implemented by Turkish authorities should be given a prominent role in the development of communal activities for prisoners held in F-type prisons.

People who are imprisoned, whatever the reason, are still entitled to respect for the full range of their human rights. Measures that are paraded as improvements in conditions, such as the move to smaller cells, should not be used as an excuse to bring about greater abuses. The reality of the F-type system is isolation and vulnerability to torture and ill treatment. In this

⁶⁰ http://europa.eu.int/comm/external_relations/human_rights/torture/guideline_en.htm

⁶¹ Report of the Special Rapporteur on Torture, Sir Nigel Rodley, E/CN.4/2001/66, 25 January 2001, para. 1131.

new system, the right to association, essential for the well-being and mental health of prisoners, has been denied. Worse, the change to the new system was carried out with disproportionate force, causing violations of the right to life and other fundamental rights. Further, those people in Turkey courageous enough to speak out about these violations have also found their own rights have been violated. Meanwhile, more die as the hunger strikes continue.

RECOMMENDATIONS

The Euro-Mediterranean Network for Human Rights Network, the Kurdish Human Rights Project and the World Organisation Against Torture urge Turkey to:

1. Diligently and urgently pursue the investigations of the prison operations that took place in December, especially with regard to the excessive and disproportionate use of force, the revelations concerning the use of chemical substances and special bullets, and the acts of torture that were perpetrated during the operations carried out on 19 December 2000 and during the transfer of prisoners to the F-type prisons. Turkey should carry out a full, impartial and effective investigation and promptly publish the results of this investigation. Turkey should ensure that those responsible are prosecuted without delay and should further provide appropriate and adequate reparation to the victims;
2. Enter meaningful negotiations in the desperate prison situation which has prevailed since the forced introduction of F-type prisons in December 2000 with a view to bringing about an immediate resolution. Minor reforms proposed by the Government are no substitute for the genuine effort needed to initiate dialogue with the prisoners who have been on hunger strike for the past year;
3. Take effective legislative, administrative, judicial or other measures to prevent torture or ill-treatment, take steps to carry out full and effective investigations where torture or ill-treatment occur, prosecute those responsible and provide appropriate reparation to the victims;
4. Promptly apply the right to association with others and communal activities to any prisoner placed under the Turkish penitentiary administration's jurisdiction and establish a real and unconditional right to association, limited only for disciplinary measures in accordance with Articles 27-32 of the United Nations Standard Minimum Rules for the Treatment of Prisoners;
5. Establish, in the context of a global approach to the problems of penitentiary centres in Turkey, independent prison monitoring groups to inspect and report on implementation of Article 16 and the conditions within Turkish prisons and to further allow non-governmental organisations and others sectors of civil society to make regular visits to detention centres and to have confidential conversations with all persons deprived of their liberty;
6. Bring the administration of justice and the prison sentences into line with Article 10 of the International Covenant on Civil and Political Rights by ending the humiliating practice of searches on prison visiting days, by lifting restrictions on visits by lawyers and families of detainees and by preventing de jure and de facto acts of violence during transfers from the place of detention to the court and/or other prisons;
7. Allow independent doctors free access to detention centres so as to investigate allegations of excessive force and torture and other cruel, inhuman or degrading treatment or punishment; to allow detainees access to adequate treatment; and to ensure that medico-legal autopsies are carried out by trained forensic specialists in accordance with internationally recognised standards; and
8. Abide by provisions of the Declaration on the Protection of Human Rights Defenders adopted on the 9 December 1998 by the UN General Assembly, particularly Article 1 and

Article 6(c) which mandate that “*everyone has the right, individually and in association with others, to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and through these and other appropriate means, to draw public attention to those matters.*” Furthermore, with respect to the Copenhagen criteria and the Barcelona Declaration, we urge the Turkish Government to put an end to any kind of harassment directed at human rights organisations and human rights defenders including concerned journalists, doctors, lawyers and all defenders of democracy in the Turkey, and ensure that these groups and individuals be allowed to carry out their work without obstacles.

The Euro-Mediterranean Network for Human Rights Network, the Kurdish Human Rights Project and the World Organisation Against Torture urge the international community, including the European Union and the United Nations, to:

1. Urge Turkey to implement all of the recommendations made above;
2. Monitor necessary penal and prison reforms in compliance with international standards, in particular the United Nations Convention against Torture and other cruel, inhuman or degrading treatment or punishment and the United Nations Standard Minimum Rules for the Treatment of Prisoners; and use all means at their disposal to encourage Turkey to implement reforms and end the current crisis; and
3. Engage Turkey in concrete programs of action and prevention, and show their condemnation of torture and other cruel, inhuman and degrading treatment or punishment in Turkey by, *inter alia*, making *demarches*, requesting information on allegations of torture or ill-treatment and issuing public statements urging Turkey to undertake effective measures against torture and ill-treatment, to guarantee that any allegation of torture and ill-treatment will be investigated rapidly and in depth by an independent body authorised to bring criminal charges. The European Union has recently identified the fight against torture as a priority issue and adopted special torture policy guidelines designed “to support and strengthen the on-going effort to prevent and eradicate torture and ill-treatment in all parts of the world”. In the context of the current F-type prison monitoring, the delegation calls on the European Union to apply these guidelines as a matter of priority.