

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/TUR/CO/3)

TURKEY

(...)

C. Main subjects of concern and recommendations

(...)

Torture and impunity

7. The Committee is gravely concerned about numerous, ongoing and consistent allegations concerning the use of torture, particularly in unofficial places of detention, including in police vehicles, on the street and outside police stations, notwithstanding information provided from the State party that combating torture and ill-treatment has been a “priority item” and while noting the reported decrease in the number of reports on torture and other forms of cruel, inhuman or degrading treatment and punishment in official places of detention in the State party. The Committee is furthermore concerned by the absence of prompt, thorough, independent and effective investigations into allegations of torture committed by security and law enforcement officers which are required by article 12 of the Convention and at the pattern of failure to conduct these. It is also concerned that many law enforcement officers found guilty of ill-treatment receive only suspended sentences, which has contributed to a climate of impunity. In this respect, it is a matter of concern to the Committee that prosecutions into allegations of torture are often conducted under article 256 (“excessive use of force”) or article 86 (“intentional injury”) of the Penal Code, which proscribe lighter sentences and the possibility for suspended sentences, and not under articles 94 (“torture”) or 95 (“aggravated torture due to circumstances”) of the same Code (art. 2).

The State party should take immediate measures to end impunity for acts of torture. In particular, the State party should ensure that all allegations of torture are investigated promptly, effectively and impartially. In connection with prima facie cases of torture and ill-treatment, the State party should ensure that the alleged suspect is subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation or continue any impermissible actions in breach of the Convention. The State party should also ensure that guidelines are in place to determine when articles 256 and 86 of the Penal Code will be required to prosecute ill-treatment instead of article 94. Further, the State party should immediately establish effective and

impartial mechanisms to conduct effective, prompt and independent investigations into all allegations of torture and ill-treatment, and ensure that perpetrators of torture are prosecuted under article 94 (“torture”) and 95 (“aggravated torture”) so as to ensure that torture is punished by appropriate penalties as required by article 4 of the Convention.

Absence of effective, prompt and independent investigations into complaints

8. The Committee is concerned at the continuing failure of authorities to conduct effective, prompt and independent investigations into allegations of torture and ill-treatment. In particular, the Committee is concerned at reports that prosecutors face obstacles in effectively investigating complaints against law enforcement officers and that any such investigations pursued are commonly conducted by law enforcement officers themselves, a procedure which lacks independence, impartiality and effectiveness, notwithstanding Circular No. 8 of the Ministry of Justice pursuant to which investigations concerning allegations of torture and ill-treatment shall be conducted by the Public Prosecutor and not by law enforcement officers. In this respect, the Committee is further concerned at the lack of clarity surrounding the current system of administrative investigation into allegations of police abuse, which lacks impartiality and independence, and that prior authorization for investigating the highest level law enforcement officers is still permitted under the Criminal Procedure Code. The Committee is also concerned by reports that independent medical documentation of torture are not entered into evidence in court rooms and that judges and prosecutors only accept reports by the Ministry of Justice’s Forensic Medicine Institute. Furthermore, while noting the project launched in 2006 to introduce an “Independent Police Complaints Commission and Complaints System for the Turkish Police and Gendarmerie”, the Committee is concerned that no independent police complaints mechanism is yet in place. The Committee is concerned about a pattern of delays, inaction and otherwise unsatisfactorily handling by authorities of the State party of investigations, prosecutions and conviction of police, law enforcement and military personnel for violence, ill-treatment and torture offences against its citizens (arts. 12 and 13).

The Committee calls on the State party to strengthen ongoing efforts to establish impartial and independent mechanisms to ensure effective, prompt, and independent investigations into all allegations of torture and ill-treatment. As a matter of priority, the State party should:

(a) Strengthen the efficiency and independence of public prosecution by increasing the number, authority and training of investigating prosecutors and judicial police;

(b) Ensure preservation of evidence until the arrival of the prosecutor and instruct courts to consider the possibility of tampered or missing evidence as central factors in trial proceedings;

(c) Ensure that prosecutors and judicial officers read and evaluate all medical reports documenting torture and ill-treatment from medical personnel and forensic doctors, irrespective of institutional affiliation, who are competent and have specialized training on the

Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);

(d) Establish an independent police complaint mechanism, as planned for by the Ministry of Interior;

(e) Amend article 161, paragraph 5, of the Criminal Procedure Code, as amended by article 24 of Law No. 5353 of 25 May 2005, in order to ensure that special permission is not needed to prosecute high level officials accused of torture or ill-treatment. To the same effect, the State party should repeal article 24 of Law No. 5353.

(...)

Failure to investigate disappearances

9. The Committee is concerned at the lack of information from the State party on progress made in the investigation into cases of disappearances. In particular, the Committee is concerned at: (a) the number of outstanding cases of disappearances identified by the Working Group on Enforced and Involuntary Disappearances (63 cases as of 2009), and (b) at the lack of information on progress in investigating disappearances cases for which the State party has been found in violation of articles 2, 3 and 5 under the European Convention of Human Rights (*Cyprus v. Turkey* and *Timurtas v. Turkey* of the European Court of Human Rights). The Committee is further concerned at the lack of: (a) information on the effective, independent and transparent investigations into such cases, and, if appropriate, prosecutions and convictions of perpetrators; and (b) due notification of the results of such investigations and prosecutions to family members of individuals who have disappeared. This lack of investigation and follow-up raises serious questions with respect to the State party's failure to meet its obligations under the Convention and, as concluded by the European Court of Human Rights, constitutes a continuing violation with respect to relatives of the victims (arts. 12 and 13).

The State party should take prompt measures to ensure effective, transparent and independent investigations into all outstanding cases of alleged disappearances, including those cited by the European Court of Human Rights (*Cyprus v. Turkey* and *Timurtas v. Turkey*) and those identified by the Working Group on Enforced and Involuntary Disappearances. As appropriate, the State party should carry out prosecutions. The State party should notify relatives of the victims of the outcomes of such investigations and prosecutions. The Committee furthermore calls upon the State party to consider signing and ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.

(...)

Restrictions on fundamental legal safeguards

11. The Committee is concerned at restrictions in the enjoyment of fundamental legal safeguards against torture and ill-treatment as a result of the introduction of new laws and amendments to the 2005 Code of Criminal Procedure. In particular, the Committee is concerned: (a) at the denial of a suspect's right to contact a lawyer until 24 hours after arrest under the Law on Combating Terrorism (Law No. 3713); (b) at the denial of of legal aid for suspects accused of offences carrying a sentence of less than five years of imprisonment (Law No. 5560); (c) at the absence of a statutory right to an independent medical examination; and (d) that the statutory right to immediate access to a medical doctor is restricted to convicted prisoners (art. 94, Law No. 5275). The Committee is concerned at reports of the presence of a public official during the medical examination of a detainee notwithstanding that this is forbidden by law unless the medical personnel so requests for reasons of personal security. (art. 2)

The State party should ensure by law and in practice that all detainees are guaranteed the right to have prompt access to a lawyer, to notify a family member and to an independent medical examination from the very outset of their detention. The State party should ensure that it upholds patient-doctor confidentiality during such medical examinations.

(...)

28. **The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 7, 8, 9 and 11 of the present document.**

(...)
