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Foltering in Turkije: tweede publieke verklaring van het CPT

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FOLTERING IN TURKIJE: TWEEDE PUBLIEKE VERKLARING VAN HET CPT

Op 6 december 1996 heeft het *Europees Comité inzake de voorkoming van foltering en onmenselijke of vernederende behandeling of bestraffing* een publieke verklaring afgelegd over foltering en andere vormen van ernstige mishandeling in Turkije. De tekst van de verklaring is hieronder integraal weergegeven.

Achtergrond

Het Comité (naar zijn Engelse naam afgekort tot CPT) werkt doorgaans achter de schermen. Op basis van het *Europees Verdrag inzake de voorkoming van foltering en onmenselijke of vernederende behandeling of bestraffing* (1987) heeft het Comité de bevoegdheid in de Verdragsstaten alle plaatsen te bezoeken waar personen op last van de overheid worden vastgehouden. De Verdragsstaten worden met dat doel bij toerbeurt bezocht (idealiter eens in de twee jaar) of, als daartoe aanleiding is, op ad hoc-basis. Na ieder bezoek stelt het CPT een rapport op waarin het zijn bevindingen beschrijft en zo nodig aanbevelingen doet. Hoewel deze rapporten in beginsel vertrouwelijk zijn, hebben vrijwel alle Verdragsstaten gebruikgemaakt van de mogelijkheid die het Verdrag biedt om openbaarmaking van het rapport te verzoeken. Doorgaans werd tegelijkertijd ook het commentaar gepubliceerd dat het desbetreffende land op het CPT-rapport had geleverd.

In het geval van Turkije heeft het CPT verschillende bezoeken gebracht, soms op ad-hoc, soms op reguliere basis. Van het meest recente bezoek is kort verslag gedaan in *NJCM-Bulletin* jrg 21 (1996), nr 7, p. 949. De rapporten van deze bezoeken zijn niet gepubliceerd.

Pas éénmaal eerder ging het CPT over tot het uitbrengen van een eenzijdige publieke verklaring; ook dat geval betrof Turkije. Die verklaring is weergegeven in *NJCM-Bulletin* jrg 18 (1993), nr 2, pp. 175-183.

De tweede publieke verklaring

Artikel 10 lid 2 van het CPT-Verdrag noemt twee mogelijke gronden voor een openbare verklaring: indien een staat geen medewerking verleent of indien deze weigert de situatie te verbeteren in de zin van de aanbevelingen van het Comité. In de onderhavige verklaring geeft het CPT niet aan welke grond van toepassing is.

Opvallend is dat het CPT uitdrukkelijk spreekt van een *praktijk* van foltering; zie bijvoorbeeld de laatste zin van § 2 ('the practice of torture and other forms of severe ill-treatment') en § 10 ('a common occurrence'). Het Europees Hof voor de Rechten van de Mens heeft tot nu toe niet zover willen gaan. In de zaak *Akdivar t. Turkije* oordeelde het Hof dat het aangedragen bewijsmateriaal onvoldoende was om de stelling te rechtvaardigen dat Koerdische dorpen systematisch werden platgebrand (zie *NJCM-Bulletin* jrg 21 (1996), nr 8, pp. 1105, § 88). Dezelfde stelling werd herhaald in het arrest *Aksoy t. Turkije* dat elders in dit *Bulletin* is opgenomen: het Hof achtte weliswaar bewezen dat de klager het slachtoffer was geworden

van foltering in de zin van artikel 3 EVRM, maar vond onvoldoende bewijzen om van een 'administrative practice' te spreken (zie § 109 van dat arrest). Overigens was Aksoy onderworpen geweest aan de zogenaamde *Palestinian hanging*, een behandeling die kennelijk ook is toegepast op zeven personen die door het CPT zijn onderzocht (zie § 3, tweede alinea, van de verklaring).

De verklaring van het CPT lijkt mede te zijn ingegeven door een in november 1996 aanhangig gemaakt wetsontwerp (zie § 8). Andere opvallende elementen in de verklaring: er zijn wel regels opgesteld om foltering en mishandeling tegen te gaan, maar daaraan wordt slechts lippendienst bewezen (§§ 4-5); de artsen die gedetineerden onderzoeken moeten in volle vrijheid kunnen werken (§ 6); het OM dient klachten over foltering voortvarend en effectief te onderzoeken (§ 7; vgl. *Aksoy* §§ 95-100); onmiddellijke toegang tot een advocaat moet verzekerd zijn (§ 9; vgl. *Aksoy* § 83). Het CPT maakt tot slot korte metten met het argument dat foltering zou zijn ingegeven door het terrorisme in Zuid-Oost Turkije (§ 11).

Op het moment van schrijven is mij geen officiële reactie van de Turkse regering bekend.

R.A. Lawson

(Voor de verklaring van het CPT zie volgende pagina e.v.)

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**European Committee for the Prevention of Torture and
Inhuman or Degrading Treatment or Punishment**

Public Statement on Turkey

This public statement is made under Article 10, paragraph 2, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

1 In its public statement on Turkey of 15 December 1992, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) summarised the facts found during its visits to Turkey between 1990 to 1992. It concluded that the practice of torture and other forms of severe ill-treatment of persons in police custody – both ordinary criminal suspects and persons held under anti-terrorism provisions remained widespread. Different types of action required to address that problem were identified in paragraphs 26 to 36 of the statement. Over the intervening four years, the CPT has striven to secure the full implementation of those measures

2 Some progress has been made. The Turkish authorities have issued a multitude of instructions and circulars, further, training programmes and human rights education strategies have been devised. However, the translation of words into deeds is proving to be a highly protracted process. The CPT's findings in the course of a visit to Turkey in October 1994 demonstrated that torture and other forms of severe ill-treatment were still important characteristics of police custody in that country. This led to an intensification of the dialogue between the Turkish authorities and the CPT. Nevertheless, the Committee has continued to receive credible reports of torture and ill-treatment by Turkish law enforcement officials throughout 1995 and 1996. Further, in the course of visits to Turkey in 1996, CPT delegations have once again found clear evidence of the practice of torture and other forms of severe ill-treatment by the Turkish police

3 The CPT's most recent visit took place in September of this year. Police establishments in Adana, Bursa and Istanbul were visited, and the delegation also went to three prisons in order to interview certain persons who had very recently been in police custody in Adana and Istanbul

A considerable number of persons examined by the delegation's three forensic doctors displayed marks or conditions consistent with their allegations of recent ill-treatment by the police, and in particular of beating of the soles of the feet, blows to the palms of the hands and suspension by the arms. The cases of seven persons (four women and three men) medically examined at Sakarya Prison, where they had very recently arrived after a period of custody in the Anti-Terror Department at Istanbul Police Headquarters, must rank among the most flagrant examples of torture encountered by CPT delegations in Turkey. To focus only on their allegations of prolonged suspension by the arms, motor function and/or sensation in the upper limbs of all seven persons was found to be impaired – for most of them severely – and several of them bore ecchymoses or tumefactions in the axillary region which were also clearly indicative of a recent suspension by the arms. Two of the persons examined had lost the use of both arms, these sequelae could prove irreversible

Further, as had been the case in October 1994 and during earlier CPT visits, the delegation once again found material evidence of resort to ill-treatment, in particular, an instrument adapted in a way which would facilitate the infliction of electric shocks and equipment which could be used to suspend a person by the arms. The objects concerned were discovered in Building B of Istanbul Police Headquarters, they rendered all the more credible allegations of ill-treatment made to the delegation by persons in the custody of the Narcotics Department (which is located in Building B), allegations which were also supported by observations of medical members of the delegation

The CPT forwarded a detailed account of its delegation's findings to the Turkish authorities, however, the reply received from those authorities on 22 November 1996 signally failed to acknowledge the gravity of the situation

4 Much of the legal and regulatory framework necessary to combat torture and ill-treatment is in place in Turkey. However, notwithstanding injunctions issued at the highest political level, in practice those measures are being ignored

5 By Circular of 13 February 1995, the Prime Minister directed the Minister of the Interior to issue instructions designed to ensure that persons taken into custody are not ill-treated, irrespective of their alleged offence, the Prime Minister identified a number of specific points to be included in those instructions. On 16 February 1995, corresponding instructions to all law enforcement agencies and Governors' Offices were issued by the Minister of the Interior. The CPT commented at the time that if given full effect in practice, those instructions would represent a turning point in respect for human rights in Turkey. Regrettably, it is clear from the information gathered by the Committee in the course of subsequent visits to Turkey that those instructions are not yet being fully complied with, in fact, little more than lip service is being paid to them.

It is incumbent upon the State to ensure that its injunctions are obeyed. The need is not for more circulars, but rather for effective control and supervision of the activities of law enforcement agencies. In this connection, the CPT has noted with interest that, on 29 November 1996, the Minister of the Interior announced that Ministry officials shall henceforth carry out unannounced inspections of law enforcement agencies in order to investigate whether the treatment of detained persons is in accordance with pre-existing orders. The Committee looks forward to receiving information on concrete action taken as a result of those inspections.

6 Particular reference should be made to the work of doctors appointed by the State to carry out forensic tasks, a matter to which the CPT has given considerable attention in the course of its dialogue with the Turkish authorities. The present system of detained persons being routinely examined by a forensic doctor at the end of their period of police custody is, in principle, a significant safeguard against ill-treatment. However, certain conditions must be met: the forensic doctor must enjoy formal and de facto independence, have been provided with specialised training and been allocated a mandate which is sufficiently broad in scope. If these conditions are not met – as is frequently the case – the present system can have the perverse effect of rendering it all the more difficult to combat torture and ill-treatment.

A series of Circulars have been issued by the Ministry of Health on this subject, in particular, a Ministry of Health Circular of 22 December 1993 – subsequently endorsed in the Minister of the Interior's instructions of 16 February 1995 sets out the required content of forensic certificates drawn up following the examination of persons detained by the law enforcement agencies. Despite this, the great majority of forensic certificates seen by the CPT over the last three years have not met the requirements of that Circular.

Measures need to be taken to ensure that there is full compliance with all of the above-mentioned Circulars and, more generally, that doctors called upon to perform forensic tasks can carry out their work free from any interference. Further, the necessary resources should be made available in order to allow the training programme for doctors called upon to perform forensic tasks – recently devised by the Ministry of Health – to be implemented throughout Turkey without delay.

7 The CPT also feels obliged to stress once again that public prosecutors must react expeditiously and effectively when confronted by complaints of torture and ill-treatment. On countless occasions over the last seven years – most recently during the visit in September 1996 – the Committee has



received allegations that detained persons did complain about treatment received at the hands of the police when brought before the public prosecutor, but that the latter displayed no interest in the matter. The CPT has itself detected, amongst some of the public prosecutors whom it has met, a tendency to seek to defend the police rather than to view objectively the matter under consideration.

Similarly, when cases are brought to court, it is of crucial importance that suitable penalties are imposed in the event of ill-treatment being proven. In this connection, the CPT believes that the Turkish authorities would be well advised closely to analyse judgements in recent years involving convictions under Articles 243 (obtaining confessions by torture or inhuman treatment) and 245 (ill-treatment inflicted by law enforcement officials) of the Criminal Code, in order to ascertain whether the courts' decisions in the cases concerned correspond to the seriousness of the offences involved.

8 Since 1990, the CPT has been calling upon the Turkish authorities to reduce the maximum periods for which persons suspected of offences falling under the jurisdiction of State Security Courts can be held in police custody. Such suspects can still be held incommunicado for long periods by the police (up to 15 days, rising to 30 days in regions where a state of emergency has been declared), a situation which clearly facilitates the infliction of torture and ill-treatment. A possible reduction of the above-mentioned custody periods has been debated in Turkey from time to time, the idea surfacing once again in the course of this year. The CPT has been informed that, on 27 November 1996, the Government submitted a Bill on this subject to the Grand National Assembly.

According to the information provided to the CPT by the Turkish authorities, that Bill provides for the maximum period of police custody for collective offences (i.e. those involving three or more persons) falling within the jurisdiction of State Security Courts to be reduced from fifteen to four days, with a possible extension to seven days by decision of a judge, as regards regions where a state of emergency is in force, the maximum period would be reduced from thirty to seven days, with a possible extension to ten days. Such provisions, if enacted, would obviously represent a significant step in the right direction.

9 However, the CPT has always stressed that the reduction of maximum periods of police custody should be accompanied by a strengthening of the safeguards against ill-treatment for persons suspected of offences falling under the jurisdiction of State Security Courts. At present, such persons are routinely denied all contact with the outside world whilst in police custody - a propitious state of affairs for the infliction of ill-treatment, regardless of how long the period of police custody may be.

The CPT has been informed that the Bill provides for a right of access to a lawyer after four days. In other words, access to a lawyer shall continue to be denied for four days, this is not acceptable. The possibility for persons taken into police custody to have access to a lawyer as from the outset of their deprivation of liberty is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons, moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs. The CPT recognises that in order to protect the interests of justice, it may exceptionally be necessary to delay access by detained persons to a particular lawyer of their choice for a certain period. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer who can be trusted not to jeopardise the legitimate interests of the police investigation should be arranged. It should be added that the CPT has received no information on whether or how the Bill addresses other fundamental safeguards against ill-treatment.

The CPT wishes to reiterate that all persons detained by the police – irrespective of the offence of which they are suspected – should be granted, as from the outset of their custody, the right of access to an independent lawyer (although not necessarily their own lawyer) and to a doctor other than one selected by the police. Further, they should in principle have the right immediately to notify their next of kin of their situation, any possibility exceptionally to delay the exercise of that right should be clearly defined and strictly limited in time. The Committee trusts that full consideration will be given to these remarks when the above-mentioned Bill is examined by the Grand National Assembly.

10 The information at the CPT's disposal demonstrates that resort to torture and other forms of severe ill-treatment remains a common occurrence in police establishments in Turkey. To attempt to characterise this problem as one of isolated acts of the kind which can occur in any country – as some are wont to do – is to fly in the face of the facts.

11 It is frequently argued that the existence of torture and ill-treatment in Turkey is closely linked to the scale of terrorist activities in that country.

On more than one occasion, the CPT has made clear that it abhors terrorism, and has recognised the serious difficulties faced by the Turkish authorities in this regard. Multi-faceted terrorist violence exists throughout Turkey and, in the South-East region of the country, has caused major security and humanitarian problems. Turkey is entitled to the understanding and support of others in its struggle against this destructive phenomenon.

However, the Committee has also emphasised that the response to terrorism must never be allowed to degenerate into acts of torture or other forms of ill-treatment by law enforcement officials. Such acts are both outrageous violations of human rights and fundamentally-flawed methods of obtaining reliable evidence for combatting crime; to refrain from resorting to such acts is one of the hallmarks of a democratic State.

Further, the information gathered by the CPT in the course of its visits to Turkey shows clearly that torture and ill-treatment are also inflicted by law enforcement officials upon ordinary criminal suspects. Consequently, it would be quite wrong to assume that the problem of torture and ill-treatment is simply an unfortunate consequence of the scale of terrorism in Turkey. The problem may well have been exacerbated by terrorism, but its roots go far deeper.

12 Article 17, paragraph 3, of the Constitution of the Republic of Turkey proclaims that "No one shall be subjected to torture or ill-treatment, no one shall be subjected to a penalty or to treatment incompatible with human dignity." The CPT's only aim in making this public statement is to motivate the Turkish authorities to take decisive action to convert those fundamental principles into reality. In pursuit of that objective and in furtherance of its mandate, the Committee is fully committed to continuing its dialogue with the Turkish authorities.

