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大会 2006 年 3 月 15 日题为“人权理事会”的第 60/251 号决议的执行情况

2007 年 2 月 20 日土耳其共和国驻联合国日内瓦办事处常设代表团致人权事务高级专员办事处的普通照会

土耳其共和国驻联合国日内瓦办事处和瑞士其他国际组织常设代表团向联合国人权事务高级专员办事处致意，谨附上土耳其共和国政府对在打击恐怖主义的同时增进和保护人权及基本自由问题特别报告员 Martin Scheinin 先生 2006 年 2 月 16 日至 23 日访问土耳其的报告(A/HRC/4/26/Add.2)提出的评论和意见 *。

土耳其共和国常设代表团谨请将所附文件作为人权理事会第四届会议的正式文件分发。

土耳其共和国常设代表团借此机会再次向联合国人权事务高级专员办事处致以最崇高的敬意。

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* 附件不译，原文照发。

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ANNEX

The observations of the Government of the Republic of Turkey regarding the report by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin (Mission to Turkey from 16 to 23 February 2006) (A/HRC/4/26/Add.2)

1. As a country that has extended a Standing Invitation to the Special Procedures assumed by the Human Rights Council and that attaches importance to cooperation with this mechanism, Turkey agreed to extend an invitation to the Special Rapporteur, Mr. Martin Scheinin, for his visit to Turkey from 16 to 23 February. Mission to Turkey was the Special Rapporteur's first country visit since his appointment as mandate holder on 8 August 2005.

2. Upon the conclusion of the visit, the Special Rapporteur prepared a Preliminary Note (E/CN.4/2006/98/Add.2) for the second session of the Human Rights Council (18 September – 6 October 2006). The Government of the Republic of Turkey submitted her comments and observations with regard to the Preliminary Note in document "A/HRC/2/G/3", which was circulated at the Second Session of the Human Rights Council. The Preliminary Note by the Special Rapporteur was discussed during the interactive dialogue with the Special Procedures at the Second Session of the Human Rights Council.

3. The Special Rapporteur has prepared a final report on his visit to Turkey, which has been submitted to the fourth session of the Human Rights Council (12 March – 5 April 2007).

4. Further observations of the Government of the Republic of Turkey concerning the final report (A/HRC/4/26/Add.2) by the Special Rapporteur, are provided herewith.

5 Firstly, Turkey notes with satisfaction the Special Rapporteur's appreciation for the full cooperation and open dialogue of the Government of the Republic of Turkey as well as for the realization of the visit without any limitations or constraints, which reflects Turkey's policy of openness and cooperation with international human rights mechanisms.

The mandate of the Special Rapporteur (Paragraphs 6, 59-70, 86, 87, B/(m), (n))

6. It is indicated in paragraph 6 of the report that according to the Special Rapporteur his mandate also includes "*issues such as sustainable strategies to prevent acts of terrorism, inter alia, through addressing the root causes or, more appropriately, conditions conducive to terrorism*".

7. Turkey is of the opinion that the mandate of the Special Rapporteur is clearly defined in paragraph 14/a-e of the Resolution 2005/80 of the Commission on Human Rights. The provisions in paragraph 14 of the Resolution contain no direct or indirect reference to issues such as root causes or prevention of terrorism. Therefore, Turkey believes that the mandate of the Special Rapporteur does not include "*root causes or conditions conducive to terrorism with a view to devising sustainable strategies on the prevention of terrorism*". In this regard, the Report

(E/CN.4/2006/98) referred to in paragraph 6 of the final report by the Special Rapporteur, reflects the personal views and interpretation of the Special Rapporteur concerning his mandate.

8. The mandate of the Special Rapporteur established by the Resolution 2005/80 of the Commission on Human Rights cannot be extended by the Special Rapporteur himself, unless such an extension is approved by the Human Rights Council.

9. In view of the above, the suggestions and recommendations (particularly recommendations m and n) made in various parts of the report with regard to strategies such as furthering economic, social and cultural rights in South-East Anatolia in order to eliminate the root causes of terrorism in Turkey, are beyond the mandate of the Special Rapporteur. In spite of that, for the sake of clarification, it should be underlined that social marginalisation or alienation which may be based on exclusion or discrimination on the basis of ethnic origin or religious belief or any other grounds cannot be shown as "root causes" of terrorism in the case of Turkey. The principle of equality has been safeguarded under the Constitution of the Republic of Turkey. According to the Constitution, every individual has the inherent right to lead a life in dignity, to enjoy the fundamental rights and freedoms on the basis of the principles of equality before the law and social justice. Furthermore, Article 10 of the Constitution stipulates that everyone is equal before the law without being subject to distinction or discrimination on the basis of their race, language, gender, political opinion, belief, religion, sect or of any other similar grounds. The State organs and administrative authorities are under obligation to observe the principle of equality pursuant to Article 10 of the Constitution. Individuals, who believe that their constitutional right to equality is violated, can seek remedy before the courts as well as other complaint mechanisms.

10. As the Special Rapporteur was briefed in detail by the relevant authorities during his visit to Turkey, comprehensive reforms have been carried out in the field of human rights, including the individual cultural rights and freedoms in Turkey, many of which have become apparent in every day life with their implementation.

The definition of terrorism and related issues (paragraphs 11 - 18)

11. In paragraphs 11-18 of the report, concern is raised on the definition of terrorism, in terms of principle of legality. In this respect, it is suggested that "*the definition of terrorism is formulated in a way that allows for an overly broad application of the term and that there is no requirement for a terrorist offender to commit a serious crime*".

12. Turkey's comments on this particular issue were explained in detail in the above-mentioned document "A/HRC/2/G/3", which was circulated during the Second Session of the Human Rights Council. A brief summary of these comments are provided below.

13. The principle of legality is regarded as a fundamental principle of Turkish criminal law, which is safeguarded by Article 38 of the Constitution as well as Article 2 of the Turkish Penal Code. In line with this principle, "terrorism"is clearly articulated in the Anti-Terror Law. The terms "terrorism", "terrorist crimes" and "terrorist offenders" are separately defined under various articles of this Law. The main elements, pre-requisites, thresholds and in some cases exclusions related to these terms are set forth therein.

14. In Article 1 of the Anti-Terror Law "terrorism" is defined as "any kind of acts which constitute an offence perpetrated by a person or persons who are members of an organization, through use of force and violence and by employing any of the methods of coercion, intimidation, oppression, suppression or threat for the purpose of altering the fundamentals of the Republic stated in the Constitution, its political, legal, social, secular and economic order, impairing the indivisible integrity of the State with its territory and nation, endangering the existence of the Turkish State and its Republic, weakening or annihilating or seizing the State authority, destroying fundamental rights and freedoms, impairing the internal and external safety of the State, public order or public health."

15. According to Article 1 of the Anti-Terror Law the main elements of terrorism are "force and violence", "membership to an organization" and "ideology". Using force and violence as well as employing any of the tactics of coercion, intimidation, suppression or threat are pre-requisites for terrorism.

16. A terrorist offender is a member of an armed organization that has been formed to attain the purposes set forth in Article 1 of the Anti-Terror Law and/or who commits terrorist crimes to advance these purposes, alone or with other members, on behalf of the armed organization.

17. The "terrorist crimes" and "crimes committed for the purpose of terrorism" are enumerated in Articles 3 and 4 of the Anti-Terror Law. Instead of creating new crimes, these provisions stipulate that certain offences in Turkish Criminal Code, the relevant articles of which have been referred to therein, constitute terrorist crimes when committed to pursue the aims and purposes defined in Article 1 of the Anti-Terror Law. These crimes (such as crimes against the security of the State, murder, trafficking in human beings etc.) are serious and violent in nature, in line with the definition of terrorism in Article 1 of the Anti-Terror Law.

18. In view of the above, the scope of terrorism is clearly defined in the Anti-Terror Law and is consistent with the principle of legality.

Access to documents related to prosecutions (paragraph 20)

19. In paragraph 20 of the report it is stated that "*some lawyers did, however voice the concern that in some instances of crimes related to terrorism, the possibility for the defence to gain access to documents related to prosecutions is in practice restricted*".

20. The authority of defence lawyers to gain access to and examine case files, has been ensured in Article 153 of the Criminal Procedure Code No. 5271. According to this article, defence lawyers have the authority to gain access to case files and obtain copies of documents contained therein, free of charge, during the investigation. However, this Article also allows for a restriction to this authority under exceptional circumstances. In this context, if the examination of or obtaining a copy from an investigation file by a defence lawyer poses a "serious risk" to the purposes of the investigation, the authority to gain access to documents may be restricted by a court order, upon the request of the Public Prosecutor. This restriction is limited in scope and does not apply for certain documents. Paragraph 3 of Article 153 of the Criminal Procedure Code states that for minutes of statements by suspects or persons who have been apprehended, expert witness reports as well as records of judicial proceedings during which these persons need to be present, such a restriction cannot be imposed. Upon the acceptance of the indictment by the

court, however, defence counsels may examine the contents of all the files and evidence, and may obtain copies of these documents, without being subject to any restriction. As it would be observed, the restriction envisaged in Article 153 of the Criminal Procedure Code is limited to exceptional circumstances and subject to certain conditions, which need to be found justifiable by the judge. Judicial scrutiny is a safeguard against arbitrary practices.

21. Furthermore, the Circular No. 24 issued by the Ministry of Justice addressed to all Chief Public Prosecutors states that "Bearing in mind that the main purpose of the criminal procedure law is to establish the concrete facts in a manner respectful of human rights. The right to defence has been safeguarded by the Constitution of the Republic of Turkey, which is also protected by the European Convention on Human Rights within the framework of the right to fair trial. The procedures and legal provisions concerning the rights of defence counsel to gain access to suspects, to be present at all stages of interrogation, to render them legal assistance, to examine case files and to obtain copies of any document free of charge, must be fully respected." Accordingly, all Chief Public Prosecutors have been requested to show utmost care and due diligence to ensure the implementation of this Circular.

Criminal procedures for suspects of terrorist crimes (paragraph 21)

22. In paragraph 21, it is stated that "*In regions governed by Emergency Rule, this four-day period can be prolonged up to seven days for terrorist offences*".

23. It should be clarified that no region in Turkey is currently under a state of emergency.

Heavy Penal Courts ("Serious Felony Courts", paragraph 24)

24. It is stated in paragraph 24 of the report that "*the judges serving at the Serious Felony Courts (hereinafter referred to as "Heavy Penal Courts") are not military judges anymore, however, several of the Special Rapporteur's interlocutors stressed that the same persons often remained in office who had been judges at the State Security Courts*".

25. This suggestion raises doubts about the independence and impartiality of the newly established special chambers of Heavy Penal Courts to examine crimes under Article 250 of the Criminal Procedure Code. Therefore, it should be emphasized that the judges and prosecutors who serve at the Heavy Penal Courts, are not in any way different from the judges and prosecutors who serve at other courts, in terms of constitutional guaranties extended to them in order to safeguard their independence and impartiality. Judges, who had previously served at the abolished State Security Courts, perform their functions in full independence as judges of the Heavy Penal Court, like other judges. Their previous experience in cases that fall within the competence of the new special chambers of Heavy Penal Courts, could only be regarded as a positive factor in terms of their expertise.

26. Furthermore, the considerations of the European Court of Human Rights with respect to the impartiality and independence of the State Security Courts were strictly limited to the presence of the one military judge who served at the State Security Courts. Therefore, the appointment of several judges who had previously served at the State Security Courts does not affect, in any way, the impartiality or independence of Heavy Penal Courts.

Priority Issues, Freedom of expression (Paragraphs 28 and 29)

27. In paragraph 28, it is stated that "*despite the repealing of Article 8 of the Anti-Terror Act (propaganda against the indivisible unity of State) there are provisions in the new Penal Code providing for similar criminalization*". It is also suggested that "*Article 159 of the previous Turkish Penal Code concerning disrespecting the State and State institutions and threatening the indivisible unity of the Turkish Republic, reappears in the new Penal Code as article 301*". Furthermore, the report indicates that Article 216 of the Turkish Penal Code has "substantive links" with the Anti-Terror Act.

28. Contrary to the suggestions in the report, Article 301 of the new Turkish Penal Code has no connection or relevance with counter-terrorism measures or with the Anti-Terror Act. In addition, it does not contain the same provisions of Article 159 of the previous Turkish Penal Code.

29. Article 301 deals only with "public denigration" of "Turkishness, Turkish Grand National Assembly, Government of the Republic of Turkey, judicial, military or security institutions of the State. It does not include any provision regarding "threatening the indivisible unity of the Turkish Republic." The offense set forth in Article 301 is "public denigration" of State institutions, not "disrespecting" the State or its institutions, as suggested by the Report.

30. Paragraph 4 of Article 301 of the Turkish Penal Code states that "expressions of thought intended to criticize shall not constitute a crime", thereby, directs the courts to give due consideration to the freedom of expression and opinion when considering any charges under this article. In this framework, the courts take into account the provisions of the Constitution safeguarding the freedom of expression and opinion, the international obligations conferred by the international treaties to which Turkey is party, including the UN Covenant on Civil and Political Rights and European Convention on Human Rights as well as the international jurisprudence.

31. Similarly, Article 216 of the Turkish Penal Code has no link or relevance with Anti-Terror Act or counter-terrorism measures. It criminalizes acts inciting the population to breed enmity or hatred or denigration on grounds of social rank, race, religion, sect, gender or region, provided that such a conduct poses an "imminent and real danger" to public security. In determining the pre-condition of "imminent and real danger" to public security, judges must be convinced that such a threat exists on the basis of concrete evidence and facts, which are fully explained in motivated decisions.

32. Freedom of expression is not an absolute right under international law. Therefore, certain restrictions are permitted to ensure respect for the rights and reputation of others, or for the protection of national security, public order, public health or morals. These restrictions are explicitly set forth in Article 19/3 of the International Covenant on Civil and Political Rights (ICCPR). Whereas, Article 20 of ICCPR makes it obligatory for States Parties to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Furthermore, Article 4 of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) introduces another restriction to the freedom of expression, by creating an obligation for States to penalize by law "all dissemination of ideas based on racial superiority or hatred to incitement to racial discrimination as well as all acts of violence.

33. In light of the above, Articles 301 and 216 of the Turkish Penal Code are within the boundaries of the restrictions to the freedom of expression permitted by international law. Therefore, prosecutions under these provisions do not constitute violations of freedom of expression and have no link with counter-terrorism measures or Anti-Terror Act, contrary to the suggestions in the report.

IDPs, village guards and refugees (Paragraph 35, 36, 38 and 39)

34. Paragraph 34 of the report points out that there is lack of data on IDPs. Whereas, paragraph 35 raises concerns with respect to obstacles for IDPs to the enjoyment of their economic and social rights. In this context, unemployment, child labour, increased health needs due to malnutrition and post-traumatic stress syndrome are highlighted as socio-economic problems of IDPs in Turkey, based on vague generalizations which are not supported with any indicative data.

35. Healthy and accurate socio-economic profiling of IDPs can only be made on the basis of a thorough scientific research. Hacettepe University has undertaken such a comprehensive study entitled "Turkey's Immigrant and Displaced Population Survey" since 2004. The survey has recently been completed. Its findings were made public on 6 December 2006 at an event launching the survey, organized by the Ministry of the Interior, State Planning Organization and the Institute of Population Studies of Hacettepe University, with participation from NGOs, members of the Diplomatic Corps and media. The Representative of the Secretary General on Human Rights of Internally Displaced Persons, Prof. Walter Kalin, in addressing the event, once again praised Turkey's transparent and constructive engagement in IDP related issues and her resolve to address these issues in a comprehensive and durable manner. During the launch, the Ministry of the Interior H.E. Mr. Abdülkadir Aksu stated that his Ministry would carefully examine the findings of the survey, which would guide the strategies and policies to be pursued by Turkey, including a comprehensive National Action Plan on IDP issues.

36. It is suggested in paragraph 36 of the report that "*obstacles to return still remain, such as the precarious and reportedly deteriorating security situation in the region, exacerbated by landmines in roads to and from villages*". It should be underlined that the main exacerbating factor for the security situation in the region, has been terrorism itself. As for the level of socio-economic progress in the region, which is pointed out as another obstacle preventing the returns (paragraph 37), it should be highlighted that the Government's projects aimed at advancing the socio-economic development of the region as well as schools, factories and infrastructure, were often the targets of terrorist attacks in the past.

37. In paragraph 36, some figures for casualties in the region are provided to support that the security situation negatively affects the returns. However, it is not mentioned in the report as to whether these figures have been confirmed from other reliable sources.

38. It is stated in paragraph 38 of the report that "*A further issue complicating the return of internally displaced persons to their villages is related to the continued existence of the village guards"* and that "*the Special Rapporteur was assured by government authorities that the village guard system is being phased out*."

39. The Provisional Village Guard system was set up in 1985 to assist the law enforcement officials in countering terrorism. The employment of village guards has been stopped since 2000 and the number of village guards has constantly been reduced within the framework of an ongoing process. Furthermore, the village guards are given regular training and all their activities are subject to administrative and judicial scrutiny. Any specific complaint or allegation concerning village guards which may be submitted to the relevant authorities would surely be thoroughly investigated.

40. It is stated in paragraph 39 of the report that "*It did not become clear to the Special Rapporteur to what extent repatriating refugees can benefit from measures addressing IDPs*" and Turkish refugees in Iraq are referred to as a particular issue of concern.

41. IDPs and repatriating refugees are two separate issues. As regards the issue of internal displacement resulting from terrorism, Turkey maintains close cooperation with Prof. Walter Kalin, Representative of the UN Secretary General on the human rights of internally displaced persons, who has recently paid his third working visit to Turkey, upon the invitation of the Government of the Republic of Turkey. Turkey also cooperates with UNDP, World Bank and European Commission in this field. Turkey will continue to pursue its strategies and policies on the basis of "UN Guiding Principles", in cooperation with Prof. Kalin and other stakeholders.

42. The suggestion in paragraph 39 that "*the Turkish authorities view the population in Makhmour Camp with suspicion of links to terrorist organization*" does not reflect the reality.

43. Turkey has been stressing that Makhmour Camp has lost its humanitarian character as it is used by the terrorist organization PKK/KADEK/KONGRA-GEL as a rehabilitation and recruitment centre. Turkey has compelling information that the camp was and still is under the physical administration of the armed members of this terrorist organisation. The Turkish citizens in the camp are under the physical and psychological pressure of the terrorist organization PKK/KADEK/KONGRA-GEL. In September 2005, UNHCR publicly announced that the humanitarian character of the camp was lost. Likewise, UNHCR's 2006 Supplementary Appeal for Iraq presented to donor governments in April 2006, outlined the measures envisaged in order to restore the confidence and humanitarian character of the camp.

44. Turkey will continue to cooperate with UNHCR in order to enable her citizens in the camp to safely return to Turkey on a voluntary basis. In order to create the necessary conditions for the Turkish citizens to exercise their free will to return to Turkey, the armed elements of the terrorist organization PKK/KADEK/KONGRA-GEL in the camp should be first expelled from the camp. Once these conditions are established, necessary steps will be taken in cooperation with the UNHCR to provide durable solutions for the Turkish citizens in the camp including their repatriation. Turkey will also work closely with UNHCR to facilitate sustainable economic and social reintegration of repatriating refugees through the implementation of the "Return to Villages and Rehabilitation Programme", the main programme which was introduced by the Government of the Republic of Turkey in order to facilitate the returns of IDPs and to provide them with the necessary assistance.

The Act on Compensation of Losses Resulting from Terrorist Acts and from Counter- terrorist measures (Paragraphs 40 to 45)

45. It is stated in paragraph 41 of the Report that there is lack of consistency in the implementation of the Act on Compensation of Losses Resulting from Terrorist Acts and Measures Taken to Fight Against Terror No.5233.

46. The data concerning the Loss Assessment Commissions used in the report dates back to April 2006. According to the most recent available data, which is that of November 2006, 229,128 applications were filed under the Compensation Act in the whole country. 46,445 of these were concluded. In 23,653 cases, the applicants were awarded compensation.

47. During this period the total number of applications finalized by the commissions has more than doubled. In April 2006, a little more than 10% of the applications submitted by that month were concluded. In November 2006, more than 20% of the applications were already concluded. Furthermore, it should be noted that by November 2006, the number of rejections amounted to less than half of the finalized applications, while there were more rejections than compensation decisions in April. Among the 22,792 rejections, 6,214 concerned applicants whose damage claims had been compensated previously. 7,517 rejections were due to claims that were outside the scope of the Compensation Act, 720 concerned claims that were outside the temporal jurisdiction of the loss assessment commissions, 2,897 concerned claims that were supported with insufficient information or documentation.

48. The Government underlines that the compensation procedure effectively covers all types of claims. Among the cases in which compensation was awarded, 2,843 involved death cases, 972 involved wounding, 468 involved mutilations, 8,620 involved damages to movable or immovable property, 1,223 involved losses related to agriculture or animal breeding and 9,385 involved losses due to the applicants' impossibility to access their property.

49. There may be variations in the number of applications concluded as well as the amount of the compensation awarded by different commissions, but there is no ground to interpret these as "inconsistencies". The problems encountered by the population of each province are different. The type of applications that have been made to each commission evidently vary in nature. Some commissions may need to deal with more claims regarding agricultural losses, while others may deal with claims regarding injuries. The assessment of the applicants' losses, therefore, necessitates different kinds of expertise. This may facilitate the loss assessment process in some departments while it slows it down in some others.

50. In paragraph 42 of the report it is indicated that "*the representatives of the Ministry of Interior who are appointed as members of the Loss Assessment Commissions may have been involved in the acts for which compensation is awarded*".

51. The Loss Assessment Commissions comprise of civil servants who are experts in the fields of finance, public works and settlement, agriculture and village affairs, health, industry and commerce, working in the provinces where the Commissions are set up. As the decision- making at the Commission involves the evaluation of applications from a purely technical point of view, such as the assessment on the values of houses, lands and animals, the composition of Commission was designed as such, with a view to avoiding a miscalculation and unfair treatment

of applicants. Commissions may also appoint experts or consult for opinions from the experts and conduct in-situ fact-finding visits during the course of their work. These experts, by nature of their post, have no connection with or involvement in counter-terrorism measures. Therefore, the suggestion that "*members of the Commissions may have been involved in the acts for which compensation is awarded*" is totally groundless and unacceptable. In fact, the European Court of Human Rights in its decision regarding the admissibility of the application by Aydın İçyer (paragraph 79) concerning return to villages, established that there was no evidence to question the composition of these commissions and proceedings before them. The Court further stated that "having regard to the duties conferred upon them and to their individual members, who sit on account of their expertise in various fields, the compensation commissions merely serve to enable the authorities to determine the damage sustained by individuals and to make a friendly-settlement offer either in kind or in cash."

52. As is also noted in paragraph 43 of the report, the Government would like to stress that decisions of the commissions, like all administrative decisions, are subject to judicial review. Therefore, the Government believes that the fact that "the commissions are composed of mostly government officials" is irrelevant to the fairness of the system.

53. Regarding paragraph 44, the Government strongly emphasizes that the compensation procedure established by the Act No. 5233 does not, in any way, lift the criminal liability of or bring impunity to the person/s who might have been allegedly involved in an injurious act. Furthermore, applicants may also apply to courts for non-pecuniary damages. This has been confirmed by the European Court of Human Rights in its decision concerning the application by Aydın İçyer. The European Court of Human Rights, in its decision on the application of Aydın İçyer and its numerous subsequent decisions on similar applications, confirmed that the Damage Assessment Commissions constituted an effective domestic remedy, thus, found these applications inadmissible. Accordingly, The Court directed the applicants to these Commissions for compensation.

Safeguards against torture and ill-treatment (paragraphs 49)

54. In paragraph 49, it is stated that "*it is clear that the past widespread use of torture during detention and criminal investigations is still not addressed in a consistent manner*". In this respect, it is indicated that some of the prisoners were convicted based on statements obtained under torture.

55. The new Criminal Procedure Code which entered into force on 1 June 2005, contains many safeguards for suspects and accused persons against unlawful practices and for the effective exercise of their defence rights. In this framework, the Criminal Procedure Code provides for the right to be assisted by a defence counsel and ensures that any statement should be based on free will and that statements extracted through prohibited methods such as torture or ill-treatment shall not be taken as a basis for any judgement. Article 148(4) states that "The statement taken by law enforcement officials in the absence of defence counsel cannot be a basis for a judgement unless verified by the suspect or the accused before the judge or the court".

56. Many of these safeguards have not been introduced to the criminal justice system for the first time with the new Criminal Procedure Code. Similar checks and balances aimed at protecting suspects and accused persons against unlawful or arbitrary practices, existed also in the former

Criminal Procedure Code No. 1412 in various forms. For instance, Article 135 of the Law No. 1412 provided the right to access to a defence counsel, assignment of a defence counsel by the State free of charge, presence of a defence counsel at all stages of statement-taking and interrogation. Article 135/a ensured that any statement should be made of free will, prohibited unlawful methods for taking statement such as torture, ill-treatment and other methods preventing free will and envisaged that statements taken through prohibited methods cannot be regarded as evidence even with the consent of the suspect.

57. In view of the above, defence rights were provided fully to suspects and accused persons before 1 June 2005 and no obstacle existed for them to exercise their right to be assisted by a defence counsel at all stages of investigation or prosecution. If a suspect or an accused person objected to the content of any statement taken in the absence of his/her defence counsel, such a statement alone was not considered sufficient for a conviction. Courts have always had discretionary power to assess the value of each and every evidence submitted to the court and to consider all the evidence together before rendering a judgement. In this respect, there has not been a protection gap in terms of safeguards against torture or other degrading treatment or of guarantees to ensure that any statement should be of free will before the entry into force of the new Criminal Procedure Code. Evidence obtained through torture has always been regarded as unlawful evidence, which has entailed criminal liability.

58. Therefore, any statement taken before 1 June 2005 in the absence of a defence counsel during a case that is pending as of 1 June 2005, can be renewed in the presence of a defence counsel on various grounds. For instance, such a renewal can be requested on the basis of an objection that the statement was not made of free will or that it was extracted under torture, ill treatment, pressure, force or other prohibited methods. Renewal can also be ordered by the court if it is not convinced that the statement or confession is indeed made of free will. This aspect is also given due consideration by the Court of Cassation. In addition, provisions of the new Criminal Procedure Code apply to statements taken following the decision of reversal.

59. On the other hand, if there is an allegation that a statement was obtained by use of torture against a suspect or an accused before 1 June 2005, it would be investigated thoroughly by the relevant authorities.

Investigations of charges of torture and ill-treatment
(paragraph 50 and 51)

60. Paragraph 50 points out that "*only few cases of torture and ill-treatment have actually led to trials and convictions*". In paragraph 51, it is stated that "*there are still reports of torture and ill-treatment*".

61. Turkey's zero tolerance policy against torture and ill-treatment and the new legislative framework, are having the desired impact on the ground. This has been also underlined by European Committee for the Prevention of Torture (CPT) during its visit to Turkey from 7 to 14 December 2005. CPT's report together with Turkey's response were made public on 6 September 2006 at the request of the Government of the Republic of Turkey. CPT has stressed that "the facts found on the ground are encouraging" in this respect and that "the message of zero tolerance of torture and ill-treatment has clearly been received, and efforts to comply with that message were evident".

62. Furthermore, CPT has confirmed that "the new Penal and Criminal Procedures Codes, as well as revised version of the Regulation on Apprehension, Detention and Statement Taking, which entered into force on 1 June 2005, have consolidated improvements which had been made in recent years on matters related to the CPT's mandate" and that "it is more than ever the case that detention by law enforcement agencies is currently governed by a legislative and regulatory framework capable of combating effectively torture and other forms of ill-treatment by law enforcement officials."

63. Torture and ill-treatment are grave crimes which are punishable by sentences up to a twelve year term and in aggravating circumstances punishable up to fifteen years of imprisonment under the Criminal Code. Sentences imposed against civil servants convicted of torture can neither be suspended nor commuted to other forms of penalties. Such allegations are investigated seriously and diligently by the judicial authorities.

64. Public prosecutors initiate investigations concerning allegations of torture and ill-treatment "ex officio" and conduct them personally in accordance with the circular issued by the Minister of Justice on 1 January 2006. This aspect has been highlighted in CPT's latest report which states that "a circular issued by the Minister of Justice on 1 January 2006 does request that due diligence be paid in order to ensure that investigations into allegations of torture and other forms of ill-treatment are carried out directly by public prosecutors- in no case being entrusted to police or gendarmerie- in an effective and adequate manner, having in mind the Constitution of Turkey, relevant legislative norms, international treaties to which Turkey is a Party, and the case law of the European Court of Human Rights".

65. Charges on torture and ill-treatment, are treated as urgent matters and dealt with as "priority cases". Hence, hearings of cases related to these offences cannot be adjourned for more than 30 days, unless compelling reasons dictate otherwise. Moreover, proceedings with regard to these cases continue even during judicial recess.

Investigation and monitoring mechanisms for human rights violations (paragraphs 53- 58, Recommendation 90/d)

66. In paragraphs 53- 58, it is suggested that investigatory bodies for human rights violations as well as Prison Monitoring Boards are not effective.

67. The Provincial and District Human Rights Boards have been established to protect human rights, to promote human rights awareness in civil society and public sector, to investigate allegations of human rights violations and to make recommendations with a view to preventing such violations. These boards have gone through an institutional restructuring process with the adoption of a new Regulation in 2003 that introduced amendments to the "Regulation on the Procedure and Principles of the Establishment, Functions and Operation of Human Rights Advisory Boards". With these legislative amendments, the Human Rights Boards have been transformed into a more civil society oriented and dominated formation in nature. Human Rights Boards are now composed of an average of 15 members, 2 members of which are public officials and the remaining members are from different segments of the society, including civil society organizations, trade unions, chambers of professions, academia, human rights experts, local press and political party representatives. Human Rights Boards convene at least once a month with simple majority of members constituting the quorum and decide by a simple majority of the

members present and voting. The explanation of votes against a decision is registered in the written text of the decision.

68. Pursuant to the "Regulation on the Procedure and Principles of the Establishment, Functions and Operation of Human Rights Advisory Boards", Human Rights Boards are entrusted to conduct visits to places of detention and other penitentiary institutions in order to observe, on-site, the human rights practices, to examine the inspection forms at the places of detention, to make recommendations for the elimination of discrepancies and deficiencies in the penitentiary system, to advice on ways to improve the conditions of places of detention, to bring them into line with the necessary standards and regulations and to conduct researches and inquiries aimed at ensuring that rights and safeguards of suspects are exercised in an effective manner.

69. In this framework, in the period of January - October 2006, Human Rights Boards conducted a total of 1792 on-site visits. Due to the frequent and wide ranging activities undertaken by Human Rights Boards in recent years, applications received by these boards have increased accordingly. The number of applications submitted to the Human Rights Boards was 493 in 2004, whereas, this number increased by 59% in 2005 corresponding to a total of 830 applications.

70. It should be noted that the participation and contribution of experienced and competent civil society actors play a significant role in the effectiveness of the Human Rights Boards. In this respect it has been observed that some civil society organizations are reluctant to join the membership of the Human Rights Boards for various reasons. However, steps are being taken to increase the effectiveness and to strengthen the inclusiveness and participatory nature of the Human Rights Boards.

71. Besides the Provincial and District Human Rights Boards, places of detention are under the constant control of the Chief Public Prosecutors, enforcement judges, inspectors of the Directorate General of Prisons, inspectors of the Ministry of Justice, the Human Rights Inquiry Commission of the Parliament, Penitentiary Institutions and Places of Detention Monitoring Boards (briefly known as "Prison Monitoring Boards"). As confirmed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) during its latest visit to Turkey from 7 to 14 December 2005, Chief Public Prosecutors are carrying out frequent, unannounced inspection visits to places of detention and interview detained persons in private. Their reports on the visits are sent to both Provincial Chief Prosecutors and the Ministry of the Interior.

72. In accordance with the Law No. 4681 adopted by the Parliament on 14 June 2001, Prison Monitoring Boards have been set up in each criminal justice district where a prison or a place of detention operates. Prison Monitoring Board is composed of five members who are appointed by the judicial commission comprising of the Chairman of Heavy Penal Court, a Chief Public Prosecutor and a judge. Membership is on a voluntary basis and no salary is paid to the members. Members of the Prison Monitoring Board are graduates of faculty of law, medicine, pharmacology, public administration, sociology, psychology, social services, pedagogic sciences or similar educational programmes.

73. These Boards are entitled to carry out unannounced visits. They are required to visit every institution in their district at least once every two months. They monitor enforcement of sentences, rehabilitation programmes, living and health conditions, security measures and

transfer of prisoners. Members of the boards hold private meetings with prisoners, interview prison administration and staff and examine prison records and other relevant documents. Prison Monitoring Boards prepare quarterly reports on their observations, copies of which are forwarded to the Ministry of Justice, enforcement judges, Offices of Public Prosecution and, when deemed necessary, to the Chairman of the Human Rights Inquiry Commission of the Parliament. The General Directorate for Prisons and Places of Detention of the Ministry of Justice, takes necessary steps to address and solve the problems or shortcomings pointed out in the report or conveys the report to the relevant senior authorities if a legislative arrangement is required for solution. The boards are informed of the follow-up action taken in accordance with the observations and recommendations of the Prison Monitoring Boards.

74. Signing of “Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” by Turkey, is yet another step forward in the progress achieved in the prevention and elimination of torture and ill-treatment, within the framework of the “zero-tolerance” policy of the Government of the Republic of Turkey against torture. The ratification process is under way. Parallel to the ratification process, a preparatory work has been undertaken by the relevant authorities in Turkey in order to identify as to how the mechanism foreseen by the Optional Protocol can be best incorporated into the domestic system to ensure its effectiveness. At this stage, inter-departmental consultations are underway and different models to be set up by other State Parties are being examined.

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