

ANKARA BAR ASSOCIATION

CENTER FOR ATTORNEY RIGHTS, PENAL INSTITUTION BOARD AND CENTER FOR HUMAN RIGHTS

REPORT REGARDING CLAIMS OF TORTURE IN ANKARA PROVINCIAL POLICE HEADQUARTERS INVESTIGATION DEPARTMENT OF FINANCIAL CRIMES 1-2

Subject: The report regarding the meetings and inspections performed by Ankara Bar Association Center for Attorney Rights, Penal Institutions Board and Center for Human Rights into claims about torture in the Investigation Department of Financial Crimes which appeared on the press and exposed to public on 26 May 2019.

REPORT

Initially, a message was shared on Kocaeli Lawmaker Ömer Faruk Gergerlioğlu's account on Twitter, the micro-blogging site, on 26 May 2019 that "there are claims of torture in Ankara Police Headquarters." In later hours and days, claims of "*beating to unconsciousness, harassment and forcing to watch those who were being tortured, the fact that acts of torture that were incompatible with human dignity were inflicted in at least four cases, the acts were performed by persons coming to Ankara Police Headquarters from outside who identified themselves as MIT; a diplomat who was beaten to unconscious was hospitalized; doctors did not write any report regarding the incident; the torture continued and it was openly stated that it would get worse; attempts were made to get statements through torture*" appeared on the media, thus revealed to the public about some 100 people identified to be Foreign Ministry Staff dismissed through emergency decrees who were kept in custody in Investigation Department of Financial Crimes."

The attorneys who provided legal assistance for the persons in custody submitted complaints to the center and boards of our bar association regarding the claims of ill-treatment and torture.

Besides complaints about torture, complaints have been submitted regarding the fact that the colleagues who went to see their clients under their duty of defense were forced to sign an affidavit in accordance with orders from the prosecutor's office, but in violation of the provisions of the CMK, that said, "*I declare and undertake that I will take the power of attorney regarding my representing the person I will see for the investigation file ... and present it to Ankara Chief Public Prosecutor's Office so that it is included in the investigation file* (Attachment-1 Order letter from the prosecutor's office and the record demanded to be signed).

Our Bar Association's Center for Attorney Rights, Penal Institutions Board and Center for Human Rights made appointments for the on-site inspection of the claims of ill-treatment and torture and well as the claims that the attorneys were demanded to hand in an affidavit for presenting the power of attorney, which is a violation of CMK provisions, and the appointed colleagues went over to the Ankara Provincial Police

¹ This report was published in Turkish by Ankara Bar Association via this link
http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?BASIN_ACIKLAMASI&=3099

² Summary of this report was also published by Ankara Bar Association in English via this link
<https://twitter.com/ankarabarasuihm/status/1134435113880752128?s=20>

Headquarters Investigation Department of Financial Crimes on 27 May 2019 to hold interviews and carry out inspections.

The Trip to Investigation Department of Financial Crimes and the Happenings

- Coercion into taking an affidavit for presenting the power of attorney

The officials from Center for Attorney Rights of our bar association went over to the department first. As a result of the meetings regarding the order from the prosecutor's office about taking an affidavit from attorneys for presenting the power of attorney, which violates the provisions of the CMK, the practice of taking an affidavit was discontinued by the chiefs in the Investigation Department of Financial Crimes.

- Interviews with the persons whose names were reported for suffering ill-treatment and torture

After the discontinuation of the practice of taking an affidavit as a result of the meetings held by the Center of Attorney Rights of our bar association, a second panel comprising members of Penal Institutions Board, Center for Human Rights, and Center for Attorney Rights who visit the Investigation Department of Financial Crimes held a meeting in a closed room with the six persons whose names had been reported regarding the claims of ill-treatment and torture, and statements were officially recorded and signed in the company of the persons who suffered ill-treatment and torture. (The names of the persons interviewed are kept confidential in this report.)

Established by the written statements and as a result of the interviews, the findings regarding the claims of ill-treatment and torture are as follows:

- All the 6 persons who were interviewed stated that they had been taken to meetings under the pretext of “*interviews*,” where they were forced to become informants and suffered threats and insults. All the 6 persons who were interviewed stated that they were taken out for an interview more than once, they were put under psychological stress during the interview, and they could identify the persons who carried out the interviews if they saw them.
- 5 of the 6 persons who were interviewed stated that they suffered ill-treatment and torture outside the interviews. 1 person with whom an interview was held stated that he did not personally suffer ill-treatment and torture but heard about the claims of ill-treatment and torture from the persons with whom he shared a cell and from other persons when they were taken together to the Criminal Judgeship of Peace during the time extension procedures. No discrepancy was found between the names of persons whom this person heard to have suffered ill-treatment and torture and the names of the persons who declared that they suffered ill-treatment and torture
- According to the common statements of the 5 persons who stated that they had suffered ill-treatment and torture; these persons were taken out of their cells where they were held in custody (one on Saturday night, another the night between Saturday and Sunday, and the other three Sunday night), they were taken to the section on the ground floor of Ankara Provincial Police Headquarters Investigation Department of Financial Crimes (one person said he was taken without handcuffs, while four said they were handcuffed in the back), they were put in through a door with the sign “*No Entrance*” on it on the narrow hallway at the entrance of the department, the persons who put them in the dark room left, the persons whose faces they could not identify because of the dark first forced them against the wall, blindfolded them (The uncuffed person stated that he was the first to be handcuffed in this room), then forced them to kneel, made them crawl for a while, hit them on the

head with truncheons, threatened that they would be raped unless they talked, and the persons in the dark room brushed truncheons on their bodies.

After these events, 3 said they were stripped completely naked, one said he was stripped waist down, one said his trousers were stripped half down; and then 4 persons, the completely and waist-down naked ones, were handcuffed in the back, put in fetus position, had truncheons brush their anal areas; they were subjected to threats and insults all the while; they were given one to two minutes after which they were told “We now move into the next stage” and a substance which they thought to be oil or lubricant was poured on their anal areas and truncheons were brushed around their anal areas. In addition, 1 person stated that they tried to take his trousers off, which they managed to lower halfway, he forced them back up, and he was tortured by having the truncheon brushed over his body and clothes.

- The 5 persons who said they had been subjected to ill-treatment and torture were asked whether the persons who performed the ill-treatment and torture were one of the persons whose face they saw and voice they heard in the Investigation Department of Financial Crimes and they replied that these were different persons. When asked if they used any expression that might reveal their identity, four of the persons said no such expression was used but one stated that he heard them say, “*We came from outside; we’re a professional team.*”
- The 5 persons who said they had been subjected to ill-treatment and torture stated that they were accompanied by a police officer during the daily examination of the doctor and they could not tell the doctor about what they experienced because they feared for and were worried about their safety of life.
- 1 person who said he was subjected to ill-treatment and torture stated that before the ill-treatment and torture defined as the second stage one person asked him whether he was married and when he said he was he was told “Look, you won’t be able to sleep with your wife and you’ll wake up at night and cry.”
- 1 person who said he was subjected to ill-treatment and torture stated that he got bruises on his knees due to the crawling (the bruises were seen and photographed by the visiting commission) and declared to the doctor on his first examination the day after the torture, but when the doctor verbally declared that he had written in the report as bruises the female officer who was present during the examination panicked, got hold of her mobile phone, and wrote something to someone, and he was then taken out of the room and he was not shown the completed version of the report and they were later transferred to the Criminal Judgship of Peace for procedures of extending detention time, and the same doctor wrote in the report that there was no mark of battery or coercion in the examination they were taken after the extension decision, and he had no idea about the fate of the other report.
- 1 person who said he was subjected to ill-treatment and torture stated that he was told before they started ill-treatment and torture that “*We rape with truncheons here; you must’ve heard about it. It’s all true,*” and then he was subjected to the ill-treatment and torture explained above.
- 1 person who said he was subjected to ill-treatment and torture stated that he did not say anything to his friends when he returned to the cell after the experience; all he could say was that there was torture, and then he went to sleep; when he wanted to go to the toilet when he woke up he passed out; 112 medical team came in, checked his blood pressure and then left; he also passed out in the morning after the events; and he had not slept for 48 hours.
- 1 person who said he was subjected to ill-treatment and torture stated that when they were taken before the Criminal Judgship of Peace he said to the Criminal Judge of Peace that he had been subjected to ill-treatment; the judge answered, “*Is it just you? Why doesn’t anyone else have it;*”

whereupon another person who stated that he had been subjected to ill-treatment and torture said, *“I’ve subjected to torture too.”* 2 persons in the same trial stated that the judge said, *“I’m not a doctor; this isn’t my job; Go tell it to the doctor.”*

EVALUATIONS

When our colleagues who were appointed by the central office and boards of our bar association informed the officials at the Investigation Department of Financial Crimes about the names of the persons with whom they wanted to interview, they were told that statements were taken from 3 of these persons since they wanted to take advantage of the provisions of effective remorse and they were then released. The files of these persons had been reviewed and no finding about ill-treatment or torture had been reported in their files. Similarly, the reports of the persons with whom interviews were conducted and about whom the findings above are confirmed had been reviewed and it was reported that there was no sign of battery or coercion. The persons with whom the interviews that revealed the findings were made named the 3 persons who took advantage of the effective remorse and were released and stated that they heard from others who went to the interviews and from still others whom they met at the Criminal Judgeship of Peace when they were transferred to the courthouse for the time extension order for detention that they were subjected to ill-treatment and torture like they were. As stated in the ECHR as well as other international conventions, the presence of the doctor’s report per se is not a sign that no ill-treatment or torture was experienced. When the accounts that reveal the findings above are evaluated as a whole, (it can be seen that) the persons were illegally taken to doctor’s examination in company of a police officer. The accounts of the persons who were heard do not contradict one another. When the accounts are evaluated as a whole, they confirm the fact that these persons were subjected to torture and ill-treatment in a way that would not leave any mark of battery or coercion.

Article 17/3 of the Constitution, which stipulates a ban on torture, reads as follows:

“No one shall be subjected to torture or mal-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.”

In addition, Article 3 of the ECHR is as follows:

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

Moreover, Article 1 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that

“For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.”

These provisions ban torture and ill-treatment in international and national norms.

Furthermore, Article 4 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is as follows:

“Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”

International norms stipulate that torture should be defined as crime and penal sanctions should be enforced. Turkey is one of the state parties in the abovementioned convention.

Article 94 of the Turkish Penal Code, titled Torture, is as follows:

“(1) A public officer who performs any act towards a person that is incompatible with human dignity, and which causes that person to suffer physically or mentally, or affects the person’s capacity to perceive or his ability to act of his own will or insults them shall be sentenced to a penalty of imprisonment for a term of three to twelve years.

(2) If the offence is committed against:

a) a child, a person who is physically or mentally incapable of defending himself or a pregnant women; or

b) a public officer or an advocate on account of the performance of his duty, a penalty of imprisonment for a term of eight to fifteen years shall be imposed.

(3) If the act is conducted in the manner of sexual harassment, the offender shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years,

(4) Any other person who participates in the commission of this offence shall be sentenced in a manner equivalent to the public officer.

(5) If the offence is committed by way of omission there shall be no reduction in the sentence.”

In our Turkish Penal code, the crime of torture entails penal sanctions. In this respect, considering the findings above, an investigation must be launched against the concerned parties and not also the persons who ignore the crime of torture and commit the crime of torture but also anybody else who attacked the physical and mental entity of others must be identified and punished.

Therefore, the law stipulates that

- Considering the fact that the law enforcement officers who carried out the investigation into the detainees could be the suspects of a probable investigation of torture or ill-treatment, they should be suspended from the investigation so that torture and ill-treatment against the detainees can be prevented and the investigation can be carried out effectively;

- Although daily doctor's examinations must be conducted in accordance with the Istanbul Protocol, to which Turkey is a party, necessary instructions must be submitted for examination procedures to be conducted in accordance with the Istanbul Protocol because law enforcement was kept present during examination in violation of the protocol;
- All the suspects kept in custody in Ankara Provincial Police Headquarters Investigation Department of Financial Crimes must be brought before the prosecutor's office immediately without getting their statements completed at the police headquarters;
- An investigation must be launched ex-officio for the identification of the persons who committed the crime of torture; an effective investigation must be conducted so that material facts can be revealed and any spoliation of evidence can be forestalled; units and members of Provincial Gendarmerie must be used as per Articles 160/2 and 164 of the CMK no. 5271, and units and members of the police must not be appointed directly in this investigation;
- All the raw camera footages from 20 May 2019 when the detention procedures were started to 28 May 2018 must be collected immediately starting with those of the different places of detention where the suspects were kept at Ankara Provincial Police Headquarters, the camera footages that show the entrances and exits of the Investigation Department of Financial Crimes as well as all the camera footages inside the Investigation Department of Financial Crimes, and the moments when the detained suspects were being taken away for interviews and torture so that the suspect law enforcement officers can be identified; because it is known that camera recordings were previously erased after their preservation for 30 days in similar applications due to claims of law enforcement officers' battery and torture against both attorneys and suspects, legal obligations must be fulfilled for all pieces of evidence to be collected and protected;
- Considering the fact that the law enforcement officers who carried out the investigation could well be the suspects of a probable investigation of torture or ill-treatment, the staff who were assigned to the said operations must be suspended until the investigation into claims of torture and ill-treatment is completed;
- Considering the fact that a judge who learns about a claim of torture and ill-treatment is obliged to take action and that the Criminal Judge of Peace did not take any action although the persons declared to him that they were subjected to torture, the Criminal Judge of Peace who issued an extension on detention period must be identified and necessary legal action must be taken against him.

In this respect, we bring to the public attention the fact that we are ready to present Ankara Chief Public Prosecutor's Office with the records and documents drawn up by the members of our bar association in the boards and central office in case or when they are demanded and we as Ankara Bar Association will continue the legal struggle to the very end so that torture and ill-treatment can be eliminated. 28 May 2019.

Ankara Bar Association