Chapter 24

Turkey

SCENERY

Few countries occupy a more strategic position than Turkey. It is situated at the crossroads of East and West. A small part is linked to Europe, bordering Greece and Bulgaria, while the bulk of the country stretches towards Armenia, Azerbaijan, Georgia, Iran, Iraq and Syria. The two parts are separated by the Bosphorus that traverses Istanbul. But the real split is not so much geographical as it is mental. Turkish society is very complex, involving many contradictions or paradoxes. As an Islamic nation, Turkey is exceptional in so far as it is a secular state. The Turkish people still value and respect this secularism, despite a growing awareness of Muslim religion and traditions.

Historical facts, religion, politics and economic changes are important factors in the compartmentalisation or segregation of modern Turkish society and contribute to the complexity of the Turkish nation.[1] Turkey is torn between two worlds, as it has been from time immemorial. Invasions by numerous nations from East and West have caused Turkey to shed its cultural skin frequently and radically. In Istanbul, for instance, the well-known Hagia Sophia and the Blue Mosque which face each other across a park, look fairly similar but are in fact separated by time (1.100 years), culture (Byzantine[2] versus Ottoman), and religion (Greek-Orthodox versus Muslim). The Ottoman empire began in 1299 with the rule of the Osmans over Western Turkey. The empire expanded over the years to include the rest of Turkey, large parts of the Arab world and Eastern Europe. In 1683, the Turks marched to the gates of Vienna. The defeat at Vienna led to the gradual collapse of the Ottoman empire. This event, together with the Greeks getting permission to occupy most of Western Turkey, precipitated a growing national sentiment. A revolutionary government was formed in Ankara under the leadership of Mustafa Kemal, better known by the honorary name Atatürk or Father of the Turks. The revolutionary government started a war of independence which ended with the spectacular defeat of the Greek army in August 1922. The Turkish Republic was founded on October 23, 1923 with Atatürk as its first president. He was a Muslim and a fierce secularist at the same time. He replaced the sultanate with a secular Republic. Atatürk's reforms were clearly inspired by the West. He introduced the Latin alphabet and a Western-European legal framework and abolished holy Islamic laws (ôeriat). And he suppressed Islam as an organized force in public life.[3] In the first 27 years of the Republic, the one-party regime of Atatürk and his successor, Ismet Inönü, began to create a modern nation directed towards Europe. From the 1950's on, the Turkish economy expanded, due to a more democratic[4] government and its young hard-

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1 For instance, Turkey is an Islamic country, but also the only NATO ally in the Middle East. It has aspirations to become a member of the European Union and a desire to reach the Western standard of living. At the same time, people do not want to forget their (religious) roots which lie in the East.

2 The Byzantine era was the result of the split of the Roman Empire into an Eastern and a Western part. The new capital of the Eastern region was situated in Constantinople, now known as Istanbul. Byzantium reached its peak under Justinianus (AD 538 – 565).

3 Furthermore, Atatürk encouraged citizens to abolish traditional dress and headdress.

4 The concept of democracy is widely claimed but poorly defined in Turkey, a country that holds one of the highest number of writers, journalists and intellectuals behind bars and has an anti-terrorist law flexible enough to include 'crimes of opinion'. See Amnesty International, *Turkse pers vogelvrij,* Dutch monthly, nr.7/8 1997, pp.22-24 and Time magazine, January 1998, p. 16. *'This is also one of the reasons why none of the interviewees, except for the academics of the Universities in*

working population.[5]

Turkish political lines were drawn in the fifties. On one side are the socialist parties following in the footsteps of Atatürk. On the other side are the conservative parties which have inter alia a more tolerant attitude towards Muslim traditions and opinions. Until 1991, when section 163 of the Penal Code was abolished, any link between politics and Islam had been prohibited. The third powerful force in the political arena is the army. No discussion of Turkey or Turkish politics can be complete without considering their influence. The armed forces are the largest organized power block in the country and absorb approximately half of the national budget.[6] Three generations of political leaders have tried to bring the army under civilian control. In response, three generations of generals have deposed democratically elected governments in order to steer the country back to the path of Atatürkish orthodoxy. Military coups took place in 1960, 1971 and 1980. In February 1997, the army bluntly warned that it would no longer tolerate 'insidious Islamisation' and forced Necmettin Erbakan of the Welfare Party to step down as Prime Minister after 11 months. To legitimize its authority, the army refers to the Constitution: 'the statutes and programmes of political parties shall not be in conflict with [...] the principles of the democratic and secular Republic' (s. 68 Const.)[7]. The armed forces, however, do not have unlimited powers to dictate their will, as is reflected in the limited duration of their coups.[8] However, in 1997 the army was helped by the courts. On 16 January 1998, the Turkish Constitutional Court ruled Muslim fundamentalist parties to be contrary to the Constitution and classified the Welfare Party as a 'locomotive for anti-secular activities'. Nonetheless, the process of re-Islamisation will not easily be stopped.[9][10] The more so, because to many Turks, the Muslim political leaders are the only leaders who are still trustworthy and able to regenerate ethics in Turkish politics. Allegations of corruption of officials and ties between politicians and criminals are widespread. Ever since the Susurluk scandal, Turks are convinced that their Members of Parliament engage in corruption and abuse of power.[11] A 'clean

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Istanbul, wanted their names to appear in this chapter. I have therefore chosen to mention only their profession and the date and place of the interview. I interviewed several policemen from two police stations in Istanbul and one in Ankara, teaching staff at the police academy in Ankara, officials of the Police Directorate of the Ministry of the Interior, three lawyers, three public prosecutors and two judges of the criminal courts in Istanbul and Ankara. Furthermore, I spoke off the record with magistrates in the Hakimevi in Ankara (a hotel for magistrates) where I was graciously invited to stay and with one clerk of the court in Ankara whom I met in a department store. The interviews were held in Turkish and translated by Ömer Meliko·lu, a student at Tilburg University. Without his help, I could not have studied the implementation of R (85) 11 in Turkey.

5 46% of the Turkish population is under 20 years of age. Turkish Daily News, October 24, 1997.

6 For over a decade, Turkey has been engaged in an armed conflict with the PKK, struggling for the independent state of Kurdistan in southeastern Turkey. The state of emergency justifies the large sums invested in the army and preserves the power of the army generals. On the other hand, it allows the civilian governor to restrict the freedom and liberties of those who live or work there including the press, and it allows removal from the area of persons deemed hostile to public order. See *Turkey Human Right Practices*, of the US Department of State, 1995.

7 Constitution of the Republic of Turkey, quoted from the official translation, available on the Internet. See http://home.imc.net/turkey/p_consti.html

8 See S. Nisanyan, *Turkey*, Sun Tree Publishing, Singapore, 1993, pp. 7-34

9 Veiled and covered women can be seen more and more frequently. In the early nineties, the ban on headdress was abolished after endless debates in parliament, although every university retained the right not to allow women with headdress on campus. What started as an action of Muslim students, who appeared with headdress at university – some because of their beliefs, others as a protest against the authorities – has grown into a symbol of fundamentalist resistance. The relaxing of Atatürk's dress code and granting the right to wear a head scarf does not mean that all religious clothing is permitted. Unlike in Iran, it is prohibited for women to wear the all black dress covering all body parts and for men to wear the turban and long coat.

10 In 1997, Turkey had 71.293 mosques, while another 2617 mosques were under construction. In August 1997, however, the Turkish directorate for religious affairs decided to limit not only the number of new mosques but also the number of Koran schools. NRC, 12 August 1997.

11 The Susurluk scandal refers to the car accident near Susurluk, a town on the highway between Istanbul and Izmir on the 3rd of November 1996. A high police officer, a well known Turkish maffia boss and a former beauty queen were found dead in the car, and only the fourth

hands' operation like that carried out in Italy is almost impossible here because Turkish magistrates are too closely linked to the state.[12] (see § 3.3).

Besides politics and religion, rapid urbanization and economic change also contribute to the complexity of Turkish modern society. As recently as the 1950's, Turkey was an agricultural society with practically no paved roads, less than 8,000 telephones and a literacy rate of only 20 percent. Nowadays, approximately 80% of the population is literate, roads have introduced modern life to even the remotest parts of the country and 25% of the population now own a car. But economic growth is not equal throughout the country. Eastern Turkey remains an economic nightmare, whereas Istanbul's economy is booming. The population of this important trade town has grown from one million to an estimated 10 million inhabitants,[13]housing vast numbers of first-generation 'immigrants' from the countryside. Turkey has made this transition within the lifetime of one generation. As a result, people are torn between traditional values and life styles, and the ways of a modern, industrialized nation.[14] All these features in combination have turned Turkish society into a highly complex, segregated and at times contradictory community. Modern Turkey is a country which is compartmentalised along socio-political and religious lines; it balances between an eastern identity and western economic aspirations. These characteristics make Turkey a fascinating country for outsiders but very difficult to comprehend. For a researcher coming from a West-European culture and unable to read or speak the Turkish language, it is not easy to grasp legal culture and give a reliable account of legal theory and practice.

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passenger, a Kurdish politician survived. Since the accident, Turkish public opinion is more and more convinced that there exist cooperation between the state and the maffia against Kurdish nationalists. The Turkish media revealed details showing that in this struggle all means were permitted: e.g. burning down Kurdish villages, murdering political activists and even the military taking over the drug trade to finance military activities and impoverish the PKK. Since the Susurluk scandal, the majority of Turkish people have been absolutely appalled by their leaders. During the entire month of February 1997, millions of Turks turned out their lights for one minute at 9.00 p.m. as a national protest against the widespread abuse of power by politicians and officials.

12 D.J. van Baar, *Voor schepping Atatürk is nog geen alternatief*, Volkskrant, 5 February 1997.

13 According to the official count (December 1997), the Turkish population consists of 62,606,157 inhabitants, 65% of them live in urban areas. Istanbul is the largest city (9,198,000 inhabitants), followed by Ankara (3,684,000) and Izmir (3,174,000). NRC, 11 December 1997.

14 In this respect the position of women in Turkish society is illustrative. In 1925 Atatürk abolished polygamy, gave women equal status in divorce and set a minimum age for marriage. Their equality of inheritance and of testimony in court was also granted. In 1926, religious marriage was replaced by civil marriage. In 1934, female suffrage was introduced. Progress in reality was not achieved as easily. Women are still being forced into marriage, suffer in a situation of dependence or domestic violence but are afraid to speak out. According to the bestseller 'Women in Islam' by Bekir Topalo ˙lu, a woman may be beaten if she challenges her husband or if she undermines the integrity of the marriage. On the other hand, however, a growing number of women hold high positions in society. See S. Nisanyan (1993), pp. 53-69. According to Turks who have lived in the West, such as my interpreter Mr. Meliko ˙lu, and Mr. Polat, assistant professor at the Middle-East Technical University in Ankara, the career perspectives of university-educated women are better than in most European countries.

CHAPTER 24

PART I:
THE TURKISH CRIMINAL JUSTICE SYSTEM

1 INTRODUCTION

It is quite difficult to compare the position of victims of crime within criminal law and procedure in Turkey to similar situations in other countries, for several reasons. First of all, in practice victims do not yet have a real role in the criminal justice system. In that respect their position is certainly worse than it would be in most other European countries. In Turkey, the attention is foremost focussed at securing the position of suspects and accused within the framework of criminal law and procedure. Secondly, several factors of a different nature and magnitude than in most other legal systems determine the functioning of the criminal justice system. As a result, this report signals not only the problems faced by victims and the inconsistencies with R(85)11 but also tries to give some background information on typical features of the criminal justice systems and its participants. This is of particular importance regarding a jurisdiction which is not particularly well known among legal practitioners and academics outside Turkey and its neighbouring countries, and which is not usually included in comparative studies. Therefore, the Scenery and Part I are more comprehensive and explanatory than usual. Finally, it is important to mention that I was accompanied by a translator[15] during the my stay in Turkey to study the formal and actual[16] implementation of R (85) 11.

2 GENERAL REMARKS AND BASIC PRINCIPLES

Until the middle of the 19th century, Turkey's criminal justice system was based on Islamic law applied by the Islamic (*Shari'a)* courts. During the Ottoman period, a transition was made to Western European law. The Ottoman rulers turned to France and copied the Napoleonic Codes. The Napoleonic Penal Code was introduced in 1950, and was followed by the Code of Criminal Procedure in 1879. The Turkish people could choose between Islamic law and secular European law. Foreigners had their own justice system which was applied by consular courts. At the time, three legal systems functioned in one and the same country. This complicated situation lasted until 1924. In 1920, the decision was made to create one justice system for all inhabitants of Turkey. The legislature decided to make a fresh start and break with all former systems. It turned to Germany for its criminal procedural law (1924) and to Italy for its Penal Code (1926). The rules for the judiciary were taken from the French Act on the Judiciary.[17] Together, these foreign Codes form the foundation of the modern Turkish criminal justice system. Today, German influences, and to a lesser extent Italian influences, are still very noticeable, even though the original Codes have been amended several times to the needs of Turkish society.[18] It is primarily Germanic legal traditions and culture which influence the law in action.

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15 Mr. Ömer Meliko¹lu. Without his kind cooperation my research programme in Turkey would have been less successful. His translations and commitment were of primary importance to the realization of this report.

16 This chapter is largely based on anonymous interviews (see footnote 4) and I want to thank all those who explained criminal law and procedure and its practice to me. Without their kind cooperation and hospitality I could not have carried out the research. We used English translations of the Turkish Penal Code and the Code of criminal procedure. The other Acts mentioned in this chapter were translated (orally) by Dr. R.F.Sokullu-Akinc22and Dr. F.S. Mahmuto·lu, Department of Criminal law and Procedure of the University of Istanbul in Beyazit, to whom I owe much gratitude.

17 With regard to their foreign origin, criminal law and procedure are no exception in Turkey. Turkish civil law is based on the Swiss Code of Neuchatel, the Code of commercial law is mainly taken from German and Swiss laws.

18 Professor Yenisey, Lecture for German students, Marmara University, 16 October 1997.

In 1924, another measure was taken which greatly influenced the criminal justice system. The courts of appeal were abolished. Only one court of appeal now exists, consisting of eleven criminal chambers. Legal remedies against the decisions of the courts in the first instance have to be presented to this court. It goes without saying that the workload of this court is enormous. It has been calculated that the court has about four minutes per appeal. Most revisions are therefore superficial, and only the complicated cases are studied in detail. It is recognized that this aspect of the organization of the judiciary needs revision. A recent proposal to reform the Turkish Code of criminal procedure sees at the re-introduction of courts of appeal.[19] There are also proposals to change the Penal Code. Important incentives for these proposals are the rulings of the European Court of Human Rights and the decisions of the Commission of Human Rights.[20] In 1992, the desire to ensure conformity with these judgements and decisions was a driving force behind reforms designed to safeguard the rights of the accused.[21] As of this time, suspects cannot be held in police custody for more than four days without a court order (previously this period was 15 days). Also suspects can no longer be detained simply on the basis of the seriousness of the crime. They are given the right to unsupervised access to a lawyer and the right to appeal every decision regarding the length of pre-trial detention. The maximum length of pre-trial detention is now fixed at 24 weeks whereas the average time spent in detention while awaiting trial was 70 weeks in 1990. Furthermore, the Code of criminal procedure now banned certain interrogation techniques in order to prevent torture and ill-treatment during interrogations by the police.[22]

The criminal justice system is characterised by a mixture of inquisitorial and accusatorial elements. The pre-trial stage is inquisitorial and based on the principle of secrecy. The trial stage is accusatorial. The public prosecutor usually brings about public prosecution. However, there are some exceptions in which the victim can bring charges against the accused. Another characteristic is that the judge plays an active role during the trial. He may initiate his own investigations and he controls the questioning of experts and witnesses, including the victim[23] (see §§ 4, 5 and 8).

2.1 Basic Principles

The pre-trial stage is governed by the legality principle but this does not mean that prosecution is mandatory in all cases (see § 3.2). The trial is governed by the immediacy and orality principle, therefore all the evidence of the prosecution and defence has to be presented and repeated during the trial, including the statements of witnesses and experts.

3 CRIMINAL JUSTICE AUTHORITIES AND PARTNERS

3.1 Investigating Authorities

The investigating authorities are subdivided into the civilian and the military police forces, such as the gendarme and the coastal security guards. The military police forces are part of the military. In Turkey, the term national police is used to refer to both ordinary police officers and the

19 The proposal to reform the law was presented to the Minister of Justice in November 1997.

20 The European Court of Human Rights has condemned Turkey eight times. In the *Aksoy* case of 18 December 1996, the fiercest condemnation in the Court's history was pronounced. Turkey was convicted for violation of article 3 of the Convention (torture), article 5-3 (length of detention without judicial control) and a violation of article 13 (denial of effective remedy). This is the first time any country has been condemned for torture.

21 The Act of 1 December 1992.

22 K. Kangaspunta (ed.), *Profiles of criminal justice systems in Europe and North America,* European Institute for Crime Preventions and Control affiliated with the United Nations, Publications series no. 26, Helsinki, 1995, pp. 198-201.

23 F. Golcuklu, 'Law of procedure', in: T. Ansay, D. Wallace, *Introduction to Turkish law,* Kluwer, Deventer, 1987, pp. 244-245.

gendarme. At present, the gendarme have the same status as the police and share the same powers, but they are part of the defence forces and are under the command of the Ministry of Defence and the Ministry of the Interior.[24] The national police force is directed exclusively by the Ministry of the Interior. The gendarme is active in the rural areas and those under emergency rule, either independently or in coordination with the police. In the cities, the gendarme is kept in reserve for maintaining order.[25] In practice, the military do not only assist the police but act as the police with full powers for maintaining public order and law enforcement; they usually exercise powers independently from police command structures.[26] Unlike ordinary police officers, members of the gendarme are not trained in police schools, even though it is questionable whether their present education is sufficient to perform police tasks. It is not unusual that those eligible for military service have to fulfill police duties in isolated areas or in territories under emergency rule. After four months of military training in the army they are considered to be ready for action. The use of the gendarme generates illegal and undesired police activities and causes much tensions in the relationship between the police and Turkish citizens.[27]

In general, Turkish police forces adhere to a repressive policing style. 'We can argue that the Turkish police fall into this style, since they are highly centralised, alienated from the community and serve a government lacking in public consensus. The police are not involved in community policing and do not seem to be the servant of the community."[28] Unsurprisingly, the Turkish police do not have a very good reputation, although there have been changes for the better in recent years. Many Turks- and not only suspects – fear the police.[29] Of course, the substandard conditions in which the police have to perform their duties are no excuse for such behaviour. It must be emphasized, however, that the police face a lot of difficulties which do not exist as such in other countries. These difficulties can be divided into three categories: work conditions[30], selection[3132] and

24 Gendarme structure, duties and powers Act, s. 4.

25 Eryilmaz, Doctoral thesis, chapter two (p. 127): under publication.

26 A.H. Aydin, 'Democracy and policing: Militarization versus democratization of the Turkish police', *Turkish Yearbook of Human Rights*, vol. 17-18, 1995-1996, p. 61.

27 If one examines the cases brought before the European Commission and the Court for Human Rights, the majority of complaints concern the abuse of police power by the gendarme. The shortcomings on the part of the gendarme do not only generate criticism abroad but also the hostility of citizens towards the State. In the areas where the gendarme operates citizens see this police force as the exclusive representative of the State. The State, however, upholds that the employment of the military as part of the police remains a necessity. (Yenisey, as translated by Eryilmaz in his doctoral thesis). See also A.H. Aydin (1995-1996), pp. 55-68; I. Cerrah, 'Policing demonstrations in Turkey: recent changes in British and Turkish public order policing and their impact on democratic rights violations', *Turkish Yearbook of Human Rights*, vol. 17-18, 1995-1996, pp. 69-87.

28 Quotation by J. Alderson, taken from: A.H. Aydin (1995-1996), p. 58.

29 It is perhaps significant that the name used by Turks to refer to the police is *karakol* (black hand). A new name is being considered as one of the measures to change the image of the police. It is common knowledge that the police are accused of human rights violations. According to an Amnesty International report (November 1996), the police regularly maltreat children – even those under the age of 12- during interrogation and questioning. They are said to beat children, give them electrical shocks, hose them with cold water and lock them up naked in solitary confinement. The Turkish authorities declares that the responsible policemen and gendarmes have been punished. Amnesty International, however, mentions a court decision in which policemen were found guilty of mistreating a twelve-year-old boy so badly that he had to be treated in hospital in the intensive care unit, but they were only given a fine.

30 First of all, the police suffer from an excessive workload and unwanted transfers throughout Turkey. It is no exception for police officers to have to work ten to twelve hours a day. Sometimes they have to remain on duty for up to 18 hours a day. Such long hours will not contribute to the patience and good temper of most policemen. The policy of transfers is another factor adding to the stress of the police, both at home and on the work floor. Police officers are regularly transferred to different regions in Turkey. This policy is caused by the need to have civil servants, and thus also police officers, working in remote and rural areas of Turkey. The state does not take the family situation into account, or the preference of the individual police officer. Transfers cause social isolation of policemen, especially if they are transferred to a region where they do not understand local customs and feel like an outsider. It further

training (for training see § 8.1). These difficulties contribute to the creation of a specific police subculture which strongly influences the performance of the individual police officer. According to Sokullu, Turkish police subculture has the following characteristics: solidarity, secrecy, social isolation, conservatism, suspicion and deception. The latter two characteristics originate mainly from distrust of the efficiency of the criminal justice system and a feeling of being let down by politicians and society.

The combination of those elements, together with a public outcry to fight crime, can form a breeding ground for unlawful police behaviour. Police officers who violate the rights of suspects or use unlawful methods to gather evidence do not feel guilty because in their subculture this is justified in the interest of putting criminals behind bars. The individual police officer justifies unlawful behaviour by referring to long hours at work, tiredness, stress, unwanted transfers and a low salary. Under such circumstances, it is hardly surprising that despite the introduction of punitive and deterrent methods to refrain police officers from unlawful behaviour, the results are far from spectacular. Moreover, certain elements of the subculture, such as solidarity and secrecy, make it very difficult to change police behaviour and to punish individual policemen.[33] The subculture is bound to affect daily police activities, such as investigations in the pre-trial stage.

Pursuant to the law, the public prosecutor is in charge of any criminal investigation (see § 3.2) but may conduct his investigations through the police, who have to carry out his orders. The orders are usually written down, however, they are given orally in emergencies only (s. 154 CCP). The police then have to conduct investigations of crimes. The outcome of the investigations has to be sent immediately to the public prosecutor (s. 156 CCP). In practice, however, the police perform all investigative activities despite the fact that the ordinary policeman is not properly trained to do this. There is no special branch of the police responsible for judicial investigative activities. As a result, the investigations performed by the police lack quality.[34] Yenisey feels that it would be advisable to create a specially trained judicial police force or, at least, make sure there is real supervision by public prosecutors.

Policemen and public prosecutor have a rather impersonal relationship in the big cities. The public prosecutor never gets involved in the actual investigation, and in the cities contacts with the police are established by phone. This is a larger problem than in most other countries because there is no judicial police and not every police officer knows how to conduct an effective investigation, to preserve evidence and to write reports in accordance with the law. Most of the problems are

enhances the feeling of being a separate group in society, with its own rules and morals.

31 Many police officers come from middle and lower class families and economic factors have an important bearing on choosing the police profession as a career. In Turkey, police high-schools exist, and thus children are stimulated at a very early age to become a policeman. Once a child enters a police high school, his career is fixed to a large degree. The advantage for parents is threefold: education is good, free of charge and the child will have job security as a police officer. Unfortunately, the down side of the system is that part of the police have not become a police officer out of choice or free will and do not particularly like police work. See Y.Z. Ozcan, A. Caglar, 'Who are the future police elites? Socio-economic background of the students at the police academy in Turkey', *Policing and Society*, vol. 3, 1994, pp. 287-301.

32 With respect to selection, it is most unfortunate that the police is often forced to hire anyone who applies for the job. Regularly, there are less applicants than persons needed. As a result, the police feel they cannot be too selective and hire everyone. Even the clearly incapable or unsuitable applicants will be trained to become a policeman. In practice, no real selection of future police officers takes place. Infomation supplied by the Directorate General of the Police, Ministry of the Interior, Ankara, 22 October 1997.

33 See F. Sokullu-Ak2nci2 (1997).

34 According to Professor Yenisey relatively many suspects are acquitted by the court for lack of evidence simply because of poor investigative work. In Turkey, 30% of the cases end in an acquittal; 50% with a conviction, and the remaining 20% can no longer be prosecuted because of undue delays or because they have become prescribed by lapse of time. The most common reason for acquittal is the poor quality of the criminal investigation: the police fail to collect enough condemning and legally valid evidence into the legal file. Yenisey considers the absence of a judicial police force an important reason for this high percentage of acquittals. Yenisey (1997).

caused by the fact that the police do not look at the situation with a legally trained eye. The police do not always correctly write down reports of victims. Other documents do not always contain the elements necessary to use them in court (see § 7.1). This causes tensions between the two authorities, because evidence gets lost, and relevant facts get distorted. In return, it causes delays, repetitive questioning (see § 8.2) – the public prosecutor often has no choice but to hear victims or witnesses again – dismissals and acquittals. The training and practical abilities of the police are often considered inadequate by the prosecution service (see § 8.1). Public prosecutors should therefore be more actively involved in the search for evidence (see § 3.2).[35]

According to the police, few problems occur in their contacts with the prosecution service. The only problem the police mention is their disappointment with the results of the public prosecutor's activities, and the outcome of the court proceedings. The police are generally satisfied with their cooperation with the prosecution service, which in contrast is not so happy with their relationship (see above, and § 3.3).

No specific laws or regulations deal with the relationship between the police and victims. The only possible exception is s. 2 of the Police Act which states the duty of the police to protect society and prevent any crimes or danger threatening the public. Furthermore, no special police units for children or victims of sexual offences are in operation. However, it is claimed that special vice squads exist in every large town, which can be called in if the police need them[36] (see § 8).

3.2 Prosecuting Authorities

Public prosecutors (*savci*) are appointed for life. Although they have the same qualifications as judges, they are not considered to be part of the judiciary. Public prosecutors are obliged to perform executive activities and are not independent, unlike the judiciary. A public prosecutor must follow orders from his superiors, such as the Ministry of Justice or the city governors (s. 148 CCP).

Every court of general criminal jurisdiction has a public prosecutor's office consisting of a public prosecutor and deputies. The public prosecutors also prosecute in the other courts. For instance, the function of the public prosecutor at the aggravated felony court is performed by the public prosecutor assigned to the court of general criminal jurisdiction in the city where the felony court is situated. The peace court functions without a public prosecutor, in the sense that the public prosecutor is not present during the trial. However, he does initiate the proceedings.

Upon being informed of the alleged occurrence of a crime, the public prosecutor will start preparatory investigations (*haz2rl2k soru6turmas2*) in order to try to identify the offender and to be able to decide whether prosecution is called for. Pre-trial investigations are conducted in secrecy and are based on written police reports. The prosecution service is in charge of investigations in the pre-trial stage. As soon as a public prosecutor is informed of the occurrence of a crime, he is required to make the necessary investigations and decide whether or not to press charges against the alleged perpetrator. The public prosecutor has to collect both the evidence against and in favour of the accused and has to help to preserve the proof (s. 153 CCP). The public prosecutor may make his investigations either directly or through the police (s. 154 CCP, see § 3.1). The results of the investigation are transferred to the public prosecutor. The model in which the public prosecutor directs the police is based on a high degree of cooperation between the police and prosecution service, and of mutual trust. The cooperation between the police and the prosecution service is said to be rather good; however, it is not without its problems (see § 3.1). The prosecution service, is however, not without blame. According to Yenisey, public prosecutors are not as sufficiently involved in the investigative stage as they should be (see § 3.1).

If the public prosecutor feels there is a *prima facie* case, he brings an indictment (*iddianame*) before

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35 According to public prosecutors interviewed both in Istanbul and Ankara, the training of police officers for these practical activities is highly inadequate (see under A1). The 1997 reform proposal includes the creation of a judicial police force.

36 Information supplied by police officers in the Kartal district, Istanbul, *Kartal Merkez Karakol Amirligi*, 13 October 1997.

the competent court (s. 163 CCP). The Minister of Justice may also order a public prosecutor who has decided not to prosecute to initiate criminal proceedings (s. 148 CCP).[37] A case should be dismissed when the offender, punishable only by fine or one month imprisonment, deposits the minimum fine before the court hearing. If this sum is paid before public action is initiated and within ten days of the date on which the crime occurred, the case will be dismissed (s. 119 PC).

The public prosecution has an almost exclusive monopoly of prosecution but not the duty to prosecute all crimes (see § 7.1). In a few cases specified by law where the injury is perceived to be more private than public, the victim may instigate criminal proceedings by means of filing a complaint (*õahsî dava*, s. 344 CCP – see § 5.3) with the public prosecutor (see § 5.2). But as a rule, the public prosecutor initiates prosecution (s. 139-140 Const.). If, on the other hand, the public prosecutor decides not to prosecute, he will inform the accused if the latter has already been questioned or if a warrant for his arrest is issued (s. 163-164 CCP, see § 6.1, B.6).

For training of public prosecutors and judges, see § 8.1.

3.3 Judiciary

The position of the judge is a very important one for he has a very active role. In establishing the facts and finding the truth, judges are assisted by public prosecutors. To safeguard the judiciary's independence, only the Supreme Council of Judges can appoint, promote or punish judges and examining magistrates (s. 159 Const.). The Code of criminal procedure, in its ss. 21 through 30 CCP, further ensures the impartiality and independence of judges and the courts. Unfortunately, politics may play a role in the actions of the Supreme Council because the it does not exclusively consist of members of the judiciary. The Minister of Justice is the president of the Council and the under-secretary of this Ministry is an *ex officio* member. Considering that the Ministry of Justice has two seats out of seven and the Minister is the chairperson of the Council, independence and tenure of the judiciary may be jeopardized.[38] However, this may not be the only danger to the independence of judges. Judges are civil servants and just like other civil servants and functionaries, i.e., police officers and teachers, they may be sent to the most remote parts of Turkey, even against their will. Concerning judges, this is done in the following manner: judges have to do a test and those with the lowest scores are sent to small towns in Anatolia where they have to stay for at least two years. If they want to be relocated to a better location, they have to present themselves before the Council which will decide who will be promoted and where they will be posted. This dependence on the Council and Ministry of Justice may influence the decisions of judges. It makes it more difficult for a judge to take a decision which make him unpopular at the Ministry of Justice. Moreover, if one takes into consideration that most human rights violations and thus 'difficult' court cases occur in the remote Eastern areas, the argument goes around in circles. A system in which a judge remains in one place or at least in his place of choice would be preferable to the current system; however, this has proven to be very difficult in Turkey where most civil servants wish to work in the three big cities (Istanbul, Ankara and Izmir) and do not want to go to small towns or rural areas. The eastern part is especially unpopular because of the conflict with the Kurdish nationalists. Therefore, the government has no option but to force judges to work in the more unpopular and remote areas.[39]

There are two types of criminal courts in Turkey, the general and special courts.[40] Among the special courts are the Constitutional Court (*Yüce Divan*), which can try for instance the President and members of the Council of Ministers (s. 146 et seq. Const.); the Courts of State Security (s. 143 Const.); the Military Courts (s. 145 Const.); the Traffic Court and the Juvenile Court. The Courts of State Security were established to deal with offences against the State, the democratic order or any offense directly involving the internal and external security of the State. The High Court of

37 F. Golcuklu (1987), pp. 250-251, 255-256.
38 See F. Sokullu-Ak2nci2 (1997), p. 4.
39 Yenisey (1997).
40 See Introductory Act on the Code of Criminal Procedure.

Appeals may also review verdicts of the Court of State Security (s. 143 Const.). There are Juvenile Courts in Turkey, however, these only operate in the three main cities (Istanbul, Ankara and Izmir). The juvenile court system is heavily criticized. Firstly they are criticized because they do not function nation-wide and secondly because the three existing courts lack the capacity and resources to deal with minors. Consequently, many juvenile delinquents have to go on trial in a court of general jurisdiction.[41]

The general courts try all kinds of criminal cases, except those expressly referred by law to the special courts. They can be divided into four categories of increasing importance, based mainly on the distinction of crimes into misdemeanours (*kabahatler*) and felonies (*cürümler*).[42] The justice of peace courts (*Sulh Ceza Mahkemeleri*) try misdemeanours, and have a single judge who tries cases. The courts of general criminal jurisdiction or courts of first instance (*Asliye Ceza Mahkemeleri*) are also single judge courts. Next in the hierarchy are the aggravated felony courts (*A·ir Ceza Mahkemeleri*), which have three judges presiding the trial, one of which is the Chief Justice.[43] The latter courts are located in the provincial capitals (*il*) and the two former types of court are to be found in the county capitals (*ilçe*). The Supreme Court (*Yarg2tay*), it is the only court of appeal and the tribunal of last resort to review the rulings of the other courts.[44] The decisions of the Supreme Court are taken as precedents for legal rulings in the lower courts throughout the country. The Supreme Court's main task is to secure the unity of jurisdiction and uniformity of legal interpretation of the law. In exceptional cases, such as trials in which the accused is a high-rank civil servant, the Supreme Court has original and final jurisdiction (s. 154 Constitution).

Courts of general criminal jurisdiction:

misdemeanours:	Justice of peace courts
less serious felonies: *(punishable by a maximum of 10 years' imprisonment)*	Court of general criminal jurisdiction
serious felonies: *(punishable by a minimum of 10 years)*	Aggravated felony court
appeals:	Supreme Court

In Turkey, civil and criminal cases are heard by the same judges. This system, which is born out of reasons of economy is criticised today because it is no longer believed that a judge should be knowledgeable about all braches of law. Specialized chambers exist only in the big cities.[45] Furthermore, there are not enough judges and public prosecutors to handle the growing case load. The efficiency and effectiveness of the judicial system is further reduced by the lengthy trials and working methods; for example the work is still largely done without computers. This situation is not likely to change in the foreseeable future, because the budget for the judiciary is said to be too low

41 F. Golcuklu (1987), pp. 247-248.

42 F. Golcuklu (1987), pp. 212-215.

43 See the Introductory law to the Turkish Penal Code (*Mer'iyet Kanunu*), ss. 25 *et seq*.

44 Ordinary legal review (*kanun yolu*) consists of exception (*itiraz*) and appeal to the Supreme Court (*temiyez*). Exceptions (or petitions) are open to decisions of judges but not to court decisions. In general, it is the next higher court who will handle the exception. Ordinary appeals have to be lodged with the Supreme Court, but only on the grounds of legal error. The appeal must be made within one week after the decision becomes final (s. 312 CCP). Normally, the Supreme Court will reverse the decision on points of law that the lower court applied incorrectly and forward the case to the original court or a nearby court for a new judgment. In exceptional cases, the Supreme Court may review a case on its merits (s. 322 CCP). See F. Golcuklu (1987), pp. 258-259.

45 F. Golcuklu (1987), p. 245.

(about 1% of the national budget).[46]

3.3.1 Criminal Proceedings

Criminal proceedings consists of a mix of inquisitorial and accusatorial elements. The pre-trial stage is inquisitorial, while the trial is accusatorial. However, in recent years, there have been some changes in the investigative stage. In 1985, the preliminary judicial stage was abolished.[47] It was conducted by the examining magistrate (*sorgu hakimi*) and was aimed at investigating complicated cases. Consequently, the function of examining magistrate no longer exists[48]and the police is the only institution conducting investigations (see §§ 3.1 and 3.2). The second change took place in 1992. Until then, the preliminary investigations had been conducted in secrecy, and information was withheld even from the suspect who was kept in detention without support of a lawyer. Now, the suspect has the right to a lawyer (s. 135-5 CCP). The defence counsel has the right to give legal and practical assistance to the suspect from the very beginning of his arrest and may be present during all further investigative activities.[49]

During the accusatorial trial stage, the public prosecutor will normally present the case and try to prove the facts, although the judge may look for additional evidence. As a rule, trials are conducted orally. Every piece of evidence has to be presented orally to the court and the parties involved, witnesses and experts must be examined during the trial. Records are read aloud to ensure that the court has access to every piece of evidence (ss. 238, 242, 244, 249 CCP).[50] Trial proceedings start at the moment the indictment is sent to the court (s. 163 CCP). Within Turkish criminal proceedings, the trial has the function of a final investigation. Therefore, the trial consists of two stages: the preparation for trial (*duruõma hazÎrlÎÎ*) and the actual trial (*duruõma*). The preparation for the trial consist of administrative actions, such as setting the date, summoning the parties, notifying them of the names of the witnesses called by the other party. If a witness is unable to give evidence during the trial, the court may order a hearing through a delegated judge or interrogatory commission (ss. 206-219 CCP). After the preparations have been concluded, the trial commences in the presence of the participants (s. 209 CCP)and is open to the public (see § 8.3). All stages and hearings of the trial are normally conducted in the presence of the accused (s. 240 CCP). Nevertheless, the accused may be excused from attending some of the court sessions and may send his defence counsel if his presence is not necessary (ss. 225-226 CCP). Trial *in absentia* is only allowed if the crime is punishable by fine or short-term imprisonment, confiscation of property or a combination thereof (ss. 269 ff CCP). The victim will usually have to be present during the first court session and may be excused from further sessions if the court does not need to hear the victim again (see § 8.2).

The actual trial begins with a roll-call of the witnesses and experts. Thereafter, the identity of the accused is registered, and this is followed by a reading of the indictment. Then the accused is questioned, in the absence of the witnesses (s. 236 CCP) and the pieces of evidence are introduced. Subsequently, the witnesses are examined. After the defendant has heard the witnesses, experts or accomplices, he is asked whether he wants to challenge the evidence presented. Upon the completion of the introduction and adjudication of the evidence, statements may be made by the victim or the complainant, the public prosecutor, other interested parties and finally the accused. The public prosecutor may reply to the statement of the accused and the defence counsel may respond. The accused has the right to have the last word (s. 251 CCP). The trial ends with the verdict of the court which consists of two parts: the judgment proper (*hüküm*) and the justification of the decision (*gerekçe* – s. 260 ff CCP).

If possible, the trial is held without interruptions; however, criminal proceedings may be

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46 Information supplied by lawyers and public prosecutors in Istanbul, 14 and 16 October 1997.
47 Act nr. 3206 of 1985.
48 F. Golcuklu (1987), p. 245.
49 F. Sokullu-AkÎncÎ (1997), p. 4.
50 F. Golcuklu (1987), pp. 256-258.

suspended or adjourned if necessary (s. 219 CCP). In practice, adjournments and suspensions of trials are very common, particularly in cases before the court of general criminal jurisdiction, where most cases are tried. If a case concerns a serious felony, the waiting times are much shorter, not only because there is a specialized court for these offences(the aggravated felony court), or because there are less of these felonies, but also because the law establishes a time limit before which the trial has to start. The trial proceedings have to begin within 31 days of the pre-trial detention of the suspect (see § 8.2).[51]

At the sentencing stage, the courts may choose one or more of several punishments, within the boundaries set by law. Punishments for felonies are death by hanging (*idam*), long-term imprisonment which means up to 24 years or life (*a·ır hapis*), imprisonment (*hapis*), heavy fine (*a·ır para cezası*) and disqualification from holding public office. The death penalty has not been carried out since 1984.[52] With respect to misdemeanours the penalties are: imprisonment up to two years (*hafif hapis*), light fine (*hafif para cezası*) and disqualification from practising a certain profession or trade (s. 11 PC). The Act on the Enforcement of Penalties (Act nr. 647) has changed the implementation of the Penal Code. It divides penalties into three categories: death by hanging; long or short-term imprisonment, which means more than six months or less than six months, and fines. In addition, there are certain secondary penalties. These include police supervision (s. 28 PC), confiscation of property (s. 37 PC), custody or treatment of mentally ill persons (s. 46 PC), commitment to an institution (s. 53 PC) and custody and treatment of drug addicts or alcoholics (ss. 404 and 573 PC). Judges are free to choose between imposing the minimum or the maximum penalty, or anything in between. Aggravating circumstances – *inter alia* provocation, (s. 51 PC) and re-offending (s. 81 PC) – and attenuating circumstances (s. 29 PC) may play a role here. Moreover, if the perpetrator has been found guilty, the court may also order the payment of damages or the restitution of property and the payment of court expenses (s. 32 PC). Finally, the enforcement of the decision to suspend punishments may be postponed until the personal rights of the victim have been restored or redressed voluntarily by the convict (s. 93 PC).

3.4 Enforcement Authorities

The enforcement authorities, enforcing the sanctions imposed by the court, are not responsible for the enforcement of any payments by the offender to the victim (see § 7.3), nor do they assist the victim.

3.5 Probation and Penitentiary Services

The probation and penitentiary services do not involve themselves in any way with victims of crime.

3.6 Victim Services

There are no nation-wide services that involve themselves with victims. However, there have been some initiatives in the big cities, mainly in Istanbul, to help victims. For instance, at the faculty of psychology of the Istanbul University and at the Institute of Legal Medicine and Forensic Sciences centres have been created for free psychological and/or medical help to victims of sex-related crimes (see § 3.7 and § 8.1, A.1). In the early nineties, the first women shelters were opened in Istanbul.[53] Women who are going through a divorce, who have been beaten up, forced to prostitution or who

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51 Information supplied by a lawyer, Istanbul, 14 October 1997.

52 However, this may change in the near future; it is possible that the leader of the PKK, who was sentenced to death in 1999, will be the first person to be executed since 1984.

53 D. van Delft (1992), p. 33. During my visit to Turkey, I did not visit a shelter. According to the persons I spoke to (policemen, lawyers, magistrates, academics, medical doctors, family members of my interpreter) no such services existed. Therefore, if such services exist as Van Delft claims, they are not well-known.

have been sexually abused can go to these shelters. Usually, the women go back to their husbands and families because of the social pressure to resume the role of wife, mother or daughter. In the rural areas, running away from home is almost impossible. The police, friends and her own family would make sure that she goes back. And what is more, a woman who runs away from home risks her life. She is considered 'the property' of her husband and she has to obey him. Disobedience can be severely punished.[54]

3.7 Medical doctors and the Institute of Legal Medicine and Forensic Sciences.

The Istanbul Institute of Legal Medicine and Forensic Sciences (*Istanbul Üniversitesi Adli Tıp Enstitüsü*) has established the only centre for victims of rape, sexual assaults or physical violence in Turkey. The centre is called the Section of Sexual Assault (SSA) and was established as a model for multi-disciplinary research in this field.[55] The original plan was to open such a centre in more towns, but so far they lack funding.

According to SSA research on this subject, 88% of rape victims are children and among child victims anal penetration is frequent (56,5%). Only a small percentage (12%) of victims of sexual offences are adults. According to the Ministry of justice statistics, 9237 trials regarding sexual assault cases, including rape, were held in 1994. The real number of sex offences can probably be multiplied by at least ten. The dark number is high, especially if the perpetrator is a family member. According to the researcher, some estimates claim that less that 5 to 10% of rape cases are reported to the authorities. Possible explanations for this are that the court historically prosecutes the women rather than the defendant, victims fear publicity or have no trust in the law enforcement agencies, the rapist is known by the victim, and finally victims are afraid that the offender will not be punished by the courts.[56] Most of the victims of sex offences (70%) were medically examined within the same day or the next day.[57] They are usually physically examined two or three times, which is a traumatic and humiliating experience for most victims. The more so if one considers that going to a gynaecologist is already a big step to most Turkish women. At the SSA, the victim is examined only once and the victim is prepared for the physical by a psychologist, who talks for about 15 minutes to the victim and explains the procedure.[58] The SSA trains doctors and nurses and teaches them for instance to check victims for venereal diseases and to give female victims the morning after pill. On far too many occasions, a victim of rape turns out to be pregnant and abortions are not always possible for religious reasons or simply because the pregnancy is already in an advanced state, which means that the life of the victim may be affected in a far-reaching way. If the rape victim is an unmarried girl, she will never be able to find a husband (see § 3.1) unless she has a secret operation to repair the virginal membrane. The test for venereal disease is very important to victims because if this disease can be proven in court, the punishment of the offender can be increased by 50%.[59]

3.8 National Ombudsman

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54 See D. van Delft (1992), p. 33.

55 M.F. Yavuz, A. Özaslan c.s., *Sexual assault cases in Turkey, 1990-1995,* Institute of Legal Medicine and Forensic Sciences, Istanbul, paper presented at the Annual Meeting of the American Academy of Forensic Sciences (1997), pp. 1 and 4.

56 M.F. Yavuz c.s (1997), p. 1.

57 M.F. Yavuz c.s (1997), p. 3.

58 In a normal, average hospital the situation is very bad. The medical doctors are not trained to treat victims of sex offences. They often do not know what to do, for instance in 99% of the cases the evidence is not secured or no samples are taken and analysed. Furthermore, most laboratories are very badly equipped. As a result, there is usually no evidence against the offender which can be used in court.

59 Information supplied by Dr. Yavuz (MD) of the Institute of Legal Medicine and Forensic Sciences, Istanbul, 17 October 1997.

There is no such institution in Turkey. This does not mean, however, that a commission or ombudsman to whom the public can complain about the (local) authorities is not needed. To victims and defence counsels of the accused alike, it is very difficult to complain about the authorities, let alone to accuse them of unlawful acts. There is a special procedure for those who want to complain, but in practice extra-judicial criteria have to be met. The case concerned must be based on a very serious allegation and the complainant must have a respectable position or status in society. If one of these conditions is not fulfilled, it is unwise to complain about persons in authority. Moreover, it is very difficult to find witnesses who are willing to testify in public against, for instance, members of the police forces. Most people are too afraid to confirm their accusations in a testimony. As a result, it is almost impossible to seek justice because without witnesses, the case will simply be dismissed.[60]

4 SOURCES OF LAW

4.1 General Sources of Law

Legislation is the principal source of law. Written law may be classified into five categories of descending authority and importance. The Constitution (*Anayasa*) is the most important code and defines the ideology of the state, the principal organs of government, the rights and duties of the individual and the relationship between the individual and the state. The supremacy of the Constitution is expressed in section 11 which states that 'laws shall not be in conflict with the Constitution. Its principles are binding fundamental legal principles [...]'. The 1961 Constitution introduced judicial control of enactments and created the Constitutional Court. The same principle returned in the 1982 Constitution (ss. 146-153). Second, there are the different codes and statutes, such as the Penal Code and the Code of Criminal Procedure. Third in authority are the statutory decrees of the Council of Ministers (*kanun hükmünde kararnameler*). These decrees cannot be applied to fundamental liberties and political rights of individuals. Normally, the Constitutional Court exercises control over these decrees, unless they concern emergencies or martial law. In fourth place in the ranking are the regulations (*tüzükler*) of the Council of Ministers which govern the enforcement of statutes. These are followed by the by-laws (*yönetmelikler*) that are issued by the Prime Minister, ministries and public corporate bodies and aim to ensure that statutes or regulations are enforced.

To a lesser extent, customary law and case law are sources of law. Customary law as such cannot determine crimes nor punishments because of the principle of written law as a safeguard of individual liberties (*nullum crimen*). Court decisions are also considered to be a source of law. The lower courts of criminal law may be bound by decisions of the Supreme Court, but not all decisions of the Supreme Court enjoy authority. As a rule, the decisions of the General Assembly of all Chambers of the Supreme Court are binding. Other decisions of the Supreme Court, although not legally binding, are respected by the inferior courts (see § 3.3).

Legal doctrine has a strong influence on the legal system. Not only because jurists make recommendations about changes in law, but also because academic publications often have a persuasive effect on judges. Legal doctrine is rarely quoted by the court in its decisions; nevertheless, the opinion of academics plays an increasingly important role in the Turkish legal system. Many recent decisions taken by the Supreme Court have made references to legal books that enjoy authority.[61]

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60 Information supplied by lawyers in Istanbul, 14 October 1997.

61 A. Guriz, *Sources of Turkish law,* in: T. Ansay, D. Wallace, *Introduction to Turkish law,* Kluwer, Deventer, 1987, pp. 1-21.

4.2 Sources of Criminal Law and Procedure

The Penal Code was adopted in March 1926 and is based on the Italian Penal Code of 1889.[62] Although it has been modified several times, its essence has been preserved until today. The Penal Code contains general principles of criminal law (book I) and specifies most crimes (book II and III) (see § 3.3). In addition to the Penal Code, several penal statutes exist which contain specific crimes and regulate particular fields of criminal law. Many civil laws also prescribe penalties for certain criminal acts.[63] The principal source of criminal procedure is the Code of Criminal Procedure of April 1929 (Act nr. 1412). It is a translation of the German Code of Criminal Procedure of 1877, and includes some minor changes. The Code has frequently been amended, for instance in July 1985 when the preliminary investigative stage was abolished together with the office of the examining magistrate (Act nr. 3206). Another example of recent amendments to the Code is the prohibition to use illegally obtained evidence (s. 254-2 CCP)[64]

4.3 Specific Victim-Oriented Sources of Law and Guidelines

The Penal Code and the Code of Criminal Procedure include sections which are relevant to victims (see Part II). In practice, however, as the rightful result of the decisions of the European Court for Human Rights, much more attention is given to the rights of the accused (see § 2). Consequently, the rights of victims that have been incorporated in to the law do not yet get the attention they deserve during the criminal process. Other enactments relevant to victims are the Terrorism Act and the Press Act. The 1991 Terrorism Act (T.A.)[65] states that victims who report terrorist acts are entitled to protection (see § 8.3, G.16). Also, the 1950 Press Act[66] contains a number of provisions aimed at protecting certain specific groups of victims against publicity (see § 8.3, F.15).

Legal aid
No legal aid is available to victims.

State compensation
In a few exceptional instances, victims can get compensation from the state. First, victims can get state compensation if damages were incurred in riots and the proprietor is not insured. Second, the *Fakir Fukara* fund – to be compared with an emergency welfare fund – may offer financial assistance to victims of crime who have landed themselves in precarious economic situation.[67] Finally, certain victims of terrorism may apply for state compensation. A State Compensation Fund has been set up for civil servants who suffered as result of terrorism (*Sosyal Dayaniõma ve Yardimlaõma Fondundan* – s. 22 T.A).

5 ROLES OF THE VICTIM IN THE CRIMINAL JUSTICE SYSTEM

Victims can assume various roles, such as that of the civil claimant or auxiliary prosecutor. However, in practice, their role remains marginal. Before the trial, the victim has no influence at all. It is only in the courtroom that he or his lawyer has access to the public prosecutor's file. In court, the

62 Law no. 765, March 1, 1926. An English translation of the Turkish Penal Code can be found in the American Series of Foreign Penal Codes, no. 9 (1965).
63 F. Golcuklu (1987), p. 206.
64 Illegally obtained evidence through for instance illegal search and seizure, illegal line-ups, wire tapping or illegal secret agents is to be excluded and cannot be taken into consideration by the court.
65 Act on Terrorism, Law no. 3713 of April 12, 1991.
66 Press Act, Law no. 5680 of July 15, 1950.
67 Information supplied by police officers in the Kartal district, Istanbul, *Kartal Merkez Karakol Amirligi*, 13 October 1997 and in other districts, Istanbul, 15 October 1997.

damages incurred by the victim do not get much attention. If the victim or his lawyer do not actively pursue a claim for damages, this claim will be overlooked or ignored. The main hindrance to victims who want to pursue their interests in court is their absolute lack of information. Consequently, most victims need a lawyer in order to find out what steps to take. As a rule, victims have to pay for their lawyers whereas the accused can get a free state paid defence counsel. The court may order the offender to pay the victim's costs and legal fees but these are usually very small sums. The amounts are fixed by law, just like fines, and with Turkish inflation rates they become pocket-money before long.[68] The sums are adjusted now and again, but the disparity remains huge. According to lawyers specialized in criminal law, the disparity is no coincidence. They feel it is used to dissuade victims from getting involved in criminal suits. In practice, the criminal justice authorities try to discourage the victim from playing his part as a civil claimant or private prosecutor, despite his legal right to do so.

5.1 Reporting the Offence

Pursuant to the law, victims may report to the public prosecutor, the police or to the justices of peace. In addition to the right of victims to report to these authorities, they may report crimes to the governor (*valiler*), the administrative chief of the district (*kaymakamlar*) or of the sub-district (*nahiye müdürleri*) (s. 151 CCP). Victims may file the report in writing or orally. An oral report, however, has to be recorded by the authority to whom the crime has been reported (s. 151 CCP). In practice, most victims report to the police. Usually, police stations have no waiting rooms. Victims have to wait in the hall-way or in the room where reports are filed. The waiting time is determined by the capacity of the station and by the severity of the crime. Also, no separate rooms are available to question and hear victims and suspects. Although the police always attempt not to bring a suspect and victim of the same crime together in one room, it may occur that a victim has to tell his story while a suspect of another offence is being questioned. All police stations are open 24 hours a day to receive victims' reports.

If a victim has sustained physical injuries, the police accompany the victim to a medical doctor. The police, however, cannot always ensure that a victim will be examined by a female doctor, if she has requested to be treated by a woman. This depends on the medical doctor on duty in the hospital. Concerning the medical profession, it is important to note that medical doctors have a duty to report crimes to the police. They can be punished if they fail to report that a victim came to see them with conspicuous injuries. It is not clear whether how this rule is interpreted, or whether this prevents certain victims from seeking medical help. At the police station, on the other hand, the request of a victim to speak with a female officer is respected, as much as possible. If there is no woman available, the police will try to get one from another police station.

After the victim has reported the crime, he is entitled to a copy of the report but he must ask for it. The copy will not be given to him automatically. In practice, victims hardly ever request a copy of the report because they simply do not know they have the right to do so. Once the report has been filed, the contacts between the police and the victim are maintained. Often victims have to come back to the police station to give additional information or provide additional statements, in particular in complicated and difficult cases.

5.2 Complainant

In some cases specified by law where the injury is perceived to be more private than public, the

[68] For instance, the average fee for a lawyer in a felony case will be around 250 million Lira (EUR 460). The sum mentioned in the law for legal fees is only 10 million (EUR 19). For the defence counsel in a misdemeanour case, the lawyer will ask for 100 million Lira (EUR 190) but the victim can only get 1 million Lira back from the offender (sums of 1997).

victim may instigate criminal proceedings by means of a complaint (*õashî dâva*, ss. 344 – 364 CCP).[69] Besides crimes such as libel and slander which are private crimes in most jurisdictions, the victim should also file a complaint with respect, amongst other things, breaking and entering a house, physical violence (without the intent to kill) causing physical or mental injuries, certain property offences, and threatening to cause serious injury (s. 344-1 CCP). Because there is such a wide range of offences, the victim does not have to be a person of flesh and blood; companies also qualify to bring legal action (s. 344-3 CCP). It has to be noted that sexual offences are considered to be public crimes. Consequently, the public prosecutor can prosecute without a formal complaint from the victim.

Victims may file a complaint with the public prosecutor or the court, both orally and in writing. A report to the political authorities (governors and administrative chiefs) can only be done in writing (s. 151-4 CCP). Usually though, the complaint is submitted to the public prosecutor (see further § 7.1, B.7).

5.3 Civil Claimant

The victim is entitled to claiming compensation from the offender within the criminal proceedings. The criminal justice system in this respect follows the adhesion procedure, by which a victim's claim can be presented at the trial. If the accused is convicted, the court may render a decision regarding the civil claim for compensation of the victim (s. 358 CCP). The formal conditions are, first, that there should be a causal link between the offence and the injuries and losses suffered by the victim, and, second, that the civil claimant should be directly affected by the offence (see further § 7.2).

5.4 Auxiliary Prosecutor

The victim who chooses to act as an auxiliary prosecutor has the right to actively participate in the criminal process (ss. 365-372 CCP). As an auxiliary prosecutor (*müdahale yoliyle dâva,* s. 365 CCP), he is a party to the proceedings and works alongside the public prosecutor. It is a position that can be compared to the German *Nebenklager*.[70]

A victim who wants to become an auxiliary prosecutor has to submit a petition to the court or make a declaration before the clerk at the court's office, who will then prepare an official petition. This petition has to be approved by a judge (s. 366 CCP). From the moment the victim's request is accepted, he enjoys the same rights as the complainant (see § 5.2). Even though a victim may join the proceedings during the trial, it is best to apply for this status at an earlier stage because his petition does not interrupt the proceedings. Furthermore, it is important to note that if the auxiliary prosecutor was not summoned or informed in time, this has no effect on the trial proceedings (s. 368 CCP).

As an auxiliary prosecutor, the victim (or his lawyer) can bring other evidence to court, in addition to the evidence presented by the public prosecutor. He can also adjudicate his claim for compensation (s. 365 CCP). According to lawyers, it is difficult to get access to the public prosecutor's file before the trial.[71] As an auxiliary prosecutor, however, the victim has the power to introduce extra pieces of evidence to the legal file. The victim can do this even before the first court hearing. The only prerequisites are that the victim has to tell the court in writing that he wishes to present evidence and that he has to get the judge's approval. Another advantage of being an auxiliary prosecutor is that it is not required to deposit a bond before participating in the proceedings (s. 366 CCP).

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69 The position of the complainant can be compared with the German *Privatklage*. See F. Golcuklu (1987), p. 251.

70 F. Golcuklu (1987), p. 251.

71 It is also difficult for lawyers to get access to the file if they act as defense counsel for the accused, despite changes in the law to improve the rights of the accused and to give more powers to his counsel.

Decisions taken before the intervention of the victim as an auxiliary prosecutor, provided that the public prosecutor has been notified, remain valid (s. 369 CCP). If the auxiliary prosecutor does not attend the trial, he will be notified about the court's judgment (s. 370 CCP, see § 6.2). Finally, the auxiliary prosecutor has the right to take recourse to legal remedy independently of the public prosecutor (s. 371 CCP).

5.5 Witness

If the public prosecutor decides to prosecute the case, the victim will have to act as a witness for the prosecution (s. 238 CCP). This means that victims have to repeat their pre-trial statements in court, even if their testimony is not strictly necessary because there is enough other evidence to prove the case. There are, however, some exceptions to this rule. Firstly, the reading of the pre-trial statements of the witness is permitted and sufficient if the witness has died, has become mentally ill, or cannot be found. The court has to state reasons for permitting the reading of the records (s. 244 CCP). The second category concerns witnesses whose presence in court becomes impossible for a long or indefinite period of time. Then the court may conduct the hearing of such a person through a delegated judge or an interrogatory session. If necessary, the witness will be heard under oath. This also applies to witnesses whose presence in court would constitute hardship because they live at a great distance from the court (s. 216 CCP).

If the witness does not testify in court, the public prosecutor and the defence counsel have the right to be present during the hearing outside the court room (s. 186 CCP). However, a prerecorded statement cannot be read in court simply because the witness claims his right to refuse to testify in court (s. 245 CCP). In practice, it will not be easy to refuse to testify in court if the victim wants to get the offender convicted.

Finally, the victim-witness has the right to make a statement in court about the case. Section 251 CCP reads as follows: 'After the introduction and adjudication of the evidence, statements may then be made by the complaining witnesses, then by the public prosecutor, then by the other parties, and after them by the accused. The public prosecutor may reply to the accused, and the accused and the counsel for the accused may reply to the public prosecutor. The complaining witnesses and interested parties may only reply with permission of the court [..].' In practice, the statement of the victim-witness bears some resemblance with the Victim Impact Statement because the victim may tell the court what he has experienced in the aftermath of crime. Concerning the questioning of witnesses, see § 8.2.

PART II:
THE IMPLEMENTATION OF RECOMMENDATION (85) 11

6 THE VICTIM AND INFORMATION

6.1 Informing the Victim

(A. 2) The police should inform the victim about the possibilities of obtaining assistance, practical and legal advice, compensation from the offender and state compensation.

There are no legal provisions or guidelines which oblige the police to inform victims about any of these subjects, nor do the police consider it their duty to give information to victims. Concerning assistance, there are hardly any services which would be able to help victims of crime. In the cities where there are services for victims of domestic violence and shelters (see § 3.6), the police ignore their existence. If a victim asks the police for legal advice, he will be referred to the public prosecutor or advised to get a lawyer. The police feel that by giving legal information to victims or by sharing

their opinion about the proceedings, their impartiality would be jeopardized.[72] The police, however, realize that about 50% of victims do not know anything about legal procedures. Notwithstanding, it is only in cases where the victim is very distressed or ignorant about what to do, that the police may offer some advice and practical help, by telephoning the bar association and requesting a lawyer. in fact, lawyers are the only source of (legal) information for victims of crime.[73] With respect to other types of practical advice, the police are also very reluctant. They do not like to give advice on how to prevent further victimization because they believe that this will make victims anxious about crime. If the police feel there is a risk that the crime will be repeated, they will try to prevent this from happening by putting extra men on the case or on the street. And even though they are fully aware that there is no victim support, the police still do not help victims with writing letters to the court or filling out forms for payments by insurance companies. Only lawyers provide practical help, but the victim will have to pay for such services. If a victim needs medical treatment, the police will send or accompany the victim to a medical doctor. The resulting medical report is included in the case file.

Regarding compensation, if it is evident that the victim is ignorant about what to do, the police inform him that he has to ask the court about compensation for these damages and he will be advised to get a lawyer. The police report, however, does not mention the wish or need of the victim to receive restitution of goods or compensation. If the victim wants compensation, it is entirely up to him or his lawyer to pursue his claim for compensation. There is no State Compensation Fund with a general scope to compensate victims of crime, although there are few exceptions (see § 4.3).

It is clear that exercising a victim's rights may be frustrated by a lack of information and assistance. Nevertheless, the police feel that victims are usually disappointed not so much by police performance but by the criminal process itself. The main reasons for disappointment are said to be that victims consider the punishment to be too low and/or they are left with the financial consequences of the offence. Lack of information is recognized by the police as one of the biggest problems for victims in Turkey. But the police do not consider it their job to inform victims and/or do not feel that they have the expertise to give legal advice (see §§ 3.1 and 8.1).

(A. 3) The victim should be able to obtain information on the outcome of the police investigation.

The police do not inform victims about the outcome of their investigations. This is considered to be the duty of the prosecution service or the court (see § 3.3.1). Victims who contact the police at an earlier time with questions about their case will be referred to the public prosecutor in charge of the investigation.

(B. 6) The victim should be informed of the final decision concerning prosecution, unless he indicates that he does not want this information.

In general, the victim is informed of the public prosecutor's decision to prosecute. This has a practical reason; the victim is the main witness for the prosecution. As a witness, he always has to be summoned to court to give evidence (see § 5.5). This is the responsibility of the court. On the other hand, if a decision is taken not to prosecute, the complainant and the auxiliary prosecutor (see § 5.2 and § 5.4) are notified by the public prosecutor because they have the right to oppose the decision. The prosecution service is legally obliged to notify him. The notification should include information about how, where and to whom the victim can complain about the decision not to

[72] This is not typical for the police. Also in interviews with public prosecutors, they insisted that giving information to victims of crime is a sign of partiality. Consequently, they felt that assisting victims in any way would interfere with their code of ethics. Even though, they do give (legal) information to suspects.

[73] Information supplied by police officers in the Kartal district, Istanbul, *Kartal Merkez Karakol Amirligi*, 13 October 1997.

prosecute, and within which period of time he should do so (see § 7.1, B.7).[74] In practice, public prosecutors are said to comply with the law. Other victims, who have not assumed these formal roles, are not informed by the public prosecutor about his decision not to prosecute.

(D. 9) The victim should be informed of:
-the date and the place of a hearing concerning;
-his opportunities of obtaining restitution and compensation within the criminal justice process, legal assistance and advice;
-how he can find out the outcome of the case.

As a rule, the victim is summoned as a witness for the prosecution (see § 5.5). The date and place of the first court session are mentioned in the summons. If the victim is needed at subsequent hearings, the court will summon him again. If the court feels the victim does not need to give testimony after the first session, the victim will not be informed of the date and location of subsequent hearings. However, if he has a lawyer, the latter is informed and notifies the victim. In addition, the complainant and the auxiliary prosecutor must be informed of the date and place of the trial.

Regarding the victim's opportunities to obtain restitution or compensation, legal assistance or advice, there is no specific judicial body that informs the victim. Neither the police, or the public prosecutor or the judge will explain him what steps he should take. Generally speaking, unless the victim has his own lawyer, he lacks the most basic information about his right to be compensated by the offender.

Victims, and especially those victims who do not act as complainants or as auxiliary prosecutors are hardly kept informed. There are, however, exceptions to this rule. One of these concerns the outcome of the case. It is standard procedure that the court notifies victims who have assumed these roles about the outcome of the case because the victim has the legal right to lodge an appeal against the sentence. Even if the victim feels that the sentence is too low, he has the right to take recourse to a legal remedy.[75] According to the law, the complainant or auxiliary prosecutor have the right to appeal any decision on the same grounds as the public prosecutor (s. 359 CCP). There are no statistics or other sources of information to assess how often victims use this right.

6.2 Information About the Victim

(A. 4) In any report to the prosecuting authorities, the police should give as clear and complete a statement as possible of the injuries and losses suffered by the victim

The police mention the injuries and losses of the victim in their report to give an indication of the consequences of the crime. It is, however, up to the victim to present his claim for compensation to the court. The public prosecutor is never involved in any claim for compensation made by the victim. Nonetheless, the nature of the victim's damages or injuries may play a role during the trial. The public prosecutor may demand a more severe penalty if the victim has suffered serious injuries or incurred damages. However, generally speaking, the nature and extent of damages incurred does not influence the court's sentence.[76]

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74 Information supplied by lawyers (14 October 1997) and a public prosecutor in Istanbul (17 October 1997).

75 Information supplied by lawyers, Istanbul, 14 October 1997.

76 Information supplied by lawyers in Istanbul, 13 and 14 October 1999 and by judges and public prosecutors in Ankara, 20 October 1997.

(D. 12) All relevant information concerning the injuries and losses suffered by the victim should be made available to the court in order that it may, when deciding upon the form and the quantum of the sentence, take into account:

-the victim's need for compensation;

-any compensation or restitution made by the offender or any genuine effort to that end.

The police record the damages incurred and injuries suffered by the victim but these facts are not intended to serve the purpose of compensating the victim. They are included in the report as evidence of the occurrence of crime. The severity or extent of the victim's damages rarely influence the form or quantum of the sentence. And, as a general rule, the court does not occupy itself with the victim's injuries and losses. Victims who seek compensation have to defend their own interests and put in a request for compensation during the trial. Once a claim for damages has been made, this is no guarantee that the court will be willing to grant damages to the victim. Criminal court judges usually refer the claim to civil court. This is surprising if one considers that civil and criminal cases are heard by the same judges (see § 3.3). Therefore, all judges are able to establish the amount of damages that would be awarded in civil court proceedings and award it within the criminal process.[77]

In the exceptional[78] case where an offender has made any payments to the victim or otherwise repaired the losses before the trial, the defence counsel will inform the court. Subsequently, the court will take the payment of damages into account as an attenuating circumstance (see § 7.2, D.13). Concerning any genuine effort of the offender to compensate the victim or his willingness to do so, the court may again consider this an attenuating circumstance. The law allows furthermore that the court imposes a less severe sanction if the offender has made a good impression during the criminal process (s. 59 PC). In practice, however, if the offender has committed a serious felony, the promise to compensate the victim will not easily influence the quantum of the sentence.[79]

7 THE VICTIM AND COMPENSATION

Within the Turkish criminal justice system, it is very unusual for victims to claim compensation from the offender. A first explanation is the inadequacy of the provision of information about the victim's rights. The criminal justice authorities, however, maintain that victims know they have the legal right to claim damages in court. They feel the problem is that they do not know how to do this, and thus need a lawyer. A second and most probable explanation why victims rarely claim compensation is that lawyers generally tend not to advise victims to go to criminal court to claim compensation. Instead, lawyers advise their clients to obtain a conviction in criminal court and to use the verdict to claim compensation in civil court.[80] Lawyers justify their approach by the fact that the civil courts are more inclined to award large sums of compensation. However, the lawyer handling the case for the victim in civil court gets a much higher fee. The fee structure of lawyers, a seemingly unimportant factor, may therefore be a major obstruction in effecting a change on behalf of victims of crime and significantly reduces their opportunity to obtain compensation within criminal proceedings.

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77 Interviews in Istanbul with police officers (13 October 1997), a lawyer (14 October 1997), public prosecutors and a judge (17 October 1997).

78 In Turkish culture, it is very rare that a suspect admits guilt – either by saying so or by paying compensation to the victim – before the court has found him guilty. Suspects are not very inclined to belief that this may lead to a less severe punishment.

79 Information supplied by a public prosecutor in Istanbul (17 October 1997) and a public prosecutor and judge in Ankara (20 October 1997).

80 Information supplied by three lawyers in Istanbul, on 13, 14 and 15 October 1997, who all stated that this is the standard procedure.

7.1 The Expediency Principle and Compensation

(B. 5) A discretionary decision whether to prosecute the offender should not be taken without due consideration of the question of compensation of the victim, including any serious effort made to that end by the offender

The criminal justice system does not adhere to the expediency principle. The public prosecutor is thus not at liberty to dismiss cases whenever he considers prosecution uncalled for. There are specific, clear circumstances which will end public action (s. 164 CCP). Public prosecution is no longer possible if the accused has died, has been granted amnesty or pardon, or if the victim has withdrawn his complaint.[81] The public prosecutor may also drop the charges if the offender, punishable by fine or by the maximum penalty of one month behind bars, deposits part of the fine before the hearing by the court. If this amount is paid before the public prosecutor takes the case to court, the offender is not prosecuted (s. 119 PC).[82] In practice, the public prosecutor will also take a decision not to prosecute if he feels he does not have enough evidence to proof that a crime has been committed.[83] Compensation, however, is not taken into consideration by the public prosecutor, nor is the payment of compensation taken into consideration by the judicial authorities regarding the decisions to grant amnesty or pardon.[84]

Mediation between victims and offenders is not an official police activity. There are no directives or circulars which authorize the judicial authorities to mediate between victims and offenders. According to the police, they do mediate in conflicts between neighbours and within families. They consider it counterproductive not to do so.

(B. 7) The victim should have the right to ask for a review by a competent authority of a decision not to prosecute, or the right to instigate private proceedings.

After a decision not to prosecute is taken, the public prosecutor is obliged to notify the complainant and the auxiliary prosecutor of his decision. The complainant and the auxiliary prosecutor have been given the right to a legal review. They may object to the Chief Justice in the nearest Aggravated Felony Court (see § 3.3) within fifteen days after notification of the decision not to prosecute. Such an objection has to be accompanied by proof justifying the opening of prosecution and it must be signed by the victim's lawyer, if the victim has hired such services (s. 165 CCP). Despite the fact that this is not required by law, the notice of objection stands a better chance of being accepted if it has been written and signed by a lawyer. Documents written by lawyers are considered more valid.[85] Of course, this increases the legal costs for victims. If the Chief Justice accepts the objection and finds the petition justified, he will order the prosecution of the case. If the petition is dismissed, the case can only be re-opened if new evidence has been discovered (ss. 164 *et seq.* CCP).[86]

7.2 The Court and Compensation

(D. 10) It should be possible for a criminal court to order compensation by the offender to the victim. To that

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81 If prosecution depends on a complaint, the case will be dismissed or discontinued if the victim drops the complaint (s. 99 PC). Here, a payment of compensation by the offender or his family may play a role in persuading the victim to withdraw the complaint.

82 F. Golcuklu (1987), p. 215.

83 Information supplied by lawyers in Istanbul, 13 and 14 October 1997.

84 General amnesty (*genel af*) terminates public prosecutions and sets punishments aside (s. 97 PC). Pardon (*ozel af*) may set aside, reduce or change the punishment (s. 98 PC). Contrary to amnesty, a pardon does not remove the effects of the conviction nor will it effect the secondary punishments. Both amnesty and pardon are granted by the National Assembly and the President of the Republic (s. 104 Const.).

85 Information supplied by lawyers, Istanbul, 14 October 1997.

86 F. Golcuklu (1987), p. 255.

end, existing limitations, restrictions or technical impediments which prevent such a possibility from being generally realised should be abolished.

According to the law, the victim has the right to choose whether he wants to present his claim for damages in criminal or in civil court. If the accused is convicted, the criminal court may also take a decision regarding the claim for compensation (s. 358 CCP). The terminology used by the legislature clearly indicates that the criminal court is under no obligation to do so. If the claim for damages is complicated or disputed and leads to delays of the criminal proceedings, the court must refer the victim's claim for compensation to civil court (s. 358-2 CCP). Thus, although it is possible to grant compensation to the victim, there is no strong formal obligation for judges to act accordingly. In practice, it depends on the individual judge whether he allows the claim for damages (see § 7.2).[87] But most judges prefer to qualify the claim as too complicated or argue that it is not undisputed.

Another impediment to realizing the victim's right to be compensated by the offender is that most judges feel they have too many cases and too little time as it is, and that the victim's claim will only prolong the trial. Already, due to the principle of immediacy several hearings are needed to conclude the case. Nevertheless, it could also be argued that judges are simply unwilling to award a claim for damages in criminal proceedings. Yet, trials take a long time to conclude. Dealing with the victim's claim most probably will not have a significant effect on the duration of the trial. More probably, criminal courts judges see themselves as magistrates dealing with criminal law and are not inclined to grant compensation to victims. In the exceptional case that compensation is claimed in criminal court (see § 7 introduction), judges will as a rule refer the claim for compensation to civil court.[88] Therefore, the odds are against a victim who wants to obtain compensation from the offender in criminal court.

As said earlier, a third limitation lies with the lawyers that represent the victim. They will generally advise victims to present their claims for compensation in civil court (see introduction § 7).[89] It is common practice to start the two proceedings at the same time and postpone the hearings in the civil case until there is a judgment in the criminal process. The average criminal trial takes about one year, but the victim who wants compensation has to wait at least another six months before he has a court decision regarding damages. Therefore, this practice has two disadvantages for victims, it is both time consuming and brings along additional costs for victims. Here, it has to be born in mind that in Turkey many people are self-employed or work in a small company, which means that they have no income if they do not come to work. If they have to travel far, the situation is even worse since travel expenses are not reimbursed.[90] Hence, it is hardly surprising that it is quite rare for victims to claim compensation during criminal proceedings.

(D. 11) Legislation should provide that compensation may either be a penal sanction, or a substitute for a penal sanction or be awarded in addition to a penal sanction.

Compensation is not a penal sanction in the sense that it is an independent penal sanction (see § 3.3). The claim for compensation is a matter of private law, even if it is dealt with in criminal court. According to the Penal Code, the court may order restitution or compensation (s. 32 PC) but the court cannot award compensation as a substitute for a penal sanction. In practice, compensation is not often awarded within criminal proceedings but if it is, it is always in addition to another

87 Information supplied by Mr. Mahmuto¹lu and Mrs. Sokullu of the Istanbul University, Department of criminal law and procedure, Istanbul, 15 October 1997.

88 As said before Turkish criminal law is based on German Penal Code (see § 4), however, German legal culture also seems to have had an impact. This attitude of Turkish members of the judiciary is an exact copy of their German colleagues. See Chapter 9.

89 Information supplied by lawyers in Istanbul, 14 October 1997.

90 Information supplied by lecturers of the Police Academy, Ankara. This is also a reason why many persons do not want to act as a witness in court, simply because it costs too much.

sanction such as imprisonment. The law also empowers the court to order the offender to pay the victim's legal costs (s. 32 PC). Furthermore, the court may postpone any suspension of punishments until the personal rights of the victim, i.e. the right to compensation, are restored or redressed by the convict (s. 93 PC).

(D. 13) In cases where the possibilities open to a court include attaching financial conditions to the award of a deferred or suspended sentence, of a probation order or any other measure, great importance should be given – among these conditions – to compensation by the offender to the victim.

In general, little importance is attached to compensation or restitution (see above). During the trial, the payment of compensation can be regarded as an attenuating circumstance. The offender who returns stolen goods or compensates for losses incurred by the victim prior to the instigation of criminal proceedings against him, receives a less severe punishment. His sentence will be reduced by one-third or two- thirds. If the restitution or compensation takes place during the criminal proceedings, the perpetrator's punishment is reduced by one-sixth to one-third (s. 523 PC).

In addition, the court may take the willingness of the offender to pay compensation into account (s. 59 PC, see § 6.2, D.12).

During the enforcement stage, payment of compensation may play a role if the court is willing to grant a conditional release or otherwise suspend the enforcement of the verdict. Pursuant to the law, the court may postpone suspension until damages are being compensated (s. 93 PC). Turkish law does not provide for probation or parole.

7.3 Enforcement of Compensation

(E. 14) If compensation is a penal sanction, it should be collected in the same way as fines and take priority over any other financial sanction imposed on the offender. In all other cases, the victim should be assisted in the collection of the money as much as possible.

Compensation is not a penal sanction, it is a decision under private law (see § 7.2, D.11). As a result, the victim is responsible for the enforcement of the verdict. He may get help from his lawyer to collect the money, especially if the legal fees have to be paid from the claim. Or, the victim may send in the bailiffs to collect money from the offender. Of course, the assistance of a lawyer or a bailiff is not free of charge. In practice, it is difficult to obtain money from the offender. This is true for most countries, however, in Turkey, an additional problem is formed by the fact that inflation is very high (at times about 80%) which means that most people have financial problems and any postponement of payment saves them (a lot of) money.

8 TREATMENT AND PROTECTION

8.1 Victim-Awareness Training

Judicial authorities

Public prosecutors and judges are mainly trained on-the-job. To become a judge or a public prosecutor, a law school graduate has to apply to the Minister of Justice in much the same way as he would for any other job. If accepted, one must start as an apprentice and work under the guidance of senior judges. At the end of a two-year period, the trainee may be appointed as a judge or public prosecutor by the Supreme Council of Judges and Public Prosecutors.[91]

Given the fact that the judicial authorities only receive training at the universities until the moment of graduation, it is hardly surprising that public prosecutors are insufficiently aware the

[91] The same applies to public prosecutors.

latest case-law of the European Court of Human Rights, which may hinder the control over police activities. In Istanbul, public prosecutors receive only four days of training on the subject of human rights, in other parts of the county no training is provided. Finally, there are not enough courses for magistrates. As a result, they often have inadequate knowledge of new legislation. Today, academics of Istanbul universities give seminars to update their knowledge. Unfortunately, this is a novelty and not available for magistrates in other parts of Turkey.[92]

General police training

New recruits are trained at police schools (*polis okulu)* or at the police academy (*polis akademisi*). Even though the general educational level at the police academy is quite similar to that in other countries, the main problem is that there is no practical training, which is left to the police units, or on-the-job training for incumbent personnel. Therefore police officers learn many specific police functions not from specially designed courses but from the mistakes they make, or by copying (bad) habits from each other.[93] The military police is not trained at all in police activities (see § 3.1, and A.1). However, to bring about changes in Turkey is difficult[94] and the results of change will therefore probably not be noticeable within the first decade.[95]

There are over twenty police schools in different parts of the country. Students are accepted from age 22 to 27 and have to pass a written exam as well as a fitness test. At the police schools the cadets are trained for nine months in basic police skills and basic theoretical legal and social subjects. The training is very theoretical and provides insufficient preparation for everyday police work. Graduates have no rank and will serve as ordinary policemen. At the police academy, the only national and university institution based in Ankara, cadets are trained for middle and senior ranks. They can enter once they have finished a (police) high school and scored the required mark on the national exam. Their four year education program consists of physical training and theoretical training in many different subjects, such as law, public relations, sociology and social psychology.[96] The education is nonetheless generally considered inadequate to prepare them for their duties. This is partly due to the rather strange philosophy that education has nothing to do with daily police practice. Students receive very little training in practical skills and their general qualification is not backed up by occupational specialization. As a result the training of individual police officers seems to have little positive effect on police practice. Their theoretical knowledge is quickly subsumed by operational police culture.[97] Moreover, teaching staff often lack police experience and expertise, and are not always selected because of their capacities. Another problem is that the different levels of police training are poorly coordinated.[98]

Until recently, the police curriculum at the academy did not include (extensive) training in social skills and or training on how to deal with the public or victims. Today, however, initiatives are being developed to change this situation. The police realize the necessity to improve its relation with the public at large. Moreover, at the police academy, training of the police has improved considerably over the last few years. Different members of staff have been trained abroad since the early

92 Yenisey (1997).

93 I. Cerrah, *Public order police training in Turkiye: public order police training and its impact on public order police practices*, presented on the International Crime Conference, June 16-21 1996, Dublin, Ireland. See http://www.whatsup.com/icc/Papers/Turkey.html

94 A (self proclaimed) characteristic common to most Turks is that they do not like criticism. Consequently, it is particularly difficult to bring about changes since this usually implies a critical attitude.

95 Information supplied by the Directorate General of the Police, Ministry of the Interior, Ankara, 22 October 1997.

96 I. Cerrah (1996), pp. 2-3.

97 I. Cerrah (1996), p. 9.

98 For instance, at the police highschool much attention is paid to technical courses, such as mathematics, physics and chemistry, but hardly any to sociological subjects. At the police academy this situation has changed, and attention is now given to other subjects, mainly writing skills. However, these skills have little to do with the requirements imposed by daily police practice.

nineties,[99] more contacts with foreign police academies have been established[100] and study material has been modernised. At police schools, however, the situation is quite different. It is hardly surprising that public prosecutors sometimes feel like training institutions themselves. Frequently, they have to tell police officers how to carry out most basic of police duties, e.g. how to write a report. They have to teach them the legal requirements of a report, and tell them which facts are relevant and which should be included. Public prosecutors find this frustrating and time consuming, also because of the transfer system of civil servants (see § 3.1). When finally these prosecutors taught them everything there is to know, chances are that these policemen will be transferred to another district and the training ritual has to start all over again with the new recruits.[101] The recent initiatives to improve police training at the police schools are the result of pressures and criticism from the prosecution service. In rural areas under the control of the gendarme, the situation is described as disastrous by the prosecution service. The problem is that the army is responsible for the training of gendarmes and it is difficult to (officially) criticize the army, an omni-present power block (see Scenery).[102]

The police are generally considered to be insufficiently trained. However, what is truly remarkable is that all criminal justice authorities criticize one others' training and often consider themselves to be inadequately trained. The latter finding in particular demonstrates that there is both a need for more and better training and a great willingness to participate.

(A. 1) Police should be trained to deal with victims in a sympathetic, constructive and reassuring manner.

During their training at the police schools or the academy, the police receive no training with respect to the rights and interests of victims of crime. Nor are they taught how to deal with victims who turn to the police for help. In practice, the police see the victim as an important source of information and treat the victim accordingly. The police have never heard of the term 'secondary victimization', nor are they particularly conscious of such a concept in daily practice. This is especially harrowing for victims who belong to vulnerable groups in society, such as female victims of sexual offences or of crimes committed among relatives. The police are known to ask these victims what they did to deserve this.[103] Therefore it is hardly surprising that these victims do not report easily to the police. Furthermore, talking about such crimes is taboo.[104] For most people it is still a big step to go to the police. Nonetheless, the police are a lot more sympathetic to victims than to suspects. In their own

99 About fifty members of the teaching staff – all high ranked police officers with a university degree – were sent to for instance England, Germany and the United States to study, to write their doctorate thesis and to see for themselves how the police functions in these countries. Unfortunately, due to a change in policy and management, this great initiative has stopped. Teachers were summoned to return to Turkey, even if they were in the middle of their Ph.D's. And what is worse, those who were abroad are now treated like pariahs in their own organization and face an uncertain future. So, it cannot be sustained that students at the Police Academy profit from their experience, new insights, modern knowledge or skills.

100 While there, I witnessed foreigners visiting the police academy in Ankara and giving lectures.

101 According to public prosecutors interviewed both in Istanbul and Ankara.

102 Information supplied by the Directorate General of the Police, Ministry of the Interior, Ankara, 22 October 1997. The same applies to the cooperation between public prosecutors and members of the gendarme. If the gendarme makes mistakes, even serious ones, no public prosecutor will readily criticize the persons involved, nor point them out to their superiors. However, criticism of the national police is much more common.

103 Information supplied by members of the Faculty of criminal law, Istanbul University, 15 October 1997.

104 In Turkey, women generally have to remain virgin, until marriage. If a girl has been raped and the crime is prosecuted, chances are that the trial is held in public (see § 8.3). Once it is known that she is no longer a virgin, her future will be seriously affected. Families rarely allow their sons to marry a girl who is no longer a virgin, whatever the reason. Moreover, unmarried women have very low social status. It is critical that the judiciary starts to realize this and show more leniency towards these victims, for instance by holding a trial in camera.

way, the police care for victims and they assist them in small matters.[105]

With respect to police training, it is important to note the contribution of the faculty members of the Institute of Legal Medicine and Forensic Sciences that is involved in the SSA centres (see § 3.7) who train (some) policemen, public prosecutors and judges concerning a proper treatment of victims, and in particular victims of sexual crimes. These training programmes were set up in Istanbul, Ankara and Izmir at the local university based institutes of medical sciences and forensic medicine. Most of the students are police officers who are very enthusiastic about the opportunity to get training. During the course, modern psychological and victimological insights are given a lot of attention. The faculty staff feels it is important to talk about the psychological effects of rape or sexual assaults on victims and the repercussions of the ways the authorities should treat these victims when they seek the help of the police. The course also focuses on more technical aspects such as how to evaluate and interpret lab reports or the statement of an expert witness. This training is not only considered necessary for police officers but also for magistrates.[106] The necessity of training can be illustrated with results of a SSA research which shows that the statement 'rape is satisfying to the victim' is true according to (*inter alia*) 18% of the police and 16% of lawyers. The statement 'the victim deserved to be raped', is valid according to 33% of the police and 17% of the magistrates. And 66% of the police and 38% of magistrates thinks the clothing or behaviour of the victim has provoked the offence.[107]

8.2 Questioning the Victim

(C. 8) At all stages of the procedure, the victim should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity. Whenever possible and appropriate, children and the mentally ill or handicapped should be questioned in the presence of their parents or guardians qualified to assist them.

The police, public prosecutors or judges are not trained to question victims in a considerate manner. Therefore, at every stage of the procedure, the way in which the victim is questioned depends on

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105 For instance, give a victim transport home or let him use the phone at the police station. At the station, there are separate rooms for reporting a crime where victims can tell their story in relative privacy. The only way for victims and offenders to meet at the station is by sheer coincidence in the hallway, if the police brings the suspect in at the moment the victim enters or leaves the station or is waiting in the hallway. Such confrontations are never planned and if possible they are avoided. The only way the police confronts the victim with the offender is in a line-up but then the victim cannot be seen because of the little peep-in window or the one-way screen. In a misdemeanour case, the victim may be confronted openly with the suspect to confirm his identity, if the police do not expect him to be aggressive or otherwise dangerous. The waiting time at the police station is determined by the severity of the offence or the physical or psychological damages suffered but is generally rather short. Information supplied by the Istanbul police, 15 October 1997.

106 Much to the surprise of the medical doctors involved in the training, judges do not handle any criteria as to the assessment of the credibility of an expert witness. An expert is never asked for his curriculum vitae and his expertise is never questioned. The SSA teach magistrates to ask for credentials and publications and train lawyers how to defend the rights and interests of victims by attacking the reliability or expertise of the expert-witness. With regard to medical tests, most lawyers are for instance unaware of the possibility to ask for a second opinion or contra expertise. This is very relevant to victims of sex crimes because 60% of the lab results of non-academic hospitals are unreliable. As a result the offender will not be convicted for his crime because his guilt cannot be proven by hair, skin or semen samples. If only the lawyers would have asked for a contra expertise by another lab, for instance a military lab, the conviction rate would be much higher. Many ordinary labs cannot perform DNA-testing and if they do the methods are questionable, therefore lawyers should ask a contra expertise by a good lab of a respected university or the army. During the courses also the attitudes of the authorities regarding victims are discussed.

107 Information supplied by Dr. Yavuz (MD) of the Institute of Legal Medicine and Forensic Sciences, Istanbul, 17 October 1997. The research including this data is under publication.

the individual who performs this task. As a rule, victims are questioned at least twice. They have to tell their story at each stage: to the police and usually to the public prosecutor during the pre-trial stage, and to the court during the trial stage. In most cases, he is questioned more than once by the each judicial authority. After reporting the crime, the victim often has to come back several times to the police station to answer additional questions. If the resulting case report is transferred to the public prosecutor and questions still remain unanswered, he will want to question the victim again. It is part of Turkish tradition in criminal proceedings that the public prosecutor personally sees and questions the victim.[108] Police officers and public prosecutors seem to be unaware of the risk of secondary victimization caused by repeated or inconsiderate questioning. To them, the victim is first and foremost a witness who has to cooperate with the criminal justice system.

Children are not questioned by the police because this is regarded as the exclusive competence of the public prosecutor. However, prosecutors are not trained in the particulars of questioning children. There are also no special facilities, such as child interviewing studios.

During the trial, the victim has to appear in court at least during the first hearing. But it is not usual for victims to be summoned to give evidence at a number of occasions. On average, court proceedings last for about one year.[109] In this year, the parties and persons involved have to present themselves at the court twice a month. According to the law, it is the judge who decides whether a victim has to come to court more than once. The presiding judge is authorized to summon some or all of the witnesses or experts for subsequent trial sessions, if the trial cannot be concluded within a single day because there is a large number of witnesses, experts or defendants or because the hearings are long (s. 207 CCP). The judge may also decide that the victim only has to be present during the first hearing. This will usually happen in simple cases or non-contended cases, when there is no need for the victim to tell his story again.[110]

The victim, just like the other witnesses, is questioned by the presiding judge. Direct questioning by the parties is never allowed.[111] The court controls every aspect of the questioning. The court decides whether a question is proper or improper, relevant or irrelevant (s. 235 CCP). And if the court feels that one of the parties is abusing the right to question of experts and witnesses, the presiding judge is authorized to revoke that party's permission to question (s. 234 CCP). In this way, the court can protect victims against irrelevant or hostile questioning. However, in practice, it all depends on the individual judge. The judge may put questions to the victim in a harsh manner. But as a rule, it is considered an advantage for victims if the judge is in charge of questioning and protects the victim from hostile questioning by the defence counsel. For instance, if the suspect is expected to be punished severely, tension in the court room may rise, but the court can function

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108 Information supplied by lawyers, Istanbul, 14 October 1997, and by a public prosecutor, Ankara, 21 October 1997.

109 Professor Yenisey of the Marmara University has recently performed a study that more or less corroborates these statements. The study was done in collaboration with Kaiser and Albrechts of the Max Planck Institute in Freiburg, Germany and includes 1000 legal files. According to the study, the time from the report to the sentence of the court is on average one year. The study further reveals that the duration of an investigation is 10 days. Yenisey feels this is often a too short a period. The investigations performed by the police and directed by the public prosecutor in particular lack quality. They spend too little time investigating and the case goes to court too soon. As a result, relatively many suspects are acquitted by the court for lack of evidence in Turkey, compared to for instance Germany. In Turkey, 30% of cases end in an acquittal; 50% in a conviction and the remaining 20% can no longer be prosecuted because of undue delay or because they have become prescribed by lapse of time. According to Yenisey, in a properly functioning criminal justice system the conviction rate of the cases brought before the court is 90%. One of the reasons for such poor performance is that there is no judicial police in Turkey (see § 3.1). Another interesting aspect of Turkish criminal justice practice is that prisoners are generally released after serving 40% of their sentence, whereas in Germany and the Netherlands they are released after serving 2/3 of their time. Yenisey (1997).

110 Information supplied by lawyers in Istanbul, 14 October 1997. Civil proceedings take longer than a case in criminal court, in general, they take between a year and a half and two years.

111 According to all persons interviewed: lawyers, public prosecutors and judges alike, the presiding judge asks the questions himself to the all the witnesses, including the victim.

as a stabilising factor. Or, if the defence wants to put more pressure on the victim-witness and tries to put him on the stand, the court can simply refuse to ask questions.[112]

In theory, questioning is a very formal ritual: the public prosecutor[113] and the defence counsel have to ask the court if the court will allow them to ask certain questions to the witness. Then they have to present questions to the court and the judge will decide whether he feels these relevant. Hereafter, the judge will address the victim and formulate the questions in his own way. In practice, the ritual is somewhat less formal, however. Some judges abide strictly by the rules, others allow counsel to formulate a question and ask the victim or witness if he understands the question. If so, the victim may answer the question.

8.3 Protecting the Victim

(F. 15) Information and public relations policies in connection with the investigation and trial of offences should give due consideration to the need to protect the victim from any publicity which will unduly affect his private life or dignity. If the type of offence or particular status or personal situation and safety of the victim make such special attention necessary, either the trial before the judgement should be held in camera or disclosure or publication of personal information should be restricted to whatever extent is appropriate.

The law comprises few opportunities to protect the victim against publicity which may affect his private life or dignity. Only the Press Act (PA) contains provisions to protect certain victims against undue publicity in the press, such as victims of sexual offences, or incest, and the surviving families of persons who have committed suicide. Concerning sexual offences, it is prohibited to publish photographs of victims or to reveal their identity. News releases about incest are expressly forbidden. The sanction for journalists, and newspapers or magazines they work for, can be imprisonment and/or a fine (s. 33 PA). Furthermore, publication of personal details in suicide cases is prohibited (s. 32 PA). The purpose of this provision is to protect families against sensational tabloids. Finally, the Press Act prohibits the publication of documents on preliminary investigations (s. 30-1 PA). This is a rule deriving from the secrecy principle, protects suspects and victims alike. Documents which have been disclosed during the trial can be published; however, the media are not allowed to interpret their meaning (s. 30-2 PA).

With respect to the trial proceedings, the media, including television cameras, are commonly allowed into the courtroom. If the trial is open to the public, the media are allowed to photograph or film both suspects and victims openly and identification is possible. Their full names can even be disclosed in such broadcasts. The only exception to this rule concerns the publication of the personal details of juveniles which is forbidden (Act on Juvenile Delinquency and the Establishment of Juvenile law). This Juvenile Act protects both juvenile delinquents and juvenile victims.[114]

As a rule, court hearings are open to the public. Hearings, or parts thereof, can be held behind closed doors if this is necessary to protect public moral and security to hold the trial (partially) behind closed doors (s. 141 Const., ss. 373-375 CCP). In practice, however, this does not seem to happen very often, and victims are usually unaware of this possibility.[115] Trials involving children under the age of fifteen, however, are always held *in camera*.

During the questioning of victim-witnesses, the court directs the examination and poses all questions (see § 8.2). Because direct examination by the defence counsel is not permitted, the victim

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112 Information supplied by a public prosecutor in Istanbul, 17 October 1997.

113 In the peace courts, there are no public prosecutors.

114 Information supplied by Mr. Mahmuto1lu and Dr. Sokulu of the department of criminal law and procedure at Istanbul University, 15 October 1997.

115 None of the lawyers I spoke with seemed to know about this possibility to protect their clients. If a victim is too afraid to testify in public court, they suggest the victim should go to the governor and ask for a gun permit. Or if the victim is a famous or powerful citizen, he may ask for police protection.

is generally protected from hostile questioning. Also, the court may send the accused out of the courtroom if he fears the victim will not be able to speak freely in his presence (see below, G.16).[116]

(G. 16) Whenever it appears necessary, and especially when organised crime is involved, the victim and his family should be given protection against intimidation and the risk of retaliation by the offender.

Concerning the protection of victims against intimidation or retaliation by the offender, very few ways exists to offer protection to victims unless they are victims of terrorism (see below). The only protection that can be offered is to order the accused to be removed from the courtroom during questioning of the victim. However, this is only possible if the court suspects that the witness does not (dare) tell the truth in the presence of the accused (s. 240 CCP). There are no other protective measures available to victims. Moreover, victims are not allowed to hide their identity in court by disguising themselves.

Turkish law does not comprise special provisions with respect to organised crime. However, with respect to terrorism, victims and their families can be protected in several ways under a witness protection programme, e.g. their identities can be changed, as well as their houses or work, and they have the right to a monthly income guaranteed by the state (ss. 19, 20 Terrorist Act, see § 8.3). Civil servants who incurred material or moral damages due to terrorist acts, have the right to be compensated by the State (s. 21 TA) or to enter a witness protection scheme (ss. 19-20 TA, see § 4.3).

9 CONCLUSION

Turkish criminal law and proceedings is not only influenced by German criminal law, but it is also characterised by German dogmatism. Dogmatism is rarely a good point of departure to find ways to improve the position of victims within criminal proceedings. Furthermore, secondary victimization is not an important issue, if it is known at all among legal practitioners. There only response to crime seems to be the incarceration of the perpetrator; the victim is only one of the instruments to gather evidence against the suspect and is usually left without any assistance from the authorities, unless the crime constituted an act of terrorism. Secondary victimization is exclusively known among academics who have contacts with foreign jurisdictions. It was therefore a most promising sign to see that members of Police Academy's teaching staff were sent abroad to study police science and police practice. However, no structural improvements can be made if no clear policy is developed in this respect.[117]

Training of the (military) police needs to be upgraded to improve both the position of suspects and victims. In addition, more attention should be given to training of public prosecutors and judges. It is a promising sign to witness that university lecturers and persons of the medical profession are providing training in the three big cities. However, this is only a beginning and should not be considered the solution to the problem of inadequate training of the criminal justice authorities, particularly the police.

Concerning information, victims should be given information about their rights and how to safeguard their interests by the criminal justice authorities, as is stated in the Recommendation. Lawyers should not be the only source of information to victims. The more so, because victims are not entitled to apply for legal aid and the fee structure of lawyers seems to have a negative impact on the right to obtain compensation within the criminal process. One of the relevant questions that need to be asked is how one can explain why a jurisdiction, in which people have generally few assets, and so few people have insurance, pays so little attention to compensating victims during the course of criminal proceedings, or any other alternative conflict or claim settlement procedures.

With respect to questioning, the court's practice to direct the examination of witnesses is most

116 Information supplied by lawyers in Istanbul, 14 October 1997.

117 It is worrisome that a change in directorship can end such important training programmes.

helpful against hostile questioning, provided that judges are aware of the dangers of disrespectful questioning. Concerning questioning of children and other vulnerable victims, the criminal justice authorities should pay more attention to the risk of secondary victimization throughout all stages of the proceedings. Furthermore, repetitive questioning seems to be the rule, and hardly any attention is paid to possible adverse effects. Training may be helpful to reduce the need for repetitive examination to a minimum.

Because of the unawareness of secondary victimization among judges, the protection of victims against undue publicity and intimidation or retaliation is inadequate. The courts should be more willing to hold trials in camera to protect the victim from publicity that unduly affects his private life or dignity. Concerning sexual offences, a policy needs to be adopted to hold trials behind closed doors. In an Islamic society, the negative impact of publicity on the female and male victim is particularly great. It leads to stigmatization that may have a considerably effect on the course of their lives. One could consider extending the policy that already exists regarding trials involving children to trials involving adult victims of sexual crimes. Besides, this may be beneficial to the criminal justice system and society as a whole because it may have a significant positive effect on reporting rates.

The protection of victims of sexual crimes against publicity in the media is however good and properly maintained. Protection against intimidation and retaliation, on the other hand, is almost exclusively available to victims of terrorism. Victims of other types of crime can only be protected by means of the court's authority to order the defendant to leave the courtroom. Civil servants who have become victims of terrorism are also the main group of victims who are entitled to State Compensation. To conclude, formal and actual implementation of the Recommendation is generally substandard and needs upgrading.

Supplements

ABBREVIATIONS:

Const.	-	Constitution
CCP	-	Code of Criminal Procedure
PA	-	Press Act
PC	-	Penal Code
SSA	-	Section of Sexual Assault at the Institute of Legal Medicine and Forensic Sciences
TA	-	Terrorism Act

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