

CPT/Inf (2003) 29

**Response of the Turkish Government
to the report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on its visits to Turkey**

**from 21 to 27 March and
1 to 6 September 2002**

The Turkish Government has authorised the publication of the report on the CPT's visits to Turkey from 21 to 27 March and 1 to 6 September 2002 (see CPT/Inf (2003) 28) and of its response. The Government's response is set out in this document.

Strasbourg, 25 June 2003

**REPORT BY THE TURKISH GOVERNMENT IN REPLY TO THE
RECOMMENDATIONS AND REQUESTS MADE IN THE REPORT ON THE VISITS
TO TURKEY CARRIED OUT BY THE EUROPEAN COMMITTEE
FOR THE PREVENTION OF TORTURE
FROM 21 to 27 MARCH
AND 1 to 6 SEPTEMBER 2002**

27 February 2003

The Turkish Government's views on the issues raised in the report on the visits to Turkey carried out by the European Committee for the Prevention of Torture (CPT) from 21 to 27 March and 1 to 6 September 2002 are set out below in the order followed in the report.

Paragraph 12

The communal facilities provided in F-type prisons are libraries, gymnasias, open air exercise yards and workshops. Prisoners also come together for conversation purposes.

a. Details of the workshop activities are given below:

In Ankara F-Type Closed Prison training is provided in enamel tile-making, woodworking, painting, knitting, carpet-making, copperwork, musical instrument manufacture and garment-making; 100 prisoners are able to take part in these activities at the same time.

In Bolu F-Type Closed Prison training is provided in painting, sculpture, enamel tile-making, carpet-making and weaving; 80 prisoners are able to take part in these activities at the same time.

In Edirne F-Type Closed Prison training is provided in enamel tile-making, carpet-making, knitting, painting and garment-making; 40 prisoners are able to take part in these activities at the same time.

In Izmir F-Type Closed Prison training is provided in copperwork, painting, woodworking and carpet-making; 50 prisoners are able to take part in these activities at the same time.

In Kocaeli F-Type Closed Prison training is provided in enamel tile-making, carpet-making, wood painting, oil painting and carpentry; 100 prisoners are able to take part in these activities at the same time.

In Tekirdağ F-Type Closed Prison training is provided in copperwork, knitting, painting, woodworking and enamel tile-making; 60 prisoners are able to take part in these activities at the same time.

b. Prisoners wishing to take part in communal activities may do so during working hours.

c. Number of prisoners who took part in communal activities in the last week of January:

Name of prison	Number of remand and sentenced prisoners (terrorist offences)	Number of remand and sentenced prisoners (organised crime)
Ankara F	11	132
Bolu F	31	56
Edirne F	5	35
Izmir F	17	66
Kocaeli F	59	81
Tekirdağ F	34	34

d. Number of prisoners who took part in each communal activity in the last week of January:

Name of prison	Library		Sport		Workshops	
	Terrorist offences	Organised crime	Terrorist offences	Organised crime	Terrorist offences	Organised crime
Ankara F	10	10	-	22	2	38
Bolu F	13	22	88	10	5	12
Edirne F	1	4	-	5	4	18
Izmir F	10	54	8	33	7	10
Kocaeli F	37	47	37	47	37	47
Tekirdağ F	21	9	16	15	11	14

Name of prison	Conversation	
	Terrorist offences	Organised crime
Ankara F	-	102
Bolu F	5	14
Edirne F	-	8
Izmir F	7	34
Kocaeli F	1	35
Tekirdağ F	9	30

A table showing the number of prisoners making use of the communal facilities on 31 January 2003 is appended (Appendix 1).

e. A maximum of ten prisoners are able to make use of the same communal facility at the same time and more than 100 prisoners are able to use all the communal facilities at the same time.

Paragraph 13

Apart from the allegations of ill-treatment made in connection with the transfers to F-type prisons at the end of "Operation Return to Life", which was carried out on 19 December 2000 during the riots and forced death fasts initiated in prisons by illegal terrorist organisations which also burned to death organisation members designated as victims, there have been no allegations of ill-treatment relating to these prisons since they were brought into service.

The necessary provisions on the subject have been introduced in our legislation and in various circulars, including the Ministry of Justice circular of 22 August 2002, and prisoners are placed under statutory protection against all forms of ill-treatment. There can be no question of ill-treatment in a prison system which includes supervisory machinery such as the civil-society prison monitoring boards, the enforcement magistrates' (supervisory judges) offices and the Parliament's Human Rights Enquiry Commission.

F-type prison staff have been given the necessary training in all areas, including the establishment of positive relations with offenders. In-service training continues on the subject.

At the end of paragraph 13 of the CPT report, the committee urges only prison staff to build positive relations with offenders. The authorities concerned are already taking the necessary care in the matter. However, we consider that it would be a useful and objective approach on the committee's part to likewise invite terrorist offenders, by various means, to establish positive relations with prison staff and refrain from violence, for their own benefit and in the interests of a peaceful prison environment.

Paragraph 14

The CPT's recommendations on the confidentiality of medical examinations have been complied with and the Ministry of Justice issued two circulars on the subject on 28 May and 22 August 2002. Under the terms of these circulars, the principle of the confidentiality of medical examinations, which applies to remand and sentenced prisoners examined on admission to prison, also concerns all medical examinations and treatment conducted subsequently. The circular of 28 May 2002, in particular, devotes a separate paragraph to this point and emphasises that the principle of the confidentiality of medical examinations is a matter of general practice.

We also consider it advisable to draw the CPT's attention to Ministry of Health circular No.13243:2000/93 on the subject entitled "Forensic medical services and the provision of forensic medical certificates" and dated 20.09.2000. Paragraph 1(a) of the section of this circular entitled "Examination of forensic cases and provision of medical certificates" states that "During medical examinations, fundamental human rights and freedoms, including privacy and the rules of respect, shall be observed without fail", while paragraph 1(c) states that "Medical examinations shall be conducted under suitable conditions out of the hearing and sight of members of the judicial law enforcement agencies. The person to be examined shall be placed in an examination room in which only health care staff are present and, after being provided with the necessary information, shall be examined entirely unclothed". In accordance with these provisions, it is accepted that unless there are exceptional circumstances, health care staff and the patient are left alone during medical examinations in compliance with the rules.

Paragraph 15

The Ministry of Justice has approached the relevant chief public prosecutor's office in connection with the recommendation made in this paragraph of the CPT's report.

Paragraph 16

The information requested by the committee on the incidents that took place during the operation of 19 December 2000 in Istanbul Bayrampaşa Prison, as a result of intervention in the incidents in which terrorist offenders built barricades, rioted, caused damage to the prison and burned to death a number of their fellow-prisoners designated as victims, is provided below:

- a. Proceedings have been brought before the Eyüp 3rd Criminal Court against 167 remand and sentenced prisoners charged with collective rebellion against the prison administration; the case is pending.
- b. As regards the question of how the weapons and other prohibited objects found in the prison were contrabanded into the establishment, proceedings have been brought before the Eyüp 3rd Assize Court against 155 prison officers and members of the gendarmerie charged with professional misconduct; the case is pending.
- c. Proceedings have been brought before the Eyüp 3rd Assize Court against a total of 1,460 members of the gendarmerie who conducted the transfers of prisoners to other prisons in the wake of the operation, on charges of ill-treatment under Article 245 of the Turkish Criminal Code. The case is pending.
- d. The investigation opened by the Eyüp Chief Public Prosecutor's Office in respect of gendarmerie personnel who took part in the operation, to establish the causes of the deaths and injuries that occurred during the operation, is continuing under file No.2000/21030.

It has not yet been possible to complete the investigation because a very large number of gendarmerie personnel took part in the operation, a substantial proportion of them have completed their military service and it takes time to establish their addresses, as many of them have changed their domicile for security reasons.

Paragraph 17

As regards the lessons learned from the prison interventions carried out in December 2000, the assessment made by the Ministry of Justice, General Directorate of Prisons and Detention Houses, is set out in paragraph 1 and the assessment by the Ministry of the Interior Gendarmerie Central Command in paragraph 2:

1. The dormitory system provides a suitable environment for solidarity among criminal organisations and the oppression of weak offenders by strong ones, and turns prisons into camps run by these organisations. When riots, fires, collective movements and similar events take place in prisons using the dormitory system, especially when barricades are built and fires are started during riots, the security forces intervening with the use of gas or other means face much more difficult working conditions and this may lead to undesirable consequences. We therefore consider that abolishing the dormitory system and replacing it with the system of small rooms, as part of the reform of Turkish prisons, will be beneficial for prisoners' safety, prison discipline and good prison management.

2. On 19 December 2000 “Operation Return to Life” was launched under the co-ordinated authority of the Ministries of Justice, the Interior and Health and under the supervision of the competent public prosecutors, to put an end to the death fasts and hunger strikes started in some prisons by prisoners largely affiliated to the illegal DHKP/C terrorist organisation, in protest against the F-type prisons, and to provide these persons with medical care. The prisoners, mostly members of the illegal DHKP/C terrorist organisation, who had virtually turned the prisons where they were held into terrorist organisations’ camps by intimidating and threatening the prison officers, attempted collective resistance to this intervention and rejected the security forces’ calls to surrender. The tear gas and irritant gas bombs used by the security forces to halt the incipient resistance and re-establish state authority in the prisons were used with an eye to the dormitories’ capacity, their ventilation and the number of prisoners per dormitory.

The tear gases used in prison interventions are pepper gas and OC gases, and cause temporary running of the eyes. They have no permanent detrimental effects on human health.

In the face of the collective armed resistance started by the prisoners against the security forces inside the prisons, the methods used to re-establish authority in the prisons and bring the prisoners under control were entirely within the statutory limits and proportionate to the threat confronting the security forces.

As regards the lessons learned from “Operation Return to Life”, we first and foremost realised once again the importance of the prisons’ internal management taking the necessary measures to prevent the situation from reaching a point where such an intervention becomes necessary, and the importance of secrecy, sound planning, rehearsals, co-ordination and training in these interventions.

It is essential to preserve secrecy at all stages in the intervention. Prisoners must not be given time to prepare for resistance. Every possible incident must be foreseen in advance and the necessary co-ordination must be established with public institutions and organisations such as health care personnel, fire fighters, the police and local authorities, with a sufficient number of personnel from these organisations being present at the scene of the intervention. The personnel who are to take part in the intervention must first be given the necessary training in the duties they are to perform and the use of their intervention equipment, and must be put through rehearsals.

Paragraph 25

No personnel have been tried on charges of inflicting ill-treatment at the Diyarbakır Gendarmerie Provincial Command between 1 November 2001 and 1 November 2002.

Lists concerning the action taken, and where necessary the proceedings brought against the security forces, as a result of the complaints lodged by persons taken into custody between 1 November 2001 and 1 November 2002 who claim to have been ill-treated are submitted in Appendix 2 and Appendix 3.*

* These Appendices are not reproduced in the published version of the Turkish authorities' response, as they contain personal data (cf. Article 11, paragraph 3, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment).

Paragraph 26

Article 25, paragraph 2 of the Regulation on Apprehension, Custody and Taking of Statements provides that “Chief public prosecutors or public prosecutors appointed by them shall, as part of their judicial duties, examine and investigate holding cells, interview rooms, the situation of persons taken into custody, the reasons for and duration of custody and all records and procedures relating to custody; they shall record their findings in the custody register”; in accordance with this provision the officials of the Chief Public Prosecutor’s Office at the Diyarbakır State Security Court conduct frequent unannounced inspections of the Anti-Terrorism Department at Diyarbakır Police Headquarters, give verbal and written instructions concerning the shortcomings found and keep regular inspection records. The Anti-Terrorism Department is also inspected by the responsible deputy heads of security and the Provincial Head of Security. These inspection records were presented to the CPT delegation during its visit.

Paragraph 27

In the event of civil disturbances, as in the other provinces, the Diyarbakır police act in accordance with the provisions of the Law on Police Duties and Powers and the Code of Criminal Procedure, and try to provide maximum protection of human rights. Compensation is awarded for injury caused by mistakes stemming from individuals or from the organisation, and judicial and administrative investigations are conducted in respect of those responsible.

The Ministry of the Interior’s circular of 16 January 2003 to all provincial governors’ offices, which mentions the need to take the requisite care over practices relating to custody procedures, including the confidentiality of medical examinations is set out in Appendix 5.

Paragraphs 30 and 31

The recommendations and comments made by the CPT in these paragraphs have been carefully noted and will be assessed as appropriate.

Paragraph 32

Whenever a person is apprehended, an accessible relative of his choice is informed of the fact immediately; details of the official taking the person into custody are included on the custody monitoring form together with the details of the person apprehended, and a copy of the form is kept in the investigation file. Ministry of Justice circular No.13/73 of 27 May 2002 on notification of the relatives of apprehended persons is set out in Appendix 4.

Paragraph 33

Ministry of Justice circular No.13/73 of 27 May 2002 on notification of the relatives of apprehended persons, which is set out in Appendix 4, also refers to this point. However, the CPT will be provided with separate information on the subject.

Paragraph 35

In accordance with the Code of Criminal Procedure, suspects are informed of all their rights, orally and in writing, during apprehension, search and the taking of statements. It is left to them to request a lawyer, and if they do so, they are granted access to their lawyer. If persons apprehended or taken into custody are not in a position to appoint a lawyer, steps are taken to ensure that a lawyer is appointed by the bar association. The difference between the figures mentioned in this paragraph of the report is due to the legal provisions in force at the time of the CPT delegation's visit to Diyarbakır. Under the laws in force at the time, persons suspected of State Security Court offences were only allowed to see their lawyers 48 hours after the beginning of the custody period and many suspects were in any case brought before the judicial authorities at the end of those 48 hours.

Paragraph 36

Article 6, paragraph 8 of the Regulation on Apprehension, Custody and Taking of Statements provides that "The apprehension procedure shall be recorded and a copy of the record shall be given to the apprehended person. He shall also be given a completed and signed copy of the 'Form on Suspects' and Accused Persons' Rights' indicating that he has been informed of his rights in writing and has understood them"; in accordance with this provision, all persons taken into custody are given, at the outset of custody, a copy of the Form on Suspects' and Accused Persons' Rights drawn up in order to remind persons apprehended or taken into custody of their rights. The fact that they have been given the form is also recorded in writing.

The Form on Suspects' and Accused Persons' Rights has also been produced in card form; the card was brought into use on 29 January 2003, when five cards were distributed to each police station.

Paragraph 38

The right of suspects taken into custody or detained on remand to meet their lawyers is regulated by Article 144 of the Code of Criminal Procedure.

"Article 144: Persons apprehended or detained on remand may at all times, without power of attorney being required, meet their lawyers out of the hearing of other persons. These persons' correspondence with their lawyers shall not be monitored."

A number of restrictive special provisions on the subject in the State Security Courts Law have been entirely repealed by Law No.4778 (4th Harmonisation Law), which came into force on 11 January 2003.

Sentenced prisoners' right of access to a lawyer is regulated by Article 155 of the Regulation on Administration of Penal Institutions and Detention Houses and Execution of Punishments.

"Article 155: Remand and sentenced prisoners' interviews with their lawyers

Remand and sentenced prisoners' interviews with their lawyers shall take place within the sight of prison staff but out of their direct or indirect hearing."

In Article 20 of the Regulation on Apprehension, Custody and Taking of Statements, this rule reads, “The apprehended person may meet his lawyer at all times, without power of attorney being required, and out of earshot of other persons”.

Under these provisions, lawyers can meet suspects in specially designated areas, and attention is also paid to the principle of confidentiality. There are no restrictions on the duration and frequency of these interviews. No complaints concerning either their duration or the question of confidentiality have been made to date to Diyarbakır Police Headquarters. All the records concerning the interviews held are properly kept and the lawyers’ signatures appear on these records and on the custody register. The lawyer is also allowed to examine information relating to the person apprehended in the preliminary investigation file and, if he or she so wishes, to make a copy of this information free of charge.

Paragraph 41

The explanatory memorandum on the amendment to Article 10 of the Regulation on Apprehension, Custody and Taking of Statements, which came into force on publication in the Official Gazette on 18 September 2002, states that it was drawn up on the basis of the CPT’s recommendations. The practical results of the amendment have not yet become apparent and our authorities have not been informed of any malfunctions to date. Statutory provision has been made for documenting the doctor’s request or that of the person to be examined concerning anxiety for their personal safety. No further amendments on the subject are therefore planned at this stage.

Paragraph 42

Article 10 of the Regulation on Apprehension, Custody and Taking of Statements includes the following provisions:

“If the apprehended person is to be taken into custody or if force was used during apprehension, he shall be examined by a doctor to determine his state of health at the time of apprehension.

Medical examinations, health checks and treatment shall be provided free of charge by forensic medical institutes, official medical establishments or local authority medical officers. Medical certificates shall be drawn up in four copies. One shall be kept by the custody unit, the second shall be given to the accused on leaving the custody unit, the third shall be placed in the investigation file and the fourth shall be kept by the medical establishment.

The state of health of persons taken into custody shall also be determined by a medical certificate prior to a change of location for any reason, to extension of the custody period, to release and to appearance before the judicial authorities.

Persons whose state of health deteriorates or is considered suspect for any reason during the custody period shall immediately be examined by a doctor.

In the case of offences subject to the jurisdiction of the State Security Courts, if the custody period is extended, the detained person's state of health shall be determined by a medical certificate, subject to the requirement that no more than four days shall elapse between two health checks."

Section 13.c of Law No.2559 on Police Duties and Powers provides that "The state of health, at the time of apprehension, of suspects and accused persons in respect of whom a criminal investigation is to be conducted shall be established by means of a medical certificate".

In accordance with the relevant provisions of the Regulations on the Organisation, Duties and Powers of the Gendarmerie (No.2803), the above-mentioned Regulation on Apprehension, Custody and Taking of Statements and Law No.2559 on Police Duties and Powers, the law enforcement agencies receive the medical certificates establishing the state of health of the suspects or accused persons from the doctors; the certificates are then included in the investigation file and sent to the public prosecutor's office. There is a possibility that a detained person may, at the trial stage, state that he was subjected to ill-treatment in the law enforcement unit and admitted to an offence he had not committed. In this respect, the fact that the records of all measures taken and acts performed by administrative units are kept first and foremost by the authorities that take those measures and perform those acts ensures that procedures are carried out on a sounder basis and is a factor facilitating the administration's obligation to furnish proof when it comes to clarifying any allegations or accusations. For this reason, we consider it necessary that a copy of the forensic medical certificates, each of which constitutes an administrative measure, should be given to the authorities carrying out the custody procedures, for information and recording purposes.

Paragraph 44

The proposal made by the CPT in this paragraph is being assessed by the relevant authorities.

Paragraph 51

As it was decided at the Turkish Parliament's sitting on 19 June 2002 that the state of emergency would be extended "for the last time" for four more months in Diyarbakır and Şırnak as from 30 July 2002, the state of emergency came to an end throughout the country on 30 November 2002. As a result, it is not possible for Article 3.c of Legislative Decree No.430 to apply throughout the country. The other relevant statutory provisions will apply on this point.

In addition to the information, views and assessments set out in the above paragraphs, we consider it advisable to draw the CPT's attention to the following points:

The report on the visits conducted by the European Committee for the Prevention of Torture from 21 to 27 March and 1 to 6 September 2002 states that persons taken into custody in the detention facilities of the Diyarbakır Gendarmerie Provincial Command were interviewed. Our enquiries have established that the delegation did not interview anyone in the gendarmerie detention facilities on either visit, but simply interviewed inmates of the prison. Most of the prisoners interviewed are persons imprisoned on charges of belonging to, or aiding and abetting, illegal terrorist organisations. As it is clear that this type of person can, under all circumstances, make any number of unproved allegations against the security forces, one wonders to what extent the allegations of torture and ill-treatment they made to the CPT delegation reflect the facts. Consequently, statements by persons taken into custody either at the Diyarbakır Gendarmerie Provincial Command or at the Provincial Police Headquarters to the effect that they were tortured and ill-treated must be based on more concrete evidence.

On 31 May 2002, as a result of the CPT's findings during its visit from 21 to 27 March 2002, the Gendarmerie Central Command withdrew the interrogation rooms from service. In its report the committee states that it welcomes this development, but that allegations of ill-treatment nevertheless continue.

Close attention is paid to the relevant personnel's sensitivity to human rights, and training and supervisory activities continue in this area.

In particular, further proof of this is provided by the Parliament's Human Rights Enquiry Commission, which carries out human rights studies and investigations in Turkey and has stated that during its fact-finding visits to the provinces of east and south-east Anatolia this month, it did not find any evidence of torture.

The operations conducted in 20 separate prisons on 19 December 2000, under the supervision of the responsible public prosecutors, were intended to save the lives of the prisoners on death fast and hunger strike. In many prisons, as a result of the advice and statutory warnings given, prisoners gave up their strikes of their own accord and were taken to hospital without any force whatsoever being used. However, in some prisons, as a result of the instructions given from abroad by members of the DHKP/C terrorist organisation, in particular, claiming to be in leadership positions, the prisoners resisted; they responded with violence to the statutory warnings and advice given to them and even started fires using the mattresses, quilts, wood and all sorts of inflammable materials that were in their dormitories. In some prisons, before the intervention, they burned to death prisoners who had previously been designated for so-called punishment within the organisation, before the security forces entered. The intervention was intended to bring the prisoners' resistance fully under control, to save prisoners' lives and to prevent a particular group from tyrannising over prisoners whose rights and freedoms are already restricted.

**NUMBER OF PRISONERS TAKING PART IN COMMUNAL ACTIVITIES IN F-TYPE PRISONS
31.01.2003**

No.	Name of prison	TODAY																NUMBER OF PERSONS USING COMMUNAL FACILITIES TO DATE	
		POPULATION		WORKSHOPS		SPORT		LIBRARY				OPEN VISITS		TELEPHONE		PERSONS USING COMMUNAL FACILITIES			
		Terrorism	4422	Terrorism	4422	Terrorism	4422	Terrorism	Terrorism	4422	4422	Terrorism	4422	Terrorism	4422	Terrorism	4422	Terrorism	4422
1	Ankara F	147	132	2	38	-	22	10	-	4	6	-	-	1	20	12	79	149	192
2	Bolu F	81	91	5	12	8	10	8	5	12	10	-	-	12	17	38	59	64	195
3	Edirne F	68	81	2	18	-	7	-	1	-	4	-	-	-	-	3	35	28	103
4	Izmir F	55	66	7	10	8	33	42	10	54	28	41	43	14	23	10	54	38	168
5	Koçali F	202	81	37	47	37	47	-	37	-	47	-	-	85	47	58	48	87	51
6	Tekirdağ F	215	34	11	14	16	15	6	15	2	7	-	-	2	16	25	29	288	73
Total		781	485	64	139	69	134	66	68	72	102	41	43	114	123	146	304	654	782

Number of remand/sentenced prisoners belonging to profit-oriented criminal organisations who take part in communal activities	613
Number of remand/sentenced prisoners held for terrorist offences who take part in communal activities	420
Number of remand/sentenced prisoners belonging to profit-oriented criminal organisations who receive open visits and use the telephone	166
Number of remand/sentenced prisoners held for terrorist offences who receive open visits and use the telephone	155
Total number of persons using the communal facilities to date	1354
NOTE: The sports facilities provided are for basketball, football, table tennis and volleyball. The figures listed in the columns entitled "Number of persons using communal facilities" and "Number of persons using communal facilities to date" include prisoners using the telephone and receiving open visits.	
Abbreviations: BB (borrow books), GL (go to the library)	

REPUBLIC OF TURKEY

MINISTRY OF JUSTICE

Criminal Affairs Directorate

No.: B.03.0.CİG.0.00.00.04.3.3.13/73
Subject: Apprehension and custody practices

ANKARA
27/5/2002

TO: THE ... CHIEF PUBLIC PROSECUTOR'S OFFICE

THE CHIEF PUBLIC PROSECUTOR'S OFFICE AT THE ... STATE SECURITY COURT

Ref.: Circular No.33/147 of 21.12.2001

Today, the recognition, protection and development of human rights have transcended the boundaries of domestic law and acquired a universal quality. In a democratic society, fundamental rights and freedoms are among the most important and inalienable rights. The Turkish Republic is a democratic, secular welfare State governed by the rule of law. Our country has introduced the necessary legal provisions to bring custody periods into line with international law.

As you know, Article 19 of the Turkish Constitution, as amended by Law No.4709, provides:

In paragraph 5, that "Persons apprehended or detained on remand shall be brought before a judge within 48 hours, or in the case of collective offences within four days, excluding the time required to convey them to the court nearest to their place of detention. No one shall be deprived of their liberty without a court decision after the expiry of these periods. These periods may be extended during a state of emergency, under martial law or in time of war",

In paragraph 6, that "A person's next of kin shall be informed immediately of their apprehension or detention on remand",

In paragraph 7, that "Persons detained on remand shall be entitled to apply for trial within a reasonable time and for release during investigation and prosecution. Release may be made conditional on a guarantee to appear in court throughout the trial or to comply with the sentence",

And in paragraph 8, that "Persons deprived of their liberty for any reason whatsoever shall be entitled to apply to a competent judicial authority for a speedy decision on their case and for immediate release if their detention is unlawful".

Under Article 5, paragraph 3 of the European Convention on Human Rights, "Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

As regards the Code of Criminal Procedure, as amended by Law No.4744:

Article 107 provides that “A relative of the detained person or a person designated by him shall be informed without delay, by decision of a judge, of the person’s arrest and of every decision extending the period of detention on remand.

In addition, provided that this does not jeopardise the purpose of the investigation, the detained person shall be allowed, in person, to inform a relative or a person designated by him of his arrest.”;

Article 128, paragraphs 1, 2 and 3 provide that “If the apprehended person is not released, he shall be brought before a magistrate’s court and questioned within 48 hours, excluding the time required to convey him to the magistrate’s court nearest to his place of detention. If the apprehended person so requests, his lawyer may also be present during questioning.

In the case of collective offences jointly committed by three or more persons, the public prosecutor may give a written order for this period to be extended to no more than four days, for reasons such as the difficulty of collecting evidence or the large number of offenders.

A relative of the apprehended person or a person designated by him shall be informed without delay, by decision of the public prosecutor, of his apprehension or of the order to extend the detention period”.

Article 136 provides that “The apprehended person or accused may avail himself of the assistance of one or more lawyers at every stage of the investigation. If he has a legal representative, this person too may select a lawyer for the apprehended person or accused.

Only one lawyer may be present during the interrogation procedures conducted by police supervisors and officers. The number may not exceed three during procedures conducted by the public prosecutor’s office.

At every stage in the investigation, including investigation by the police, the lawyer’s right to meet the apprehended person or accused, to be present throughout the taking of a statement or interrogation and to provide the person with legal assistance may not be obstructed or restricted.”.

Article 16 of the Law on the Establishment and Trial Procedures of State Security Courts, as amended by Law No.4744, provides that “In the case of offences subject to the jurisdiction of the State Security Courts, the person apprehended or detained on remand shall be brought before a judge and questioned within 48 hours, excluding the time required to convey him to the court nearest to his place of detention.

In the case of collective offences committed jointly by three or more persons, the public prosecutor may give a written order for this period to be extended to no more than four days, for reasons such as the difficulty of collecting evidence or the large number of offenders.

In regions where a state of emergency has been declared under Article 120 of the Constitution, the four-day period provided for in the second paragraph in respect of persons apprehended or detained on remand may be extended to no more than seven days by decision of a judge, at the request of the public prosecutor. Before giving his decision, the judge shall hear the person apprehended or detained on remand.

An accused person detained on remand may meet his lawyer at all times. After the public prosecutor has given a written order for the extension of the custody period, the same provision shall also apply to persons held in custody.”.

Accordingly, as regards liberty and security of person, which are among the most important of human rights, please ensure that the requisite meticulous care is taken to comply with the statutory rules regarding custody periods, notification of the relatives of persons apprehended or arrested and access to a lawyer, so as to avoid giving cause for complaints. Please inform the chief public prosecutors’ offices within your judicial district of the matter and, for information, the courts.

Dr Hikmet Sami TÜRK
MINISTER

**REPUBLIC OF TURKEY
MINISTRY OF THE INTERIOR
(Head of Private Office)**

No.: B.050.ÖKM.0000011-12/115
Subject: Human rights practices

16/01/2003

TO THE DIRECTORATE OF SECURITY

For the countries of the civilised world and in the eyes of international public opinion, the recognition, protection and development of human rights and fundamental freedoms and access to those rights and freedoms for everyone without discrimination have become a necessity, a common concern and an ideal.

Turkey too has acceded to the Universal Declaration of Human Rights and the European Convention on Human Rights and has incorporated them into its domestic law. In addition, particularly in recent months, amendments have been made to our Constitution and a number of laws in order to develop human rights and prevent torture and ill-treatment as a means of protecting the right to life, which is one of the fundamental rights of the individual.

However, it is clear that introducing statutory provisions will not be sufficient on its own and that the most important point is for these provisions to be fully reflected in practice, because the existence of rights depends on their being exercised.

As indicated in its programme, our 58th Republican Government is determined to bring fundamental rights and freedoms up to world standards. To this end, while all the necessary amendments will be made to the Constitution and legislation, every effort will also be made to ensure that they are actually applied.

Our intention is to ensure that throughout the country each one of our citizens feels protected by the safeguards of the rule of law and the democratic system. Serious and resolute steps will be taken to eradicate human rights violations such as torture, disappearances, deaths in custody and murder by persons unknown.

I am convinced that our provincial and district governors and particularly supervisors at every level of our law enforcement agencies will make all the requisite contributions to our government's efforts in this direction.

I accordingly consider it appropriate for the following measures to be meticulously applied.

1. When persons are taken into custody, the "Regulations on Apprehension, Custody and Taking of Statements", which have been revised in parallel to the above-mentioned improvements, will be applied to the letter. In particular:

- a) Persons taken into custody will be informed of their statutory rights and the forms prepared for the purpose will be given to them without fail at the beginning of the custody period.
 - b) Persons taken into custody will be systematically recorded; care will be taken in these records to comply with the rule whereby dates and serial numbers follow one another without interruption; and all records concerning both custody, transfer and release will be meticulously kept in accordance with the proper procedure. The custody period begins with the apprehension of the person whose liberty is actually restricted, and the beginning of this period will consequently be recorded as from that moment.
 - c) Whatever the duration of the custody period, medical certificates will be drawn up in respect of persons taken into custody both at the outset of custody and on release.
 - d) Provincial and district governors and police and gendarmerie supervisors will frequently visit detention facilities and their annexes and inspect them, or have them inspected, to check whether practices comply with the law; if evidence of ill-treatment of suspects or equipment that can be used to inflict ill-treatment is found, it will immediately be seized and the necessary steps will immediately be taken to open an investigation in respect of the persons concerned.
 - e) To enable doctors performing forensic medical duties to conduct their activities without any form of interference, law enforcement officials will leave the doctor and suspect or accused alone together while medical certificates are issued, unless security requirements dictate otherwise.
 - f) Persons apprehended will be released immediately if no grounds for taking them into custody can be established or if the reason for their apprehension ceases to exist.
2. Irrespective of the offence charged, suspects will on no account be subjected to ill-treatment; if allegations of torture and ill-treatment are made, steps will be taken to ensure that the necessary investigation is initiated without delay.
 3. The disciplinary action required by law will also be taken immediately, without hesitation, in respect of officials who overstep legal boundaries and display unlawful behaviour in the performance of their duties, whatever their position and rank.
 4. Prisoners will not be ill-treated or humiliated either during interventions in prisons or during transfers.
 5. Our gendarmerie and police forces will take all the necessary administrative steps to increase public prosecutors' effectiveness in investigating offences. This will include assigning public prosecutors suitable permanent offices in provincial police headquarters buildings to enable them to perform their duties at police headquarters where necessary.
 6. To bring the practical results of the amendments and improvements introduced up to international standards, all personnel will be required to undergo in-service training so that they assimilate the legislative improvements designed to develop fundamental rights and combat torture and ill-treatment.

In other words, the intention is to ensure that the statutory provisions that have been introduced do not remain on paper, but that the personnel enforcing them internalise the spirit of this legislation.

7. I am sure that my colleagues at every level of the law enforcement agencies, in particular, will appreciate the damage caused by placing our country, which has in all sincerity expressed its determination to rank among the countries that have adopted the principles of freedom and democracy, in the undeserved position of being accused by domestic and international public opinion of failure to respect human rights.

Consequently, all personnel will be made aware, and continuously taught through in-service training, that besides being a criminal offence and a disgrace to humankind, human rights violations may arouse adverse reactions to our country among both domestic public opinion and public opinion in the civilised world, with highly damaging results.

8. It is well known that law enforcement officials' working hours are much longer than those of other public servants and that in the police force in particular, they are organised on the basis of criteria determined by unit commanders, while some supervisors even view overtime as a sign of hard work.

This state of affairs sometimes becomes a significant means of exerting pressure on personnel, causes major problems in their family and social lives, together with physical and mental fatigue and work-related stress, and prevents our police officers, who need to have an objective, patient, friendly and where necessary tolerant approach, from exhibiting these positive types of behaviour.

Except in the case of special activities and operations, senior territorial and law enforcement officials will therefore ensure that law enforcement officers' working hours do not exceed 40 hours a week, as is the case for other public servants.

9. In professional relations, the harsh attitudes and arbitrary behaviour directed at subordinates prevent the personnel targeted by this behaviour from internalising the concept of human rights, and this adverse situation directly affects members of the public. Valuing law enforcement agency personnel will in the long run benefit the individual citizen.

In particular, as regards personnel working in law enforcement units which deal with civil disturbances (mobile squads), in interrogation units and in departments where they are in direct contact with members of the public,

- facilities will be set up for regular sports activities and sports events,
- at least once a month, individual and group therapy methods will be used under the supervision of psychological counsellors.

In this way the necessary steps will be taken to dispel the stress arising from work, the environment, the social and economic situation and the family.

10. A broad interpretation will be placed on the concept of human rights in the provision of public services. It will be borne in mind at all times that the State exists for the citizens, that public services are provided thanks to the taxes the citizens pay, that public servants essentially work on behalf of the citizens, that the individual citizen is at the heart of the services provided and that the provision of services and the methods for providing them are directly linked to human rights.

11. In order to preserve and maximise the respect that our domestic law enforcement agencies deserve from society and to minimise the criticism levelled at them, the relevant statutory provisions and the above-mentioned measures will be meticulously applied by the provincial and district governors and law enforcement supervisors, and in the course of their general and special inspections the ministry inspection units will give priority to verifying whether or not the provisions of this circular are being implemented.

For your information and the requisite action.

Abdülkadir AKSU
Minister of the Interior

DISTRIBUTION:

For action:

The 81 provincial governors' offices
The Head Office of the Ministry's Research,
Planning and Co-ordination Unit
The Head Office of the Ministry's
Inspections Board
The Gendarmerie Central Command
The Directorate of Security
Coastguard Command

For information:

The Turkish Grand National Assembly
(Office of the Chairman of the Human Rights
Enquiry Commission)
Mr E. YALÇINBAYIR, Deputy Prime
Minister
The Prime Minister's Office (Human Rights
Department)
The Prime Minister's Office (European
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The Ministry of Justice
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