



CPT/Inf (2004) 2

**Report to the Turkish Government
on the visit to Turkey
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 16 to 17 February 2003

The Turkish Government has authorised the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2004) 3.

Strasbourg, 25 February 2004

CONTENTS

Copy of the letter transmitting the CPT's report3

I. INTRODUCTION.....4

A. Dates of the visit and composition of the delegation4

B. Context of the visit, consultations held and co-operation encountered4

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED7

Copy of the letter transmitting the CPT's report

Strasbourg, 17 March 2003

Dear Deputy Director General,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Government of Turkey drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Turkey from 16 to 17 February 2003. The report was adopted by the CPT at its 50th meeting, held from 4 to 7 March 2003.

As indicated in paragraph 17, the CPT requests the Turkish authorities to provide **within one month** a response setting out the action taken upon its visit report. The CPT would ask, in the event of the response forwarded being in Turkish, that it be accompanied by an English or French translation. It would also be most helpful if the Turkish authorities could provide a copy of the response in a computer-readable form.

I am at your entire disposal if you have any questions concerning either the CPT's visit report or the future procedure.

Yours faithfully,

Silvia CASALE
President of the European Committee for
the prevention of torture and inhuman
or degrading treatment or punishment

Mr Erdoğan IŞCAN
Minister Plenipotentiary
Deputy Director General for the Council of Europe
and Human Rights
Ministry of Foreign Affairs
ANKARA

cc. Mr Numan HAZAR, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Turkey to the Council of Europe

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In accordance with Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT visited Turkey from 16 to 17 February 2003.

2. The delegation consisted of Marc NEVE, member of the CPT and Head of the delegation, and Timothy HARDING, Director of the University Institute of Forensic Medicine, Geneva (expert). They were assisted by Zeynep BEKDIK and Kudret SUZER (interpreters), and were accompanied by Petya NESTOROVA of the CPT's Secretariat.

B. Context of the visit, consultations held and co-operation encountered

3. The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention). It was triggered by persistent reports to the effect that relatives and lawyers of Abdullah ÖCALAN have been experiencing considerable difficulties in gaining access to the prison on the island of İmralı in order to visit him. By letter of 27 January 2003, the CPT requested the Turkish authorities to provide observations concerning those reports, as well as a list indicating the date and duration of every visit to Abdullah Öcalan by his relatives and lawyers during the last three months. By letter of 5 February 2003, the CPT reiterated those requests and formally invoked Rule 30 (1) of its Rules of Procedure.¹ By letter of 6 February 2003, the Turkish authorities replied to the Committee's letter of 27 January 2003. The information provided made clear that the last visit to Abdullah Öcalan by his relatives and lawyers had taken place on 27 November 2002. Apparently, "weather conditions" had subsequently prevented the relatives and lawyers from gaining access to the island.

The President of the CPT discussed this matter with the Committee's Liaison Officer in Ankara by telephone, and it was understood that all efforts should be made to ensure that relatives and lawyers of Abdullah Öcalan were able to visit İmralı Closed Prison on the next visit day, i.e. 12 February 2003. However, the CPT subsequently learned that the relatives and lawyers had not been able to visit İmralı Closed Prison, the reason advanced being once again poor weather conditions. The CPT therefore decided that a delegation should visit Turkey in order to obtain, on the spot, information on the visiting arrangements for prisoners held at İmralı Closed Prison and to interview the establishment's sole inmate.

¹ Rule 30 (1) reads as follows: "Before deciding on a particular visit, the Committee or, if appropriate, the Bureau may request information or explanations as regards the general situation in the State concerned, as regards a given place, or as regards an isolated case concerning which it has received reports."

4. The visit to İmralı Closed Prison also offered an opportunity to review other aspects of Abdullah Öcalan's conditions of detention, in the light of recommendations made by the CPT after its previous visits to that establishment (in March 1999 and September 2001).² However, this report will focus on the specific issue of visits by his relatives and lawyers. Other aspects of Abdullah Öcalan's treatment will be the subject of a separate communication addressing both the Turkish authorities' response to the report on the September 2001 visit by the CPT (in which his conditions of detention are dealt with in some detail) and the findings during the most recent visit. The intention is that these issues should subsequently be discussed at the high-level talks between the Turkish authorities and representatives of the CPT, planned for the spring of 2003. The issue of paramount importance to the CPT is finding means of ending Abdullah Öcalan's isolation, which has now lasted for more than four years.

5. The delegation visited İmralı Closed Prison on 17 February 2003 and interviewed Abdullah Öcalan at length. Further, it discussed with the prison management the arrangements for visits by relatives and lawyers and the transportation means between the mainland and the island.

During the visit, the delegation also went to the Communications Office of the Gemlik Gendarmerie District Command, which has been designated as the point of departure to İmralı Island for relatives and lawyers of prisoners held at İmralı Closed Prison.

Further, the CPT's delegation had meetings, on the one hand, with Levent ERSÜZ, Bursa Regional Gendarmerie Commander, and, on the other hand, with Emin ÖZLER, Chief Public Prosecutor of Bursa, and Cemil KUYU, Deputy Public Prosecutor of Bursa responsible for supervising İmralı Closed Prison. The delegation discussed in detail with them means of ensuring that Abdullah Öcalan's right to receive visits from his relatives and lawyers is fully effective in practice.

Finally, the delegation held discussions with two of Abdullah Öcalan's lawyers.

6. The co-operation encountered during the visit was on the whole very good. In this connection, the CPT is grateful to Levent ERSÜZ, Bursa Regional Gendarmerie Commander, for providing the helicopter which transported the delegation to the island of İmralı. The Committee also wishes to thank Kaan ESENAR of the Ministry of Foreign Affairs for his availability and support both before and during the visit.

² The reports on these visits, as well as the responses of the Turkish authorities, have been made public (cf. documents CPT/Inf (2000) 17, CPT/Inf (2000) 18, CPT/Inf (2002) 8 and CPT/Inf (2003) 13).

Nevertheless, it should be noted that, at one point during the visit to the Gemlik Gendarmerie Communications Office, the officer in charge refused to provide further information concerning transportation to the island and asked the delegation to leave the premises. Following a telephone conversation with the Bursa Regional Gendarmerie Commander, the delegation was able to finish examining the register of visitors to İmralı Closed Prison who had undergone searches at Gemlik and received an assurance that the Commander would personally respond to any other questions.

It should also be noted that the Gendarmerie staff responsible for the external security of İmralı Closed Prison were under instructions not to speak to the delegation and did not allow it to examine the register of persons searched upon arrival on İmralı Island. **Such an attitude is not in accordance with the provisions of the Convention and, in particular, Article 3 and Article 8, paragraph 2 (d).**

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

7. According to the Internal Regulations of İmralı Closed Prison, prisoners held at the establishment are entitled to one weekly visit of one hour by their relatives, as well as one visit of the same duration by their lawyers. Up to four persons can attend each visit. The visits are of a closed nature and are supervised by staff. Conversations should be conducted in Turkish and no sign language is allowed. Visits by lawyers are to take place out of the hearing of staff.

The delegation was informed that, by decision of the Ministry of Justice, Wednesday had been assigned as the day on which visits by relatives and lawyers should take place. Two coastal vessels have been designated by the Ministry of Justice to provide the link between İmralı Island and the mainland: İmralı-9, which has a capacity of ten passengers and should remain at a distance of no more than 10 miles from the mainland, and İmralı-10, with a capacity of some twenty passengers and a seaworthiness certificate which allows it to travel further afield. Although initially both vessels were used for journeys to the island by Abdullah Öcalan's visitors, subsequently İmralı-9 was specifically designated for transporting his relatives and lawyers, whereas İmralı-10 has been reserved for transporting personnel or supplies.

8. The delegation sought information on the procedure for authorising visits by relatives and lawyers of prisoners held at İmralı Closed Prison.

The island of İmralı is located in a restricted military zone (covering the adjoining sea within a radius of 3 miles) and all access to it is controlled by the Bursa Regional Gendarmerie Command. A special Gendarmerie Communications Office has been set up at Gemlik for the purpose of performing the initial security check of relatives and lawyers of prisoners held at İmralı Closed Prison and ensuring their safe transportation to the island.

On the eve of each visit, the Communications Office receives an order from the Bursa Regional Gendarmerie Command with the names of the persons to be transported to İmralı Island. The Communications Office monitors the weather and maritime conditions on the day of the visit by means of contacting the Bandırma Meteorology Department and the Gendarmerie Unit stationed on the island. This information is reported to the Bursa Regional Gendarmerie Command and the Prosecutor's Office at Bursa, which are jointly responsible for deciding whether a visit can take place. If a visit fails to take place, the Gemlik Gendarmerie Communications Office draws up a record describing the weather conditions or other circumstances which led to the cancellation.

9. The delegation was informed that, since 27 November 2002, the weather conditions on each consecutive Wednesday had been unfavourable for operating the coastal vessel İmralı-9, and therefore the visits had been cancelled. On one occasion (29 January 2003), the boat had in fact set out, but was compelled to return on account of the rough sea.

At his meeting with the CPT's delegation, the Chief Public Prosecutor of Bursa stated that this was an exceptional situation caused by an extraordinarily long spell of bad weather. Indeed, difficulties of access to İmralı Island have occurred in the past, but never for such a prolonged period of time. By way of comparison, six visits were cancelled between November 2001 and March 2002; however, the interruption between two visits was never longer than three weeks. A total of 34 visits took place and 19 were cancelled in 2001 and, similarly, 34 visits took place and 18 were cancelled in 2002. Although most of the visits failed to take place due to bad weather, in the case of four cancelled visits the cause was technical problems with the İmralı-9 boat.

In this connection, reference should also be made to the instructions for the use of coastal vessels İmralı-9 and İmralı-10, contained in letter No 1999/2-5161 of 8 December 1999 from the Bursa Chief Public Prosecutor's Office, according to which "İmralı-9 must not be used in the poor weather conditions of the winter period between 15 September and 15 April. Where necessary, the use of both boats must be avoided in very poor weather conditions involving winds of force 4 or more, which may endanger human life". The CPT would point out that wind force 4 on the Beaufort scale corresponds to a moderate breeze with wind speeds of 11-16 knots and a sea height of about 1 metre. Thus İmralı-9 is clearly a vessel which is not adapted to normal navigation in the winter season.

10. The above-described state of affairs is a matter of considerable concern to the CPT. A de facto suspension of the right to visits for more than three months³ would be a serious matter vis-à-vis any prisoner, and it is quite simply unacceptable vis-à-vis a prisoner who has been held in isolation for a very long period (which, as already indicated, is the case for Abdullah Öcalan). When interviewed by the CPT's delegation, Abdullah Öcalan was clearly worried by the prolonged lack of contact with his relatives and lawyers. According to the management of İmralı Closed Prison, he was upset when there had been information that his visitors were about to come and a visit had subsequently been cancelled. The gravity of this situation is compounded by the lack of progress in implementing the recommendations previously made by the CPT as regards other forms of contact with the outside world.

11. The Chief Public Prosecutor of Bursa affirmed that his Office was making "every possible effort" to enable Abdullah Öcalan to enjoy his right to visits; in this connection, a letter had been sent to the Ministry of Justice in September 2002, reporting the inadequacy of the coastal vessel İmralı-9 and requesting that a new, more seaworthy, vessel be purchased. This matter was apparently under consideration but the Chief Prosecutor had no idea when or whether there would be a positive outcome.

Has every possible effort indeed been made?

³ In the period after the CPT's visit, visits to İmralı Closed Prison by relatives and lawyers of Abdullah Öcalan have continued to be cancelled (on 19 February, 26 February and 5 March 2003) on the grounds of bad weather conditions. However, the Committee understands that visits by relatives and lawyers did take place on 12 March 2003.

12. Why was the coastal vessel İmralı-9 exclusively designated for transporting Abdullah Öcalan's relatives and lawyers, when according to the instructions referred to above it "must not be used in the poor weather conditions of the winter period between 15 September and 15 April" (which effectively puts visits at stake for seven months every year)?

Why could not relatives and lawyers be transported to İmralı Island by other existing modes of transportation? The larger coastal vessel İmralı-10, which is scheduled to travel to İmralı Island three times a week, is apparently more seaworthy. According to information provided by the Bursa Regional Gendarmerie Commander, İmralı-10 failed to make the planned crossing to the island on only 18 occasions in 2002. In January 2003, it made 11 out of 18 planned crossings to the island (whereas İmralı-9 made none). In December 2002, when İmralı-10 was undergoing maintenance, a military landing boat was assigned as a replacement. Further, the delegation was told that visiting doctors, prosecutors and prison staff are sometimes transported by coastguard vessels. At the time of the CPT's visit, two coastguard vessels, as well as a smaller boat, were moored at the island's pier.

If bad weather prevents a visit from taking place on a Wednesday, why could it not take place on another day of the week when the weather conditions are more propitious? The Director of İmralı Closed Prison saw no inconvenience, as far as the organisation of the work of prison staff was concerned, in having visits on any other day of the week. Exceptions to the Wednesday rule have apparently been made in the past for the British lawyers of Abdullah Öcalan.

13. In the course of the meetings with the CPT's delegation, the Turkish authorities invoked a series of arguments against the above-mentioned alternatives.

The Bursa Regional Gendarmerie Commander stated that the two vessels (İmralı-9 and İmralı-10) had been designated by the Ministry of Justice and he had no authority to allocate an alternative means of transport. As regards İmralı-10, it was used exclusively for transporting supplies and could therefore not carry passengers. Further, according to him, no more than one vessel could be moored at the island, as there was only one pier, which was partly destroyed. On the other hand, according to the Chief Public Prosecutor of Bursa, transport to İmralı Island was the responsibility of the military authorities, and therefore the use of other means of transport was within their control.

Both the Chief Public Prosecutor of Bursa and the Bursa Regional Gendarmerie Commander maintained that visits could only take place on Wednesday because: i) it had been designated as the visiting day by the Ministry of Justice; ii) the other days of the week had been assigned to meeting the different requirements of the island (change of staff, supply of provisions, military exercises and operations, etc.); iii) it was impossible to shift the visiting day, as the island was in a military zone and each visit required major preparatory work and security measures.

In conclusion, the delegation's interlocutors stated that, under the present circumstances, the only solution to the problem of access to İmralı Island was an improvement in the weather as the winter comes to an end.

The CPT does not find the above arguments convincing; they are not indicative of a real determination to overcome the difficulties faced by the relatives and lawyers of Abdullah Öcalan in gaining access to İmralı Island.

14. The lawyers of Abdullah Öcalan whom the delegation met during the visit expressed serious concern about the prolonged lack of contact with their client, who is currently facing three sets of legal proceedings and is prevented from giving instructions in relation to them. They had repeatedly written to the Ministry of Justice, the Prison Directorate and the Bursa Chief Prosecutor's Office, requesting that steps be taken to remedy the situation. In reply, the Ministry of Justice stated that there was no budget to replace the coastal vessel İmralı-9 with a new boat. The lawyers' request that the restrictions placed on the days and duration of their visits to İmralı Prison be removed was also rejected.

15. In the light of the information at its disposal, the CPT is persuaded that further measures could be taken to enable visits to İmralı Closed Prison to take place, without placing an excessive burden on the Turkish authorities. In view of the exceptional circumstances of Abdullah Öcalan's custody, and in particular his prolonged isolation on İmralı Island, it is absolutely essential that his right to visits from his relatives and lawyers is fully effective in practice. As stressed in the letter by the CPT's President to the Turkish authorities dated 27 January 2003, ensuring that this is the case may require proactive measures on the part of the Turkish authorities. It is incumbent upon those authorities to ensure that the visit regulations they have put in place are implemented in practice.

The CPT recommends that the Turkish authorities take immediate steps to find means of ensuring that Abdullah Öcalan's right to receive visits from his relatives and lawyers is fully effective in practice. The relevant instructions should be modified so that, if necessary, İmralı-10 can be used to transport relatives and lawyers of Abdullah Öcalan to İmralı Island or, if that boat is unavailable, a coastguard vessel. Further, a degree of flexibility should be introduced concerning the day of the visits, so that if during a given week adverse weather prevents all means of transport from reaching the island on the allocated day, visits can take place on another day.

16. Finally, the CPT understands that although he has been imprisoned for over four years, visits to Abdullah Öcalan by his relatives still take place under very restrictive conditions, namely with the prisoner and his visitors sitting in two separate rooms on opposite sides of a glass panel and communicating via a telephone. **The Committee invites the Turkish authorities to allow visits to Abdullah Öcalan by his relatives to take place under the conditions applied to his lawyers, namely in the same room, the prisoner and his visitors seated on opposite sides of a table.**

17. **The CPT requests the Turkish authorities to provide within one month a response setting out the action taken in the light of paragraphs 15 and 16.**