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**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 visit to Turkey**

from 19 to 22 May 2007

(transmitted to the CPT by letter of 25 October 2007)

The Turkish Government has requested the publication of this response. The report of the CPT on its May 2007 visit to Turkey is set out in documents CPT/Inf (2008) 13 and CPT/Inf (2008) 13 Addendum.

Strasbourg, 6 March 2008

**REPORT OF THE TURKISH GOVERNMENT IN REPLY TO THE
RECOMMENDATIONS, REQUESTS FOR INFORMATION AND COMMENTS SET
OUT IN THE REPORT OF THE EUROPEAN COMMITTEE FOR THE
PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT (CPT) ON ITS VISIT TO TURKEY FROM 19 TO 22 MAY 2007**

The views of the Turkish Government on the points raised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) in the report on its visit to Turkey from 19 to 22 May 2007 are set out below in the order adopted in the report.

Paragraph 19:

“When the delegation visited İmrah High-Security Closed Prison, it was informed that an official from the registry of the Bursa court had been systematically present during Abdullah Öcalan’s interviews with his lawyers since the entry into force of the new legislation on 1 June 2005. Furthermore, interviews between the prisoner and his lawyers were recorded. The CPT would like to be informed of the exact legal basis for this practice of recording interviews between the prisoner and his lawyers.”

The convict is a terrorist, who is responsible for widespread terrorist acts and violence causing approximately 35,000 deaths as the leader of the terrorist organization, the PKK. The PKK, terrorist organization which has been waging a campaign of violence against Turkey since 1984, has increased its terrorist activities against civilian targets in recent months resulting in the deaths of dozens of innocent civilians. It is proscribed in European countries and is included in the EU Terrorist Organizations and Entities List together with its aliases, KADEK and KONGRA-GEL.

The convict was sentenced to the death penalty in 1999. In 2002, Turkey abolished the death penalty, consequently the applicant’s sentence was converted to heavy life imprisonment. After the adoption of the new Penal Code, the sentence of the applicant was converted to strict life imprisonment, as the term “heavy life imprisonment” was changed to “strict life imprisonment” with respect to terror crimes.

His sentence is being executed in accordance with the provisions of the law and in the same way as the other convicts who are sentenced to strict life imprisonment.

The convict has not given up his efforts to command the terrorist organization and for that purpose he attempts to make use of his meetings with his lawyers and relatives. Due to abuse of the right to consult with a lawyer, the convict has been given disciplinary punishments, while charges have been brought against his lawyers for the same reason.

According to Article 59 (4) of the Law No 5275, the Execution of Prison Sentences and Security Measures which regulates the right to consult with an attorney,

(4) (Amended: 25.5.2005 – 5351 Art. 5.) The attorneys’ documents, files and records of the conversations with their clients shall not be subject to examination. However, regarding the relation between the attorney and the convict sentenced for the crimes

included in Article 220 of the Penal Code (Law no. 5237), as well as in Sections Four and Five of Part Four in Book Two of the Penal Code, those documents and files declared by the attorney to concern his defence can be physically examined. Where findings and documents which point to the fact that acts constituting a crime are committed, the security of the penal institution is put under risk, or they serve as a means of organization-related communication between members of a terrorist organization and other criminal organizations are produced, then, upon a request by the Office of the Chief Public Prosecutor and a decision by an execution judge, an official can be appointed to attend the consultation; furthermore, those documents and files given by such convicts to their attorneys as well as those given by the attorneys to the convict can be examined by the execution judge. The execution judge shall decide whether the documents shall be given or not, as well as whether in part or fully. The convict concerned may object to such a decision in accordance with Law no. 4675.

The above-mentioned Article is of a general nature and applies to other organized crimes as well as to terrorism. Consequently, it applies not only to convict Öcalan but to all convicts and detainees who occupy leadership positions in criminal and terrorist organizations that constitute a danger of the same nature.

Similar regulations exist in a number of countries' legislation such as UK, Germany, Austria and Spain.

Since the convict continues to command the terrorist organization through his lawyers, the convict's consultations with his lawyers are recorded and examined, upon the decision and under the directive of a judge. Accordingly, an official's presence at the consultations of the convict with his lawyers is justified. This exercise is in conformity with Paragraphs 23.5 and 24.2 of Recommendation No. 2 on the European Prison Rules of Committee of Ministers of the Council of Europe, as well as Article 8 (2) of the ECHR.

Moreover, case-law of the ECtHR has established that the representatives whose conduct is deemed inappropriate may be subject to certain limitations, provided that they are prescribed by the law. (For instance, Chahal, Campell and Fell cases against United Kingdom, Elvan Can case against Austria, Domenichini case against Italy, Peers case against Greece, 28524/95, 19/04/2001 paragraph 84 and A.B. case against Holland, No. 37328/97 29/01/2002 paragraph 83).

Paragraph 24

“The CPT wishes to raise two questions concerning the disciplinary procedure, namely lawyers' participation in disciplinary proceedings and its corollary, lawyers' access to their clients' disciplinary files.”

In his written defence submissions against disciplinary proceedings, the convict has constantly issued direct instructions to the terrorist organization such as “the Turkish state will eliminate the Kurdish people”, “the PKK and should take their own decisions in this regard”, “the PKK should carry out bomb attacks as was done in Iraq”, “violent acts could be carried out in Turkey's touristic resorts”. It is obvious that the convict is trying to direct the terrorist organization against the Turkish Republic, thus abusing his right to consult with his lawyers.

It is therefore obvious that the purpose of the written submissions of the convict is to issue instructions to the terrorist organisation rather than defending himself against disciplinary proceedings. Therefore, the requests by his lawyers were rejected by the competent Assize Court and the execution judge in accordance with Article 153/2 of the Law on Criminal Procedures and Article 59 (4) of the Law No 5275, the Execution of Prison Sentences and Security Measures.

This does not contravene the European Prison Rules REC (2006) 2/23 and 24, nor the case-law of the ECtHR.

Conclusions and Recommendations

Paragraph 33

“The CPT calls upon the Turkish authorities to completely review the situation of Abdullah Öcalan, with a view to integrating him into a setting where contacts with other inmates and a wider range of activities are possible.”

If international legislation governing the execution of sentences is examined, it will be observed that in prisons, dangerous criminals are detained in maximum security single rooms, where extraordinary security measures are implemented. According to Recommendation R (82)17 and the explanatory memorandum of the Committee of Ministers of the Council of Europe concerning dangerous criminals, such prisoners can only be involved in the activities that the security of the prison allows and can be detained in single rooms separated from the prison community.

These people are criminals who create a high risk both for the society and themselves. They are limited in number and are generally criminals associated with terrorism, organized crime and drug crimes and those who commit brutal crimes.

Moreover, Articles 67, 68 and 69 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provide that high risk convicts are to be separated from the other convicts and that this can be done within the same institution or in separate institutions.

The convict is the leader of a terrorist organization which has carried out brutal acts of violence resulting in deaths of 35.000 people and this fact is established by a domestic court decision. The convict may become a target for many people, including the relatives of the 35.000 killed and therefore there is a serious risk to his life. It is considered very difficult to secure the protection of the convict in another other prison. The convict is under a multiple risk as he also carried out many executions within the terrorist organization. Moreover, his possible transfer to another prison may cause outrage among inmates or lead to attempts to escape from prison, thus endangering the security of the prison. The purpose of his detention on an island is to secure his right to life. As imprisoned convicts are under the responsibility of the state, it is only natural that the state takes necessary precautions to fulfil this obligation.

The fact that a terrorist who poses a risk is kept in the highest-security section of a prison or in a prison where the highest security standards are practiced cannot be perceived as a contravention of either national or international prison standards.

The convict lives in a single room with adequate air-conditioning and lighting which complies with international prison standards. He enjoys outdoor privileges for an hour a day. He also enjoys the basic rights accorded to all convicts in Turkey such as seeking access to means of redress, engaging in cultural and sportive activities upon request, benefitting from health and psycho-social services, reading books, newspapers and periodicals, listening to the radio, performing recreational activities upon request, receiving visitors, consulting with his lawyers and communicating via letter and telegraph. He is not left on his own, on the contrary he is in constant contact with his guardian, psychologist, and other doctors. On the other hand, he has not asked the prison administration to be allowed to engage in any hobbies, which in many cases have a positive effect on the mental states of the prisoners.

Further favourable treatment than accorded to other prisoners of the same status would be discriminatory.

“The CPT recommends that the Turkish authorities take steps to ensure that:

In the medical sphere:

The prisoner immediately receives a comprehensive ENT examination (including a specialised endoscopic examination and, if necessary, a CT scan) and, if appropriate, palliative/reparatory surgery;

The prisoner immediately receives an X-ray examination of the thorax;”

During the medical check-up on 7 August 2007, an ear, nose and throat (ENT) specialist diagnosed sinusitis, reflux and eustachian tube congestion and prescribed Pitoxil Tablets 1x1, Pantpas Tablet 1x1, Asistplas Ef 1x1, Rennies Suspension 4x2 and Nazocort Spray 2x1. No other recommendation has been made for further treatment, including surgery.

The convict is examined daily by the two doctors of the prison and daily medical reports are prepared. He is also examined once every three weeks by doctors specialized in Internal Medicine and Psychiatry. Specialists from other branches and dentists are assigned as the need arises. No health problems have been diagnosed, with the exception of sinusitis and reflux, which would necessitate further examination or treatment.

According to the reports prepared as a result of the regularly conducted health examinations, the applicant is in good health and does not have a serious illness. The said reports are sent regularly to the CPT.

“The prisoner is provided with the psychiatric consultations required by the developments in his mental condition;”

As mentioned earlier, in addition to daily check-ups, the convict is examined once every three weeks by doctors specialized in Internal Medicine and Psychiatry. If the need arises, specialists from other branches are assigned, including psychologists.

The convict also receives psychological support.

“The current daily medical checks imposed on the prisoner are replaced by less frequent medical consultations with the same doctor. The intervention of specialists should be coordinated by that doctor. The nature of, and reasons for, this new approach should be fully explained to the prisoner in advance, by the doctor appointed to carry out the examinations;”

The frequency of the medical check-ups and examinations is decided by the doctors of the prison. The recommendation of the CPT has nevertheless been communicated to the medical staff of the prison. The intervention of specialists is coordinated by the doctors of the prison.

“The laryngoscope is in working order and that the doctors on duty receive the training necessary to use both the laryngoscope and the defibrillator;”

Every student in Turkish medical universities is trained to use above-mentioned equipment. The doctors of the prison also have had the proper training to use both the laryngoscope and the defibrillator.

“Regarding his material conditions and regime;

The prisoner is allowed to move freely between his cell and the adjoining room during the day.

He has access – from time to time – to a larger exercise area equipped with basic facilities (e.g shelter from the elements, a bench, sport equipment)”

As it was established in the judgment of the Grand Chamber of the ECtHR of 12 May 2005, the prison conditions of the convict are in conformity with the requirements of the ECHR and International Law :

“The applicant's prison cell is indisputably furnished to a standard that is beyond reproach. From the photographs in its possession and the findings of the delegates of the CPT, who inspected the applicant's prison during their visit to Turkey from 2 to 14 September 2001, the Court notes that the cell the applicant occupies alone is large enough to accommodate a prisoner and furnished with a bed, table, armchair and bookshelves. It is also air-conditioned, has washing and toilet facilities and a window overlooking an inner courtyard. The applicant appears to be under medical supervision that is both strict and regular. The Court considers that these conditions do not give rise to any issue under Article 3 of the Convention.”

The physical conditions of the prison and the room in which the convict is being detained continue to possess the same characteristics.

The CPT report dated 7 December 2000 also stated that “Material conditions of detention in Mr Öcalan's cell were of a high standard. The cell was of a good size (13 m²), well lit (including adequate access to natural light), and suitably equipped (bed, bedside table, chair, shower, toilet and washbasin, heater/air conditioning system - all of very good quality).”

It was explained in the Government Response to CPT's visit of 2-14 September 2001 that prisoners are not allowed to circulate freely between their rooms and the visiting area in any prison in the world. Visiting areas are used only for receiving visitors.

The convict has the right to enjoy outdoors privileges where he can exercise in 45 square meter open area for 30 minutes in the morning and a further 30 minutes in the afternoon. In addition, he has the opportunity to exercise in his room.

Security reasons would render the recommendation for allocation of adjoining room or a larger exercise area with basic facilities unapplicable.

The convict is provided with large enough area that would be needed by a healthy individual to use and move freely in his daily life.

The room which the convict occupies and its air-conditioning system exceed even international standards and is adequate to meet the needs of one person.

The convict cannot be granted a luxury beyond that. It would amount to privileged treatment distinguishing him from other dangerous prisoners of the same status.

“He is able to have television set (rented or purchased) in his cell and to enjoy a basic range of activities.”

The convict is provided with radio, newspapers, books, paper and pencil. The newspapers brought by his lawyers and those sent daily by the Office of the Chief Public Prosecutor in Bursa are delivered to the convict without any censorship.

The reasons for restriction to access to a television set was previously explained in the Government Response to CPT’s visit of 2-14 September 2001.

By the decision no. 2005/2 of the Administrative and Observation Board of the Directorate of İmralı High Security Closed Prison dated 26 July 2005, the convict’s access to a television was restricted pursuant to Article 67/4 of Law no. 5275 (the article provides that a restriction may be imposed in respect of dangerous convicts and those who are a member of an illegal organization) and Article 90/5 of the Statute on the Administration of Prisons and the Execution of Sentences and Security Measures.

Turkish legislation, the European Prison Rules and the United Nations Standard Minimum Rules do not include an obligation to provide a television set to detainees and convicts.

Article 68 of the German Code on Execution of Sentences stipulates that, where required in the interests of prison safety, convicts may be denied access to radio and television. British legislation allows a television set only as an award for good conduct.

“Regarding contact with the outside world

The prisoner can receive “table visits” once a month from members of his family, if necessary by amending the relevant legal provisions, and that there is some flexibility in allowing him to aggregate unused visiting periods (due to difficulties of access to İmralı Island)”

According to Article 126/3 of the Regulation on the Execution of Prison Sentences and Security Measures, those serving strict life imprisonment may receive two visits every 15

days, with a duration not exceeding one hour, by parents, spouses, children, grandchildren and legal guardians.

Since the convict's parents are not alive and since he does not have a wife or children, he could only be visited by his siblings. Such meetings take place regularly upon the request of his siblings. Until 30 September 2007, his siblings visited him 126 times. Furthermore, the convict held with his lawyers 675 consultations in total (664 consultations with 78 different Turkish lawyers and 11 consultations with 2 foreign representatives) from the date he was admitted to the İmralı High Security Closed Prison till 30 September 2007.

As laid down in Article 14 of the above-mentioned Regulation, open visits can only be made by parents, spouse, children and grandchildren. Siblings, therefore, are not entitled to benefit from open visit rights.

Despite some difficulties encountered at times arising from weather conditions, these visits take place without any obstruction. In the event that a scheduled visit does not take place, the representatives are informed that the visit can take place, upon their request, on the following day/days if the weather conditions permit.

A legal arrangement for aggregation of unused visits has not been found in domestic law, or international law. Introducing a legal regulation for a particular individual would contradict the principle of equality and the rule of law.

“The prisoner can speak on the telephone to members of his family (calls being subject to monitoring and , if necessary, interrupted)”

Pursuant to Article 25/1-e of Law no. 5275 on the Execution of Prison Sentences and Security Measures, where the Board of Administration and Observation deems appropriate, convicts have the right to telephone conversations with their close relatives, as set forth in sub-clause (f) (spouse, children, parents, grandparents, grandchildren, siblings and legal guardians) once every 15 days not exceeding 10 minutes. However, pursuant to Article 66/1 of the same Law, this right may be restricted in the case of convicts who are “members of illegal organizations” or considered “dangerous” for public and prison safety.

The convict has been denied this right, as he continues to attempt to lead the terrorist organization directly and could issue instructions to the organization to carry out terrorist activities by way of telephone calls, thus undermining public and prison security.