



CPT/Inf (2007) 1

**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 9 to 21 September 1990**

The Turkish Government has authorised the publication of this report and of its responses. The Government's responses are set out in document CPT/Inf (2007) 2.

Strasbourg, 11 January 2007

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**Copy of the letter transmitting the CPT's report**

Strasbourg, 6 February 1991

Dear Mr Gölcüklü,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report to the Turkish Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Turkey from 9 to 21 September 1990. The report was adopted by consensus by the CPT at its seventh meeting, held from 28 to 31 January 1991.

I would draw your attention in particular to paragraphs 185 and 186 of the report, in which the CPT requests the Turkish authorities (i) to provide within three months an account of action taken to implement the recommendation set out in paragraph 89 of the report, and within six months an account of action taken to implement the recommendation set out in paragraph 122, and (ii) to provide within respectively six and twelve months an interim and a follow-up report on action taken upon its report as a whole.

More generally, the CPT is keen to establish an on-going dialogue with the Turkish authorities on matters of mutual interest, in the spirit of the principle of co-operation set out in Article 3 of the Convention. Consequently, any other communication that the Turkish authorities might wish to make would also be most welcome.

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

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours sincerely,

Antonio CASSESE  
President of the European Committee for  
the Prevention of Torture and Inhuman or  
Degrading Treatment or Punishment

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## Preface

As the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is a new institution, knowledge of its mandate and functions is inevitably limited. The CPT has therefore deemed it appropriate to begin the first of its reports to each Party by setting out some of the Committee's salient features, inter alia because the basis and aims of its activities are fundamentally different from those of the two other Council of Europe bodies of supervision within the field of human rights protection - the European Commission and European Court of Human Rights.

Unlike the Commission and the Court, the CPT is not a judicial body empowered to resolve legal disputes concerning alleged violations of treaty obligations (i.e. to determine claims ex post facto).

The CPT is rather first and foremost a mechanism designed to prevent torture and inhuman or degrading treatment or punishment from occurring, although it may also in special cases intervene after the event if this is important for future prevention.

Consequently, whereas the Commission's and Court's activities aim at "conflict solution" on the legal level, the CPT's activities aim at "conflict avoidance" on the practical level.

This being so, the guiding maxim for the CPT when performing its obligations must be to "extend the widest possible protection against abuses, whether physical or mental" (quotation from the 1979 UN Code of conduct for law enforcement officials as well as from the 1988 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, both adopted by the General Assembly).

Underlying the CPT's activities is the notion of co-operation (Article 3 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). The CPT's task is not to publicly criticise States, but to assist them to find ways and means of strengthening the "cordon sanitaire" between acceptable and unacceptable treatment or behaviour. In fulfilling this task the CPT is guided by the following considerations: that the prohibition of ill-treatment is absolute ; that ill-treatment is repugnant to the principles of civilised conduct, even if used in milder forms ; and that ill-treatment is not only harmful to the victim but also degrading to the person inflicting it and ultimately harmful to the national authorities in general.

In performing its function of prevention of ill-treatment, the CPT must first of all explore the prevailing factual situation. In this connection it:

- i) takes stock of the general conditions in establishments visited ;
- ii) observes the general attitude, behaviour and demeanour of law enforcement officials and other staff to persons deprived of their liberty ;
- iii) interviews persons deprived of their liberty in order to get their views on i) and ii), and to hear any specific grievances they may have ;
- iv) examines the legal and administrative framework on which the deprivation of liberty is based.

Subsequently, the CPT reports to the State concerned, giving its assessment of all the information gathered and providing its observations. In this regard it should be recalled that the CPT does not have the power to confront persons expressing opposing views or to take evidence under oath. If necessary, the CPT recommends measures designed to prevent the possible occurrence of treatment that is contrary to what reasonably could be considered as acceptable standards for dealing with persons deprived of their liberty.

In carrying out its functions the CPT may take as points of reference not only the European Convention on Human Rights but also a number of other relevant human rights instruments (and the interpretation of them by the human rights organs concerned). At the same time, it is not bound by the jurisprudence of judicial bodies acting in the same field *ex post facto*.

To sum up, the principal differences between the CPT and the European Commission and European Court of Human Rights can be summarised as follows:

- i) the Commission and Court have substantive treaty provisions to apply and interpret : the CPT has not, although it could seek guidance from - without, however, being formally bound by - not only one but a number of treaties, other international instruments and the jurisprudence formulated thereunder ;
- ii) the Commission and Court only intervene after having been duly seized of applications from individuals or States : the CPT "intervenes" *ex-officio* by way of periodic or *ad hoc* visits and mainly without having received complaints ;
- iii) the Commission's and Court's proceedings conclude with a finding of breach or no breach of a State's treaty obligations, which is legally binding upon the parties: the CPT's findings are included in a report with, if need be, recommendations and other advice, on the basis of which a dialogue can develop ; in the event of a State failing to co-operate with the CPT or to comply with its recommendations, the latter may issue a public statement on the matter.



## **I. INTRODUCTION**

### **A. Dates of the visit and composition of delegation**

1. In pursuance of 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 carried out a visit to Turkey from 9 to 21 September 1990.

2. The delegation consisted of the following Committee members:

- Mr Antonio CASSESE, President of the CPT (Head of delegation);
- Mr Bent SØRENSEN, First Vice-President of the CPT;
- Mr Jacques BERNHEIM, Second Vice-President of the CPT;
- Ms Astrid HEIBERG;
- Mr Michael MELLETT.

The delegation was assisted by:

- Mr Gordon LAKES, former Deputy Director General of the Prison Service of England and Wales (expert);
- Miss Zeynep BEKDIK (interpreter);
- Mrs Belgin DÖLAY (interpreter);
- Mr Kudret SÜZER (interpreter).

The delegation was accompanied by the following members of the CPT's Secretariat:

- Mr Trevor STEVENS, Secretary of the CPT;
- Mrs Geneviève MAYER.

3. Acting under Article 14, paragraph 3, of the Convention, the Turkish authorities refused to allow three persons (two experts and an interpreter) to take part in the visit (see further under paragraphs 13 and 14).

**B. Nature of the visit to Turkey**

4. The visit to Turkey was one which appeared to the CPT "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention). The CPT took into account that allegations of ill-treatment of persons deprived of their liberty in Turkey have been made for many years by a considerable number of organisations and individuals, and that such allegations continue to be made on a significant scale. The CPT has itself, since its establishment in November 1989, received directly numerous communications from a variety of sources containing serious allegations of ill-treatment of persons deprived of their liberty in Turkey. On two occasions prior to the visit it had recourse to Rule 30 of its Rules of Procedure to request information or explanations with regard to particular cases about which it had received reports.

5. In the light of the most recent information available, the CPT decided that in the course of its first visit to Turkey it should focus its attention on the treatment of persons detained by the police or the gendarmerie. This decision dictated the choice of places to be visited. In particular, the delegation chose prison establishments which had among their inmate populations prisoners who had recently been in the custody of the police or the gendarmerie.

**C. Establishments visited by the delegation**

6. The delegation visited the following places of detention:

Police and Gendarmerie establishments

- Ankara Police Headquarters;
- Diyarbakır Police Headquarters;
- Interrogation Centre of the 1st (Political) Department of the Diyarbakır Police;
- Central Interrogation Centre of the Departmental Command of the Diyarbakır Gendarmerie Regiment;
- İçkale Gendarmerie Unit, Diyarbakır.

Prisons

- Ankara Central Closed Prison;
- Diyarbakır 1 Prison;
- Malatya E-type Prison.

7. Further, on 20 September 1990 the delegation visited the Ankara Forensic Institute and the Turkish Police Academy.

**D. Persons met by the delegation**

8. In addition to its meetings with the persons in charge at the places visited, the delegation held consultations with the national authorities and representatives of relevant non-governmental organisations.

9. The delegation met in particular:

i) Ministries

Ministry of Justice

- Mr Oltan SUNGURLU, Minister of Justice;
- Mr Yıldırım TÜRKMEN, Deputy Under Secretary.

Ministry of the Interior

- Mr Vecdi GÖNÜL, Under Secretary.

Ministry of Foreign Affairs

- Mr Ali BOZER, Minister of Foreign Affairs;
- Mr Rıza TÜRMEN, Director General for Multilateral Political Affairs;
- Mrs Fügen OK, Deputy Director General for Multilateral Political Affairs;
- Mrs Hülya TUNÇEL, Director of the Department of Human Rights.

ii) National Assembly

- Mr Kaya ERDEM, Speaker of the Assembly;
- Mr Alpaslan PEHLIVANLI, Chairman of the Justice Committee;
- Mr Gökhan MARAŞ, Vice-Chairman of the Justice Committee;
- Mr Mehmet GAZIOĞLU, Member of the Justice Committee;
- Mr Ahmet NEYDİM, Member of the Justice Committee;
- Mr Güneş GÜRSELER, Member of the Justice Committee;
- Mr Bülent AKARCALI, Co-Chairman of the Turkey-European Community Joint Parliamentary Committee.

iii) Other authorities

- Mr Nusret DEMİRAL, Chief Public Prosecutor at the Ankara State Security Court;
- Mr Hayri KOZAKÇIOĞLU, Governor of the South-Eastern Region of Turkey.

iv) Non-governmental organisations

representatives of the following organisations :

- Turkish Bar Association;
- Turkish Medical Association;
- Human Rights Association, Ankara Branch;
- Human Rights Association, Diyarbakır Branch.

**E. Co-operation with the visiting delegation**

**a. Before the visit**

i. visas

10. The Turkish authorities insisted that three participants in the visiting delegation - a Committee member, an expert and the Committee Secretary - obtain visas before entering Turkey, they being nationals of countries in respect of which a visa requirement had been introduced.

11. Under the circumstances, the three persons in question had no option but to apply for visas. However, **the CPT considers that the Convention's provisions, and more particularly Articles 8 (paragraph 2 (a)) and 16, and paragraph 2(b) of the Annex, exclude the requirement for members of a CPT visiting delegation to obtain visas.** This matter has been raised before the Committee of Ministers of the Council of Europe.

12. On the other hand, the CPT wishes to express its thanks to the Turkish Permanent Representation in Strasbourg, which took steps to facilitate the issue of the above-mentioned visas.

ii. objections to persons assisting the CPT

13. The Turkish authorities invoked Article 14, paragraph 3, of the Convention to declare that an expert (Mr Ole Vedel RASMUSSEN, Medical Doctor at Bispebjerg Hospital (Denmark)) and an interpreter (Mr Necip BAKSI) included in the visiting delegation could not take part in the visit. Further, they refused, by a telefax message dated 7 September 1990, to provide the CPT with the reasons for invoking Article 14, paragraph 3, in respect of those persons. Subsequently, the Turkish authorities invoked Article 14, paragraph 3, again to declare that the expert (Mr Robert DALY, Professor of Psychiatry at University College, Cork (Ireland)) appointed by the CPT to replace Mr Rasmussen could not take part in the visit, and once more declined to provide the reasons for this step.

14. **The CPT considers that the refusal of the Turkish authorities to provide the reasons for not allowing the above-mentioned persons to take part in the visit contravenes both the letter and spirit of Article 14, paragraph 3, of the Convention and also amounts to a failure to respect the principle of co-operation set out in Article 3 of the Convention.** Such information would have been of considerable assistance to the CPT as regards the appointment of other persons.

Moreover, the CPT considers that the objections to Messrs Rasmussen and Baksi should have been made known earlier. The composition of the visiting delegation was notified to the Turkish authorities by telefax on 24 August 1990, but the objections were not notified until 8.51 p.m. on 5 September 1990.

The legal issues arising out of this incident have been raised before the Committee of Ministers.

**b. During the visit**

i. high level consultations

15. The CPT's delegation had fruitful discussions with the Minister of Justice, Mr Sungurlu, and the Minister of Foreign Affairs, Mr Bozer. Both indicated a willingness to co-operate with the CPT. Unfortunately, the Minister of the Interior was not in a position to meet the CPT's delegation in the course of its visit. The CPT would also stress the co-operative attitude shown by Mr Türkmen, Deputy Under-Secretary at the Ministry of Justice, and senior members of his staff, as well as by Mr Gönül, the Under Secretary of State at the Ministry of the Interior.

16. The delegation was received at the Turkish National Assembly building by the Speaker of the Assembly, Mr Erdem. The delegation subsequently had a particularly useful meeting with five members of the Assembly's Justice Committee, including the Chairman (Mr Pehlivanlı) and Vice-Chairman (Mr Maraş), in the course of which draft legislation concerning issues touching upon the CPT's mandate was considered in some depth. The delegation also met in the course of its visit Mr Akarcalı, Co-Chairman of the Turkey-European Community Joint Parliamentary Committee.

17. The delegation had the privilege of meeting on two occasions the Chief Public Prosecutor at the Ankara State Security Court, Mr Demiral; these meetings proved exceptionally enlightening.

Further, the delegation had a very instructive meeting with the Governor of the South-Eastern region of Turkey, Mr Kozakçıoğlu.

18. Despite disagreements on certain matters, the delegation received a satisfactory degree of co-operation from officials of the Ministry of Foreign Affairs, namely Mr Türmen, Mrs Ok and Mrs Tunçel. The CPT is grateful for the information they provided and the steps they took to organise various meetings, as well as for their effective action in overcoming the initial objections to the delegation's visit to gendarmerie establishments in Diyarbakır. The CPT would also like to express its appreciation of the assistance given to its delegation by Mr Yunus Demirer, who accompanied the delegation to Diyarbakır and Malatya. He carried out a delicate task with considerable skill.

19. The rapid and substantive reaction of the Turkish authorities to a request for information made under Rule 30 of the CPT's Rules of Procedure in the course of the delegation's visit should also be mentioned.

ii. co-operation at places of detention visited

*- Ankara Police Headquarters*

20. The CPT's delegation visited the Ankara Police Headquarters on three occasions; the night of 11/12 September 1990; on 13 September 1990 and on 14 September 1990. In the course of the first two visits, the delegation visited the "old building", and in the course of the third visit, the "new building". During the visits to the old building, a number of flagrant violations of Articles 3 and 8 of the Convention were committed. A summary of the sequence of events during the visits to the old building is set out in Appendix II to this Report.

21. The summary in Appendix II illustrates first of all that the delegation's access to places it wished to visit was blocked on two occasions for lengthy periods. During the night of 11/12 September 1990 the delegation was obliged to wait more than 6 hours before it was finally permitted to visit the detention area of the old building; on the morning of 13 September 1990, the delegation was again made to wait a considerable time, and it was not until 12.05 p.m. that it was granted access to the same area.

The reason proffered for the delays in question is anything but convincing. It is quite unbelievable that the Security Director's closest associates were not able to contact him for such long periods of time. In any event, as regards the visit on 11/12 September 1990, it was admitted that the Security Director had been contacted at 11.00 p.m. Despite this, the delegation was still obliged to wait several more hours before beginning its visit.

22. The seriousness of the situation is compounded by the fact that the Turkish authorities had been notified on 5 September 1990 of the delegation's intention to visit Ankara Police Headquarters and that, as regards the visit on 13 September 1990, the Security Director's request that half an hours' notice be given of another visit had been complied with.

**23. The delaying action of the police authorities at Ankara Police Headquarters amounts to a clear violation of the CPT's right of access to places where persons are deprived of their liberty, as provided for in Article 8, paragraphs 1 and 2(c), of the Convention.**

24. It must also be recorded that subsequent discussions with the relevant authorities revealed that numerous persons were being detained by the Political Department of the Ankara Police between 11 and 13 September 1990, including a person whose name was mentioned to the Head of that Department during the morning of 13 September 1990 (see page 72, fourth indent). The list of detainees presented to the delegation at 3.30 a.m. on 12 September 1990 and the register shown to it at 4.30 a.m. were therefore incomplete, and the statement made by the Head of the Political Department on 13 September 1990 concerning the person named by the delegation was inaccurate. Further, it also became clear that, contrary to what the delegation was told by the police authorities, the detention area shown to it on the ground floor of the old building is not the only area in that building where detainees held by the Political Department are kept.

25. As for the actual visits to the old building, a full account of the delegation's findings will be given in Part IV of the report (see paragraphs 69 to 81). However, it should be noted in this section that on 13 September 1990 the delegation was initially denied access to two particular areas of the ground floor complex of the old building and was given inaccurate information concerning those areas. With regard to the first area (the entrance to which was concealed by a fibre board panel), the delegation was told that it had not been used for nine years; the inspection of the area subsequently carried out revealed that this was patently not the case. With regard to the second area (the most readily available entrance to which was blocked by a large metal cupboard), the delegation was initially told that it did not belong to the Political Department. This affirmation was later transformed into a statement that the premises concerned contained nothing of any interest. In the course of a subsequent inspection of the premises, a set of cells which had been occupied very recently was discovered.

26. The relevant authorities later acknowledged openly that some detainees had been removed from the old building in order to prevent the delegation from seeing them. This removal - or at least a part of it - was in fact effected in a blatant fashion shortly before 3.00 p.m. on 13 September 1990 (see paragraph 77).

The CPT is aware of the manner in which the said authorities interpret Article 9, paragraph 1, of the Convention, which they consider permits them to prevent delegations of the CPT from seeing certain detainees throughout the whole period of police custody. The CPT will comment on this matter at a later stage (see paragraphs 53 and 54). However, regardless of the interpretation to be given to Article 9 (1), nothing can excuse the obstructive behaviour of the police authorities towards the delegation in the course of its visits to Ankara Police Headquarters.

27. To sum up, instead of being open and frank with the delegation, the police authorities at Ankara Police Headquarters subjected it to a series of delays and diversions, and on several occasions gave it false information. **In acting in this manner, the said authorities failed to comply with the principle of co-operation laid down in Article 3 of the Convention.**

*- other police and gendarmerie establishments*

28. On the whole, the delegation met with a satisfactory degree of co-operation at the other police establishments and the gendarmerie establishments which it visited.

The delegation would underline in this connection the good co-operation at the Interrogation Centre of the Political Department of the Diyarbakır Police, which it visited on three separate occasions; in particular, no obstacles were placed in the delegation's path as regards the interviewing of persons detained there.

29. In the course of the delegation's last visit to the above-mentioned Interrogation Centre, a dispute did arise over the delegation's request to visit the first floor of the building in which the Interrogation Centre was housed, which the delegation had reason to believe might be used for the purposes of detention. The officer in charge insisted that it was not a place where persons were deprived of their liberty. The matter was eventually resolved satisfactorily, Governor Kozakçioğlu authorising the delegation to visit the premises concerned, subject to certain (entirely acceptable) precautions. The delegation noted that it was not a place of detention.

30. The delegation received less than full co-operation from the officer in charge of the Central Interrogation Centre of the Departmental Command of the Diyarbakır Gendarmerie Regiment.

*- prisons*

31. The authorities in charge at Ankara Central Closed, Diyarbakır 1 and Malatya E-type Prisons were very co-operative. With one exception, no attempts were made to restrict the delegation's activities.

32. The exception referred to concerns an incident which occurred at Ankara Central Closed Prison on the evening of Thursday, 20 September 1990. A sub-group of the delegation arrived at the Prison at 8.15 p.m. and requested to interview three prisoners who had been sent to the prison earlier that evening. The Prison Governor explained that the roll-call had already been made and that for security reasons it was impossible for the prisoners to be interviewed before the following morning, a position which was subsequently confirmed by Mr Türkmen (Deputy Under Secretary of State at the Ministry of Justice).

The CPT recognises the difficulties which night visits to certain prisons can cause, and for this reason did not on this occasion persist in its efforts to see the prisoners concerned on Thursday evening. However, the CPT wishes to recall that Article 8, paragraph 1, of the Convention stipulates that the CPT may "at any time visit any place (where persons are deprived of their liberty)", and to stress that night visits to prisons may sometimes be necessary.



## **II. GENERAL CONTEXT**

### **A. Preliminary remarks**

33. One cannot understand and assess the conditions under which persons are deprived of their liberty by a public authority in a given country without considering those conditions in their general context. Although respect for human dignity must be effectively practised in all Parties to the Convention, the historical, social and economic background of each of those countries is different and can account for differences in their response to human rights issues.

34. The task of the CPT is to prevent torture and inhuman or degrading treatment or punishment. Prevention must of necessity lead to removing - perhaps gradually - underlying causes of general or specific conditions conducive to torture or any other form of ill-treatment. It follows that, to fulfil its task, the CPT must constantly look into those causes with a view to suggesting - if need be - measures designed to eliminate them.

### **B. Two important features of the general situation in Turkey**

35. When drawing up its report, the CPT was mindful of the general situation in Turkey. The CPT took account, in particular, of two features of the current position there which are relevant to its task of preventing torture and inhuman or degrading treatment or punishment.

36. The first feature can be discerned at the socio-economic level.

In Turkey there exists :

- i) a high degree of polarisation in the political arena ;
- ii) a frequent resort to physical violence by terrorist groups as a means of advancing political objectives ;
- iii) a rigorous response by State authorities to political polarisation and violence ;
- iv) a widespread social acceptance of resort to physical means of punishment in "elementary" social groups such as the family or the school; this reflects a pattern of social behaviour that may lead to the acceptance of similar behaviour in State institutions.

More generally, it has been said that there is a reluctance to embrace political compromise and accommodation. As was described by a distinguished Turkish scholar : "culturally most Turks, elites and nonelites, seem to be committed to a democratic regime ; yet this commitment does not always seem to be based on a set of profoundly felt concomitant democratic values, such as tolerance, compromise and respect for individuality".

37. It must also be recalled that in Turkey there is a per capita income of only 1,454 US dollars. It follows that one should not expect to find in places where persons are deprived of their liberty, living or medical facilities of the same level as those prevailing in certain other West European countries.

38. The second relevant feature of the current Turkish situation can be found at the legal level.

Turkey has a liberal-democratic regime and its Constitution (adopted in 1982) sets up a parliamentary system based on checks and balances. However, the Constitution and many laws provide for wide-ranging restrictions on human rights and fundamental freedoms. For example :

a) Article 13, paragraph 1, of the Constitution provides that fundamental rights and freedoms can be restricted "by law, in conformity with the letter and the spirit of the Constitution, with the aim of safeguarding the indivisible integrity of the State, its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest, public morals and public health, and also for specific reasons set forth in the relevant articles of the Constitution" (however, paragraph 2 of the same Article goes on to provide that "General and specific grounds for restrictions of fundamental rights and freedoms shall not conflict with the requirements of the democratic order of society and shall not be imposed for any purpose other than those for which they are prescribed") ;

b) the Constitution explicitly provides for the proclamation of a state of emergency and for martial law (Articles 119 to 122), with the consequent possibility of severe restrictions on human rights and fundamental freedoms (however, it also stipulated in Article 15 of the Constitution that any suspension of the exercise of fundamental rights and freedoms in times of state of emergency or martial law must not violate obligations under international law, and that even under such circumstances, the right of the individual to life and material and spiritual integrity shall be inviolable except where death occurs through lawful acts of warfare or execution of death sentences) ;

c) the Turkish Penal Code (enacted in 1926) includes a number of provisions (e.g. Articles 141, 142, 159, 163 and 312) which may result in significant barriers to freedom of opinion, conscience and association ;

d) certain laws (e.g. the Law on Assembly and Demonstrations, the Law on Association, the Law on Trade Unions, the Law on Political Parties) to some extent impose restrictions on the rights to freedom of association and freedom of expression.

Further, between 1961 and 1990 Turkey has filed with the Council of Europe more than 50 notices of derogation from substantive provisions of the European Convention on Human Rights, pursuant to Article 15 of the Convention (this very large number of notices is, to some extent, explained by the practice of the Turkish authorities of declaring martial law for a period of one or two months and then renewing it). The latest notice of derogation was filed on 7 August 1990, following the promulgation by the Government of Turkey of the decrees with the force of law Nos. 424 and 425.

It is also noteworthy that the Constitution provides for specialised courts ("Courts for the Security of the State") to be responsible for dealing with "offences against the indivisible integrity of the State with its territory and nation, the free democratic order, or against the Republic's characteristics defined in the Constitution, and offences directly involving the internal and external security of the State" (Article 143, paragraph 1). On the other hand, appeals against their decisions can be lodged with the Court of Cassation (Article 143, paragraph 5).

39. Some of the aforementioned characteristics of the Turkish legal system may be attributed to the violence, terrorism and political turbulence which prevailed in Turkey in the 1970s. However, the restrictions on rights and freedoms referred to above, whatever their political justification - and this is a subject on which the Turkish authorities, political parties and public opinion are alone entitled to pass judgment -, may in themselves result in political tension and create conditions that incite State authorities to resort to repressive action.

### **III. LEGAL FRAMEWORK**

#### **A. Current legal situation and planned reforms**

40. The features of the current legal situation that are relevant to the subject of torture and inhuman or degrading treatment or punishment, as well as planned reforms, are described in Appendix III to this report. However, it would be useful at this stage to highlight a number of points.

##### **a. Prohibition of torture**

41. Torture or any other cruel or inhuman treatment or punishment is explicitly prohibited by a number of legal provisions in Turkey. However, it is questionable whether the penalties formally provided for and/or applied in practice are fully commensurate with the seriousness of these offences.

##### **b. Length of police (or gendarmerie) custody**

42. The maximum possible lengths of police custody vary according to the nature of the offence:

- for ordinary criminal offences, 24 hours (48 hours in regions in which a state of emergency has been declared);

- for ordinary criminal offences of a collective nature (i.e. involving three or more people), 15 days (30 days in regions in which a state of emergency has been declared);

- for offences falling under the jurisdiction of State Security Courts (see paragraph 38 - hereinafter referred to as "offences against the State"), 48 hours (96 hours in regions in which a state of emergency has been declared);

- for offences against the State of a collective nature, 15 days (30 days in regions in which a state of emergency has been declared).

43. In September 1989 the Prime Minister presented a Bill drawn up by the Minister of Justice, designed to reduce somewhat the periods of custody for collective offences (see further, Appendix III, paragraphs 38 to 41); it is still pending before Parliament.

##### **c. Notification of custody**

44. Article 19, paragraph 6, of the Constitution provides that "notification of the situation of the person arrested or detained shall be made immediately to the next of kin, except in cases where definite necessities pertaining to the risk of revealing the scope and the subject of the investigation compel otherwise". This constitutional provision is reflected, albeit in somewhat different wordings, in other legal provisions.

Under the above-mentioned provisions, the relevant authorities appear to enjoy considerable discretion as to whether or not to notify the next of kin of the reasons for a person's detention, of his whereabouts or even of the very fact of his detention.

**d. Access to a lawyer**

45. Articles 136 and 144 of the Code of Criminal Procedure stipulate that detained persons shall have the right of access to legal advice. However, another provision of the Code, Article 143, paragraph 2, is frequently invoked to justify the denial of access to a lawyer. Similarly, some public prosecutors often deny access to a lawyer on the basis of Article 19, paragraph 6, of the Constitution, arguing that in cases where it is necessary to refrain from notifying a detainee's next of kin of his situation because of definite necessities pertaining to the risk of revealing the scope and the subject of the investigation, the logical consequence is that the person concerned must not be allowed to communicate with his lawyer either.

46. Between 1986 and 1990, three circulars were issued by the Minister of Justice and the Prime Minister designed to improve access to lawyers for persons in detention; however, they do not appear to have had the desired effect.

47. A Bill designed, inter alia, to guarantee access to a lawyer at every stage of the investigation process was presented by the Vice-Chairman of the Justice Commission of Parliament and several other MP's in September 1989 (see further, Appendix III, paragraphs 36 and 37); it is still pending before Parliament.

**e. Access to a medical doctor**

48. Persons held in police custody do not have the right to be seen by a medical doctor of their own choice. On the other hand, as a matter of practice, all persons taken into police custody are examined by a doctor of the relevant Forensic Institute at the expiry of the period of police custody.

**f. Remedies in the event of ill-treatment**

49. Persons who allege that they have been subjected to torture or other forms of ill-treatment at the hands of law enforcement officials may inter alia file a complaint with the relevant public prosecutor, who is required by law to carry out an investigation. Further, persons who are ill-treated by law enforcement officials can claim compensation.

**B. Application of Article 19, paragraph 6, of the Turkish Constitution and Article 9, paragraph 1, of the European Convention for the Prevention of Torture to the CPT's activities**

50. As already indicated (see paragraph 24), detainees held by the Political Department of the Ankara Police were concealed from the delegation when it visited Ankara Police Headquarters. The Chief Public Prosecutor of the Ankara State Security Court subsequently told the delegation that it could not see any detainee being held under the control of public prosecutors attached to that Court (and intimated that he would be taking disciplinary action against the police officers concerned for having allowed the delegation to see those detainees that it did meet - see paragraphs 71 and 72).

51. In support of his view the Chief Public Prosecutor invoked Article 19, paragraph 6, of the Turkish Constitution (cf. paragraph 44) as well as Article 9, paragraph 1, of the Convention, two provisions which he considered coincided.<sup>1</sup>

The CPT, for its part, considers that neither Article 19, paragraph 6, of the Turkish Constitution nor Article 9, paragraph 1, of the Convention provides any legal basis for the attitude adopted by the Chief Public Prosecutor.

52. Article 19, paragraph 6, of the Turkish Constitution lays down an obligation to notify a detainee's next of kin of his situation, save if "definite necessities pertaining to the risk of revealing the scope and the subject of the investigation compel otherwise".

It is hard to see what possible relevance this provision can have to the CPT's activities, and this even if one views the provision in the light of the interpretation frequently placed upon it by public prosecutors at the Ankara State Security Court<sup>2</sup>, to the effect that it can be used to prevent a detainee from having access to legal advice. Members of a CPT delegation are neither a detainee's next of kin nor his legal advisors; they are independent persons entrusted with an international mission by a treaty which has been ratified by Turkey. Further, the fact that a delegation of the CPT has access to a detainee can in no respect involve a risk of "revealing the scope and the subject of the investigation". Firstly, a CPT delegation is not interested in the particular reasons why someone is being detained but exclusively in the treatment he is receiving. Secondly, anything that the delegation might learn through access to a detainee - including the very fact that he is detained and his whereabouts - must remain confidential (cf. Article 11, paragraph 1, of the Convention).

It follows that Article 19, paragraph 6, of the Turkish Constitution can provide no legal basis for a refusal to allow a CPT delegation to see a particular detainee.

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<sup>1</sup> Article 9, paragraph 1, of the Convention provides that "In exceptional circumstances", a Party can make representations to the CPT against a visit "at the time or to the particular place proposed by the Committee", and includes in an exclusive list of possible grounds for such representations, "that an urgent interrogation relating to a serious crime is in progress".

<sup>2</sup> albeit an interpretation that is contested by a large body of opinion in Turkey.

53. As regards Article 9, paragraph 1, of the Convention, this provides for an exception to the power of the CPT to visit at any time, any place where persons are deprived of their liberty by a public authority. It is expressly stipulated at the outset of the paragraph that recourse to this provision is restricted to "exceptional circumstances", and the limits of this latter notion are subsequently spelt out in the paragraph's second sentence. In accordance with a universally accepted rule of interpretation, such exceptions to a general legal rule must be strictly construed.

54. When invoking Article 9, paragraph 1, the Chief Public Prosecutor at the Ankara State Security Court had in mind the following ground - "an urgent interrogation relating to a serious crime is in progress".

Certainly, on the basis of that ground the relevant authorities could object to the CPT having immediate access to a detainee who is in the process of being interrogated as a matter of urgency by the police in relation to a serious crime. The delay involved in interrupting the interrogation in order to allow the CPT to interview the detainee could indeed prejudice that interrogation and consequential police investigations. Delegations of the CPT will always understand and respond sensitively to such situations.

However, the view put forward by the Chief Public Prosecutor is more far-reaching. He argues that on the basis of Article 9, paragraph 1, a CPT delegation can be denied access to detainees whose activities are being investigated by the police under the control of public prosecutors attached to the Ankara State Security Court throughout the whole period of their custody (i.e. up to 15 days in the case of collective offences). This position is quite untenable. In particular, it misreads the actual wording of Article 9, paragraph 1 by confusing the notion of "urgent interrogation" with the much broader one of "investigation". The distinction between these two notions is made expressly in the French text of Article 9, paragraph 1: "... ou d'un interrogatoire urgent, dans une enquête en cours, en relation avec une infraction pénale grave.". The position advanced by the Chief Public Prosecutor would lead to the manifestly unreasonable result that a whole class of persons in police custody would fall outside the scope of the CPT's powers. Such an interpretation would in reality amount to nothing less than a de facto reservation to the provisions of the Convention, and consequently cannot be accepted.

**55. The CPT requests the Turkish authorities to bring the remarks made in paragraphs 50 to 54 to the attention of the Chief Public Prosecutor at the Ankara State Security Court and to take any other steps that might be necessary in order to ensure that in the course of future visits, delegations of the CPT do not meet with a blanket refusal of access to persons being held in police custody under the control of public prosecutors attached to the aforementioned Court.**

#### IV. FACTS FOUND DURING THE VISIT

56. In this part of the report, a distinction will be drawn between, on the one hand, torture and other forms of severe ill-treatment of persons deprived of their liberty and, on the other hand, the general conditions of detention in the places visited by the delegation.

##### A. Torture and other severe ill-treatment of persons detained by the police or the gendarmerie

###### a. Preliminary remarks

###### i. allegations of torture and severe ill-treatment

57. The delegation spoke with many people about their experience whilst in the custody of the police or the gendarmerie. The majority were either persons awaiting trial or convicted prisoners held in the three prisons visited by the delegation. However, they also included persons currently at liberty who had recently been detained by the police. In addition, the delegation met a number of persons actually in police custody. The delegation interviewed both persons charged with or convicted of ordinary criminal offences and persons charged with or convicted of offences against the State.

58. An extremely large number of allegations of torture and other forms of severe ill-treatment by the police were made.

As regards ordinary criminal offences, practically all persons detained for particular types of crime (e.g. drug-related offences, robbery, burglary, sex offences) claimed that they had been tortured or otherwise severely ill-treated by the police. For other types of crime (e.g. arson, physical assault, fraud), the number of persons claiming to have been tortured, though still significant, was somewhat lower. As for persons involved in traffic offences (a category of offenders which apparently constitutes a not insignificant part of the Turkish prison population), no allegations of torture or other forms of ill-treatment were heard; however, some of the persons concerned indicated that they had been tortured or severely ill-treated in the past by the police when being questioned in relation to more serious offences.

Practically all persons detained for offences against the State and who were of left-wing political tendencies claimed that they had been tortured while in police custody. Further, a number of persons met by the delegation who were detained for offences against the State and who were of right-wing political tendencies also claimed that they had been tortured by the police; however, these latter allegations tended to relate to periods of police custody in the fairly distant past.



59. The forms of torture and severe ill-treatment most commonly alleged were:

*physical*

- suspension by the arms, in particular the variant known as "palestinian hanging" (the victim is suspended from the wrists, which are fastened behind him), but also vertical and cruciform hanging;
- electric shocks, often applied in association with suspension and accompanied by dousing with water. It was said that shocks were most commonly applied to the genitals, breast nipples (women), toes, fingers, ears, lips and teeth;
- beating of the soles of the feet ("falaka"), on occasion involving the use of a bench of the type commonly found in parks;
- hosing with high pressure cold water jets;
- squeezing or beating of the genitals and beating of the buttocks, often while held bent up inside a car tyre;
- immersion in sewage;
- prolonged standing.

*psychological*<sup>3</sup>

- incarceration for lengthy periods in very small, dark and unventilated cells;
- sensory isolation (in particular, deprivation of any form of light, including through blindfolding, and disorientation as to time) combined with total social isolation (absence of any direct contact with persons other than law enforcement officials and of any other form of contact with the outside world) for lengthy periods;
- being made to listen to tape-recordings of the cries of persons being subjected to torture or severe ill-treatment, or being placed in the actual presence of persons undergoing such treatment;
- threats of execution, rape or serious injury to themselves or others;
- verbal abuse.

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<sup>3</sup> Of course, the physical forms of torture and severe ill-treatment already mentioned could also have a very damaging effect on the victim's psychological state.

60. Other features common to many of the allegations were:

- torture and other forms of ill-treatment were applied most severely in the first days of police custody (thereby leaving time for injuries resulting therefrom to heal before the victim was released from police custody);
- steps were taken to avoid as far as possible physical marks on the victim (e.g. the use of cloths to avoid abrasions to the wrists during suspension);
- injuries inflicted were treated before the victim was released from police custody (e.g. jumping up and down in cold water and application of cream after falaka).

61. As regards the gendarmerie (which is responsible for police functions in rural areas), the delegation heard far fewer allegations of torture. However, it was stated that suspects were frequently handled very roughly and on occasion even beaten by the gendarmerie, in particular at the time of arrest.

ii. other information

62. Some members of the medical staff in the prisons visited by the delegation commented that they sometimes saw evidence of torture or other forms of severe ill-treatment among new arrivals, though opinions on the frequency of such cases tended to vary. It was indicated that the main categories of detainees who showed signs of torture were property offenders, drug offenders and persons held for offences against the State.

63. In the course of discussions with staff of the Ankara Forensic Institute, it was estimated that about 10% of the persons examined by the Institute at the end of police custody displayed physical signs consistent with ill-treatment. It was pointed out in this connection that certain methods of torture or severe ill-treatment (e.g. high pressure cold water jets) did not leave physical marks and that certain others (e.g. palestinian hanging, electric shocks) need not if carried out expertly. The view was also expressed that cases of torture or severe ill-treatment were becoming less frequent.

64. In the course of its visit to the Forensic Institute on 20 September 1990, the delegation was able to observe the medical examination of a group of persons at the end of their period of police custody; several of them were found to display physical conditions or marks consistent with ill-treatment.

iii. medical findings

65. The delegation's doctors met a large number of persons who claimed that they had been tortured or severely ill-treated while in the custody of the police or gendarmerie, many of whom stated they still had physical marks or conditions resulting therefrom. Twenty-eight of the latter persons were examined by the doctors; in twenty-three of the cases, physical marks or conditions consistent with the allegations of torture or severe ill-treatment were observed.

66. By way of illustration, synopses of four of the cases are given below:

Subject A, a young man, alleged that during several days ending six days before being seen by the delegation, he had been subjected to falaka, electric shocks and cruciform hanging. He said that the lesions from falaka had subsequently been treated by making him jump up and down in cold water and the application of yoghurt-like cream as ointment, and that in the course of the suspension his wrists had been protected by cloth.

On examination:

- the skin of the person's feet was found to be very smooth and clean. There were no visible marks. Tenderness was apparent on palpation of the soles and the person was observed to walk cautiously;
- the capsule was swollen on both sides of the shoulders. On palpation, crepitation and tenderness was found.

Subject B, a middle-aged man, alleged that one and a half years before being seen by the delegation, he had been subjected to repeated and lengthy episodes of palestinian hanging, as well as electric shocks, falaka and pressurised cold water.

On examination:

- the capsule of the left shoulder was found to be loose. There was reduced strength in the left arm;
- as regards the left hand, reduced strength and atrophy of the hypothenar region was observed. There was reduced sensibility in the fifth, fourth and half of the third fingers and the nearby area upwards, indicating paresis of the left ulnar nerve.

Subject C, a middle-aged man, alleged that one and a half months before being seen by the delegation, he had been subjected, inter alia, to electric shocks (including the placing of an electrode on his penis) and squeezing of the genitals.

On examination:

- on the penis, at the front of the sulcus coronarius, a small, sharply edged, round brownish discoloration with a whitish centre was observed;
- on the front side of the scrotum, a small superficial, irregular and non-specific skin induration was observed.

Subject D, a young woman, alleged that during several days, ending approximately one week before being seen by the delegation, she had been subjected to falaka, pressurised cold water, electric shocks, and suspension by the arms (palestinian and vertical hanging). She stated that the lesions from falaka had subsequently been treated by massage in cold water.

On examination:

- the capsule of the right shoulder was found to be swollen and tenderness was observed when the right arm was drawn forwards;
- significantly reduced strength in the first three fingers of the right hand was observed, as well as a diffuse numbness in the left hand.

The person also claimed that she had suffered extensive vaginal bleeding following the above-mentioned treatment; the blood was apparently different in colour and quantity from that lost during normal menstruation. It is interesting to note that a similar complaint was made by other women who claimed to have been tortured and whom the delegation's doctors met in the course of the visit to Turkey.

67. Reference should also be made to the persons actually in police custody seen by the delegation's doctors at the Interrogation Centre of the Political Department of the Diyarbakır Police (see also paragraph 87).

None of them stated openly that they had been ill-treated. However, on examination, some of them were found to display pronounced physical conditions consistent with suspension by the arms e.g. in one case, in the left shoulder, the capsule was loose, swollen and tender, and power in the left arm was reduced by approximately 50%; in another case, paresis of the right arm and hand was observed.

Several of the detainees displayed signs of acute anxiety or depression. The following two examples can be given:

Subject E, a middle-aged man, had been kept for seven days in solitary confinement, in a very small cell and in total darkness. He complained of total ignorance of his status, that he was allowed no contact with persons other than police officers, and that he had not even been interrogated.

On examination: the person sat in a passive manner, crying, with trembling hands, avoiding eye contact.

This is indicative of a mixed state of depression, acute anxiety and exhaustion;

Subject F, a middle-aged man, had been kept for fifteen days under the same conditions as subject E.

On examination: the person sat passively and remained totally silent, without eye contact, physical movement or facial expression, giving no sign of interest in the delegation's presence or reaction to its questions.

This is indicative of major mental disorganisation, in a melancholy-like state of depression.

The state of these two persons could well have been induced by their conditions of detention alone, namely complete social isolation (apart from contact with police officers) for lengthy periods and confinement in very small, dark, poorly ventilated and totally unfurnished cells (see also paragraphs 88 and 113, fourth indent).

**b. Police and gendarmerie establishments visited by the CPT's delegation**

**i. Ankara Police Headquarters**

68. Many of the persons whom the delegation met in the course of its visit to Turkey identified Ankara Police Headquarters as a place where torture and other forms of severe ill-treatment were routinely practised. Particular emphasis was placed on the Headquarters' old building, which houses inter alia the Political Department of the Ankara Police.

*- old building*

69. The delegation visited the Headquarters' old building on two occasions. The circumstances under which those visits were carried out have already been recorded (see paragraphs 20 to 27).

70. On its first visit to the old building, the delegation was taken to a garage on the ground floor, in one corner of which, near the vehicle access doors, was a detention area made up of a small number of cells, an office, and interrogation and toilet facilities. This area (together with a bedroom-type facility on the next floor up shown to the delegation in the course of its second visit - see paragraph 72) was said to be where persons detained by the Political Department were kept. The Security Director explained that formerly, persons had also been detained on one of the building's upper floors; however, after a detainee had fallen from a window, it had been decided no longer to use that area for holding purposes.

71. It was in the above-mentioned detention area that the delegation met and briefly interviewed, at approximately 4.15 a.m. on 12 September 1990, the one detainee said to be held at that moment by the Political Department. He stated that he had not been ill-treated; the delegation did not prolong the interview as the detainee appeared to be terrified.

72. When the delegation returned to the old building on 13 September, it was again led to the garage area (after a short visit to the floor above, where it was shown an additional interrogation room and the previously mentioned bedroom facility, which was apparently designed to enable detainees to rest in between interviews). On its arrival, it was informed that two more persons had since been detained. One of them, a young man aged 25, was in the process of being interrogated by a detective; as members of the delegation entered the room, the detainee stood up and said "Welcome to Turkey. I have not been tortured".

73. The CPT is unable to attach great importance to the statements made by the two above-mentioned detainees, in particular as, contrary to what the police authorities stated, other persons were being detained by the Political Department at the time (cf. paragraph 24).

Some of the persons who had been concealed were subsequently interviewed by the delegation at a later stage of its visit to Turkey and after the period of police custody had ended. They all stated that they had been subjected to various forms of torture or severe ill-treatment during their detention by the Ankara police (in particular, suspension by the arms, electric shocks and prolonged standing). Two of the persons concerned were examined by the delegation's doctors; one of them was found to have physical conditions in a shoulder and hand consistent with the allegation of suspension by the arms ; the other person was found to display bruises consistent with his allegation that he had been severely beaten while in police custody. It should be added that the above-mentioned conditions and bruises were also recorded in the Forensic Institute reports drawn up concerning these persons at the end of their detention by the police.

74. Although the delegation did not see any other detainees in the old building apart from the persons mentioned in paragraphs 71 and 72, it did discover two other sets of cells in the ground floor area, both considerably larger than the detention area it had been shown by the police authorities.

75. The entrance to the first set of cells was in the well of the stairs leading to the upper floors. It was concealed by a display of fire-fighting equipment mounted on a fibre-board panel. The delegation's request to have the panel removed was vigorously resisted by the Head of the Political Department. He first of all denied that there was anything behind the panel; he subsequently admitted that there was a steel gate behind the panel giving access to "a number of rooms", but stated that the rooms had not been used for nine years. Some two hours later, following negotiations involving a meeting between the President and First Vice-President of the CPT and the Chief Public Prosecutor at the Ankara State Security Court, authorisation to enter the area was finally given, and the panel was removed.

76. A detention area made up of 31 cells and other facilities was discovered; the area gave the impression of having been recently painted and very recently cleaned. A close inspection of the area revealed that it had certainly not been out of use for nine years; in particular, numerous pieces of debris of clearly recent origin were discovered (including a piece of white mattress stuffing which was dust free and several small pieces of water-soaked mattress foam), as well as recent date marks scratched on the cell walls and a piece of a newspaper dated 24 January 1989. Body odour was detected in several cells.

In the entrance to one of the cells was an open manhole providing access to a sewage drain, with raw sewage floating just below floor level; the manhole cover was missing and could not be produced. Several used car tyres and a park bench were also found ; it is difficult to comprehend to what legitimate use such items could be put in a detention area.

Two sections of the detention area contained tiled cubicles with drainage holes; the water fittings appeared to be quite new. The overall impression was of shower facilities; however, no shower equipment was installed.

77. After concluding its inspection of this set of cells, the delegation requested to visit the premises immediately adjoining the garage. The delegation had noticed these premises at an earlier stage of its visit while standing in the road outside the garage. At that time the Head of the Political Department had stated that the premises did not belong to his Department. The delegation's interest in the premises had been rekindled by an incident which occurred just prior to the removal of the panel in the well of the stairs - shortly before 3.00 p.m., the Head of the Political Department had ordered "for security reasons" two members of the delegation standing in the road outside the garage to return immediately to the building; the garage doors had then been closed.

78. The Head of the Political Department protested that there was nothing to be seen in those premises. The Chief Public Prosecutor at the Ankara State Security Court was again contacted, and he authorised the visit. The delegation entered the premises from the road, and in due course found a second set of 22 cells. It was quite obvious that this area had been occupied very recently; the toilets had clearly been used at the most only a matter of hours before, and there was strong body odour in a number of the cells.

79. A short distance away from the cell block was a second garage, off which led a series of rooms of various sizes. Most of the rooms were either empty or contained what appeared to be discarded objects, including a number of car tyres. One room seemed to be equipped for interrogation purposes. Another room contained a park bench as well as a padded chair, the legs of which were missing; the delegation requested, but did not receive, an explanation of the purposes which these pieces of furniture were meant to serve.

80. Eventually, a short passageway was reached, and the delegation found itself back inside the first garage. A large metal cupboard in that garage which had hidden the passageway door had by this time been pushed to one side.

81. The delegation's visits to the old building of Ankara Police Headquarters did nothing to reassure it that the allegations of torture and severe ill-treatment referred to in paragraphs 68 and 73 were false. On the contrary, the circumstances under which the visits took place, the frequent diversions and untruths, the delegation's observations in the areas visited and the general attitude and demeanour of the police officers (and more particularly of the detectives of the Political Department, who followed in great numbers and observed closely the delegation throughout the visits to the two detention areas discovered by it) all tended to lend credence to those allegations.

*- new building*

82. The delegation visited the Headquarters' new building during the afternoon of 14 September 1990 and saw in particular the detention areas of the Criminal and Narcotics' Departments. The delegation was able to move inside the building without restriction.

83. The delegation was shown a list of the persons who had been in custody during the previous 24 hours ; six of the persons concerned were still in custody. The delegation spoke to the detainees ; none of them made any complaints about their treatment, and their general appearance and manner was not such as to provide grounds for concern on this point.

ii. Diyarbakır Police Headquarters and Interrogation Centre of the Political Department of the Diyarbakır Police

84. The delegation visited Diyarbakır Police Headquarters in the evening of 15 September 1990. The Deputy Security Director explained that the custody and interrogation of suspects was carried out at different places, depending on the type of the alleged offence: in the Headquarters building as regards ordinary criminal offences; on one floor of a building belonging to the "Agile Forces Unit" as regards offences against the State (it being emphasised, however, that interrogations were carried out by detectives of the Political Department of the Diyarbakır Police and not by members of the Agile Forces Unit, which merely provided and serviced the accommodation).

85. The delegation inspected the cellular accommodation for persons suspected of criminal offences and spoke to the five persons detained that evening in the Headquarters' building. None of them made any complaints about their treatment, and their general appearance and manner were not such as to provide grounds for concern.

86. The delegation visited the Political Department's Interrogation Centre on the evening of 15 September 1990, and on 17 and 18 September 1990. The Centre was found to possess a total of 40 cells, an interrogation room (furnished with a table, chairs and a park bench) and related facilities. The delegation was able to freely inspect all parts of the Centre as well as the basement of the building in which it was located; the latter was apparently used for workshop and storage purposes.

87. The delegation interviewed all the nine detainees in the Centre in the course of its visits. It reached the conclusion that three of the detainees had not been tortured or severely ill-treated, but that the other six almost certainly had been. Examinations of the detainees by the delegation's doctors revealed in some cases pronounced physical conditions consistent with suspension by the arms; five detainees displayed signs of acute anxiety or depression (see also paragraph 67).

88. It must be added that the cells in which the detainees were being held were extremely small, very poorly ventilated, had no lighting, and were devoid of any fittings save a wooden board on the floor (see also paragraph 113, fourth indent). Further, many of the detainees had been refused contact with persons other than police officers for lengthy periods. Such conditions are totally unacceptable to the CPT; they may often amount in themselves to torture or inhuman or degrading treatment or punishment.



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89. A number of measures designed to combat torture and other forms of ill-treatment in police establishments in general will be indicated later in the report.

However, the CPT wishes to state at this point that **in the light of all the information gathered, including its own on-site observations, it has concluded that detectives of the Political Departments of the Ankara and Diyarbakır Police frequently resort to torture and/or other forms of severe ill-treatment, both physical and psychological, when holding and questioning suspects. These practices must cease.**

**The CPT recommends the Turkish authorities (i) to immediately take appropriate steps to remedy the situation in those Departments, and (ii) to inform the CPT of the steps so taken.**

- iii. Central Interrogation Centre of the Departmental Command of the Diyarbakır Gendarmerie Regiment

90. The delegation visited this Interrogation Centre in the afternoon of 17 September 1990 (the visit was immediately preceded by a brief visit to İçkale Gendarmerie Unit in the centre of Diyarbakır, where it was found that no-one was in custody). The Departmental Commander stated that the Centre was used for the questioning of persons suspected of having committed offences against the State. He added that depending on the case, the actual questioning might be done by officers of the gendarmerie or police officers.

91. The Centre was situated in a building some distance away from the Departmental Command Headquarters and consisted of approximately 20 cells on two floors, an interrogation room and related facilities. The delegation noted the presence of a park bench in the well of the staircase connecting the two floors, a piece of furniture which would appear to be standard in all detention areas.

92. No-one was in custody at the time of the delegation's visit. The register of detainees indicated that the Centre had been empty since 2.00 p.m. on 14 September 1990. A detailed examination of the register revealed that it was unusual, but not unique, for the Centre to have no suspects for such a length of time; the Centre had been empty for a similar period in early August 1990. Fourteen detainees had left the Centre on 10 September 1990, and a further two on 14 September 1990. The delegation was shown the reports drawn up by the local Forensic Institute concerning these persons; the reports stated that they bore no marks resulting from physical force.

c. **Assessment**

93. The sheer number of allegations of torture and other forms of severe ill-treatment by the police, the wide range of persons making those allegations, and the consistency as regards the particular types of torture and ill-treatment inflicted, are striking. It is also to be noted that the same persons who alleged that they had been tortured or otherwise ill-treated while in police custody frequently also stated that they had not been ill-treated while in prison. These factors alone are sufficient to raise doubts as regards the treatment received by persons detained by the police.

Such doubts are reinforced by the CPT's medical findings. A considerable number of persons who were examined by the delegation's doctors displayed physical marks or conditions consistent with their allegations of ill-treatment by the police. To this must be added the cases of the detainees in police custody interviewed in Diyarbakır. Some of them displayed clear medical signs consistent with very recent torture or other severe ill-treatment, both physical and psychological. The delegation's talks with members of the medical profession who have regular contact with persons who have been detained by the police are also relevant; the discussions tended to focus on the extent rather than the existence of torture and other forms of ill-treatment.

Due weight must also be given to the other information gathered by the CPT's delegation in the course of its visits as well as to the circumstances surrounding those visits, in particular at Ankara Police Headquarters. The delegation was more than once left deeply concerned by the fate of persons detained in the places in question.

**94. The Turkish Government's own statistics show that the phenomenon of torture exists in Turkey<sup>4</sup>. The only conclusion that can reasonably be drawn from all that the CPT saw and heard in the course of its visit to Turkey is that torture and other forms of severe ill-treatment are important characteristics of police custody in that country.**

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<sup>4</sup> In its report dated 10 May 1990 presented to the United Nation's Committee against Torture, the Turkish Government stated that during the period 1 January - 31 December 1989, 508 cases of torture allegations had been brought before Turkish courts and 15 policemen had been given prison sentences. **The CPT wishes to receive similar information for the period 1 January - 31 December 1990.**

**d. Action proposed**

i. introduction

95. Turkish law already contains numerous provisions penalising torture and other forms of ill-treatment. Further, a number of safeguards against torture and ill-treatment are formally provided for by law, in particular the right to have a third party informed of one's arrest, and access to legal advice; however, the former is subject to a broad exception and the latter is in practice often denied on the basis of other legal provisions. Clearly, there remains considerable room for improvement as regards the provision of effective safeguards against torture and ill-treatment.

However, the reinforcement of existing safeguards and the introduction of new ones will not in itself be sufficient. Attacking the root of the problem of torture and other forms of severe ill-treatment of detained persons involves not so much changing laws as changing attitudes and behaviour. This will require a major and sustained effort on the part of the Turkish authorities in the field of the education and professional training of law enforcement officials and members of other relevant professions.

ii. length of custody

96. As is recognised in the Explanatory Report accompanying the Bill drawn up by the Ministry of Justice on the length of custody (see Appendix III, paragraphs 38 to 41), the maximum possible length of police or gendarmerie custody in Turkey (up to 30 days; see above, paragraph 42) is considerably longer than in other Council of Europe member States. A reduction in the maximum possible periods of custody would make a significant contribution to the prevention of torture and inhuman or degrading treatment or punishment.

**The CPT therefore recommends the Turkish authorities :**

- **to take appropriate steps to expedite the consideration of the above- mentioned Bill (which has been pending before Parliament for more than 15 months), and**
- **to keep the possibility of reducing even further the maximum possible lengths of custody, in particular in regions where a state of emergency has been declared, under close review.**

iii. notification of custody and access to legal advice

97. The rights of a detainee not to be held incommunicado and to have access to legal advice are fundamental safeguards against ill-treatment. Any exceptions to the enjoyment of those rights should be clearly circumscribed and their application strictly limited in time.

98. The above-mentioned rights are not adequately protected in Turkey (see paragraphs 44 to 47 and Appendix III, paragraphs 12 to 15 and 18 to 20). The applicable legal provisions apparently allow the relevant authorities considerable discretion as to whether or not to notify a third party of someone's detention and to grant access to legal advice. Further, a refusal to proceed to such notification or to grant such access would not appear to be subject to any time-limit. For example, as regards collective offences, detainees might be kept incommunicado and/or denied access to legal advice for up to 15 days (30 days in regions in which a state of emergency has been declared). Such a situation is quite unacceptable.

**99. The CPT recommends:**

- **that the exception to the obligation to notify immediately a person's next of kin of his arrest or detention should be clearly defined and circumscribed by law and its application made subject to an appropriate time limit;**
- **that the right of persons in the custody of the police or the gendarmerie to have access to legal advice should be effectively guaranteed by law, and that any exception to this right should be clearly defined and circumscribed and its application made subject to an appropriate time limit. The right of access to legal advice should certainly include the right to both contact and to be visited by a legal advisor and, normally, the right to have one's legal advisor present during interrogations;**
- **that arrested or detained persons should be immediately informed of their right of access to legal advice.**

**In this connection, the CPT wishes to underline that the adoption of the Bill submitted by Mr Maraş MP and others (see Appendix III, paragraphs 33 and 36 to 37) would represent a major step forward.**

iv. medical examination of detained persons

100. A communication sent by the Permanent Mission of Turkey to the United Nations Office at Geneva to the Special Rapporteur, Mr P. Kooijmans, after his visit to Turkey in 1988, contained the following statement:

"All detained persons go through medical examination before and after the interrogation. The medical examination is carried out by physicians completely independent from security officials"<sup>5</sup>.

This position was confirmed by the relevant legal authorities in Ankara responsible for the investigation of offences against the State.

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<sup>5</sup> See the fifth report of the Special Rapporteur to the UN Commission on Human Rights, doc. United Nations, Economic and Social Council, E/CN.4/1990/17, paragraph 258.

101. However, the delegation heard from other sources that although the medical examination of detainees by doctors from the relevant Forensic Institute was common practice at the end of their custody by the police or gendarmerie, it was on the other hand extremely rare for detainees to be medically examined before they were interrogated. The CPT would also point out in this connection that the exchanges of correspondence it had with the Turkish authorities under Rule 30 of the CPT's Rules of Procedure concerning the cases of Miss Zöhre ÇAKMAK and Miss Tülay GENÇAY, contain no reference to a medical examination of those detainees before they were interrogated.

102. The delegation was informed that detainees do not have a right to be examined by a doctor of their own choice. It also noted with concern that the reports drawn up by doctors of the Forensic Institute described only the physical findings on each patient and did not record any related allegations made by the latter.

103. **The CPT recommends:**

- **that a person in the custody of the police or the gendarmerie be given the right to be examined at any time by a doctor of his own choice or, if there are reasonable grounds in a particular case for believing that access to the detainee by the doctor chosen by him might jeopardise the investigation, by a doctor chosen from a list of doctors agreed with the appropriate professional body;**
- **that detainees be fully examined by a doctor from the relevant Forensic Institute both before they are interrogated and at the conclusion of their interrogation;**  
**that the above-mentioned examinations by a doctor from the Forensic Institute be carried out on a personal basis and under conditions offering due privacy for the person examined;**  
**that all medical examinations be conducted out of the hearing, and preferably out of the sight, of police or gendarmerie officers;**  
**that the results of all medical examinations as well as relevant statements made by the detainee be formally recorded by the doctor and made available for scrutiny by the detainee.**

104. It is clear that doctors attached to the Forensic Institutes have an important part to play in the fight against torture. In order for them to fulfil this role properly, they must be adequately trained in the field of forensic medicine and enjoy complete independence as regards the reaching of their medical conclusions.

**In this connection, the CPT requests the Turkish authorities:**

- **to provide a detailed account of the education and training in the field of forensic medicine received by doctors working for Forensic Institutes both before their appointment and in the course of their work at the Institute ;**
- **to indicate the safeguards guaranteeing that doctors working for Forensic Institutes enjoy complete clinical independence.**

105. As regards the Forensic Institutes as such, the question arises whether it would be more appropriate for them to be administered by the Ministry of Health rather than the Ministry of Justice. **The CPT would appreciate receiving the views of the Turkish authorities on this point.**

v. conduct of interrogations

106. It is not sufficient that the law provide penalties for public officers who subject detainees to torture or other forms of ill-treatment. Policemen and other public officers responsible for questioning suspects should be given clear, written instructions as to how the interrogation process should be conducted. Such instructions, in addition to underlining the total prohibition of the use of torture or other forms of ill-treatment, should address such matters as the permissible length of an interview, eating and rest periods between interviews, and the place(s) in which an interview may take place. Further, they should provide for a record to be systematically kept of the times during which a detainee is interviewed, of the persons present during each interview and of the actual content of the interview; this record should be available for scrutiny by a competent authority.

107. **The CPT recommends the Turkish authorities to draw up and publish, as soon as possible, a code of practice for the conduct of interrogations addressing inter alia the above-mentioned matters.**

**Further, the CPT recommends the Turkish authorities to explore the possibility of introducing a system of electronic recording of interrogations by police or gendarmerie officers, providing all appropriate guarantees.**

vi. complaints of torture or severe ill-treatment

108. Under the Turkish Code of Criminal Procedure, public prosecutors are obliged to launch an investigation when a person makes a complaint to them as to the occurrence of a crime, including the infliction of torture or other forms of severe ill-treatment. Further, Article 151 of the Code makes clear that such complaints may be made orally or in writing.

However, discussions which the delegation had with both interested legal circles and prisoners raised doubts as to whether all public prosecutors were reacting expeditiously and effectively when confronted with complaints of torture or severe ill-treatment.

109. Energetic action to investigate and follow-up complaints of torture or severe ill-treatment would inter alia have an important knock-on effect of a preventive nature. **The CPT recommends that the Turkish authorities take steps to ensure that all complaints of torture or severe ill-treatment are properly investigated and, if necessary, consider the establishment of alternative procedures or structures in this area.**

vii. education and professional training

110. The CPT believes that the provision of suitable education on human rights questions and of adequate professional training is an absolutely essential ingredient of any strategy for the prevention of torture and other forms of ill-treatment. Legal and other technical safeguards against such treatment - while important - will never be sufficient; the best possible guarantee against ill-treatment is for its use to be unequivocally rejected by law enforcement officials.

Reference should also be made in this context to Article 10 of the United Nations' Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

111. The above-mentioned education and professional training should exist at all levels of the law enforcement hierarchy, and should be ongoing. It should seek to put across and develop two basic points. First, that torture and other forms of ill-treatment are an affront to human dignity and as such are fundamentally incompatible with the values enshrined in the Turkish Constitution as well as in many international instruments ratified by and binding upon Turkey. Second, that torture and other forms of ill-treatment are grossly ineffective means of combating crime (as Cesare Beccaria remarked as early as 1764 in his *Essay on Crimes and Punishments*, it is at variance with reason "that pain should be the test of truth, as if truth resided in the muscles and fibres of a wretch in torture."). Interrogation techniques which respect human rights are likely to yield better results from a security standpoint.

112. The delegation visited the Turkish Police Academy on 20 September 1990 and was given an overview of its activities. The CPT welcomes the developmental work being undertaken at the Academy and the efforts being made to improve the standard of the professional training of senior police officers.

**The CPT requests the Turkish authorities to provide detailed information on the content of courses concerning human rights and the conduct of interrogations and investigations run by the Academy, as well as on similar courses given at police schools and colleges.**

**The CPT also recommends the Turkish authorities to give a high priority to the development of the Academy's activities and, more generally, to the intensification of human rights education and professional training for law enforcement officials of all ranks and categories.**

**Further, the CPT wishes to underline the importance of appropriate human rights education for members of the medical profession.**

**B. Conditions of detention in the police and gendarmerie establishments visited by the CPT's delegation**

**a. Physical characteristics of the cells**

113. The physical characteristics of the cells seen by the delegation were as follows:

- *Ankara Police Headquarters, old building*

As already mentioned, the delegation saw three sets of cells.

The first set consisted of 2 cells measuring 1.15m x 1.85m (2.1m<sup>2</sup>) and 3 cells measuring 1.63m x 1.80m (2.9m<sup>2</sup>). The detainee seen by the delegation on 12 September 1990 was being held in one of the cells measuring 2.1m<sup>2</sup>. The cells did not enjoy any natural light and there was no internal artificial lighting. The only means of ventilation was a small hole in the wall above the cell door; a small amount of artificial light also reached the cell via the same means.

The second set, of 31 cells, comprised cells of three different sizes:

2m x 1.28m (2.6m<sup>2</sup>), with a height of 2.46m;  
2.70m x 1.57m (4.2m<sup>2</sup>), with a height of 2.46m;  
2.03m x 1.16m (2.4m<sup>2</sup>), with a height of 2m.

Light was provided artificially by strip lighting situated on the roofs of the cells, a glass panel being inserted in the ceiling of each cell for this purpose. The delegation could not test the adequacy of the cell lighting system, as it was out of order during the visit. There was no evident means of ventilation, apart from a small aperture in the cell doors.

The physical characteristics of the third set, of 21 cells, were on the whole comparable to those of the second set. However, one cell in the third set measured 1.1m x 1.1m (1.2m<sup>2</sup>).

- *Ankara Police Headquarters, new building*

This building houses the Criminal and Narcotics Departments; each of these Departments has its own cells.

The cellular accommodation of the Criminal Department consists of 7 large holding rooms (each of approximately 42m<sup>2</sup>) designed for multi-occupancy; they are equipped with benches fixed to the wall. There was no natural light (windows had been covered over) and the artificial light was poor. There was no evident means of ventilation.

The Narcotics' Department possesses 18 cells, each measuring 2.40m x 1.70m (4m<sup>2</sup>). They had no lighting or means of ventilation.



- *Diyarbakır Police Headquarters*

The delegation saw two sets of, respectively, 6 and 10 cells, each cell measured approximately 1.5 m<sup>2</sup>, with a gap above the cell doors for ventilation. It was told that the cells were designed for temporary holding purposes and were authorised for use for a maximum of two hours. None of these cells was occupied.

The delegation also saw a number of large, multi-occupancy rooms fronted by steel grills.

- *Interrogation Centre of the Political Department of the Diyarbakır Police*

The 40 cells of the Centre were divided into two groups of 8 and 32.

Cells in the group of 8 measured 1.57m x .81m (1.3m<sup>2</sup>), with a height of 2.97m. Each was equipped with a close fitting wooden bed board 25cm high and lighting and ventilation was via a high level grill above the cell doors. The delegation was told that this group of cells was used only occasionally, and then only for short periods, as holding cells. They were not occupied when the delegation carried out its visits.

The main cell block comprised 24 cells measuring 1.45m x 1.68m (2.4m<sup>2</sup>), with a height of 1.96m, and 8 cells measuring 1.45m x .79m (1.1m<sup>2</sup>), again with a height of 1.96m. Ventilation was via two circular holes (one circular hole in the 8 smaller cells), each approximately 10cm in diameter, giving access to the space above the cells; it was totally inadequate. Moreover, the cells had no lighting whatsoever.

The delegation was informed that the 8 small cells were normally used for storage purposes; they were used to hold detainees only in the event of overcrowding.

- *Central Interrogation Centre of the Regional Command of the Diyarbakır Gendarmerie*

Cellular accommodation was on two floors. The lower floor had 9 cells, each measuring 1.51m x 2.12m (3.2m<sup>2</sup>), with a height of 2.18m. The upper floor had 10 cells of the same dimensions.

Each cell was fitted with a wooden board on the floor, several of which were in need of repair. The cells possessed no lighting, and the only ventilation was that which came from eight holes approximately 1cm in diameter drilled in a line at the top and bottom of the cell door, and from a small hinged door flap which could only be opened from the outside. The corridor on the lower floor was itself totally without ventilation; the corridor on the upper floor was ventilated by an electric fan fitted to the end window.

A number of the cells were extremely dirty, and in one cell a wall was smeared with excreta.

**b. Rest/sleeping arrangements**

114. Few of the cells seen possessed any fittings of furnishings (with the exception on occasion of wooden boards on the floor). In most cells, a detainee who wished to sit or lie had to do so on the floor.

The detainee seen in the old building of Ankara Police Headquarters at 4.15 a.m. on 12 September 1990 had a thin mattress in his cell. As regards detainees in other police establishments visited, the delegation was told by the police authorities that persons detained overnight were provided with a blanket, but no mattress.

**c. Sanitary arrangements**

115. None of the cells visited possessed a toilet or running water. Access to toilet and washing facilities was always controlled by the police or gendarmerie officers.

**d. Assessment and action proposed**

116. Generally speaking, police and gendarmerie cells are meant to be used as short-stay accommodation. Consequently, high standards cannot be expected of such cells, though certain elementary material conditions must be met.

117. As already mentioned, the normal maximum period of custody in Turkey is fixed by the law at 24 hours for ordinary criminal offences and at 48 hours for offences against the State. However, in both cases the maximum period can be extended to 15 days if the crime is "collective" i.e. involving three or more persons. Moreover, the latter maximum period can be extended to 30 days in regions where a state of emergency has been declared, as is currently the case (among other areas) in the Diyarbakır region.

The delegation noted that it was not unusual for detainees to be held for periods approaching the permitted maximum. Several persons detained at Ankara Police Headquarters at the time of the delegation's visit to Turkey were held for between 12-15 days. Further, some of the detainees interviewed by the delegation at the Interrogation Centre of the Political Department of the Diyarbakır Police had already been held for comparable periods when seen by the delegation. As regards the Gendarmerie Interrogation Centre visited by the delegation, the register of detainees indicated that one of the persons who had left the Centre on 14 September 1990 had been held there for 26 days, and another (a 14-year old boy) for 30 days.

The above factors must be borne in mind when considering the question of cellular accommodation.

118. The detention of a person in an excessively small, or dark, or unventilated cell is not acceptable to the CPT, a fortiori if these factors are combined; the effect of such conditions on the detainee may in itself amount to torture or inhuman or degrading treatment or punishment.

Bearing this in mind, none of the cells seen in the old building of Ankara Police Headquarters is acceptable to the CPT as detainee accommodation for lengthy (i.e. multi-day) periods. At the most, some of the cells might in their present form be used for temporary holding purposes (i.e. detention for a matter of hours), and this subject to the strict condition that they be provided with adequate lighting and ventilation. The smallest cells seen (1.2m<sup>2</sup> and 2.1m<sup>2</sup>) are in their present form totally unfit for holding someone for any period.

Similarly, the cells of the Narcotics' Department located in the new building of Ankara Police Headquarters are in their present form fit to be used only for temporary holding purposes, and subject to the strict condition that adequate lighting and ventilation are provided.

As regards Diyarbakır Police Headquarters, the holding cells (approximately 1.5m<sup>2</sup>) seen there are in their present form too small to be used for even the most short-term detention, and the same must be said of the 16 small cells (1.1m<sup>2</sup> and 1.3m<sup>2</sup>) in the Interrogation Centre of the Political Department of the Diyarbakır Police. The Centre's remaining 24 cells are in their present form fit to be used only for temporary holding purposes, and this again subject to the strict condition that adequate lighting and ventilation are provided.

Similarly, the cells in the Interrogation Centre of the Department Command of the Diyarbakır Gendarmerie Regiment are in their present form only fit to be used for temporary holding purposes, and this again subject to a major improvement of lighting and ventilation in those cells.

119. To sum up:

- i) all the cells mentioned in paragraph 118 are, in their present form, unacceptable from the standpoints of space, lighting and ventilation for use as detainee accommodation for multi-day stays;
- ii) some of them might in their present form be used for temporary holding purposes (detention for a matter of hours), subject to the provision of adequate lighting and ventilation;
- iii) some of the smaller cells are, in their present form, unfit for holding a detainee for any length of time whatsoever.

120. It is not the function of the CPT to lay down minimum standards in relation to the physical characteristics of cells. It would nevertheless suggest the following as a desirable objective, insofar as space is concerned, for detainee accommodation used for multi-day stays: in the order of 7m<sup>2</sup>, 2m or more between walls, 2.5m or more between floor and ceiling; occupancy by one detainee.

121. Of course, it is axiomatic that all cells (including those used for temporary holding purposes) should possess lighting and be adequately ventilated. As already indicated, many of the police and gendarmerie cells seen by the delegation failed to meet these basic requirements.

**122. The CPT recommends the Turkish authorities to review immediately the state of cellular accommodation in Ankara Police Headquarters, Diyarbakır Police Headquarters, and the Interrogation Centres of the Political Department of the Diyarbakır Police and the Departmental Command of the Diyarbakır Gendarmerie Regiment, with a view to either its immediate improvement in the light of the remarks made in paragraphs 118 to 121 or its withdrawal from service.**

**A similar review of cellular accommodation in police and gendarmerie establishments in general would also seem appropriate.**

**123. The CPT would also make the following recommendations to the Turkish authorities concerning the material facilities to be offered to persons in the custody of the police or the gendarmerie:**

- persons obliged to stay overnight in the custody of the police or the gendarmerie should be provided with a mattress and blankets;**
- persons in police or gendarmerie custody should be allowed to comply with the needs of nature when necessary and in clean and decent conditions, and be offered adequate washing facilities;**
- persons in police or gendarmerie custody should be given at least one full meal every day.**

124. To conclude this section of its report, the CPT would like to comment on a remark made to its delegation by officials on more than one occasion in the course of its visits to police and gendarmerie detention areas, namely that the conditions of detention were better than the conditions in the detainees' homes.

The fact that someone might live in abject poverty when free does not absolve the State from its duty to provide that person with tolerable conditions of life when its authorities detain him. The act of depriving a person of his liberty brings with it responsibility for that person's physical, mental and psychological welfare until such time as his liberty is restored.

**C. Torture and severe ill-treatment in the prisons visited by the CPT's delegation**

125. The delegation heard hardly any allegations of torture by prison staff of the three prisons it went to (the only notable exception was an allegation that on one recent occasion prison officers in Ankara Central Closed Prison had subjected some prisoners to falaka). On the contrary, prisoners in each of the establishments tended to state quite emphatically that torture was not practised there.

Prisoners in Diyarbakır 1 prison alleged that torture had been commonplace in that prison during the period when it was under military control (control of the prison was handed over to the civilian authorities in the first half of 1988).

126. However, the delegation did hear a number of allegations in Ankara Central Closed Prison that prison officers sometimes beat prisoners with sticks; apparently young prisoners were the most frequent (though not the exclusive) victims of such beatings. The discovery by the delegation of a considerable number of sticks concealed in a wall cavity used for the storage of a fire hose reel gave weight to those allegations.

Further, doctors in the delegation examined two young prisoners who alleged that they had very recently been beaten by prison staff as a punishment after an escape attempt ; both displayed physical marks consistent with that allegation.

**The CPT recommends that the relevant authorities investigate whether prison staff in Ankara Central Closed Prison are on occasion abusing their authority in the manner alleged and, if necessary, take appropriate steps to prevent such abuses occurring in the future.**

127. Finally, after its visit to Turkey the CPT received information to the effect that more than 90 prisoners had been transferred from Diyarbakır 1 Prison to other prisons during the night of 7 to 8 or 8 to 9 October 1990. It was alleged that several prisoners were injured in the course of this operation, that visits to the prison by lawyers and family members of prisoners were subsequently suspended, and that prisoners remaining in the prison had begun a hunger strike.

The CPT was disturbed to receive such reports so shortly after the visit by its delegation to Diyarbakır 1 Prison, the more so as the delegation was informed by the Prison Director that there had been no disturbances or hunger strikes in the prison for more than two years.

**The CPT requests the Turkish authorities to inform it as to whether such a transfer of prisoners took place and, if it is confirmed, to provide full information on the reasons for such a large-scale transfer of prisoners<sup>6</sup>, on the circumstances under which the transfer took place, on the prisons to which the prisoners concerned were transferred, and on any special features of the present situation in Diyarbakır 1 Prison (e.g. hunger strikes, suspension of prisoners' rights, etc).**

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<sup>6</sup> The Prison Director informed the CPT's delegation that normally an average of 10 to 15 prisoners were transferred every month.

**D. Conditions of detention in the prisons visited by the CPT's delegation**

**a. Introduction**

128. As already indicated (cf. paragraph 5), the main purpose of the CPT's first visit to Turkey was to examine the treatment of persons deprived of their liberty by the police or the gendarmerie. Consequently, in the course of the visiting delegation's visits to Ankara Central Closed Prison, Diyarbakır 1 Prison and Malatya Prison, much of the time was spent in discussions with prisoners and relevant prison staff on the subject of the treatment received by detainees while in the custody of the police or the gendarmerie.

Nevertheless, the delegation also spoke to prisoners and prison staff about the conditions of detention in the three prisons visited and carried out a relatively short inspection of each of the prisons.

129. One common complaint of prisoners in all the prisons was that the prisons' ambulant medical services were inadequate. The question of medical services in relation to persons deprived of their liberty will be considered separately, after some remarks concerning other aspects of the conditions of detention in each of the prisons.

**b. Ankara Central Closed Prison**

**i. general information**

130. What was originally a warehouse was converted to a closed prison in 1929. The present buildings provide a mixture of dormitory and cellular accommodation, and the official inmate capacity is 876. On the first day of the delegation's visit, the inmate population was 792, including 23 women, 24 boys aged between 16 and 18 years, and 7 boys between 14 and 16 years of age. Only 36 of the inmates had been sentenced; they were either undergoing medical treatment (having been sent from other prisons for care in the prison hospital)<sup>7</sup>, being held for further court appearances or awaiting transfer to another prison.

131. The majority of the inmates are accommodated in single storey dormitories ("Wards"), each of which has its own courtyard - which is used for open air exercise and recreational association - and shower and toilet facilities.

132. The general atmosphere in the prison was relaxed and there were no obvious signs of tension between prisoners and staff.

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<sup>7</sup> Ankara Central Closed Prison is the only establishment in the area with hospital facilities.

ii. inmate accommodation

133. Certain of the living/sleeping quarters were very crowded, in particular in Wards 5 and 12 and the Women's Ward. The cell-type dormitories found in Ward 8 are also rather limited in size for the numbers accommodated; this is particularly the case of the four-man cells, which measure a mere 6.4m<sup>2</sup>.

134. Of course, it must be borne in mind when assessing the adequacy of the above-mentioned accommodation that throughout the entire day (12 hours) prisoners are able to move freely about the whole of their ward, including the courtyard (subject to weather conditions).

**Nevertheless, the CPT invites the Turkish authorities to examine the possibility of reducing somewhat the number of inmates to be held in the wards and cells mentioned in paragraph 133.**

135. The delegation noted that kitchen and toilet facilities were totally inadequate and unhygienic in the Women's ward. **The CPT recommends that steps be taken immediately to improve those facilities.**

iii. Ward 14 (the segregation unit)

136. Ward 14 is situated in a two-storey building and is used to hold inmates in segregated conditions for a variety of reasons, including security and control considerations.

137. The cells on the lower floor of the building are in a very dilapidated condition. The delegation was told that the cells had not been occupied for several years, and there was certainly no evidence of recent occupation. A great deal of remedial work would have to be done in order to bring the cells on the lower floor up to an acceptable standard. **The CPT recommends that these cells remain out of use until such time as they have been extensively renovated.**

138. The first floor contains a group of approximately 20 cells, each accommodating two or three inmates. The cells are 7.4m<sup>2</sup> in size, some of that space being taken up by a small annex in one corner containing a toilet and washbasin.

139. The delegation was told by the prison staff, and it was confirmed by prisoners, that Ward 14 inmates are allowed 4 hours exercise a day in the outdoor passageway which runs alongside the building. However, this still means that prisoners held in Ward 14 will spend most of their time in their cells. Bearing this in mind, **the CPT recommends that no more than two prisoners should be accommodated in each cell.**

**The CPT would also point out that some of the small annexes in the cells were in a very dirty and unhygienic condition.**

140. The delegation was informed by prison staff that one of the Wards' inmates had been confined there because he was mentally ill. Subsequently, the delegation's doctors met another inmate in the unit, a young boy, who was clearly mentally ill.

**The CPT recommends that Ward 14 should not be used as a place of detention for such inmates; the appropriate place to confine a mentally ill prisoner is a secure hospital, not a prison segregation unit.**

iv. reception accommodation

141. New arrivals in the prison are held in a small dormitory pending their allocation to normal location in the wards. The dormitory was found to contain five bunk beds, each of which had an old and worn mattress and some had a bundle of old and dirty blankets. There was little natural light and the ventilation was poor. Further, the toilet/washing annex was dirty and in a poor state of repair. The delegation was informed that prisoners could be kept for up to three days in the reception dormitory.

**The CPT recommends that steps be taken to improve conditions in the reception dormitory and that consideration be given to the possibility of finding better facilities for the holding of newly arrived inmates.**

v. visiting facilities

142. The delegation noted that family visits normally took place in closed conditions, with inmate and visitor each in a small cubicle (of approximately 1m<sup>2</sup>) and separated by a glass and wire partition.

143. There are plans to provide greatly improved, and in particular more open, visiting facilities. **The prison authorities are to be commended for this initiative and the CPT trusts that the plans will be implemented in the not too distant future.**

vi. transport of prisoners

144. The delegation inspected some of the vehicles used for transporting prisoners to and from the Ankara Prison, in particular those used for long distance travel. The means of ventilation appeared very limited, and it was noted that there was little light inside the prisoner cubicles.

**145. The CPT recommends that the Turkish authorities review the adequacy of ventilation in the vehicles used for prisoner transport, in particular in those used for long distance travel.**

**Further, the CPT would suggest that in the design of future vehicles for the transporting of prisoners, the need to provide adequate ventilation and reasonable light inside the vehicles be given due consideration.**



146. As regards the arrangements for the escorting of prisoners, the CPT recognises that they avoid the necessity of diverting prison officers from their internal prison duties.

**However, the CPT wishes to inform the Turkish authorities that its delegation heard a large number of complaints about the methods of restraint employed during transport (eg. excessively tight handcuffs), as well as some allegations of brutality by gendarmerie officers in the course of transport.**

**c. Diyarbakır 1 and Malatya Prisons**

i. general information

147. These prisons were both built approximately 10 years ago and are of the so-called "E-type" design; they are characterised by large dormitory-type accommodation for prisoners set out in a number of parallel wings which are connected by a central corridor. The official inmate capacity of Diyarbakır 1 Prison is 625, and of Malatya Prison, 600.

148. On the first day of the delegation's visit to Diyarbakır 1 Prison there were 425 inmates, of which 28 had been sentenced and were being held pending transfer to other prisons; the remainder were all awaiting trial for offences against the State.

When the delegation visited Malatya Prison it had 446 inmates, broken down into the following categories: 161 sentenced prisoners, 55 for ordinary criminal offences and 106 for offences against the State; 285 persons awaiting trial, 179 for ordinary criminal offences and 106 for offences against the State.

149. These two prisons were more secure and inmates were more closely controlled than in Ankara, and as a result the overall atmosphere was more obviously coercive. Nevertheless, the prison staff seemed to be on reasonably good terms with the inmates and the delegation heard few adverse comments about staff attitudes and behaviour.

ii. inmate accommodation

150. Each dormitory had two floors, with dining and association areas on the ground floor and sleeping accommodation on the upper floor, and was equipped with a courtyard, and toilet and washing facilities. The accommodation appeared adequate for the numbers involved.

151. Inmates in both prisons complained about the water facilities; apparently there was often no hot water, and sometimes no water at all.

iii. segregation/observation units

152. The delegation discovered a suite of 9 cells in Block E of Diyarbakır 1 Prison which were described as observation rooms designed to accommodate aggressive and intransigent prisoners. The Director said that they had not been used in recent years, and a close inspection of the cells suggested that they had certainly not been occupied recently.

The cells were not excessively small; however, there was neither natural nor artificial light and the ventilation was clearly inadequate. **The CPT recommends that in their present state these cells should remain out of use.**

153. The segregation unit in Malatya Prison consisted of a total of 40 cells on four open landings. The Director stated that every new male inmate spent two days in the unit. There were no newly admitted prisoners in the unit at the time of the delegation's visit; however, two inmates were accommodated there at their own request, as they wished to have a break from communal living.

The cells were of a fair size (6.5m<sup>2</sup>) and were each equipped with a toilet, wash basin and a bunk bed. However, the unit as a whole was very dirty and neglected; **there was an urgent need of simple routine maintenance and cleaning.**

A set of floodlights were fixed on the wall facing the cells. The delegation was told that they were no longer used and were out of order. Certainly, they did not give the impression of having been used recently. There was adequate lighting both inside and outside the cells; the floodlights could therefore serve no legitimate purpose. **The CPT recommends that the floodlights be removed.**

d. Young prisoners

154. In Ankara Central Closed Prison, male young offenders under the age of 16 years were accommodated in a separate and self-contained unit with limited space for recreational activities. Some recreational classes were provided but the daily routine consisted largely of outdoor exercise and extensive periods of inactivity in a television room.

Those over the age of 16 were accommodated in a separate and overcrowded ward, equipped with three tier bunk beds. This accommodation was immediately adjacent to the unit used to accommodate adult males who had to be segregated from the mainstream population for their personal protection. Although a small open courtyard was available for outdoor exercise and limited recreational activity, there was little or no other activity and the young men spent most of their time in enforced idleness. Some of the adults adopted a paternalistic and protective role but the lack of effective segregation from adult male prisoners made them vulnerable to the risk of exploitation and abuse.

155. The Director of Diyarbakır 1 Prison stated that there were no children in the prison. However, in one dormitory the delegation discovered 6 young boys who claimed that their ages varied from 12 to 16 years. The delegation asked to see the records of one boy who said he was - and appeared to be no more than - 12; a birth certificate indicating his date of birth as 1978 was discovered. The Director explained that such certificates could not always be relied upon and that in cases of doubt the court would decide the age; in this case the court had decided that the boy was 18.

156. The Director of Malatya Prison also said that there were no children in his prison (apart from one very small child who was with its mother, who was an inmate). However, the delegation subsequently met 5 boys who claimed that they were under 16.

**157. The CPT recommends the Turkish authorities to review the present arrangements for the accommodation and care of children and young persons in the three prisons. Children and young persons in custody should be provided with a full and active regime of educational, recreational and other purposeful activity. Further, measures should be taken to avoid any possible exploitation or abuse of them by adult prisoners.**

**The CPT also requests the Turkish authorities to inform it of the legal position concerning the imprisonment of persons under the age of 16 and to provide statistics showing the number of such persons detained in adult prisons.** The CPT would add that an adult prison is no place for a 12 year-old.

**e. Medical services in relation to persons deprived of their liberty**

**i. staff**

158. Officials at the Ministry of Justice explained that a typical medical service in a prison consisted of a doctor (two in larger prisons), a dentist, two other health care personnel (eg. a psychologist) and an assistant. There were no specialist doctors attached to prisons ; however, a prisoner in need of special treatment could be transferred to a civil hospital.

159. In the course of its visits, the delegation found the situation to be as follows :

*Ankara Central Closed Prison*

(which includes a 36 bed hospital accommodating prisoners from a number of establishments)

- two full time doctors (who had hardly any contact with each other), a psychologist and a social worker ("health care officer"). There were no trained nurses ; medical staff were assisted by prison officers or prisoners who had apparently received some basic hygiene training ;

*Diyarbakır 1 Prison*

- two full time doctors (both absent from duty at the time of the delegation's visit, in order to take an examination in Ankara), one half time dentist, and three prison officers with some hygiene training;

*Malatya Prison*

- 1 full time doctor, assisted by three prison officers assigned to the medical service. The delegation was informed that two other medical posts existed (a psychiatrist and a psychologist), but had been vacant for a considerable time.

160. The total absence of staff trained in nursing, even in the hospital at Ankara Central Closed Prison, is a matter of serious concern ; treatment and care is often provided by prison officers or prisoners who have had no formal training for such tasks. Moreover, the overall strength of the medical services in the prisons visited was weak, in particular at Ankara and Malatya.

**The CPT recommends :**

- **that the medical service at Ankara Central Closed Prison include fully trained nurses and that the medical staff at Diyarbakır 1 and Malatya Prisons be supported by staff who have received at least first-aid training ;**
- **that the medical staff at the Ankara and Malatya prisons be reinforced ;**
- **that, more generally, the medical services in all three prisons be improved.**

ii. Ankara Central Closed Prison Hospital

161. At the time of the delegation's visit, 20% of the patients in this 36 bed hospital were from Ankara Prison; the remaining 80% were from other prisons which did not possess hospital facilities.

162. The absence of trained nursing staff and shortage of medical staff, combined with the somewhat outmoded nature of the hospital's equipment, obviously place important limitations upon the level of treatment that can be offered. Nevertheless, it should be said that the facilities were clean and the atmosphere relaxed.

iii. ambulant medical care

163. Prisoners in each of the three prisons visited complained that the ambulant medical care was inadequate. It was alleged that intervention in emergency cases was slow, that medical examinations were very superficial, and that the medical treatment tended to be both limited and subject to long delays.

**164. The delegation's general conclusion on the basis of its own observations was that the medical services in the prisons visited were ill-equipped and, more importantly, hopelessly overstretched, with the result that it was physically impossible to provide an acceptable level of ambulant medical care.**

**Reinforcement of the staff of those services as recommended in paragraph 160 is the essential first step towards remedying this situation.**

iv. payment for medical treatment

165. The general position would appear to be that with the exception of "emergency" medication, medical treatment (including diets) has to be paid for by the prisoners. However, a prisoner without resources can petition the Prison Governor for assistance.

**The CPT would welcome further information concerning the basis on which medical treatment is provided to prisoners.**

v. psychiatric care

166. There was no specialised psychiatric care available in any of the prisons visited. In principle, a mentally ill prisoner could be transferred to a civil hospital for treatment. However, the delegation was informed that in practice the possibilities for such a transfer were very limited ; for example, there was apparently no hospital in Ankara that received mentally ill prisoners.

167. The delegation found clear evidence of mentally ill persons being held together with other prisoners and, in the event of their becoming too disruptive, of their being dealt with by isolation instead of being properly cared for (see also paragraph 140).

**The CPT recommends that procedures for the identification of the mentally ill on their entry into the prison system be reinforced and that steps be taken to ensure the provision of appropriate psychiatric care to the mentally ill, either in a medical facility within prison or in a secure ward of a civil hospital.**

vi. specialist treatment in general

168. As already indicated, the general policy was to transfer prisoners in need of specialist treatment to civil hospitals rather than to have specialists attend to the patients in prison. This policy is unexceptionable. However, the delegation encountered several prisoners in the course of its visits who appeared to be in need of specialist treatment (e.g. for cancer related conditions or for gynaecological problems) but who were receiving it neither inside nor outside prison.

169. The delegation was informed that even when it had been possible to arrange an appointment for a prisoner in a hospital, the appointment was quite often cancelled because of lack of transport facilities or escort staff. In this connection, it is to be noted that hospital appointments enjoy a lower priority than court appearances.

170. The delegation also heard many complaints about the manner in which prisoners were transferred to civil hospitals for treatment (see also paragraphs 144 to 146). It was alleged that the conditions of transport were such that some prisoners preferred not to be sent to hospital.

171. The means of security employed during a prisoner's stay in hospital outside prison is of particular concern to the CPT. Prior to the visit to Turkey, the CPT received a number of reports of prisoners being handcuffed or chained to their hospital beds both before and after treatment. The CPT's delegation received similar reports from various sources, and saw a photograph of such a case, in the course of its visit.

Security needs can be met satisfactorily through relatively straightforward means, without recourse to such primitive methods of restraint. **The CPT recommends that the Turkish authorities take steps to ensure that prisoners sent to hospital to receive treatment are not physically attached to their hospital beds or other items of furniture for security reasons.**

vii. training and status of doctors working in prisons

172. The delegation was informed that junior doctors were chosen by lot to serve for up to two years in the prison medical service. They apparently did not receive any special education or training in prison medicine or prison psychiatry either before or during such assignments.

Further, it was claimed that the clinical independence of prison doctors could be adversely affected by the fact that their future prospects often depended to a large extent on reports made by the Prison Governor or the local representative of the Public Prosecutor's Office.

**173. The CPT wishes to underline the very particular nature of the tasks and responsibilities of a prison doctor ; specialised education and training both before and after appointment is certainly required if those tasks are to be performed satisfactorily.**

**Further, it would be appropriate for the decision making processes on disciplinary and career matters concerning doctors working in the prison service to involve the participation of an independent medical body.**

viii. co-operation with the Turkish Medical Association

174. The delegation met representatives of the Turkish Medical Association (TMA) on 9 September 1990. It was impressed by their professionalism and by the balanced and objective nature of the views they advanced.

Closer co-operation between the TMA and the Turkish authorities would certainly facilitate the resolution of many of the issues concerning medical services for persons deprived of their liberty identified in the preceding paragraphs. **Consequently the CPT suggests that the Turkish authorities reinforce their relations with the TMA.**

175. Further, the CPT's delegation noted that there are no formal links between medical faculties and the TMA. Links between medical teaching institutions and the professional bodies are commonplace in other European countries. The CPT believes that the TMA has a great deal to offer in the context of the training of future doctors, in particular on the subjects of medical ethics and human rights. **The CPT therefore suggests that consideration be given to the possibility of establishing appropriate links between medical faculties and the TMA.**

## V. RECAPITULATION AND CONCLUSIONS

### A. Torture and severe ill-treatment of persons deprived of their liberty

176. The CPT's delegation heard an extremely large number of allegations of torture and other forms of severe ill-treatment of detained persons by the police (as distinct from the gendarmerie). These allegations were made by a wide range of persons and were strikingly consistent as regards the particular types of torture and severe ill-treatment in question. Further, a considerable number of persons examined by the delegation's doctors displayed physical marks or conditions consistent with their allegations of ill-treatment by the police.

177. The delegation's "on-site" observations in police establishments tended to confirm rather than discredit the above-mentioned allegations. Particular reference should be made to the highly suspicious nature of many things seen and done in the course of the visits by the CPT's delegation to the old building of Ankara Police Headquarters, as well as to the state of the detainees interviewed by the delegation at the Interrogation Centre of the Political Department of the Diyarbakır Police, several of whom displayed clear medical signs consistent with very recent torture or other severe ill-treatment, both physical and psychological.

178. Taking into account also the other information gathered by the delegation in the course of its visit to Turkey, inter alia during its talks with members of the medical profession who have regular contact with persons who have been detained by the police, the CPT has reached the conclusion that torture and other forms of severe ill-treatment are important characteristics of police custody in Turkey. A considerable number of recommendations have been made with a view to addressing this problem; among them, one stands out as being of fundamental importance - the intensification of human rights education and professional training for law enforcement officials of all ranks and categories. There will be no lasting improvement in the present situation without a basic recognition on the part of all participants in the processes of crime investigation and State Security that torture and other forms of severe ill-treatment are not only illegal but also both morally indefensible and technically inefficient.

Of course, the teaching of human rights in schools and educational establishments in general, with a view to sensitising public opinion on this subject and making citizens aware of their rights and of the remedies available in the event of those rights being violated, is also of primary importance.

179. By contrast, practically no allegations of torture by staff of the prisons visited were heard; nor was any other evidence of torture gathered. With regard to Diyarbakır 1 Prison, there seems to have been a marked improvement since the end of military control of the establishment. Nevertheless, there were indications of some ill-treatment of prisoners by staff at Ankara Central Closed Prison which require investigation by the relevant authorities. Moreover, the CPT is disturbed by reports it has received concerning events at Diyarbakır 1 Prison after the visit by its delegation and wishes to receive full information on those events.

Finally, it should be underlined that the CPT's findings relate only to the three prisons visited by its delegation.



## **B. Conditions of detention**

180. Many of the police and gendarmerie cells seen by the CPT's delegation during its visit to Turkey failed to satisfy the basic standards of adequate space, lighting and ventilation. It must be stressed again that detaining someone in a cramped, dark and unventilated cell may frequently in itself amount to torture or inhuman or degrading treatment or punishment. The Turkish authorities should review the state of the cellular accommodation concerned as well as the question of other facilities to be provided for detainees (sleeping arrangements; washing/toilet facilities; food), in the light of the CPT's remarks. The living conditions must meet certain elementary material requirements.

181. As was indicated at the outset of the report, the CPT's main preoccupation in the course of its first visit to Turkey was the treatment of persons detained by the police or the gendarmerie. Consequently, it did not examine in great depth the living conditions in the three prisons it visited. Nevertheless, it can be said that at first sight those conditions appeared on the whole to be of a tolerable standard, especially when one bears in mind the economic constraints to which Turkey is subject.

However, the state of the medical services gives rise to concern. The overall level of medical care in the three prisons fell below the threshold of acceptability. The CPT has proposed a number of measures in this area.

The CPT is also concerned about the imprisonment of the very young and the treatment of mentally ill prisoners; these are questions that it intends to pursue further in the course of future visits to Turkey.

## **C. Respect for the principle of co-operation**

182. As regards relations between the CPT and the relevant Ministries, the CPT considers that in general there was a good degree of co-operation. However, the CPT must reiterate its disappointment at the refusal of the Turkish authorities to provide reasons for the use made by them of Article 14, paragraph 3, of the Convention in respect of three persons chosen to assist the CPT.

183. There was on the whole a satisfactory degree of co-operation between the CPT and the authorities in charge at the places visited, subject to one striking and disturbing exception.

The CPT has already explained at length the circumstances under which its delegation's visits to the old building of Ankara Police Headquarters took place. In the CPT's view, the events which occurred in the course of those visits amounted to a serious violation of the principle of co-operation. The CPT is mindful of the appeal made by the then Minister of Foreign Affairs, Mr Bozer, to the delegation for it to be tolerant vis-à-vis the police authorities, given that they have no previous experience of visits by outside bodies. **Nevertheless, the CPT trusts that all appropriate measures will be taken to avoid a repetition of its delegation's experience at Ankara Police Headquarters.**

**D. Action on the CPT's recommendations, comments and requests for information**

184. The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I to this report.

185. The recommendations set out in paragraphs 89 (stopping of physical and psychological ill-treatment of persons held by the Political Departments of the Ankara and Diyarbakır Police) and 122 (review of the state of cellular accommodation) are particularly urgent. Having regard to Article 10, paragraph 2, of the Convention, the CPT requests the Turkish authorities to provide within three months of the receipt of this report an account of action taken to implement the recommendation set out in paragraph 89, and within six months an account of action taken to implement the recommendation set out in paragraph 122.

186. As for the CPT's other recommendations, and having regard to Article 10, paragraph 2, of the Convention, the CPT requests the Turkish authorities:

- i) to provide within six months an interim report explaining how it is intended to implement these recommendations and, as the case may be, providing an account of action already taken;
- ii) to provide within twelve months a follow-up report providing a full account of action taken to implement the recommendations.

The CPT trusts that it will also be possible for the Turkish authorities to provide in the above-mentioned interim report, reactions to the comments formulated in this report that are summarised in Appendix I as well as replies to the requests for information made.

**APPENDIX I**

**LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS  
AND REQUESTS FOR INFORMATION**

- A. Torture and other severe ill-treatment of persons detained by the police or the gendarmerie
- a. recommendations
- appropriate steps to be taken immediately to stop detectives belonging to the Political Departments of the Ankara and Diyarbakır Police from having recourse to torture and/or other forms of severe ill-treatment, whether physical or psychological, when holding and questioning suspects, and the CPT to be informed of the steps so taken (paragraph 89);
  - consideration of the Bill reducing the period of police custody to be expedited (paragraph 96);
  - the possibility of reducing even further the maximum possible periods of custody, in particular in regions where a state of emergency has been declared, to be kept under close review (paragraph 96);
  - the exception to the obligation to notify immediately a person's next of kin of his arrest or detention to be clearly defined and circumscribed by law, and its application to be made subject to an appropriate time limit (paragraph 99);
  - the right of persons in the custody of the police or the gendarmerie to have access to legal advice to be effectively guaranteed by law, and any exception to this right to be clearly defined and circumscribed and its application made subject to an appropriate time limit (paragraph 99);
  - persons arrested or detained to be informed immediately of their right of access to legal advice (paragraph 99);
  - persons in the custody of the police or the gendarmerie to be accorded the right to be examined at any time by a doctor of their own choice or, if there are reasonable grounds for believing that access to the detainee by the doctor chosen by him might jeopardise the investigation, by a doctor chosen from a list of doctors agreed with the appropriate professional body (paragraph 103);
  - detainees to be fully examined by a doctor from the relevant Forensic Institute both before they are interrogated and at the conclusion of their interrogation (paragraph 103);
  - the examination of detainees by a doctor from the Forensic Institute to be carried out on a personal basis and under conditions offering due privacy for the person examined (paragraph 103);
  - all medical examinations of detainees to be conducted out of the hearing, and preferably out of the sight, of police or gendarmerie officers (paragraph 103);

- the results of all medical examinations as well as relevant statements made by the detainee to be formally recorded by the doctor and made available for scrutiny by the detainee (paragraph 103);
- a code of practice for the conduct of interrogations to be drawn up and published as soon as possible (paragraph 107);
- the possibility of introducing a system of electronic recording of interrogations to be explored (paragraph 107);
- steps to be taken to ensure that all complaints of torture or other forms of severe ill-treatment are properly investigated and, if necessary, the establishment of alternative procedures or structures in this area to be considered (paragraph 109);
- a high priority to be given to the development of the activities of the Turkish Police Academy and, more generally, to the intensification of human rights education and professional training for law enforcement officials of all ranks and categories (paragraph 112).

b. comments

- adoption of the Bill submitted by Mr Maraş MP and others would represent a major step forward (paragraph 99);
- importance of appropriate human rights education for members of the medical profession (paragraph 112).

c. requests for information

- the number of cases involving torture allegations brought before Turkish courts during the period 1 January - 31 December 1990 and the number of law enforcement officials given prison sentences during the same period (paragraph 94, footnote 4);
- a detailed account of the education and training in the field of forensic medicine received by doctors working for Forensic Institutes both before their appointment and in the course of their work at the Institute (paragraph 104);
- an indication of the safeguards guaranteeing that doctors working for Forensic Institutes enjoy complete clinical independence (paragraph 104);
- the views of the Turkish authorities on the idea of having Forensic Institutes administered by the Ministry of Health rather than the Ministry of Justice (paragraph 105);
- detailed information on the content of courses concerning human rights and the conduct of interrogations and investigations run by the Turkish Police Academy, as well as on similar courses given at police schools and colleges (paragraph 112).

B. Conditions of detention in police and gendarmerie establishments visited by the CPT's delegation

a. recommendations

- the state of cellular accommodation in Ankara Police Headquarters, Diyarbakır Police Headquarters, and the Interrogation Centres of the Political Department of the Diyarbakır Police and the Departmental Command of the Diyarbakır Gendarmerie Regiment to be reviewed immediately, with a view to either its improvement in the light of the CPT's remarks in paragraphs 118 to 121 or its withdrawal from service (paragraph 122);
- persons obliged to stay overnight in the custody of the police or the gendarmerie to be provided with a mattress and blankets (paragraph 123);
- detainees to be allowed to comply with the needs of nature when necessary and in clean and decent conditions, and to be offered adequate washing facilities (paragraph 123);
- detainees to be given at least one full meal every day (paragraph 123).

b. comments

- appropriateness of a review of the state of cellular accommodation in police and gendarmerie establishments in general (paragraph 122).

C. Torture and severe ill-treatment in the prisons visited by the CPT's delegation

a. recommendations

- the relevant authorities to investigate whether prison staff in Ankara Central Closed Prison are, on occasion, abusing their authority by beating prisoners and, if necessary, to take appropriate steps to prevent such abuses occurring in the future (paragraph 126).

b. requests for information

- confirmation or denial of allegations that a large number of prisoners were transferred from Diyarbakır 1 to other prisons during the night of 7 to 8 or 8 to 9 October 1990 and, in the event of confirmation, full information on the reasons for such a large-scale transfer of prisoners, on the circumstances under which the transfer took place, on the prisons to which the prisoners concerned were transferred, and on any special features of the present situation in Diyarbakır 1 Prison (e.g. hunger strikes, suspension of prisoners' rights etc) (paragraph 127).

D. Conditions of detention in the prisons visited by the CPT's delegation

1. Prison by prison

i) Ankara Central Closed Prison

a. recommendations

- immediate steps to be taken to improve kitchen and toilet facilities in the Women's Ward (paragraph 135);
- the cells on the lower floor of the building housing Ward 14 (the segregation unit) to remain out of use until such time as they have been extensively renovated (paragraph 137);
- no more than two prisoners to be accommodated in each cell in Ward 14 (paragraph 139);
- mentally ill inmates not to be placed in Ward 14 (paragraph 140);
- steps to be taken to improve conditions in the prison's reception dormitory and consideration to be given to the possibility of finding better facilities for the holding of newly-arrived inmates (paragraph 141);
- the medical service of the prison to comprise fully trained nurses and the prison's medical staff to be reinforced (paragraph 160).

b. comments

- desirability of examining the possibility of reducing the number of inmates to be held in Wards 5, 8, 12 and the Women's Ward (paragraph 134);
- dirty and unhygienic condition of some of the toilet/washing annexes in the cells of Ward 14 (paragraph 139);
- the prison authorities to be commended for the plans to improve visiting facilities, which hopefully will be implemented in the not too distant future (paragraph 143).

ii) Diyarbakır 1 Prison

a. recommendations

- the cells in the observation unit in Block E of the prison to remain out of use while in their present state (paragraph 152);
- the medical staff at the prison to be supported by staff who have received at least first-aid training (paragraph 160).

iii) Malatya E-type Prison

a. recommendations

- the floodlights on the wall facing the cells of the prison's segregation unit to be removed (paragraph 153);
- the medical staff at the prison to be reinforced (paragraph 160);
- the medical staff to be supported by staff who have received at least first-aid training (paragraph 160).

b. comments

- routine maintenance and cleaning of the segregation unit's cells required (paragraph 153).

2. Broader issues

i) Transport of prisoners

a. recommendations

- the adequacy of ventilation in the vehicles used for prisoner transport, in particular in those used for long distance travel, to be reviewed (paragraph 145);

b. comments

- importance of considering, in the design of future vehicles for the transporting of prisoners, the need to provide adequate ventilation and reasonable light inside the vehicles (paragraph 145);
- frequency of complaints about the methods of restraint employed during transport and existence of some allegations of brutality by gendarmerie officers in the course of transport (paragraph 146).

ii) Young prisoners

a. recommendations

- the present arrangements for the accommodation and care of children and young persons in the three prisons visited to be reviewed in the light of the CPT's remarks (paragraph 157).

b. request for information

- information on the legal position concerning the imprisonment of persons under the age of 16 and statistics showing the number of such persons in adult prisons (paragraph 157).

iii) Medical services

a. recommendations

- medical services in the three prisons visited to be reinforced and improved in order to provide an acceptable level of ambulant medical care (paragraph 164 read together with paragraph 160);
- procedures for the identification of the mentally ill on their entry into the prison system to be reinforced and steps to be taken to ensure the provision of appropriate psychiatric care to the mentally ill, either in a medical facility within prison or in a secure ward of a civil hospital (paragraph 167);
- steps to be taken to ensure that prisoners sent to hospital to receive treatment are not physically attached to their hospital beds or other items of furniture for security reasons (paragraph 171).

b. comments

- the need for prison doctors to have specialised education and training in prison medicine both before and after appointment (paragraph 173);
- desirability of the participation of an independent medical body in the decision making processes on disciplinary and career matters concerning doctors working in the prison service (paragraph 173);
- desirability of reinforcing relations between the Turkish authorities and the Turkish Medical Association (TMA) (paragraph 174);
- desirability of considering the possibility of establishing appropriate links between medical faculties and the TMA (paragraph 175).

c. requests for information

- information concerning the basis on which medical treatment is provided to prisoners (paragraph 165).



E. Other matters

comments and requests

- in the course of the visits to the old building of Ankara Police Headquarters, the police authorities violated the CPT's right of access to places where persons are deprived of their liberty, as provided for in Article 8, paragraphs 1 and 2 (c), of the Convention, and more generally failed to comply with the principle of co-operation laid down in Article 3 of the Convention. The CPT trusts that appropriate measures will be taken to avoid a repetition of its delegation's experience at Ankara Police Headquarters (paragraphs 23, 27 and 183);
- the CPT requests the Turkish authorities to bring the remarks made in paragraphs 50 to 54 of its report to the attention of the Chief Public Prosecutor at the Ankara State Security Court and to take any other steps that might be necessary in order to ensure that in the course of future visits, delegations of the CPT do not meet with a blanket refusal of access to persons held in police custody under the control of public prosecutors attached to that Court (paragraph 55).

**APPENDIX II**

**SUMMARY OF THE SEQUENCE OF EVENTS IN THE COURSE OF THE  
DELEGATION'S VISITS TO THE OLD BUILDING OF ANKARA POLICE  
HEADQUARTERS**

11 September 1990

- 9.30 p.m - a sub-group of the delegation, including the President and First Vice-President of the CPT, arrived at the Police Headquarters and was taken to a small office on the ground floor of the old building;
- the duty officer denied any knowledge of the CPT and stated that the sub-group should return the following morning at 9.00 a.m.;
- the sub-group declined to leave and requested that the officer contact his superiors.
- 10.10 p.m - an Assistant Security Director (Mr Durmuş) arrived. He also denied any knowledge of the CPT. He added that as the Security Director was in the Ankara region, he (Mr Durmuş) had no authority to authorise the sub-group to carry out a visit. As for the Security Director himself, he was not in Ankara city and could not be contacted. Mr Durmuş in turn suggested that the sub-group return the next morning.
- 10.20 p.m. - the sub-group telephoned the duty officer of the Ministry of Foreign Affairs and asked her to take steps to facilitate the delegation's visit to the Police Headquarters.
- 11.00 p.m - Mr Durmuş stated that he had been able to contact the Security Director, who was expected to arrive at the Police Headquarters at around 2.00 a.m. (12 September 1990). The sub-group requested that the Security Director be asked to give his authorisation for the visit to proceed immediately; this request was not complied with.
- 11.20 p.m. - the sub-group again telephoned the duty officer of the Ministry of Foreign Affairs.
- 11.25 p.m. - the duty officer called back and said that the sub-group would have to wait until 2.00 a.m. before starting its visit.

12 September 1990

- 00.25 a.m. - Mr Durmuş was relieved by another Assistant Security Director, Mr Taclacar, who stated that, like Mr Durmuş, he had no authority to allow the sub-group to proceed with its visit.
- 2.45 a.m - the Security Director (Mr Ağar) appeared and received the sub-group; he indicated he had had a vague idea that a Committee would carry out a visit;
- the sub-group requested to see the register of detainees. A list of persons detained by the Criminal Department was produced after a short delay.
- 3.30 a.m - a list of persons held by the Political Department was presented; it was dated 11 September 1990. The list indicated that five people were being held by the Political Department; however, Mr Ağar stated that four of them had in the meantime been released.
- 3.45 a.m - the sub-group visited various parts of the old building and was shown the person held by the Political Department who was on the above-mentioned list.
- 4.30 a.m. - the sub-group was shown a register of detainees, which indicated that the detainee seen was at that time the only person being held by the Political Department.
- 4.45 a.m - the sub-group left the Police Headquarters.

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In the course of 12 September 1990, the Head of the delegation protested successively to Mr Gönül, Under Secretary of State at the Ministry of the Interior, and Mr Bozer, Minister of Foreign Affairs, about the manner in which the sub-group had been treated. A written protest was subsequently sent to Mr Bozer.

13 September 1990

- 9.00 a.m. - a sub-group arrived at the Police Headquarters for a pre-arranged meeting with Mr Kalkan, Head of the Political Department.
- 9.45 a.m. - Mr Kalkan arrived. He was immediately informed that the whole delegation would visit the old building in approximately half an hour<sup>8</sup>; he said he would try to have the Security Director informed. In reply to a question, Mr Kalkan stated that his Department had no terrorists in detention at that moment.
- 10.05 a.m. - Mr Kalkan said he had been informed that the Security Director could not be contacted; he added that there was no-one else with the authority to allow the delegation to carry out a visit;
- the sub-group gave the name of a person the delegation wished to interview; Mr Kalkan stated that no-one by that name was currently detained by his Department.
- 10.30 a.m. - the rest of the delegation arrived at the Police Headquarters.
- 10.45 a.m. - it was announced that it had still not been possible to contact the Security Director.
- 11.20 a.m. - the whole delegation met the Assistant Security Director, Mr Taclacar, in his office. He indicated that he only had responsibility for the new building and offered to show this building to the delegation. This offer was declined.
- 11.55 a.m. - after several attempts, the Head of Delegation spoke to Mr Gönül by telephone, who agreed to contact the Security Director.
- 12.05 p.m. - the delegation was informed that the Security Director had arrived at the Police Headquarters and had authorised the delegation to proceed with its visit.
- 12.05 p.m. to 6.00 p.m. - the delegation visited the old building, with particular attention to the ground floor and adjoining buildings.

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<sup>8</sup> The Security Director had been told on 12 September 1990 of the possibility of such a return visit; he had asked that half an hour's prior notice be given.

**APPENDIX III**

**LEGAL FRAMEWORK**

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## I. BRIEF SURVEY OF THE CURRENT LEGAL SITUATION

### A. Prohibition of torture

1. The Turkish State possesses an array of legal measures which explicitly prohibit the use of torture or any other cruel or inhuman treatment or punishment.

Prohibition of these practices can be found both in Turkish law of "national" origin and in Turkish legislation implementing international treaties.

2. As regards Turkish law of national origin, mention should be made of Article 17, paragraph 3, of the Constitution, which states: "No one shall be subjected to torture or ill-treatment; no one shall be subjected to a penalty or to treatment incompatible with human dignity". This provision is matched by two important provisions of the Criminal Code, Article 245 (punishing law enforcement officials who ill-treat or cause bodily injury to persons with whom they come into contact in the fulfilment of their duties) and Article 243 (punishing any public official who "tortures an accused person in order to make him confess his offence").

3. In addition, general legal provisions exist that prohibit action or conduct causing bodily harm. In this respect Article 456 of the Criminal Code, which prohibits battery, is particularly noteworthy. By virtue of other provisions (e.g. Articles 228, 240 and 251), whenever public officers engage in arbitrary action, bodily harm or other abuses, the relevant penalty is increased in varying degrees.

Furthermore, Article 8 of the Police Disciplinary Regulations, as amended by Council of Ministers' Decision no. 83/6883 of 26 July 1983, provides that "security officials who torture or ill-treat those who visit or who are brought to police stations shall be disqualified from holding public office for life".

4. As regards legislative measures implementing international treaties, it will suffice to mention that Turkey has ratified both the European Convention on Human Rights of 1950 and the UN Convention against Torture of 1984.

Since Article 90, paragraph 5, of the Constitution states that "international agreements duly put into effect carry the force of law", the relevant provisions of the two aforementioned Conventions have become part of Turkish law. Accordingly, courts and other Turkish authorities are bound to apply them.

5. The above-mentioned legal provisions have been applied by Turkish courts in a number of cases. At this juncture, it is interesting to note the judgment handed down by the Court of Cassation on 17 April 1989 in the Mustafa Erdoğan case, in which that Court gave an elaborate definition of torture and inhuman, degrading or cruel punishment, as well as the judgment delivered on 12 June 1990 by the 3rd Assize Court of Ankara in the Cafer Tayyar Çağlayan case, where the Court dwelt on the question of ill-treatment.

6. Attention should be drawn to one important feature of the aforementioned legislation prohibiting, in general or specific terms, torture and other forms of ill-treatment; the penalties provided for in those provisions are rather light. For instance, the crime of torture referred to in Article 243 (see above, paragraph 2) carries the penalty of "heavy imprisonment for not more than five years" plus disqualification from holding public office "temporarily or for life" (these penalties are increased if the victim of torture dies or suffers permanent disability). Similarly, the offence of bodily harm caused by police officers provided for in Article 245 (see above, paragraph 2) carries the penalty of "punishment for not less than one month and not more than three years" plus a temporary disqualification from holding public office. As regards the offence of battery (see above, paragraph 3), which carries a penalty of imprisonment for six months to one year (Article 456, paragraph 1; see also, however, paragraphs 2 and 3 of the same provision), the penalty is increased by one-third to one-half if the battery is committed by a public officer in the course of the performance of his duties (Article 251).

7. As an illustration of the application of the above penalties, mention can be made of the judgment delivered on 12 June 1990 by the Ankara 3rd Assize Court in the Cafer Tayyar Çağlayan case. The defendant, a lieutenant-colonel of the Gendarmerie found guilty under Article 245 of the Criminal Code of having caused bodily harm to a group of inhabitants of the village of Yeşilyurt, was sentenced to three months imprisonment and three months suspension from public service. However, in the same judgment the sentence was successively reduced by one sixth (to two months and two weeks imprisonment and two months and two weeks suspension from public service), commuted to a fine of 375,000 Turkish Liras (roughly equivalent to 150 US dollars) - to be paid over ten months - plus the said period of suspension from public service, and then suspended.

It should be noted that this is the case in which villagers alleged that, in addition to being beaten by the Gendarmerie security forces, they had also been compelled to eat human excrement (on this issue the Court confined itself to stating that "as is apparent from the file, the Administrative Council of the Sub-Prefecture of Cizre stated in its aforementioned decision [of 8 March 1989] that the question of whether the defendant had forced them [the villagers] to eat filth had not been fully elucidated and found that the only fact established was that the defendant had struck the plaintiffs").

B. Police custody<sup>9</sup>

a) Length of police custody

8. The maximum possible length of police custody varies for both non-collective and "collective" offences (i.e. crimes allegedly committed by three or more persons).

9. As regards non-collective offences, although under Article 19, paragraph 5, of the Constitution a person arrested or detained must be brought before a judge within 48 hours, Article 128 of the Code of Criminal Procedure provides that the accused must be brought before the nearest "minor" court no later than 24 hours following his arrest or detention. The relationship between the constitutional provision and the provision of ordinary law just mentioned is not entirely clear; however, the best interpretation is probably that the Constitution sets the maximum length of detention, and the law has reduced this length with regard to "ordinary" offences. However, if a state of emergency is declared, the period of police custody can be doubled to 48 hours by written order of a public prosecutor or a judge.

For non-collective offences coming under the jurisdiction of State Security Courts (namely "offences against the integrity of the State, its territory and nation, the free democratic order, or against the Republic's characteristics defined in the Constitution"), according to Article 16 of Law no. 2845 of 16 June 1983 the maximum length of police custody is 48 hours. However, as regards such offences perpetrated in areas under a state of emergency, the maximum length of police custody is 96 hours, i.e. four days.

10. For "collective" offences the maximum length of police custody is 15 days. However, this period can be doubled to 30 days by written order of a public prosecutor or a judge in areas where a state of emergency has been declared.

11. Mention should also be made of the detention periods envisaged by martial law: in the case of declaration of martial law, the maximum detention period is 15 days, with a possible extension to 30 days in exceptional circumstances (see Article 15 of Law no. 1402 on Martial Law).

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<sup>9</sup> The term "police custody" is to be read as covering also custody by the gendarmerie.



b) Access to a lawyer

12. Article 136 of the Code of Criminal Procedure provides that "At any and every stage of the proceedings the accused shall have the right to seek the advice of, and be represented by, one or more counsel". Article 144 of the same Code, which states in more general terms that "a person under detention may at any time meet, confer with and correspond with his legal counsel", should also be taken to apply to the detention period immediately following apprehension by the police.

13. In spite of the clear wording of the above provisions, suspects in police custody are often denied access to counsel. Two legal arguments are invoked for this purpose.

The first is based on Article 143, paragraph 2, of the Code of Criminal Procedure, which states: "where it is considered that no prejudicial harm may result, and that the purpose of the inquiries will not be jeopardized", defence counsel may be accorded access to all papers and documents relevant to the case even at the earliest stage of the investigation into a criminal case. Some public prosecutors argue that in all cases where the preparatory investigation must be conducted in secret, defence counsel cannot be given access to the relevant files nor can he contact the detainee.

The second argument (one relied upon in particular by the Chief Public Prosecutor of the Ankara State Security Court) is based on Article 19, paragraph 6, of the Constitution, according to which "notification of the situation of the person arrested or detained shall be made immediately to the next of kin, except in cases where definite necessities pertaining to the risk of revealing the scope and the subject of the investigation compel otherwise". It is argued that, logically, access to legal counsel should also be denied in the cases mentioned in that provision.

14. In view of the widespread refusal of public prosecutors to allow access to defence counsel, the Minister of Justice and subsequently the Prime Minister issued, respectively, one and two circulars, dated 25 April 1986, 26 September 1989 and 3 April 1990. In these circulars, after quoting the relevant provisions of the Code of Criminal Procedure, they urged police officers and public prosecutors to allow lawyers to speak to persons in police custody. It may suffice to quote the end of the Prime Minister's circular dated 26 September 1989: "Police officers conducting investigations in their capacity as assistants to the public prosecutor are accordingly required, as provided for in the various articles of the Code of Criminal Procedure, to allow persons detained as part of a preliminary investigation, at their request and by order of the public prosecutor, to speak to a lawyer."

15. However, all the available evidence suggests that despite the issuing of the above-mentioned circulars, access to a lawyer for persons in police custody remains precarious. In its report to the UN Committee against Torture, the Turkish Government itself acknowledged that there had been "some shortcomings in the implementation of the Prime Ministers' circulars dated 26 September 1989 and 3 April 1990 to end the incommunicado detention and to prevent the use of torture" (see CAT/7/Add. 6, paragraph 76).

The legal justification offered by one public prosecutor to the CPT's delegation for not complying with the circulars was that they were not legally binding on judges and public prosecutors and, in any event, could not override Article 19, paragraph 6, of the Turkish Constitution.

c) Access to a medical doctor

16. There seems to be no legal right for persons held in police custody to be seen by a medical doctor of their own choice. However, as a matter of practice, whenever a complaint is filed alleging serious ill-treatment, a forensic doctor is apparently sent at the request of the public prosecutor to examine the complainant.

All persons held in police custody are examined by a medical doctor of the relevant Forensic Institute at the expiry of the period of police custody. The medical report is forwarded to the public prosecutor in charge of the investigation as well as to the detainee, if so requested by him or her.

d) Writ of habeas corpus

17. Under Article 19, paragraph 8, of the Constitution, "persons deprived of their liberty under any circumstances are entitled to apply to the appropriate judicial authority [...] for their release if the restriction placed upon them is not lawful".

Such writs of habeas corpus are adjudicated by a court.

e) Is police custody incommunicado detention?

18. As noted above (see paragraph 13), according to Article 19, paragraph 6, of the Constitution, when persons are taken into police custody the authorities should notify their next of kin of their "situation", except in cases where "definite necessities pertaining to the risk of revealing the scope and the subject of the investigation compel otherwise."

Similarly, Article 107 of the Code of Criminal Procedure states that "the detainee shall be permitted to notify his next of kin and those with a strong interest in the case of his detention, provided that this does not impair the purposes of detention. They shall also be officially notified if the detainee so wishes".

It is a matter of debate among scholars whether the derogation from the obligation to notify concerns only the reasons or the purposes of detention, or includes also the fact of detention itself. The language of the Constitution and the Code of Criminal Procedure seems to support the first interpretation. However, the wording of the Law on Police Powers and Duties (Article 13) is closer to the second: "The next of kin of the detainee shall be notified of the detention, unless this involves a definite risk of revealing the subject of investigation".

As regards what actually happens in practice, the wording of the above-mentioned provisions, and more particularly the broad exception contained therein, suggests that in fact the relevant authorities enjoy considerable discretion as to whether or not the situation and whereabouts of suspects held by the police should be revealed to their next of kin.

19. As for access to a lawyer, it has already been mentioned (see paragraph 13) that although under Article 136 of the Code of Criminal Procedure, a person held in police custody is entitled to have access to a lawyer, the exercise of this right is in fact restricted by public prosecutors on the strength of Article 19, paragraph 6, of the Constitution and Article 143, paragraph 2, of the Code of Criminal Procedure. That access to a lawyer has often been denied is underscored in a telling manner by the very existence of the three circulars referred to in paragraph 14. Further, it is clear that these circulars have not led to a significant change in the practices of at least some public prosecutors.

20. The fact that there is no right to communicate with one's next of kin or to be seen by a medical doctor of one's own choice, as well as the fact that in actual practice the right of access to a lawyer is seriously curtailed, lead inevitably to the conclusion that incommunicado detention, although it is not formally provided for in law, is a regular occurrence in Turkey. This conclusion is borne out by the wording of paragraph 76 of the Turkish Government's report to the UN Committee against Torture, where the existence of incommunicado detention is recognised openly (see also paragraph 15).

C. Remedies in the event of ill-treatment

21. From a legal viewpoint, there are a range of remedies available to persons held in police custody who allege that they have been subjected to torture or any other form of ill-treatment. These remedies include the following:

at national level

- i) the right to file a complaint with the relevant public prosecutor (the public prosecutor can also begin an investigation ex officio on receipt of information about torture or any other form of ill-treatment, regardless of whether there has been a complaint). If the investigation of the public prosecutor results in the initiation of criminal proceedings against the alleged offender, the alleged victim can participate in them as an "intervener";
- ii) the right to request compensation through administrative or civil proceedings for injuries suffered at the hands of law enforcement officials.

at international level

- i) the right to lodge an application with the European Commission of Human Rights under Article 25 of the European Convention on Human Rights of 1950 (the jurisdiction of the Commission in this respect was accepted by Turkey on 28 January 1987);
- ii) the right to send a "communication" to the UN Committee against Torture, under Article 22, paragraph 1, of the UN Convention against Torture of 1984.

22. In the Turkish Government's report to the UN Committee against Torture it is stated that "during the period 1 January - 31 December 1989, 508 cases of torture allegations have been brought to Turkish courts and 15 policemen have been convicted to prison sentences" (ibidem , paragraph 76).

The CPT delegation has repeatedly requested the Turkish authorities to supply comparable information for the period 1 January - 31 August 1990; unfortunately, no such information has yet been forwarded.

D. Confessions made under duress

23. Under the Turkish legal system, a confession made to a police officer as a result of torture or other forms of ill-treatment must be disregarded by the courts and not be considered as evidence of the alleged offence.

It should be noted in this regard that although Turkish judges are required to weigh the evidence in accordance with their assessment of the investigation and trial (i.e. the doctrine of free evaluation of evidence - *théorie de l'intime conviction* - is upheld), their judgments must at the same time be in accordance with the Constitution, laws, and the general principles of law. Numerous legal provisions prohibit the use of torture or ill-treatment as a means of obtaining evidence. Further, it should also be recalled that Article 15 of the UN Convention against Torture has been incorporated into Turkish law (though it must be noted that some Turkish courts have held that Article 15 is not directly applicable as it is not a self-executing provision).

24. Attention should also be drawn to a number of decisions handed down by Turkish courts, which have consistently held that "for a confession to constitute evidence, the act confessed to must be possible and the confession must be made before a court, must not be withdrawn and must be substantiated by further evidence" (Court of Cassation, Full Criminal Court, Ismail Karadağ and Kenan Kumar case, judgment of 1 April 1985).

In the cited and other similar cases, the defendant claimed before the court that he had made a confession to a police officer as a result of torture or other forms of ill-treatment; he subsequently withdrew the confession before the court. The court held that since the confession had not been made before the court nor was substantiated by further evidence, no probative value could be attached to it. See, in addition to the case just cited: Court of Cassation, Full Criminal Court, Muammer Özel and others, judgment of 17 November 1986; Court of Cassation, Full Criminal Court, Ahmet Yılmaztürk, judgment of 2 February 1987; Court of Cassation, Full Criminal Court, Yüksel Babadağ, judgment of 16 February 1987; Court of Cassation, Full Criminal Court, Selahattin Altuntaş and Feriz Aydoğan, judgment of 28 September 1987; Court of Cassation, Full Criminal Court, Karharman Korkmaz, judgment of 5 December 1988.

E. Disciplinary and grievance procedures available to persons held in prison

25. Within each prison visited by the CPT's delegation there was a Board responsible for dealing with disciplinary matters of a serious nature (the Board consists, among others, of the Governor, the Chief of the prison guards and the representatives of the public prosecutor in the Prison). Prisoners who are disciplined by the Board may appeal to the public prosecutor within 24 hours.

26. Prisoners alleging ill-treatment may appeal to the public prosecutor in charge of the Prison and may also forward a petition to the Turkish Parliament. This right is granted by Article 74 of the Constitution to all Turkish citizens, whatever the subject of the complaint, and is regulated by Law no. 3071 of 1 November 1984.

27. In addition, prisoners are entitled to lodge applications with the European Commission of Human Rights, under Article 25 of the European Convention on Human Rights.

28. It should be noted that while persons have the right to forward the above petitions or applications in a sealed envelope, it has frequently been alleged that prison authorities do not respect the secrecy of correspondence.

F. Parliamentary Commission of Inquiry on human rights' matters

29. A recently adopted law provides for the establishment of a Parliamentary Commission of Inquiry on human rights' matters.

According to Article 3 of the law, the Commission shall consist of a number of MP's to be determined by the Assembly on the proposal of its Advisory Committee: political groups and independents shall be represented on the Commission, according to the ratio of their seats in the Assembly - with the exception of vacant seats - to the total number of seats in the Assembly.

30. Among the various tasks assigned to the Commission by Article 4 of the new law, the following should be emphasised:

- i) to study the extent to which human rights practice in Turkey complies with the international conventions to which Turkey is a party, with the Constitution and with domestic legislation and, to that end, to carry out research and propose improvements and remedies;
- ii) to examine applications relating to alleged violations of human rights or to forward them to the relevant authorities when it considers this necessary.

31. It is important to note that the Commission is given extensive powers of investigation. Pursuant to Article 5, it may, in the performance of its duties, request information from ministries and other government departments under the general and subsidiary budgets, local authorities, universities and other public institutions, conduct enquiries on their premises and invite the officials concerned to appear before it and give information.

As to the possible outcome of its investigations and deliberations, Article 6 provides that the Commission shall submit reports to Parliament. In addition, when it considers it necessary, its report may be referred by the Office of the President of the Turkish Grand National Assembly to the appropriate authority in order to enable criminal or civil proceedings to be brought against the persons responsible for the case examined.

32. Adoption of this law certainly constitutes a major step. It is, of course, necessary to reserve any opinion on the question of the effectiveness of the Commission. However, two points should be made at this stage.

Firstly, the political composition of the Commission may fail to ensure fully the objectivity that one can expect from independent bodies consisting of non-political experts.

Secondly, it is not clear whether, in conducting its own investigations, the Commission enjoys the same power of subpoenaing witnesses and collecting evidence as the judicial authorities.

## II. PLANNED REFORMS

### A. General

33. There are at present two Bills pending before the Turkish Parliament which are designed to modify the existing body of legal provisions concerning torture and ill-treatment:

- i) a Bill amending or repealing various provisions of the Code of Criminal Procedure, submitted by Mr G. Maraş MP (member of the ruling party, "The Motherland Party", and vice-chairman of the Justice Commission of Parliament) together with three other MPs;
- ii) a Bill amending or repealing various provisions of the Code of Criminal Procedure, submitted by the Minister of Justice.

34. There is apparently another Bill designed to amend certain provisions of the Criminal Code (Articles 141, 142, 143 and 163). Reference to this Bill was made by the Minister of Justice in the course of his meeting with the CPT's visiting delegation on 19 September 1990, and by the Chairman of the Justice Commission of Parliament, on 20 September 1990. According to the latter, the draft has not yet been submitted to the Justice Commission. He also expressed doubts about the likelihood of the draft being adopted.

35. An additional Bill, for the establishment of a Turkish Ombudsman, will be submitted shortly to Parliament by Mr Altuğ MP (of the ruling party). In the 8 July 1990 issue of the magazine *Nokta*, Mr Altuğ explains that the Ombudsman would be elected (and, if necessary, dismissed) by the Turkish Parliament. He would be empowered to bring irregularities to the attention of the relevant authorities and, if this failed to produce results, to instigate legal proceedings. He would also submit an annual report to Parliament.

B. The Bill submitted by Mr Maraş to amend or repeal various provisions of the Code of Criminal Procedure

36. This important Bill deals inter alia with the following points:

- i) prohibited methods of interrogation. It is proposed to amend Article 135 of the Code of Criminal Procedure in such a way as to ban explicitly methods of interrogation involving brutality or any other form of ill-treatment;
- ii) access to a lawyer. Four important innovations in this respect should be mentioned: a) a detainee will have access to legal counsel at every stage of the investigation process, starting from the moment when he is taken into custody; b) the lawyer can be chosen and paid by the accused or, if need be, by the court, at the expense of the Treasury; c) the detainee will be able to communicate with his lawyer in private; d) statements obtained from an accused in the absence of his lawyer shall not serve as a basis for the indictment or the judgment;
- iii) access to a court. The cases of persons held on remand will have to be brought before and decided by a court within a maximum period of six months; in the event of the need to extend this time-limit, the reasons for the delay will have to be stated;
- iv) the interrogation system before the court. This system will be altered so as to adopt cross-examination along the lines of the American system;
- v) the recording of the court hearing. The use of tape-recording will be introduced.

37. This Bill is undoubtedly a welcome development and, if passed, could significantly improve the lot of suspects in police custody. However, three points should be made.

Firstly, although the author of the Bill is confident that it will be adopted quite soon by Parliament, subject to some amendments, the Minister of Justice expressed doubts about the likelihood of the Bill being passed when he met the CPT's delegation.

Secondly, a possible weakness of the Bill is that it focuses heavily on the interrogation period. When questioned about the possibility of the Bill putting an end to ill-treatment, the proponent of the Bill stated that since the aim of torture is to force a suspect to admit that he has committed a crime or at least to extract testimony from him, once the presence of a lawyer during interrogation becomes unavoidable (as statements obtained from an accused in the absence of his lawyer will have no legal value), the raison d'être of torture will automatically be removed. The fact remains, however, that detainees might still be subjected to ill-treatment between interrogation periods.

Thirdly, the Bill does not specify whether it also applies in areas subject to emergency legislation. When questioned about this, the Chairman of the Justice Commission stated that they "had not yet finalised [their] proposal" and its "technicalities" would be discussed later.

C. The Bill on the length of police custody tabled by the Minister of Justice

38. The Bill drafted by the Minister of Justice was formally tabled before Parliament on 18 September 1989 by the then Prime Minister, Mr T. Özal, after being approved by the Council of Ministers.

The primary aim of the Bill is to shorten the period of police custody so as "to ensure that persons arrested are brought before a court as soon as possible". In this way the Bill would bring the periods of police detention more closely in line with those in force in other member States of the Council of Europe.

39. The changes proposed in this Bill are as follows:

i) while at present the maximum period of police custody for persons suspected of "collective" offences (i.e. offences committed jointly by three or more persons) is 15 days, the Bill seeks to shorten this period to:

- 4 days as regards collective crimes of an ordinary nature;
- 6 days as regards offences that fall under the jurisdiction of the State Security Courts.

ii) the 6-day period of police custody as regards collective offences falling under the jurisdiction of the State Security Courts might be extended to 10 days "where there are more than 10 accused persons"; this "provisional" provision would only apply "for a period of 5 years from the date on which the Act enters into force".

The Bill does not specify clearly what would happen on expiry of this 5-year period; however, a logical interpretation of the present wording of the Bill would suggest that the maximum period for all collective offences falling under the jurisdiction of the State Security Courts would then be 6 days.

40. The Explanatory Report on the Bill indicates that the 15 and 30 day periods of detention possible under martial law will remain unchanged.

As regards the situation in areas in which a state of emergency has been declared, no amendment is proposed to the legal provisions enabling the normal maximum periods of detention to be doubled in such areas. This presumably means that if the Bill becomes law, the maximum possible periods of detention in such areas for collective offences will be:

- 8 days as regards collective crimes of an ordinary nature;
- 12 days as regards collective offences falling under the jurisdiction of the State Security Courts (with a possible extension during 5 years to 20 days where there are more than 10 accused persons).



41. This Bill would also no doubt improve the lot of persons held in police custody and diminish the chances of ill-treatment. Two points should, however, be made.

Firstly, on 10 September 1990 the Minister of Justice told the CPT delegation that he was concerned about that part of the Bill which provides for a 10-day detention period for those involved in organised crimes against State Security but at the same time establishes that 5 years after the passing of the Bill this 10-day period would be reduced. According to the Minister of Justice, the existence of so many organised groups is likely to make it difficult for Parliament to adopt at least that part of the Bill.

Secondly, whatever the outcome of the parliamentary discussion of the Bill, it is a matter of concern that the maximum possible periods of custody will remain very long in areas covered by emergency legislation. These are precisely the areas where the majority of cases of ill-treatment reportedly occur.