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

from 16 to 24 July 2000

The Turkish Government has authorised the publication of the CPT's report on its visit to Turkey from 16 to 24 July 2000 (see CPT/Inf (2001) 25) and of its response. The response of the Turkish Government is set out in this document.

Strasbourg, 8 November 2001

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Note: Appendix 1 to the response is included in this document.
The other Appendices can be obtained upon request to the CPT's
Secretariat

**RESPONSE OF THE TURKISH GOVERNMENT
TO THE RECOMMENDATIONS AND REQUESTS FORMULATED
BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE
IN THE REPORT ON ITS VISIT TO TURKEY FROM 16 TO 24 JULY 2000**

4 JUNE 2001

The views of the Turkish Government on the issues discussed in the report of the European Committee for the Prevention of Torture (CPT) concerning its visit to Turkey from 16 to 24 July 2000 are set out below in the order in which they appear in the report.

I. INTRODUCTION

Paragraph 8 (Request for information)

The CPT requests full information on all places where persons deprived of their liberty by the MIT are held, in conformity with Article 8, paragraph 2(b) of the Convention.

This request has already been complied with in a separate document, which has been forwarded to the secretariat of the CPT by our Permanent Delegation to the Council of Europe.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. PRISONS

1. Preliminary remarks - from dormitories to smaller living units

Paragraphs 14 and 51 (Recommendation)

The CPT recommends that the adoption of the Bill amending Article 16 of the Law Against Terrorism be accorded a high priority.

The draft law amending Article 16 of the Law Against Terrorism was passed by the General Assembly of the Grand National Assembly of Turkey (GNAT) after debate on 1 May 2001. The Law on Enforcement Judges, which is of importance with regard to prison reform, was passed by the General Assembly of the GNAT after debate on 16 May 2001. The draft law on monitoring boards is on the GNAT's agenda.

The Law amending Article 16 of the Law Against Terrorism and the circular laying down the principles governing application of this amendment to prisoners are attached as Appendix 1.

Paragraph 15 (Recommendation)

The CPT recommends that the Turkish authorities develop and implement an appropriate system for allocating and classifying prisoners, taking the remarks in this paragraph into consideration.

The principles for the appropriate allocation and classification of each prisoner upon arrival according to the security risk presented, skills and needs are set out in an appendix to the Circular attached as Appendix 1.

As a result of Law No. 4616 on Conditional Release, Stay of Proceedings and Suspension of Punishment, which came into force on 22 December 2000, 2053 persons who were being detained for the offence of assisting and sheltering terrorist organisations have been released so far. Consequently, the remainder are the principal perpetrators of the murderous terrorist acts which have taken the lives of almost 30 000 people in our country in the last 16 years, and those who were members of terrorist organisations and had inside information about the planning of terrorist acts. We do not share the view expressed in this paragraph that it is unjustified to put the rate of dangerous offenders in our country at 15%: none of the Western European countries with which our country is compared and in which the dangerous offenders rate is said to range from 3% to 5% has anything like the intensity and extent of terrorist activities and terrorist offenders that Turkey has.

According to the Regulation on Observation and Classification Centres, sentenced prisoners entering prison are classified in groups such as the following:

- a) first-time offenders, previous offenders, habitual or professional criminals
- b) offenders who will be subject to a special regime because of their mental or physical condition or their age
- c) political offenders
- d) terrorist offenders.

They are furthermore classified according to their age, the length of their sentence and the type of offence committed.

The observation of sentenced prisoners is carried out in the observation units of the prisons in which they are held; the observation period must not exceed 60 days. Those serving sentences of less than 6 months are not subject to observation.

There is thus a well functioning observation and classification method in our penitentiary system, and it is being successfully applied in prisons accommodating ordinary prisoners. However, owing to the atmosphere of violence created by terrorist and mafia offenders, the classification and grouping of prisoners was constantly being obstructed, and the terrorist organisations sometimes carried out this classification themselves according to their own interests. But this problem has been solved since the transition to F-type prisons with small living units.

Paragraph 16 (Recommendation)

The CPT recommends that the establishing positive relations with prisoners should be recognised as the key element of a prison officer's vocation, and that to this end, training courses should place considerable emphasis on the acquisition and development of interpersonal communication skills.

The purpose of a modern prison system is to rehabilitate sentenced prisoners by influencing their personalities and to release them as useful members of society, preventing them from committing another offence. A penal system, which respects human rights, achieves its objectives only if a penal execution system that honours the human rights is established. And prison staff are one of the key elements of sentence enforcement. Providing them with special training will be a major contribution to achieving the objectives of sentencing, and to rehabilitating prisoners and reintegrating them into society.

The Ministry of Justice has prepared a draft Law on Prison Staff Training Centres for that purpose; the Bill is currently on the agenda of the Budget and Planning Committee of the GNAT.

The bill provides for the establishment of a Prison Staff Training Centre and, where necessary, regional training centres with a view to giving prison staff special initial and in-service training, and lays down the principles and rules governing the training to be provided in the centres. The first of these training centres has been established in Ankara, and a further 6 centres are to be set up in the future in other localities; these centres will serve for the training of all prison staff.

Since under the dormitory system, prison staff are constantly taken hostage, beaten up, insulted and even killed, the positive relations, which have been established between prison staff and ordinary prisoners, have not been realized with dangerous criminals. However, with the transition to small living units, positive relations are beginning to be established between inmates and staff; as part of the initial and in-service training of F-type prison staff, courses have been provided for both administrators and personnel on developing relations with inmates, and results have started to be seen.

In this context, the directors, deputy directors, psychologists and social workers provisionally appointed to F-type prisons have received a short period of in-service training. The directors, deputy directors, chief prison officers and technicians have also been required to attend a 2-week course of intensive in-service training, comprising courses in first aid and health, human rights and staff-prisoner relations in addition to the usual prison courses.

Permanent staff of F-type prisons are planned to take up their duties after a 6-week course of intensive training and will also receive in-service training.

2. Material conditions of detention and other activities

a. Sincan F-type Prison

Paragraph 18 (Request for information)

The CPT would like to receive detailed information regarding the criteria, which will be used to determine how prisoners will be allocated to multiple or single-person accommodation in the new F-type establishments.

The F-type prisons have been visited by members of the CPT and several other organisations and individuals, both at their construction and service phases. It has been observed that thanks to their physical structure and administration plans, they have the equipment and facilities that will enable prisoners to spend a reasonable part of the day engaged in useful activities without constituting a security threat for the prison. Thus, the high walls of the exercise yards stem from the architectural design of the prison.

In architectural terms these prisons are based on a two-storey arrangement of adjacent units; three walls of the outdoor exercise yards, which are prison's ordinary walls, and the remaining wall is the one separating two adjacent exercise yards. Thus, the height in question therefore is a consequence of the normal structure.

With this type of architectural structure it is not possible to extend the field of vision beyond 10 meters. To do so would entail completely altering the architectural structure of the prison and building it on a larger mass of land with a superstructure covering a broader area. However, it seems impossible for the Ministry of Justice to meet this expenditure.

On the other hand, the construction of lower walls in high-security prisons often leads prisoners to try to escape, and this might result in serious incidents.

In a prison, in which prisoners will spend a reasonable part of the day engaged in useful activities outside their living areas, the fact that the open-air exercise yards are surrounded by high walls, or that the range of vision is 10 metres, is less important than the useful functions this prison offers. Besides, there are many high-security prisons in the world where the range of vision is less than 10 metres and where there are no exercise areas where prisoners are free to enjoy the whole day.

The principles for allocating rooms for the prisoners on admission, and for changing rooms, are mentioned in detail in the circular in Appendix 1.

Paragraph 19 (Recommendation)

The CPT recommends that every effort be exerted to ensure that prisoners held in Sincan F-type Prison, as well as in other F-type establishments, benefit from an improved programme of activities outside their living units, taking into account the remarks in this paragraph. The CPT also notes that such a programme of activities should in principle be offered to all persons placed in such establishments; exclusion of prisoners from the programme on the grounds that they represent a particularly high security risk should be based on a thorough assessment of the individual cases and should be reviewed regularly.

The construction of libraries and indoor and outdoor sports facilities in F-type prisons has been completed, and the planning and designing of workshops and hobby rooms is in progress. In these prisons, inmates are allowed out into the exercise yard outside their rooms from 8 am to 5 pm, that is 9 hours a day - a facility which is allowed in no other prisons in Europe. Moreover, they are allowed to spend a reasonable part of the day in the prison activity areas. Thus, in principle, they will be able to spend a large part of the day outside their rooms. However, it is important that the prisoners should wish to do so and that there should be no abuse of this arrangement by prisoners.

All remand and sentenced prisoners who do not abuse the above-mentioned programmes and do not present a security threat to the prison benefit from these possibilities. The circular in Appendix 1 indicates how those inmates, who are to benefit from these activities, will be selected and defines the criteria for identifying the prisoners who exploit them.

b) Kartal Special Type Prison

Paragraph 25 (Recommendation)

The CPT recommends that facilities for organised activities in Kartal Special Type Prison be improved and that the number of prisoners who benefit from such activities be increased. The provision of a large open-air area where prisoners can take proper exercise on a regular basis and, preferably, play sports, is a particularly high priority.

Furthermore, the CPT recommends that appropriate steps be taken to improve the quality of staff at Kartal Special Type Prison.

This prison, which is used as a remand centre, was built very rapidly on account of the riots and murders organised and perpetrated in particular by terrorist and mafia offenders in other overcrowded dormitory-type prisons in Istanbul, and was brought into use immediately. It was brought into service for reasons of urgency before the social, cultural and sports facilities were completed. However, as the Committee has noted, the prison does have a few limited facilities for activities in the prison. But both for security reasons and pursuant to the legislation in force, detainees cannot be forced to participate in any activity against their will, so that the activities are not yet as efficient as expected.

However, as the Committee has already been informed, the plans for a multi-purpose hall (accommodating 200 people), an outdoor football ground and 6 workshops (accommodating 150 people) have been completed and construction work has started. The full plans are shown in Appendix 2. The above-mentioned facilities will be completed rapidly; the currently limited facilities for activities will be maximised and all remand and sentenced prisoners in this prison will be able to use them. The provisions of the circular in Appendix 1 also apply to this prison. A sum of 777 billion TL has been allocated for the contracts in this project.

The director and deputy directors and those working in the psychiatric and social services unit have been receiving in-service training in Ankara. The supervisory staff of the establishment will also be required to undergo intensive in-service training in Ankara in 2002. As part of the training activities for 2001, this staff will also receive annual in-service training from the chief public prosecutor's office to which they are attached.

c) Bursa E-type Prison

Paragraph 30 (Recommendation)

The CPT recommends that the process of dividing the large dormitories into smaller living units be suspended until such time as it is possible to ensure that the number of prisoners in any given smaller living unit is within that unit's design capacity.

Further, the CPT recommends that when it becomes possible to recommence the conversion programme, the introduction of smaller living units be accompanied by measures to ensure that prisoners are able to spend a reasonable part of the day outside those units, engaged in purposeful activities of diverse nature.

The CPT also recommends that immediate steps be taken at the Bursa E-type prison to ensure that:

- every prisoner has his own bed,**
- every prisoner is offered at least one hour outdoor exercise per day. If necessary, prisoners should be taken to the exercise yard of another unit for that purpose.**

The problem of overcrowding which is seen in the prisons of many Council of Europe member countries is also encountered in our country. This overcrowding is more marked in big cities such as Istanbul, Ankara, Izmir, Bursa and Adana. Law No. 4616 on Conditional Release, Stay of Proceedings and Suspension of Punishment, which came into force at the end of 2000, has solved the problem to some extent, resulting in the release of 23 497 prisoners.

The necessity of accommodating a much larger number of prisoners in a prison designed for 500 inmates is naturally the source of various shortcomings in the prison's physical conditions and health care services as well as in the observation units accommodating new arrivals.

The Prisons Directorate General of the Ministry of Justice has been monitoring the situation in Bursa E-type Prison closely; efforts to remedy the situation have been carried out speedily and partially completed. The statement made by the Bursa E-type Prison governor's office concerning these works was presented to the Committee in the interim report of 2 May. Most of the works described in that statement have been completed; they include the following important features:

- a) the conversion into rooms has been completed in half of the establishment and the tender procedure is under way for the other half. It does not seem possible to postpone these works, since the prison reform must be completed within the planned time-limit. Moreover, the prison is less crowded than it used to be;
- b) The extension of half the observation units and the construction of open-air exercise yards outside these units have been completed; a call for tenders will be issued for the remaining half. The floor space of single rooms have been increased to 10 m², and each one now has a window of 75 x 90 cm through which fresh air and sunlight can enter the room. The sanitary facilities have also been renovated and brought up to adequate standards of hygiene.

The chief public prosecutors' offices concerned have been requested by the circular in Appendix 1 to take the necessary measures to ensure that inmates in all prisons where the conversion to the room system has been realized to spend a certain part of the day to be engaged in purposeful activities.

In addition to the above,

- there are no prisoners in this prison who do not have their own bed.
- A circular issued in 1997 is currently in effect which provides that every prisoner must have at least 1½ hours of outdoor exercise every day. There have been occasional deviations from this principle at times when the prison was crowded beyond its capacity, but there are no problems at the present time.

3. Special Units in Bursa E-type and Kartal Special Type Prisons

Admission-Observation, discipline and segregation sections in Kartal Special Type Prison

Paragraph 34 (Recommendation)

The CPT recommends that immediate steps be taken to ensure that every prisoner in the unit is offered the opportunity to take at least one hour of outdoor exercise per day, regardless of the reason for placement (new arrival, discipline, segregation).

It further recommends that steps be taken to remedy the other shortcomings mentioned in paragraph 33 concerning the observation, discipline and segregation sections in Kartal Special Type Prison and that efforts be made to keep the duration of placement in the unit to a minimum.

We do not share the view of the Committee that inmates of this prison are deprived of the opportunity to take open-air exercise for up to 25 days.

The fact is that all remand and sentenced prisoners in observation and disciplinary cells are given at least an hour and a half of daily open-air exercise under the terms of Ministry of Justice Circular 21-134 of 3.11.1997. Despite this fact, the Ministry of Justice has once again reminded the prison administration of the provisions of that circular and requested them to be more attentive on this point.

Under our prison system, the observation of prisoners is carried out in the observation section of their prisons. According to the regulations on observation and classification centres, the observation period can vary from 1 to 60 days. However, owing to capacity and security problems, this period normally ranges in practice from 1 to 7 days.

Shortening this period further in Kartal or any other prison would prevent prisoners from receiving proper classification and treatment because it would adversely affect their observation, evaluation and classification period, and the objective of sentence enforcement would not be achieved. Compared to Western European countries, Turkey is the country applying the shortest observation period. Any further reduction of this period would have negative results.

The shortcomings in the observation and segregation sections will be assessed in line with available financial means. The beds provided have been changed and both prisoners and staff have been informed that the rooms and toilets must be kept clean.

4. Health-care services

Paragraph 38 (Recommendation)

The CPT recommends that immediate steps be taken:

- **to reinforce nursing staff resources at both Bursa E-type and Kartal special-type Prisons, including by persons who are fully qualified as nurses;**
- **to fill the vacant post of psychiatrist at Bursa E-type Prison and to ensure regular visits by a psychiatrist to Kartal Special-type Prison**
- **to ensure the attendance of a general practitioner at Kartal Special Type Prison.**

Further, steps should be taken to fill all vacant posts in the health-care services of the above-mentioned prisons as soon as possible, in accordance with the circular of 3 November 1997.

Health care staff have been reinforced in Bursa E-type Prison and Kartal Special-Type Prisons.

There are now 3 doctors, 1 dentist and 2 health officers in Bursa E-type Prison, whereas in Kartal Special Prison, which has fewer prisoners, there are 2 doctors, 1 external dentist and 1 health officer.

In both prisons, other members of staff who have knowledge of health care work as assistants, and there is also a psychologist working in each prison.

Paragraph 39 (Request for information)

The Committee would like to receive an update regarding the draft law foreseeing the allocation of additional positions for doctors and health care staff, which was referred to on page 21 of the interim report of the Turkish Government (cf. CPT/INF (99)3) in response to paragraph 141 of the report on the CPT's October 1997 visit (CPT/Inf (99)2).

Furthermore, it would like to receive precise details regarding the number and types of health care posts planned for each F-type prison.

In order to fill all the vacant health, education and other posts in our prisons, authorisation has been requested from the Prime Minister's Office to appoint 2326 external persons for the year 2001. It has furthermore been proposed that about 300 psychiatrist and social worker posts be allocated to the Directorate General of Prisons of the Ministry of Justice, and exchanged against 300 prison officers' posts. Although posts for psychiatrists already exist in prisons, it is difficult to find candidates for appointment since it is not a popular workplace. However, prisoners who need psychiatric treatment are treated in the secure wards of external hospitals by decision of the prison doctor, and, depending on how serious the case is, the psychiatrists in these hospitals can transfer the prisoners to a psychiatric hospital.

Information on the health care posts in the F-type prisons is set out below:

Sincan F-type Prison: 4 doctors, 1 dentist, 2 health officers

Edirne F-type Prison: 2 doctors, 1 external dentist, 2 health officers

Tekirdağ F-type Prison: 4 doctors, 1 external dentist, 3 health officers

Kocaeli F-type Prison: 3 doctors, 1 dentist, 3 health officers.

Paragraph 41 (Recommendation)

The CPT recommends that a personal and confidential medical file be opened for each prisoner, containing diagnostic information as well as an ongoing record of the prisoner's state of health and of his treatment, including any special examinations he has undergone. In the event of transfer, the file should be forwarded to the doctors in the receiving establishment.

Information was requested from the Bursa E-type and Kartal Special Type prisons on the keeping of personal medical files for which provision is made in the circular of 3 November 1997, and it was stated in the replies received that a medical file was kept for every prisoner. It was understood, however, that there was a misunderstanding regarding the content of those files. In the above-mentioned prisons, it was apparently thought that the hospital patient cards would fulfil this function, that every prisoner had a patient card and that, since the files are generally kept in the hospitals where the prisoners are treated, it was not deemed necessary to keep a separate prison file. A new circular will be issued to all prisons and the entire organisation will be warned of the importance of this issue.

The medical files of prisoners who are transferred from the establishment are forwarded after the transfer, and prisoners' observation files are sent to the new prison along with the prisoners.

Paragraphs 42 and 43 (Recommendation)

The CPT recommends that appropriate steps be taken to ensure that paragraphs 3 and 4 of the circular of 6 May 1999 are in compliance with the practice.

It is alleged in the report that in the Kartal Special Type Prison, requests to consult a doctor require the director's approval. The objective of this practice, however, is not "to make the request to consult a doctor subject to the governor's approval", but to inform the most senior officer in the institution of the statutory reason why a particular prisoner is being taken out of his room and where he is being taken. There is no question of the nature of the illness or the treatment being mentioned. The director only knows that the person in question is being taken out of his room because he is ill. This is what is meant by confidentiality in paragraph 4 of the Circular of 6 May 1999.

Moreover, the person responsible for all security issues in the prison has the right and the authority to be informed of such developments. Besides, the prison officers responsible for security have to unlock the door of the room of the person who is ill and take him out of his room. The health care personnel do not have the authority - nor it is their duty - to do so.

Paragraph 44 (Recommendation)

The CPT recommends that any signs of injuries or scars observed on admission should be fully recorded, together with any relevant statements by the prisoner and the doctor's conclusions. It recommends that the same approach should be followed whenever the prisoner is medically examined following a violent episode in the prison, and if so requested by the prisoner, that the doctor should provide him with a certificate describing his injuries.

The first examination of new arrivals is carried out by the prison doctor and any signs of injury or other findings are recorded in the report. The doctor's conclusion regarding the causes of the injury is also recorded in the report and the relevant authorities are informed of it. According to medical ethics, the prison doctors and any other doctors must write down whatever they see, that is, they do not have to confine their report to the prisoner's statements alone. To give an example, the doctor has to report on any marks of beating, but he is not in a position to decide whether this has been caused by a fight or torture or in any other way; he gives a medical opinion, but the issue will be decided by the judicial authorities investigating this matter. Thus, the doctor does not have the authority or the responsibility to take a statement from the inmate or to take a decision on that basis. For this reason, we do not agree with the Committee's recommendation on this point.

Prisoners are given a medical report describing their injuries if they so request.

Paragraph 44 (Request for information)

The CPT notes that screening procedures for certain transmissible diseases, such as hepatitis, are underdeveloped and requests the comments of the Turkish authorities on this question.

As regards contagious diseases, regular screenings and vaccinations are carried out in our prisons as part of general Ministry of Health practices. Where symptoms of hepatitis are detected during the initial examination of a newly arrived prisoner, the necessary steps are taken immediately. General hepatitis screenings are also carried out in the prisons.

Paragraph 45 (Recommendation)

The CPT reiterates the recommendation made in previous visit reports that mentally ill prisoners be transferred without delay to an appropriately equipped and staffed psychiatric facility.

It was understood that the prisoner mentioned in paragraph 45 of the CPT report who was seen in Kartal Special-Type Prison and found to be in need of psychiatric treatment was transferred three times to Bakırköy Psychiatric Hospital. After keeping him for several days each time, the hospital decided he did not need to stay there any longer and he was sent back to the prison. In view of the overcrowded conditions there he agreed to stay in the segregation unit in order to avoid any security problems. He was released by the court some time later.

A Commission on Sentence Enforcement Law, composed of high court judges, academics and experts, has been established to reorganise the prison system applied to remand and sentenced prisoners along modern lines, to grant the right to object to disciplinary offences and penalties before a judge, to give pride of place to judicial review in enforcement law, to prevent prisoners who have served their sentences from being excluded from society, to define principles for aftercare with a view to helping them find a job or continue their education after their release and to establish a prison system based on contemporary standards. The Commission's work is in progress; it will include re-assessing the rights and duties of remand and sentenced prisoners in prison, especially the right to health care, in the light of the United Nations "Minimum Standard Rules for the Correction of Offenders" and Recommendation No. (87) 3 (the European Prison Rules) of the Committee of Ministers of the Council of Europe.

5. Role of the Gendarmerie in relations with prisoners

Paragraph 47 (Recommendation)

The CPT recommends that the adoption of legislative amendments designed to transform the work of the Gendarmerie in relations with prisoners from a "public order" to a "judicial" duty be treated as a matter of priority.

The necessary adjustments have been made in the new draft Law on Sentence Enforcement and the draft Law on the Organisation and Duties of the Prisons Directorate regarding the transformation of the work performed by the Gendarmerie - which is responsible for the external security of prisons and is attached to the Ministry of the Interior - from a "public order" to a "judicial" duty. In practice, however, there are fewer problems than in the past. Pursuant to Law No. 4483 on Proceedings against Civil Servants and other Public Officials, which came into force on 4 December 1999, the judicial procedures in respect of these persons have been speeded up, the authorisation to try them is given within 30 days by the provincial or district governor, and an objection to the decision may be filed with the public prosecutor or the relevant administrative court.

Paragraph 48 (Comment)

The CPT trusts that the provision designed to apply the Committee recommendation that intervention by law enforcement agencies in prison disturbances take place in the presence of an authority which is fully independent of both the law enforcement agency and the prison, will soon become legally binding.

The law enforcement agencies, which intervene in prison riots, are not attached to the Ministry of Justice but to the Ministry of the Interior. The chief public prosecutor's office representing the Ministry of Justice therefore acts as an independent observer. On the other hand, under the draft Law on Prison Monitoring Boards, which is currently before the GNAT, prisons will be opened to supervision by boards composed of impartial civilians. Three articles of the bill have been debated in the General Assembly of the GNAT so far, and the entire bill is expected to be debated and passed and to come into force soon. Once this law is in force, there will be nothing to prevent the civilian monitoring boards from being present in the prison during any intervention, since the law empowers them to enter prisons whenever they consider it necessary.

On the other hand, work is continuing on the draft Law on the Organisation and Powers of the Prisons Directorate with a view to solving problems which arise in practice, ensuring that the various developments in the human rights field stemming from international documents and court decisions are reflected in the prison system and organising prisons in line with a modern sentence enforcement system, taking account of the legislation and regulations on prison establishments and prison systems in developed countries.

Paragraph 49 (Recommendation)

The CPT recommends that steps be taken to ensure that searches in Kartal Special Type Prison, and in all prisons in general, are always performed by prison staff, and that requests for the assistance of the Gendarmerie are kept to a strict minimum.

Kartal Special Type Prison is a remand prison where the most advanced organised mafia criminals are accommodated. The staff of this prison carry out their duties under great security risks, since these mafia groups are very well organised outside the prison and occasionally attempt assassinations of prison staff. They are able to intimidate staff during searches and ensure in this way that prohibited objects are not in access. The assistance of the gendarmerie is therefore requested so that searches can be conducted properly. This practice is beneficial for the security of all prisoners. However, requests for assistance from the gendarmerie are kept to a minimum.

In connection with searches and prisoner transfers, gendarmerie personnel are given training courses in human rights by the Gendarmerie General Command in the Gendarmerie Training Schools, and in-service training on the same subject by the Ministry of the Interior.

Paragraph 49 (Comment)

The CPT notes that it would be more preferable for searches at the point of entry to a prison to be carried out by prison staff rather than by members of the Gendarmerie.

It is not against the law for the searches at the entrance to a prison be carried out by the gendarmerie personnel responsible for external security, and the searches inside to be conducted by the prison staff. In practice, terrorists or mafia criminals, their families and sometimes even their lawyers are able to bring forbidden objects into the prison. But since threats or blackmail by terrorists or members of the mafia do not have any effect on the gendarmerie, there is sometimes friction between them. Many members of criminal organisations and their relatives are caught red-handed while bringing forbidden objects into prison; 32 lawyers representing these persons have been convicted of bringing forbidden objects or organisation documents into prisons, and investigations concerning other lawyers are pending in the courts.

Paragraph 50 (Request for information)

The views of the Turkish authorities are requested about the proposal to bring together under the authority of one entity, namely the prison administration, all staff responsible for prison security, both internal and external.

Both the Ministry of Justice and the Gendarmerie Central Command wish to put an end to the "dual system". However, the Ministry of Justice has concerns about several issues here. If the external protection duty is withdrawn from the gendarmerie, 16 000 permanent members of staff will have to be recruited and trained, and this is a lengthy and costly process. For this reason, many small district prisons must first be closed and regional prisons built in order to reduce the number of prisons to a reasonable level; technological facilities for external protection must then be used in those prisons in order to reduce the need for human labour to a minimum. This means a process that will take about 10 years. The fact that during the "Return to Life" operation terrorist organisations set fire their own members in prison and that large numbers of prohibited objects were found in the prisons has sparked a debate as to whether it would really be appropriate for the gendarmerie to withdraw from its external protection duties.

6. Other issues

a) Contact with the outside world

Paragraph 51

The CPT stresses the need for prisoners to maintain reasonably good contact with the outside world, and points out that the recommendation already made in paragraph 14 (the bill amending Article 16 of the present 1991 Law Against Terrorism) applies equally to this aspect of the draft law.

As noted in paragraph 14, the Law amending Article 16 of the Law Against Terrorism (no. 3713) was published in the Official Gazette and came into force on 1 May 2001. The text of the above-mentioned law has been forwarded to the CPT via our Permanent Delegation to the Council of Europe.

The above-mentioned amendment makes it possible for persons detained for or convicted of offences under this law to receive open visits. Paragraph 52 gives detailed information on this issue.

Paragraph 52 (Comment)

The Turkish authorities are invited to move towards more open visiting arrangements for prisoners.

Under the Law amending Article 16 of the Law Against Terrorism, the right given to ordinary prisoners to have open visits with relatives on religious and national holidays and with their spouses and children once a month has now also been granted to members of terrorist organisations and organised crime rings. Under this amendment there are no more remand or sentenced prisoners who do not have the right to open visits. Further extension of open visits will only be possible when the dormitory system has been completely done away with and discipline and authority have been established in prisons. This is one of the Justice Ministry's plans for the future.

Under the modern conception of sentence enforcement, the fact that remand and sentenced prisoners are deprived of their freedom is in itself a punishment and the aim is to treat them in a manner compatible with human dignity, to prevent them from committing further offences and to return them to society as useful individuals. Taking this idea as a point of departure, the requirements of a modern prison system include providing treatment (rehabilitation) programmes which will facilitate prisoners' adjustment to society after their release by preventing criminal conduct and bringing life in prison closer to life in society, thus eliminating the potentially negative effects of the prison atmosphere on the personality of offenders.

One of the necessary and most important means of educating and rehabilitating prisoners is their contact with the outside world, of which visits are an important part. However, owing to the increase in the number of prison inmates in the past few years, remand and sentenced prisoners are sometimes transferred to various prisons, with the result that the great majority of prisoners are accommodated outside the areas where they live.

It was for that purpose that the Regulations amending the "Prison Administration and Sentence Enforcement Regulations" were published in the Official Gazette on 27 April 2001 and brought into force. Our Permanent Delegation to the Council of Europe has already provided the CPT with information on this amendment, under which sentenced prisoners are now able to receive news of their families by communicating with them by telephone.

In this respect, an Article 155/A has been added after Article 155 of the Regulations, which bears the heading "Control of communications", with a view to encouraging good conduct and alleviating tension among prisoners, enabling them to maintain social ties with their families and ensuring order and security in prisons, as is the case in all prisons in Western Europe; this additional article allows remand and sentenced prisoners to hold telephone conversations with the relatives listed in Article 152 of the Regulations. It provides that prisoners may exercise this right once a week, that the administration will keep the relevant records and that telephone cards will be sold in the prison shop. Prisoners subject to disciplinary penalties - with the exception of reprimand - will not enjoy the right to make telephone calls as long as those penalties apply.

Furthermore, Article 5 of the Regulations is amended, redefining closed prisons to take account of present-day conditions and the prisons' physical structure.

Visits to Remand and Sentenced Prisoners:

Article 152. (Amended: 83/6920 - 2.8.1983) Remand and sentenced prisoners may receive visits on the days specified and according to the principles laid down in the Regulations. (Amended 2nd sentence: 94/5382, 29 June 1994) Visits may be made one day a week in closed, open and semi-open prisons, prisons for minors and reformatories for minors. (Amended last sentence: 89/14894, 19.12.1989) A remand or sentenced prisoner may be visited by his/her spouse, children, grandchildren, mother, father, grandfather, grandmother, siblings, uncle, aunt, father-in-law, mother-in-law, guardian, trustee, representative, lawyer, nephews and nieces, brother-in-law, sister-in-law, sister-in-law's husband, brother-in-law's wife, daughter-in-law or son-in-law.

b) monitoring process

The CPT invites the Turkish authorities to take account of the remarks in paragraph 54 in the course of the further examination of the draft Law on prison monitoring boards and in the implementation of that law as soon as it has been adopted.

The CPT's remarks in paragraph 54 were evaluated by the commission in the course of its work on the Draft Law on Prison Monitoring Boards.

The 2-monthly visits introduced under Article 7 of the draft law on Prison Monitoring Boards have been laid down as the minimum frequency for visits. The same article empowers monitoring boards to visit prisons whenever they consider it necessary. Work has almost been completed on a programme for determining the number of centres where monitoring boards are to be set up in order to enforce the law if the bill is passed.

As mentioned in paragraphs 14 and 48, the draft law is currently on the agenda of the GNAT; three articles have already been debated; the entire law is expected to be debated and passed and to come into force soon.

B. Police

Paragraphs 55, 56 and 57

Regarding the matters raised in paragraphs 55, 56 and 57 (treatment of persons in police custody in Istanbul), the following has emerged from the investigations carried out by the Ministry of the Interior:

- regarding the methods applied by the Anti-Terror Department at Istanbul Police Headquarters during the interrogation of suspects in custody and the alleged behaviour towards a woman, concerning which a medical report was alleged to have been drawn up, no material evidence supporting these allegations has been found; members of illegal terrorist organisations have made these allegations in order to undermine the law enforcement agencies;
- in interviews held by members of the delegation with persons taken into custody by the Narcotics Department of Istanbul Police Headquarters these persons made no complaints of ill-treatment; the allegations to that effect made by those persons in court and the medical reports issued were unfounded and slanderous lies; these persons inflicted injuries on themselves before appearing in court (by scratching or scraping with a hard object) in order to create the impression that they had been interrogated under torture and to denigrate the success of the Narcotics Police.

The law enforcement agencies, which act against crime and criminals under the powers conferred on them by law, are monitored by their superiors, who carry out checks with or without prior notice. The necessary legal measures are taken against those whose attitude or behaviour is found to be improper.

In this connection,

1. in the case of E. Y., who was apprehended and taken into custody on a charge of theft at his place of work on 06.04.1999, claimed injury resulting in loss of 7 days' work, post-traumatic stress disorder and slight depression and filed a complaint, a judicial investigation has been opened in respect of three police officers by the Bakırköy Chief Public Prosecutor's Office (dated 21.02.2001 and registered under no. Hz.1999/17891), and an administrative investigation has been started after approval by the Küçükçekmece District Governor's Office dated 12.02.2001;
2. in the case of A. O., who was apprehended and taken into custody on 19.05.2000 on various charges of theft, criminal proceedings have been instituted before the Küçükçekmece Criminal Court on the basis of the medical report from Bakırköy State Hospital dated 20.05.2000, which states that during his period of custody (until 21 May 2000) he was subject to ill-treatment in the form of beatings on his hands and feet, and of indictment no. Hz.2000/11600 of 21.05.2000; an administrative investigation has been opened after approval by the Küçükçekmece District Governor's Office dated 20.11.2000;
3. in the case of S. A., who was taken into custody on 21.04.2000 on charges of theft and allegedly beaten by seven police officers, criminal proceedings were instituted before the Küçükçekmece Criminal Court on 12.07.2000 on the basis of indictment no. Hz.2000/8920 of the Küçükçekmece Chief Public Prosecutor's Office, dated 12.07.2000, and an administrative investigation has also been opened on that basis;
4. in the case of C. K. and S. K., who were taken into custody on 29.02.2000 on charges of theft and alleged that they were ill-treated by the police, a judicial investigation concerning three police officers has been opened on the basis of indictment no. Hz.2000/5440 of 10.05.2000 issued by Küçükçekmece Chief Public Prosecutor's Office and sent to the Küçükçekmece Criminal Court; at the close of the administrative investigation opened on the basis of this ongoing investigation the Disciplinary Board of the Provincial Police issued a decision (no. 2001/2060 of 27.10.2000) ruling that "there is no reason to assign punishment";
5. in the case of E. K. and Ö. K., who were apprehended and taken into custody on charges of theft on 29.11.1999 and alleged that they each lost 3 days of work due to the injuries sustained as a result of ill-treatment during their period of detention, criminal proceedings (dated 01.05.2000 and registered under no. Hz.1999/24830) have been instituted by the Küçükçekmece Chief Public Prosecutor's Office; at the close of the administrative investigation opened on the basis of these ongoing proceedings, the Disciplinary Board of the Provincial Police issued a decision (no. 2001/61 of 12.01.2001) ruling that "there is no reason to assign punishment";

6. in the case of Z. Y., who was apprehended on 01.12.1999 on charges of theft, criminal proceedings have been instituted by the Küçükçekmece Chief Public Prosecutor's Office, on the basis of indictment no. Hz.2000/9785 of 28.02.2000 sent to Bakırköy Assize Court, against one police officer alleged to have tortured him by beating him on the hands with a truncheon and administering electric shocks on various parts of his body; at the close of the administrative investigation opened on the basis of these ongoing proceedings the Disciplinary Board of the Provincial Police issued a decision (no. 2001/2048 of 27.10.2000) ruling that "there is no reason to assign punishment";
7. in the case of E. A., who was apprehended and taken into custody on charges of theft on 10.01.2000, criminal proceedings (no. Hz.2000/1180 of 26.01.2000) have been instituted before the Küçükçekmece Criminal Court against two police officers alleged to have beaten him; at the close of the administrative investigation opened on the basis of this ongoing investigation the Disciplinary Board of the Provincial Police issued a decision (no. 2000/1949 of 23.10.2000) ruling that "there is no reason to assign punishment";

Paragraph 59 (Recommendation)

The CPT, referring to the Prime Minister's Circular of 25 June 1999, recommends that the complete and accurate implementation of the monitoring process be treated as a matter of priority.

The CPT also recommends that the information set out in paragraph 56 to 58 be forwarded to officials responsible for carrying out checks and inspections in police establishments in Istanbul and, in particular, to public prosecutors responsible for monitoring the situation in the Anti-Terror Department and Narcotics Section at Istanbul Police Headquarters.

This proposal is being examined. The CPT will be informed of the outcome of the assessment.

Paragraph 59 (Request for information)

The CPT would like to receive on a regular basis the three-monthly conclusion-reports prepared under guidelines of the monitoring process.

There is already a continuous flow of information to the CPT. Efforts will of course be made to provide the information requested by the CPT promptly - even at irregular intervals.

Paragraph 60 (Request for information)

The CPT would like to receive, in respect of the year 2000, information on the number of cases brought under Articles 243 (torture) and 245 (ill treatment) of the Criminal Code, the number of acquittals and convictions and, as regards the latter, full details of the actual sentences finally imposed.

The CPT would also like to receive an account of legal proceedings and other measures taken in the light of recent reports by the Human Rights Inquiry Commission of the Grand National Assembly of Turkey concerning torture and ill treatment by law enforcement officials.

Furthermore, the CPT would like to receive an update as regards the legal proceedings instituted against police officials assigned to the Anti-Terror Department at Istanbul Police Headquarters, following the death of Süleyman Yeter on 7 March 1999 while in the custody of that Department.

The penalties involving deprivation of liberty under Articles 243 (torture) and 245 (ill treatment) of the Turkish Criminal Code (No. 765), have been increased by Law no. 4449 of 26.8.1999. The reasons for this amendment are emphasised as follows in the explanatory memorandum of the Law:

"In Article 1, paragraph 1 of the "United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", the term "torture" is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." But it is specified that this does not include "pain or suffering arising only from, inherent in or incidental to lawful sanctions".

Article 17 of the Turkish Constitution provides that "No one shall be subjected to torture or ill-treatment or to inhuman or degrading punishment or treatment."

It was deemed necessary to amend Articles 243 and 245 of the Turkish Criminal Code in order to prevent torture and ill-treatment, which are considered crimes against humanity in the Constitution and in international legal instruments on human rights, as well as Article 354 of the same Code in order to prevent cover-ups of such crimes.

In this context, the definition of the crime of torture in Article 243 has been extended and the penalties have been increased. Penalties pursuant to Article 245 have likewise been increased.

With the amendment to Article 354 of the Turkish Criminal Code, penalties have also been increased, and the forgery of a document to cover up or destroy evidence of a crime, torture or other cruel behaviour is considered as an aggravating circumstance.

With the new deterrent provisions, the law will provide more effective protection of human rights."

With regard to the death in custody of Süleyman YETER, at the Istanbul 6th Assize Court hearing held on 12.03.2001, the court decided to release one of the police officers arrested, E. E., and to continue the detention of M. Y.; the hearing was adjourned until 24.04.2001; as to Deputy Police Superintendent A. O., who is standing trial in the same court case, it has been established that he has absconded. The CPT will continue to be informed of any further developments in this case.

Paragraph 61 (Recommendation)

The CPT recommends that all persons deprived of their liberty by the law enforcement agencies, including persons suspected of offences falling under the jurisdiction of the State Security Courts, be granted as from the outset of their custody, the right of access to a lawyer. The CPT recognises that in order to protect the legitimate interests of the police investigation, it may exceptionally be necessary to delay for a certain period a detained person's access to a lawyer of his choice; however, in such cases, access to another independent lawyer should be arranged.

The CPT recommends that the officials responsible for carrying out controls and inspections under the previously mentioned compliance monitoring procedure be instructed to pay particular attention to whether persons suspected of collective offences falling under the jurisdiction of State Security Courts are being informed of their right to have access to a lawyer after the first four days of their custody and are being placed in a position to exercise that right effectively.

Article 136 of the Code of Criminal Procedure (Law No. 1412) formerly read as follows:

"The accused shall have access to the assistance of one or more defence lawyers at every stage of the investigation.

If the accused has legal representatives, they too may choose a lawyer for him."

This was amended by Article 14 of Law No. 3842 of 18.11.1992 entitled "Law amending several articles of the Code of Criminal Procedure and the Law on the Establishment and Trial Procedures of State Security Courts" and now reads as follows:

"The apprehended person or the accused may take advantage of the assistance of one or more defence lawyers at every stage of the investigation. If there is a legal representative, he too may choose a lawyer for the apprehended person or the accused. During the interrogations carried out by a senior law enforcement officer and his subordinates, only one defence lawyer may be present. During procedures conducted by the public prosecutor's office, this number shall not exceed three.

The right of the lawyer to communicate with the apprehended person or the accused, and to be present and provide him with legal assistance during the taking of a statement or during interrogation shall not be impeded or restricted at any stage of the investigation, including investigations carried out by the police."

Article 135 of the Code of Criminal Procedure formerly read as follows:

"At the beginning of the interrogation, the accused shall be informed of the offences with which he is charged. He shall be asked whether he wishes to respond on this point.

Interrogation shall be in the accused person's favour and shall not hinder his communication of any evidence.

During his first interrogation, the accused shall be asked to state his identity and give details of his personal circumstances."

This has been amended by Article 12 of Law No. 3842, and now reads as follows:

"During the taking of statements by a senior law enforcement officer and his subordinates or by a public prosecutor, and during questioning by a judge, the following rules shall apply:

1. The identity of the person giving the statement or undergoing interrogation shall be established. The person giving the statement or undergoing interrogation shall answer the questions pertaining to his identity truthfully.
2. The offence with which he is charged shall be explained to him.
3. He shall be informed that he has the right to appoint a defence lawyer, that if he is unable to appoint a lawyer, he may request the Bar Association to appoint a lawyer for him and that he may benefit from his legal assistance; it shall be explained that, if he so wishes, the lawyer may be present - without power of attorney being sought - while a statement is taken or the accused is interrogated, provided that this does not delay the investigation. The accused shall be informed that he may notify the relative of his choice that he has been apprehended.
4. He shall be informed that he has the right to refrain from making a statement concerning the offence with which he is charged.
5. He shall be reminded that he may request the gathering of concrete evidence in order to dispel the suspicions against him, and he shall be given the opportunity to disprove any grounds for suspicion against him and to present any facts in his favour.
6. Information shall be obtained on the personal circumstances of the person making a statement or undergoing interrogation.

7. The statement or interrogation shall be recorded in a report which shall include the following items:
- a) the date and place where the statement or interrogation procedures are being carried out,
 - b) the names and titles of all of the persons present at the taking of the statement or interrogation, and the identity of the person making a statement or undergoing interrogation
 - c) whether or not the above procedure has been followed during the taking of the statement or the interrogation, and, if not, the reasons for this
 - d) that the content of the report has been read by the person making the statement or undergoing interrogation and by his lawyer and that they have signed it
 - e) if they refuse to sign, the reasons for this."

Article 144 of the same Code previously read as follows:

"An accused person in detention may speak to and communicate with his lawyer at all times.

Until a public prosecution has been brought up, the judge may prohibit a suspect from being informed about matters which, by law, he is not permitted to know about. Depending on the reason for his arrest, and until a prosecution has been brought, if necessary, the judge himself or an appointed deputy or a delegated judge may be present during the accused person's conversations with his lawyer."

This has been amended by Article 20 of Law No. 3842, and now reads as follows:

"The apprehended person or the accused may speak with his defence lawyer, without power of attorney being sought, at all times and out of the hearing of other parties. The correspondence between these persons and their lawyers shall not be inspected."

Article 31 of Law No. 3842 provides as follows:

"The provisions of Articles 4,5,6,7,9,12,14,15,18,19,20 and 22 of the present Law shall not apply in the case of offences falling under the jurisdiction of the State Security Courts. Where these offences are concerned, the provisions of the Code of Criminal Procedure (Law No. 1412) shall apply in the form which was in force prior to the present amendment."

On the other hand, Article 16, paragraph 4 of Law No. 2845 of 16.6.1983 on the "Establishment and Trial Procedures of State Security Courts" entitled "Apprehension, arrest and access to a lawyer", reads as follows: "An accused person under arrest may communicate with his lawyer at all times. Once the judge decides to prolong the custody period, the same provision shall also apply to the person in custody."

In view of the above-mentioned provisions, the fact that in the case of State Security Court offences the "Regulation on Apprehension, Police Custody and Interrogation" contains procedures parallel to the provisions which were applicable prior to the amendments in Law No. 3842 is consistent with the mandatory provisions of Article 31 of Law No. 3842 and of Article 16, paragraph 4, of Law No. 2845.

Since offences falling under the jurisdiction of the State Security Courts are by definition offences against the security of the State, the reason why provisions on trial procedures specific to these offences are included in domestic law is that they fall within the scope of a "public emergency threatening the life of the nation" within the meaning of Article 15 of the European Convention on Human Rights. In this respect, we consider that the above-mentioned provisions of the "Regulation on Apprehension, Police Custody and Interrogation" are consistent with the European Convention on Human Rights.

Paragraph 61 (Request for information)

The CPT would like to receive the comments of the Turkish authorities, in connection with the matters raised in paragraph 61, on the question of persons suspected of State Security Court offences informing their relatives of their situation.

The restriction of the right of a person suspected of a State Security Court offence to inform relatives of his situation is a measure aimed entirely at shedding light on the offence. It is deemed appropriate to maintain this rule as it stands because of the possibility of acts such as altering or destroying evidence and attempts to change witnesses' statements or to force witnesses to abstain from giving evidence, and in order to put an end to acts connected with or prolonging the offence or to prevent accomplices from absconding.

Paragraph 62 (Recommendation)

The CPT recommends that the possibility to delay exercise of the right to have the fact of one's custody notified to a relative be much more limited.

The necessary care is being taken to ensure that this will not happen.

Paragraph 64 (Recommendation)

The CPT recommends that Article 10 of the 1998 Regulation on Apprehension of 1998, Police Custody and Interrogation be amended so as to stipulate clearly that medical treatment of persons in police custody:

- **must in all cases be conducted out of earshot of law enforcement officials;**
- **must be conducted out of sight of law enforcement officials, unless the doctor concerned requests otherwise in a particular case.**

It is requested that Article 10 of the Regulation on Apprehension, Police Custody and Interrogation, which reads "Where this is not prejudicial to the sound conduct of the investigation or to the security of the doctor or the suspect or accused, the doctor and the person undergoing examination shall be allowed to remain alone", be amended as suggested in the report; and in paragraph 66 it is stated that "The procedure whereby the forensic examination form is forwarded to the relevant authorities should also be reviewed in order to ensure that the form is not read by law enforcement officials escorting the person being medically examined", and expectations are expressed on this point.

We have no objection to amending Article 10 as described in paragraph 64 and thus clarifying the existing rules. However, it is necessary for the law enforcement agencies to receive a copy of the forensic examination form mentioned in paragraph 66. They must be allowed to have a copy of this report for the purpose of medical examination procedures and of invalidating any unjustified accusations of ill-treatment made against the police. If the law enforcement agency carrying out the investigation does not receive a copy of the documents issued in connection with medical procedures, problems may arise at a later stage and allegations may also be made against the agency. This issue must therefore be assessed not only from the point of view of the person undergoing the medical examination but also from the point of view of any accusations which may be made against the law enforcement agencies.

The Regulation on Apprehension, Police Custody and Interrogation was brought into force with a view to applying the provisions of the law as effectively as possible and preventing wrongful practices by officers. The Regulation includes provisions concerning custody procedures and the monitoring of custody and interrogation facilities, and in order to ensure that this monitoring is carried out in such a way as to reveal wrongful practices, states how medical report records are to be kept and provides that medical reports must be kept in the custody unit ready for inspection.

The provisions of the last paragraph of Article 10 aim to ensure the security of the doctor and persons close to him. In normal cases where security measures are not necessary, the doctor will of course be alone with the person to be examined.

Paragraph 65 (Recommendation)

The CPT recommends that steps be taken to ensure that the circular issued by the Ministry of Health on 20 September 2000 is complied with by all doctors called upon to treat persons in the custody of the law enforcement agencies and that, when necessary, such doctors receive appropriate training for the use of the general forensic medical examination form.

The relevant authorities are showing the necessary concern on this issue. The general forensic medical form is distributed to all units.

Paragraph 66 (Recommendation)

The CPT recommends that all necessary steps be taken to ensure that doctors are not subjected to any interference in relation to their task of treating persons in the custody of the law enforcement agencies and states that implementation of the recommendation already put forward in paragraph 64 is one of the steps required in this context. The precise procedure whereby the forensic examination form is forwarded to the relevant authorities should also be reviewed, in order to ensure that the form is not read by law enforcement officials escorting the person undergoing medical examination.

The relevant authorities are showing the necessary concern over this issue.

Paragraph 67 (Request for information)

The CPT would like to receive updated information on the Turkish Government's participation in the Council of Europe's programme "Police and Human Rights 1997-2000" and in the reports discussed in this context.

A conference on "Police and Human Rights, Beyond 2000" was held in Strasbourg on 11 and 12 December 2000 to discuss the activities completed under the Council of Europe's "Police and Human Rights Programme 1997-2000" and the activities are planned for the future.

Immediately after that conference, a meeting was held in Strasbourg on 13 and 14 December 2000 to discuss projects, which might be carried out by the General Directorate of Security in cooperation with the Council of Europe.

As a result of this meeting, owing to similarities between the project proposed by the Council of Europe for training the trainers and the project prepared and proposed by the General Directorate of Security for training the trainers, these two projects were amalgamated and entrusted to the Council of Europe Secretariat. The Secretariat is now expected to appoint an expert to guide these activities and send him or her to Turkey. The Secretariat has accepted this invitation in principle.

Paragraph 68

The CPT believes that detention facilities in the Narcotics Section at Istanbul Police Headquarters need to be improved. It points out that the situation in the Organised Crime Section, which has similar features, could serve as a model.

The CPT recommends once again that the relevant amendments be made and that anyone held overnight in custody be provided with a mattress.

Further, with regard to certain allegations received by its delegation, the CPT recommends that officials responsible for carrying out controls and inspections pay particular attention to whether persons in detention are being granted access to toilet facilities without delay and offered food at appropriate intervals.

The CPT regrets that persons held in police custody for up to 7 days are still not being offered outdoor exercise, and reiterates that persons held for extended periods (24 hours or more) must be offered outdoor exercise on a daily basis as far as possible.

The necessary measures have been taken as far as possible.

Paragraph 69

The CPT underlines that the facts found during the July 2000 visit show that improvements are continuing to be made to the design and equipment of interrogation facilities, but that the practice of directing spotlights on the person interrogated seems highly resistant to change. The CPT notes that different technical justifications advanced for the presence of the spotlights proved on further examination to be fallacious, and that dazzling criminal suspects with bright lights is a method, which must finally be consigned to history.

The CPT notes that Ministry of the Interior officials assured the delegation that it had been decided to remove spotlights from interrogation rooms, and recommends that officials responsible for carrying out controls and inspections under the monitoring procedure verify that this has been done.

The Committee may be assured that the above-mentioned recommendation will be duly evaluated.

APPENDIX 1

MINISTRY OF JUSTICE

Prisons Department
B.03.0.CTE0.00.00.

No : Ks/11 V :RD :Ter.Hük

ANKARA

Subject: Amendment to the Anti-Terrorism Law

21.05.2001

TO: ... CHIEF PUBLIC PROSECUTOR'S OFFICE

Paragraphs 2 and 3 of Section 16 of Anti-Terrorism Law No.3713 of 12.04.1991 have been amended as follows by the Law Amending a Section of the Anti-Terrorism Law, which came into force on publication in issue no. 24393 of the Official Gazette dated 05.05.2001.

“Prisoners in these institutions, grouped according to the offences they have committed, their behaviour while in prison and their interests and aptitudes, shall participate, to the extent that this does not pose a security threat and as part of rehabilitation and education programmes prepared specifically for them, in activities such as education, sport, vocational training, work centre activities and other social and cultural pursuits. The duration of such programmes and the number of participating prisoners shall be determined in accordance with the specific nature of each programme, the security situation and the resources available to the institution. In the case of prisoners for whom rehabilitation and education programmes are observed to yield results contrary to those for which they were intended, these arrangements may be terminated or modified as necessary. Prisoners subject to disciplinary sanctions other than reprimands shall not be entitled to receive open visits until the lifting of such sanctions.

Prisoners in these institutions who have served at least one third of their sentence with good behaviour or are covered by the 25 March 1988 Act (No. 3419) on Provisions applicable to Certain Offenders and its amendments may be transferred to other penal institutions.”

The implementing regulations governing the amendments introduced by Law No.4666 Amending a Section of the Anti-Terrorism Law are set out below.

1. Participation of prisoners in education, sport, vocational training, work station activities and other social and cultural activities as part of rehabilitation and education programmes shall be based on the appended “Principles governing access to common living areas, work stations and workshops in closed prisons”. Implementation shall be based on the principles in question.

However,

- a. If the establishment has no psychologist or social worker, the Selection Board shall be composed of the prison governor, deputy governor, doctor, teacher and chief prison officer; if one of these is missing, the board shall meet with the available members. In establishments where there is no psychologist or social worker and it is therefore impossible to set up a psycho-social welfare unit, one of the deputy governors with training in the social sciences in particular, and the doctor and teacher if there are any, shall be assigned the unit's duties. The necessary documents and reports shall be drawn up by these officials.
- b. In establishments lacking a governor and deputy governors, the Selection Board's duties shall be performed by the chief public prosecutor's office and the psycho-social welfare unit's duties by the administrative officer or the chief prison officer in charge.
- c. If the establishment lacks either an indoor or outdoor sports area, a multi-purpose hall, a day nursery, a library, work stations or workshops, or several of these, sports, social and cultural activities and work shall be performed in the available areas. If no such areas are available, those parts of the establishment which are considered suitable, as far as possible, shall first be fitted out for activities of this type.
- d. Prisoners subject to the disciplinary penalty of solitary confinement shall, after undergoing their penalty, be assessed by the Selection Board as regards their participation in education, sport, vocational training, work station activities and other social and cultural activities; those receiving other disciplinary penalties shall be assessed regardless of whether they have undergone their penalty.
- e. Prisoners who are to have access to indoor and outdoor sports areas, multi-purpose halls, day nurseries, libraries, work stations and workshops shall be divided into groups by the Selection Board according to their offences, behaviour in prison, interests and aptitudes; the size of each group shall be determined by the prison administration, with security conditions in mind.
- f. The functioning of the activity programme shall be monitored by the control centre; in establishments that have no control centre it shall be monitored by the deputy governor on duty, and where there is no deputy governor by the chief prison officer in charge.

2. In establishments lacking an indoor or outdoor sports area, a multi-purpose hall, a day nursery, a library, work stations and workshops, prisoners may use their own dormitories for individual or collective activities. However, activities leading to communication between dormitories shall be absolutely prohibited.

3. The sentence “The provision of section 16 of Anti-Terrorism Law No.3713 as regards spouses shall not be affected” contained in paragraph 10 of Circular No 8-59 of 09.07.1996 is hereby repealed.

Please photocopy this circular and send it for information and action to the governors of central closed prisons and the relevant chief public prosecutors’ offices.

(signed)
Dr Hikmet Sami TÜRK
MINISTER

Appendix: Principles governing access to common living areas, work stations and workshops in closed prisons.

APPENDIX

PRINCIPLES GOVERNING PRISONERS' ACCESS TO INDOOR AND OUTDOOR SPORTS AREAS, MULTI-PURPOSE HALLS, DAY NURSERIES, LIBRARIES, WORK STATIONS AND WORKSHOPS IN CLOSED PRISONS

Decisions concerning the allocation of rooms to remand and sentenced prisoners on admission to prison, changes in room allocation and access to common living areas, work stations and workshops [*in accordance with*] the principles governing access to indoor and outdoor sports areas, multi-purpose halls, day nurseries, libraries, work stations and workshops shall be taken by the Selection Board.

Under Article 121 of the Prison Administration and Sentence Enforcement Regulations, and in accordance with the "Internal Regulations" on the functioning of prisons, the Selection Board shall be headed by the prison governor and comprise the doctor, psychologist, social worker, teacher and chief prison officer.

1. The units concerned shall complete their preliminary discussions within three days of a prisoner's admission to the prison.
2. In the light of the information received during the preliminary discussions, and with a view to dividing prisoners into groups according to their offences, behaviour in prison, interests and aptitudes, the Selection Board shall determine the room to be allocated to each prisoner in the light of the offence committed, the length of sentence, the prisoner's sex, age, educational level, career (eg soldier, police officer, security officer, civil servant), leadership position, mental and physical health, kinship situation and socio-economic and cultural level, bearing in mind the question of whether the prisoner is a first or previous offender and whether he has enemies. The need to avoid endangering prison security shall also be taken into account in allocating rooms to prisoners.
3. After prisoners have been installed in their rooms, the prison governor shall instruct the psycho-social welfare unit to draw up a report to enable them to make use of the indoor and outdoor sports areas, multi-purpose hall, day nursery, library, work stations and workshops.
4. The activity areas and the work station and workshop facilities are grouped as follows:
 - a. indoor and outdoor sports areas,
 - b. multi-purpose hall,
 - c. day nursery,
 - d. library,
 - e. work stations and workshops.

The Selection Board shall take separate decisions in respect of prisoners' access to each group of activities.

The same person may take part in more than one programme.

5. With a view to the preliminary discussions, the psycho-social welfare unit shall study prisoners' sentence enforcement files and, where transferred prisoners are concerned, shall contact their prison of origin to obtain initial information.
6. The psycho-social welfare unit shall receive applications indicating which activities prisoners wish to take part in. Bearing in mind the proposals made by the education, supervision, health and other units, it shall draw up an activity report on each prisoner in line with the information and documents obtained. The report shall be submitted to the prison governor within seven days.
7. Within seven days of receiving the report, the prison governor shall discuss the matter with the Selection Board. The Selection Board shall decide which activities the prisoner is to have access to.
8. One copy of the decision taken shall be given to the psycho-social welfare unit together with the appended documents, one shall be placed in the Board's decision file and the other shall be notified to the prisoner and placed in his or her sentence enforcement file.
9. Within three days the psycho-social welfare unit shall draw up an activity programme indicating the relevant days and times, in line with the decision taken, and shall submit it to the prison governor for approval.
10. If any change is to be made to the activity programme, it shall be returned to the psycho-social welfare unit, and the newly drawn up activity programme shall be submitted to the prison governor for approval within three days.
11. In the event of a search, an inspection or similar special circumstances in the prison, the daily activity programme may be postponed.
12. If a prisoner asks to change activity or activity programme for a particular reason, the request shall be assessed by the psycho-social welfare unit. A new programme consonant with the reason given shall be drawn up and submitted to the prison governor for approval. The prisoner concerned shall be notified of the outcome.
13. The initiating unit shall be responsible for monitoring the activity programmes, the control centre for ensuring that they function and keeping a watch on them, and the supervision unit for security. The prison governor shall be informed at once of any malfunctions that may arise in the course of a programme, together with the reasons for it.

14. The unit that draws up the activity programme shall, if it considers that the programme should be pursued, prepare a three-monthly assessment report and submit it to the prison governor. Assessment reports concerning changes to an activity programme or suspension or termination of the programme shall be submitted to the prison governor as a matter of urgency, regardless of timing.

15. On receipt of the assessment reports referred to him in both cases indicated in paragraph 14, the prison governor shall place them on the Selection Board's agenda within seven days.

16. If the Selection Board decides, after assessing the matter, that the activity programme is to be pursued, the programme shall continue unchanged. If it is decided to alter the programme as requested by a prisoner, the decision shall be forwarded to the psycho-social welfare unit so that a new programme may be prepared. The new programme shall be drawn up as indicated in paragraph 9.

17. In cases requiring the suspension or termination of an activity programme, the decision taken shall be forwarded to the Disciplinary Board for assessment. The Disciplinary Board shall examine the programmes arranged for the prisoner concerned and the relevant reports and Selection Board decisions. As a result of this examination, it may decide either that the programme will continue unchanged or that it will be suspended or terminated. The person concerned shall be notified of the Disciplinary Board's decision; objections to the decision may be lodged by remand prisoners with the court which has jurisdiction in their case and by sentenced prisoners with the chief public prosecutor's office. The Disciplinary Board's decision shall be applied until the objection is settled.

18. In an emergency such as an earthquake, fire, flood, landslide, thunderbolt or war, or such as a hunger strike, escape or escape attempt, tunnelling, hostage-taking, a riot, revolt or boycott or widespread fighting, the Disciplinary Board shall have the right to suspend the programme in the short or long term.

19. Decisions taken by the Selection Board to grant access to facilities such as the multi-purpose hall, the indoor and outdoor sports areas, the day nursery and the library and to the work stations and workshops shall not be in lieu of a "good conduct" decision. However, these documents shall be assessed in decisions on good conduct concerning sentenced prisoners.

20. If a prisoner is unable to take part in the day's activity programme because of a transfer to hospital or to court, conflicting visiting hours, lack of motivation or failure to get ready in time, he shall be considered to have lost the right to take part in the activity planned for that day. However, if a prisoner shows continuous lack of motivation or fails to get ready in time on at least three occasions, his activity programme shall be terminated in accordance with paragraphs 14, 15, 16 and 17.

21. The above principles shall be applied in accordance with Articles 121 and 122 of the Prison Administration and Sentence Enforcement Regulations.

