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

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

The Turkish Government has authorised the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2003) 29.

Strasbourg, 25 June 2003

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Copy of the letter transmitting the CPT's report

Strasbourg, 27 November 2002

Dear Deputy Director General,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report to the Government of Turkey drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visits to Turkey from 21 to 27 March and 1 to 6 September 2002. The report was adopted by the CPT at its 49th meeting, held from 5 to 8 November 2002.

The CPT's recommendations, comments and requests for information are set out in **bold type** in the text of the visit report and are listed in Appendix 1. The Committee requests the Turkish authorities to provide within three months a response to those recommendations, comments and requests for information.

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

Yours faithfully,

Silvia CASALE
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

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

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

I. INTRODUCTION

1. In pursuance of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), the CPT carried out visits to Turkey from 21 to 27 March and 1 to 6 September 2002. Both visits were considered by the Committee to be “required in the circumstances” (cf. Article 7, paragraph 1, of the Convention).

2. The March 2002 visit was carried out by two members of the CPT, Silvia CASALE (President of the CPT and Head of delegation) and Davor STRINOVIĆ. They were assisted by Dan DERMENGIU (Chair of Forensic Medicine Department, Medical Faculty “Carol Davila”, Bucharest) as well as by Trevor STEVENS and Michael KELLETT of the CPT’s Secretariat.

3. The CPT’s delegation reviewed once again¹ the development of communal activities for inmates in the new F-type prisons. For that purpose, the delegation examined the situation at Sincan F-type Prison.

This question was also discussed in depth during talks held in Ankara on 20 September 2002 with the Minister of Justice, Dr Aysal ÇELIKEL, the Director General of the Prisons Directorate, Mr Ali Suat ERTOSUN, and other senior Justice Ministry officials. The CPT representatives at those talks were Silvia CASALE, Andrew COYLE (Director of the International Centre for Prison Studies, London) and Wolfgang RAU of the Committee’s Secretariat.

4. Another main objective of the March 2002 visit was to examine the implementation in practice of the legal reforms concerning custody by law enforcement agencies which had been adopted shortly before the visit. Those reforms shortened police/gendarmerie custody periods and introduced improvements as regards access to a lawyer and the notification of custody to a relative.

In addition, the CPT’s delegation explored recent cases of resort to Article 3 (c) of Legislative Decree N° 430, under which prisoners who have to be questioned as part of the investigation of offences giving rise to the declaration of a state of emergency may be taken out of prison. During the months preceding the visit, the CPT had received several reports containing allegations that persons in respect of whom that provision had been applied in the province of Diyarbakır had been severely ill-treated when returned to police/gendarmerie premises.

For these latter purposes, the delegation visited Ankara Police Headquarters (Anti-Terror Department) as well as various police, gendarmerie and prison establishments in the provinces of Batman and Diyarbakır.

The preliminary observations made by the delegation at the end of the March 2002 visit are reproduced in Appendix 2 ².

¹ cf. also the reports on CPT visits to Turkey in 2001; CPT/Inf (2001) 31 and CPT/Inf (2002) 8.

² Those observations, as well as the response of the Turkish authorities, were published on 23 July 2002; cf. CPT/Inf (2002) 13.

5. The September 2002 visit was carried out by three members of the CPT - Marc NÈVE (Head of delegation), Renate KICKER and Jean-Pierre RESTELLINI - assisted by Trevor STEVENS of the Committee's Secretariat. The purpose of the visit was to examine in greater depth both the implementation of the recent legal reforms concerning custody by law enforcement agencies and the use being made of Article 3 (c) of Legislative Decree N° 430. In the light of the information gathered during the March 2002 visit, the delegation also pursued further the issue of the conditions under which medical examinations of persons in police/gendarmerie custody take place.

The delegation focussed its attention on the province of Diyarbakır. Various departments of Diyarbakır Police Headquarters (Anti-Terror, Law and Order, Narcotics) were visited, as well as the Provincial Gendarmerie Command. In addition, prisoners were interviewed in the Diyarbakır I (E-type) and II Prisons, and visits were made to the unit of the Diyarbakır State Hospital and to the health centres in the city where persons in police/gendarmerie custody are taken to be medically examined.

The preliminary observations made by the delegation at the end of the September 2002 visit are reproduced in Appendix 3.

6. During both visits, the CPT's delegation had detailed discussions in Ankara with senior officials from the Ministries of Justice, the Interior, Foreign Affairs and Health. Further, on 27 March 2002 it met Mr Hikmet Sami TÜRK, Minister of Justice. All these meetings took place in a spirit of close cooperation, as did the high-level talks in Ankara on 20 September 2002.

The delegation also held discussions in Diyarbakır with senior officials and members of the judicial authorities, including: Mr Gökhan AYDEMİR, Governor of the State of Emergency Region; Mr Ahmet Emil SERHALDI, Governor of Diyarbakır Province; Mr Ismail KARA, President of the Diyarbakır State Security Court (3rd Chamber); Mr Sait GÜRLER, Chief Public Prosecutor of the Republic in the Diyarbakır Province; and Mr Şaban ERTÜRK, Chief Public Prosecutor at the Diyarbakır State Security Court.

Further, the delegation had talks with representatives of the Human Rights Association in Ankara and Diyarbakır, as well as with representatives of the Bar Association and the Turkish Medical Association in Diyarbakır.

7. Cooperation at local level was very good throughout both visits. The delegation was granted rapid access to all places of detention visited, and was provided with all the required (including documentary) information.

That said, the CPT must observe that in certain police establishments in Diyarbakır, and in particular the Anti-Terror Department at the Police Headquarters, the number of persons in custody was strikingly below the norm throughout the periods of the delegation's presence in the city.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Communal activities in F-type prisons

8. The issue of communal activities in F-type prisons has been a major theme of the CPT's activities in Turkey during the last two and a half years. In this context, the Committee has constantly stressed that the introduction of smaller living units for prisoners must be accompanied by measures to ensure that prisoners spend a reasonable part of the day engaged in a programme of communal activities outside their living units; under no circumstances must the introduction of smaller living units be allowed to lead to a generalised system of small-group isolation.

F-type prisons do possess facilities (workshops, a gymnasium, an outdoor playing field, a library) for communal activities and a legal and regulatory framework has been adopted which ensures that prisoners can have access to those facilities. However, the development of communal activities has been held back by the reluctance of prisoners held under the Law to Fight Terrorism (who constitute the great majority of the inmate population of F-type prisons) to make use of the above-mentioned facilities.

9. At the end of the September 2001 visit, the CPT's delegation emphasised the need for a proactive, enterprising approach to communal activities in F-type prisons. In this connection it proposed *inter alia* that immediate steps be taken to supplement the activities already offered by regular association periods for prisoners, to be held in the prison library or open visits areas.

A Circular issued by the Minister of Justice on 18 January 2002 went very much in the direction advocated by the Committee's delegation; it stipulated that prisoners who so wished could be brought together in groups of up to ten persons for five hours conversation per week, in the open visits areas or other communal areas designated by the administration. However, to be eligible for such conversation periods, prisoners had to be already taking part in one of the (other) communal activities offered in F-type prisons. In its report on the September 2001 visit (adopted in March 2002), the CPT expressed strong concern that this precondition would undermine the potentially positive effect of the Circular and recommended that it be dropped.

It was against this background that the March 2002 visit took place.

10. As already indicated, the CPT's delegation visited once again Sincan F-type Prison; what it found confirmed the Committee's fears. Although certain workshops as well as the gymnasium, outdoor playing field and library were open for use, practically all of the prisoners held under the Law to Fight Terrorism were still refusing to take up the offer of communal activities; the possibility of enjoying the previously- mentioned conversation periods, subject to participation in one of those activities, had not led to a change of attitude on the part of the prisoners. The only out-of-living-unit activity in which a significant number of prisoners held under the Law to Fight Terrorism were involved was open visits.

Despite this, the conversation periods provided for by the Circular of 18 January 2002 were being organised, for interested prisoners held under Law No 4422 (organised crime) who already took part in another communal activity. Each conversation period lasted for 2 to 3 hours and the conditions under which the periods took place were satisfactory. They were held in the open visits rooms, which are both spacious and equipped with tables and chairs. The prisoners were left to talk among themselves; the one prison officer present in the room remained close to the door, out of earshot of the prisoners' conversations. It was clear from the delegation's interviews with the prisoners concerned that they appreciated this activity.

11. At the end of the March 2002 visit, the CPT's delegation strongly reiterated the recommendation already made by the Committee, that the possibility of participating in the conversation periods should not be linked to prior participation in one of the other programmed communal activities. It stressed that for a considerable number of prisoners held under the Law to Fight Terrorism, taking part in the conversation periods could be the first step towards broader participation in communal activities.

In their response to the delegation's observations, the Turkish authorities advanced a number of arguments which they felt justified the maintenance of the above-mentioned precondition. Those arguments were subsequently discussed in depth at the talks on 20 September 2002 between the Turkish authorities and representatives of the CPT (cf. paragraph 3). The Committee was very pleased to learn that following those talks, by a Circular issued by the Minister of Justice on 10 October 2002, the precondition was removed.

The CPT is confident that this step will do much to ensure that the communal activities in F-type prisons reach their full potential. All prisoners in those establishments now have at their disposal a range of communal activities involving both structured and unstructured opportunities for human contact. The Committee very much hopes that this positive development will also contribute to bringing an end to the on-going hunger strike campaign related to the prison system.

12. The CPT requests the Turkish authorities to provide a full account of the communal activities in operation in each of the F-type prisons as of three months from the receipt of this visit report, including:

- **each type of communal activity taking place;**
- **the total number of hours during which each communal facility is in use by prisoners per week;**
- **the total number of prisoners (broken down by category of prisoner) engaging in communal activity per week;**
- **the number of prisoners (broken down by category of prisoner) participating in each communal activity per week;**
- **the largest number of prisoners (broken down by category of prisoner) participating at the same time in each communal activity.**

B. Other prison-related issues pursued by the delegation

13. For F-type prisons to operate in a satisfactory manner, it is essential to win the confidence of prisoners that their legitimate interests will be respected in those establishments. The development of a range of communal activities is one very important aspect of this process; however, it is even more necessary for prisoners to be convinced that they are safe from physical harm. Consequently, the CPT was pleased to note that its delegation heard no allegations of recent ill-treatment of prisoners in Sincan F-type Prison and, in particular, no allegations of ill-treatment during the headcount procedure.

The CPT trusts that the Turkish authorities will remain vigilant and take rapid and effective action if and when any evidence of ill-treatment comes to light. In this connection, the CPT greatly welcomes the Circular issued by the Minister of Justice on 22 August 2002, which addresses precisely this point.

Further, current efforts to provide staff assigned to F-type prisons with adequate training should be maintained and, if possible, intensified; staff should be made fully aware of the crucial importance of building positive relations with prisoners.

14. The CPT has pointed out on several occasions in the past, and most recently in the report on the September 2001 visit, that medical confidentiality should be observed in prisons in the same way as in the outside community. This implies inter alia that all medical examinations of prisoners should be conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of custodial staff. However, at the time of the March 2002 visit, it was clear that prison staff were systematically present during medical examinations of prisoners at Sincan F-type Prison, and the same situation prevailed at Diyarbakır I Prison.

In their response to the report on the September 2001 visit, the Turkish authorities informed the CPT that this issue had now been addressed in a Ministry of Justice Circular of 28 May 2002. According to that Circular, unless medical staff request otherwise, no officials are allowed to be present in the examination room and steps are to be taken so that they remain out of earshot, merely supervising from a distance for security purposes. These requirements were reiterated in the above-mentioned Circular of 22 August 2002.

The CPT welcomes the fact that the issue of medical confidentiality has been expressly addressed. However, the scope of the Circulars would appear to be limited to the medical examination of prisoners on admission. As the CPT pointed out in the report on the September 2001 visit, all medical examinations of prisoners, whether on a prisoner's admission to prison *or at a later stage*, should take place out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of sight of custodial staff. **The CPT recommends that this be made clear.**

15. The previously-mentioned Circulars of 28 May and 22 August 2002 also stress that prisoners must be systematically examined by a doctor on admission to the establishment and the results of that examination recorded on a medical card. Once again, the CPT welcomes these instructions; the medical screening of newly-arrived prisoners is very important for a number of reasons, of which one is that it can play an important role in the prevention of ill-treatment by law enforcement officials.

On this matter, the CPT must highlight its concern about the quality of medical screening of prisoners on their admission to Diyarbakır I Prison. During both the March and September 2002 visits, the CPT's delegation discovered cases of prisoners in respect of whom no findings had been recorded after their medical examination on arrival, despite the fact that they undoubtedly bore injuries or displayed other medical conditions consistent with severe ill-treatment. Such a state of affairs is inadmissible.

The CPT recommends that appropriate steps be taken without delay to ensure that all prisoners receive a proper medical examination on their arrival at Diyarbakır I Prison and that all injuries or other medical conditions displayed by prisoners, as well as any statements made by them concerning those injuries or conditions, are fully recorded.

16. In the course of the talks with senior officials during the March 2002 visit, the CPT's delegation inquired about the results of the investigation undertaken by the Eyüp Chief Public Prosecutor's Office as regards the intervention vis-à-vis Istanbul Prison and Detention House (Bayrampaşa) in December 2000. As was made clear in the preliminary observations after the January 2001 visit and in the subsequent visit report, the CPT has grave doubts regarding, in particular, the manner in which that intervention took place in respect of the female dormitory C1, where six of the twenty-seven inmates died and many others suffered burns and/or other injuries. Those doubts have been reinforced by the findings and conclusions set out in the "scene of incident examination and expertise report" concerning Block C, drawn up by experts from the Forensic Institute at the request of the Eyüp Chief Public Prosecutor's Office.

The delegation was told that the investigation continued but that 1800 members of the Gendarmerie on duty at Bayrampaşa Prison at the time of the intervention had already been indicted. According to reports subsequently received, it would appear that criminal court proceedings have now begun.

The CPT would like to receive details of the precise charges which have been brought and a full account of the current state of the court proceedings.

17. Pursuing another question raised by the CPT in the report on the January 2001 visit, the delegation inquired about the lessons which had been learned from the experience of the December 2000 prison interventions as regards the methods to be employed during such operations.

The CPT is grateful to the Turkish authorities for the information subsequently provided on this subject. However, no reference is made to any conclusions drawn for the future as regards the use of tear gas devices and other munitions during operations of this kind. Having regard inter alia to the findings and conclusions set out in the previously-mentioned scene of incident examination and expertise report, **the CPT would like to receive the comments of the Turkish authorities on this matter.**

C. Combating ill-treatment by law enforcement officials

18. The different measures required to combat torture and ill-treatment by law enforcement officials are the subject of an on-going dialogue between the Turkish authorities and the CPT. Many of those measures were dealt with once again in the report on the Committee's periodic visit in September 2001. The Committee has recently received the Turkish authorities' response to the report on that visit, and will comment upon it in due course.

In this visit report, the CPT will focus on the specific issues explored by its delegation during the March and September 2002 visits, as spelt out in paragraphs 4 and 5 above.³ Nevertheless, at the outset, reference should be made to evidence of ill-treatment by law enforcement officials gathered by the delegation in the course of the visits.

1. Ill-treatment - findings during the March and September 2002 visits

19. Given the very limited amount of time spent by the delegation in Ankara during the March 2002 visit, and the fact that only one police establishment in the city (the Police Headquarters' Anti-Terror Department) was visited, it is not possible to draw any general conclusions concerning the current situation in this part of Turkey as regards the treatment of persons deprived of their liberty by law enforcement officials. However, it should be noted that the delegation did interview many of the 16 persons in the custody of the Anti-Terror Department at the time of the March 2002 visit and that none of those persons made allegations of physical ill-treatment.

20. During the two visits, the delegation interviewed a considerable number of persons who had recent experience of custody by law enforcement agencies in the province of Diyarbakır. Most of those persons were met by the delegation in prison establishments; however, some of them were still in police/gendarmerie custody when interviewed. The offences of which the persons concerned were suspected or accused covered both ordinary crimes and offences falling under the jurisdiction of the State Security Courts.

Approximately one half of the persons interviewed alleged that they had been subjected to ill-treatment of one form or another while in police/gendarmerie custody.

21. A number of persons alleged severe ill-treatment amounting to torture; almost all of these severe cases concerned periods of detention at the Provincial Gendarmerie Command, situated a few kilometres outside Diyarbakır on the road to Elâziğ, or in the Anti-Terror Department at Diyarbakır Police Headquarters. Very detailed and consistent accounts of such ill-treatment were received from persons interviewed individually. The ill-treatment was said to have begun during the initial period of custody and in some cases apparently continued when the persons concerned had been returned to the premises of the law enforcement agency concerned under Article 3 (c) of Legislative Decree N° 430.

³ Information on other issues gathered by the delegation during the visits will be referred to in the context of the CPT's comments on the Turkish authorities' response to the report on the September 2001 visit.

The ill-treatment alleged included, as regards both the above-mentioned establishments: blows; squeezing of the testicles; hosing with cold water while naked followed by exposure to cold air; sleep deprivation; prolonged standing. Some of the persons interviewed also alleged that they had been subjected to electric shocks (to the toes, genitals, and/or ears).

One person alleged that during his period of custody at the Provincial Gendarmerie Command, he was subjected to a single session of suspension by the arms (the description given corresponded to Palestinian hanging), with the toes just touching the ground.

22. In most of the above-mentioned cases, there was little or no medical evidence in the persons' files to support the allegations (and the delegation interviewed the persons concerned too long after the alleged ill-treatment to be able to observe itself marks or conditions that any such treatment might have caused). However, this does not mean that the allegations should be dismissed. In Diyarbakır, it is far from guaranteed that medical injuries or other conditions resulting from ill-treatment will be duly observed and recorded (cf. paragraph 15 above as well as section C. 3 below). Further, in certain cases, the delegation did gather medical evidence consistent with allegations of ill-treatment in the Provincial Gendarmerie Command and the Police Headquarters' Anti-Terror Department.

In one case, a medical member of the delegation directly observed conditions (pain in the sternocleidomastoid region to the right; right arm elevation restricted to 70%; grip strength of the right hand 50% inferior to that of the left) consistent with an allegation made by the person concerned of suspension by the arms leading to injury of the right shoulder. In another case, a medical member of the delegation observed marks consistent with allegations of cigarette burns to the hand and of a blow to the face. In a third case, medical reports drawn up in the course of custody contained findings consistent with allegations made by the person concerned of blows to the body and squeezing of the testicles.

Reference should also be made to two other persons who alleged severe ill-treatment in one of the above-mentioned establishments and who, when examined by a medical member of the delegation, displayed a state of shock with very severe behavioural and somatoform disorders.

23. As regards the allegations of ill-treatment at the Provincial Gendarmerie Command, the credibility of those allegations was reinforced by the information gathered during a visit to that establishment's detention facility in March 2002. The delegation found in particular a very intimidating interrogation room (walls padded with black fabric; a raised platform at one end of the room equipped with a table and chairs; a single chair at the other end of the room, beneath a spotlight). As the CPT has pointed out in the past, facilities of this kind are indicative of an unhealthy professional culture.

The CPT is pleased to note that during the September 2002 visit, it was found that the delegation's immediate observation on this subject (cf. Appendix 2, paragraph 3) had been heeded and the interrogation facility concerned transformed into offices.

24. Allegations of ill-treatment were not restricted to the two establishments referred to in paragraph 21. Several persons interviewed who were suspected or accused of ordinary criminal offences claimed that they had received blows in other police/gendarmerie facilities. Persons apprehended for property-related crimes, and in particular theft, would appear to be at a particularly high risk of ill-treatment.

In one case, involving an altercation at a police station, two persons alleged that they had been severely beaten by a group of four police officers. On examination by a medical member of the delegation, the persons concerned were found to display multiple injuries (principally to the arms, legs and back) fully consistent with their allegations. It might be added that many of the injuries had also been recorded when those persons were admitted to Diyarbakır II Prison⁴.

25. Formal complaints have been lodged concerning the alleged ill-treatment in certain of the cases referred to above. To echo the words of its delegation after the March 2002 visit, the CPT trusts that the competent public prosecutors are thoroughly and expeditiously investigating those complaints; further, if authorisation from an administrative authority were to be required for such an investigation to take place, the CPT trusts that such authorisation has been or will be forthcoming.

In this connection, **the CPT would like to receive, in respect of the period 1 November 2001 to 1 November 2002, a full account of:**

- **all complaints lodged alleging ill-treatment during custody at the Provincial Gendarmerie Command at Diyarbakır or the Anti-Terror Department of the Diyarbakır Police Headquarters;**
- **action taken to investigate those complaints and, when appropriate, to bring criminal proceedings against the law enforcement officials concerned.**

26. The CPT continues to receive reports containing allegations of the severe ill-treatment of persons detained in the Anti-Terror Department at Diyarbakır Police Headquarters. During the September 2002 visit, the delegation had lengthy discussions with the Head and other members of that Department; they were adamant that the allegations of ill-treatment were untrue and merely designed to discredit the police service. However, both the findings during the March and September 2002 visits and the persistence of reports of ill-treatment cannot but raise doubts on this point.

In the interests not only of persons detained in the future in the Anti-Terror Department at Diyarbakır Police Headquarters but also of police officers working in that Department, **the CPT recommends that a comprehensive inquiry be carried out by an independent (preferably judicial) body into the methods used by officers of the Anti-Terror Department at Diyarbakır Police Headquarters when questioning persons in their custody.**

⁴ More generally, the delegation found that the quality of medical screening of prisoners on their admission to Diyarbakır II Prison was distinctly better than that in Diyarbakır I Prison.

27. It should be added that certain of the allegations of ill-treatment received by the delegation, in particular as regards non-terrorism related cases, concerned events when suspects were apprehended or situations in which the authority of law enforcement officials was contested.

The CPT fully recognises that the apprehension of a suspect may often be hazardous, particularly if the individual concerned resists apprehension and/or the police have reason to believe that the person might be armed and dangerous. The circumstances may be such that the apprehended person, and possibly also police officers, suffer injuries, without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used and, once apprehended persons have been brought under control, there can never be any justification for their being struck. Similarly, resort to physical force should not be the automatic response when a law enforcement official is confronted by a person who contests his authority.

The CPT recommends that law enforcement officials in the province of Diyarbakır be reminded of these precepts.

2. Implementation of recent legal reforms concerning custody by law enforcement agencies

28. A series of legal reforms during the last twelve months have introduced numerous positive changes in areas related to the CPT's mandate. In particular:

- the maximum period of police custody in respect of collective offences has been reduced to four days (seven days as regards collective offences falling under the jurisdiction of the State Security Courts which are committed in provinces subject to a state of emergency);
- as regards collective offences falling under the jurisdiction of the State Security Courts committed in provinces subject to a state of emergency, the judge concerned must hear the detained person before deciding whether or not to agree to a prosecutor's request that police custody be extended beyond four days;
- exceptions to the right to have one's custody notified without delay to a relative or other designated person have been removed;
- the period during which persons detained on suspicion of collective offences falling under the jurisdiction of the State Security Courts are denied access to a lawyer has been reduced from four to two days, and such persons must be allowed to meet the lawyer in private.

As already indicated, one of the main objectives of the March and September 2002 visits was to examine the actual impact in practice of these reforms.

29. The information gathered by the CPT's delegation clearly indicates that the new, shorter, custody periods are being respected (though, as during previous visits, the delegation did hear isolated allegations that the time of apprehension - which is the starting point for calculation of the custody period - is not always accurately recorded). Further, as regards the possibility in provinces subject to a state of emergency to extend in certain cases the custody period to seven days, the information gathered in Diyarbakır indicated that the requirement that suspects be brought before the judge who must decide on requests for extension was being met.

30. However, the delegation's examination of one recent case in Diyarbakır, in which an extension of custody from four to seven days had been granted, would suggest that sufficient attention is not always paid to the points highlighted in paragraph 11 of the report on the September 2001 visit ("...even if the forensic examination does not reveal objective physical findings consistent with ill-treatment, this is not a guarantee that ill-treatment has not occurred. Certain methods of ill-treatment commonly used do not leave physical marks, or will not if carried out expertly. Consequently, irrespective of the findings of the forensic medical examination, the judge must listen carefully to what the detained person has to say and seek to assess for himself the physical and psychological state of the person concerned. Care must also be taken to ensure that persons who may have been the victims of ill-treatment are not dissuaded from disclosing this fact to the judge. In particular, it would be entirely inappropriate for law enforcement officials carrying out the investigation against the detained person to be present when he/she is heard by the judge").

In their response to the report on the September 2001 visit, the Turkish authorities state that the above points will be brought to the attention of the relevant judicial authorities. **The CPT trusts that this has now been done, including in respect of the Diyarbakır State Security Court.**

31. Further, from the information gathered by the delegation it would appear that, at present, detained persons are not assisted by a lawyer when brought before the judge examining a request for extension of their custody. In order to ensure that detained persons are in a position effectively to defend their interests at this stage of the procedure, **the CPT recommends that such assistance be made possible.**⁵

32. As regards notification of custody, most of the persons interviewed by the delegation who were suspected or accused of ordinary criminal offences stated that their relatives had been informed of their apprehension (though not always promptly). In contrast, many persons suspected or accused of terrorism-related crimes alleged that the fact of their detention had not been notified by the police/gendarmerie to their family.

⁵ Of course, the CPT is aware that the extension of custody from four to seven days will cease to be possible if, as announced, the state of emergency is lifted at the end of November 2002 in the remaining two provinces where it currently applies.

A careful examination of custody registers in various Departments at Diyarbakır Police Headquarters revealed that the section concerning notification of a relative had been completed in the great majority of cases, with an indication of the name of the person notified and often his/her telephone number. In order to facilitate verification that notification of custody has indeed been given (and in good time) to a relative, **the CPT recommends that the entry in the custody register also indicate by whom, and when, the notification was given.**

33. Notwithstanding the legal reforms which had been introduced, officers in both the Anti-Terror and Law and Order Departments at Diyarbakır Police Headquarters asserted that notification of custody to a relative could be delayed in the interests of the investigation. The Chief Public Prosecutor at the Diyarbakır State Security made a similar affirmation, as regards terrorism-related cases; in this regard, he was of the view that the provisions of Article 9 of the Regulation on Apprehension, Police Custody and Taking of Statements remained valid. At the end of the September 2002 visit, the CPT's delegation stressed that the confusion on this issue should be removed and the recently-amended provisions of Article 19(6) of the Constitution and Article 128 of the Code of Criminal Procedure given full effect.

Subsequently, on 18 September 2002, amendments were made to various provisions of the above-mentioned Regulation, including Article 9. The paragraphs in Article 9 which referred to the possibility of not notifying relatives if this would harm the investigation were deleted, and the following paragraph was added: "By the decision of the public prosecutor, he/she shall be allowed to inform a relative or another person to be designated by him/her concerning the fact that he/she has been detained ...". This wording is very similar to that found in Article 128 of the Code of Criminal Procedure and poses the same question as that already raised by the CPT in relation to that latter provision in the report on the September 2001 visit, viz. why does the notification of a relative require a decision of a public prosecutor instead of being an obligation placed upon the law enforcement agency concerned? In their response to the report on the September 2001 visit, the Turkish authorities stated that they would give information on this issue as soon as possible; **the CPT looks forward to receiving that information.**

The Committee's concerns in this area are two-fold. Firstly, making notification of a relative dependent on the decision of a public prosecutor could in practice lead to delays. Secondly, if notification requires a decision of a public prosecutor, this would seem to imply that the prosecutor could decide not to authorise the giving of the notification; but this would run counter to the clear stipulation in Article 19 (6) of the Constitution.

34. As a result of the reforms introduced in February 2002, the right of access to a lawyer for persons detained on suspicion of collective offences falling under the jurisdiction of the State Security Courts becomes operative after 48 hours (as compared to four days previously). A further legal amendment introduced in March 2002 formally guaranteed that meetings between such persons and a lawyer would be in private. In the course of examining the impact in practice of these specific reforms, the delegation discovered that access to a lawyer for persons detained by law enforcement agencies in Diyarbakır was in general a problematic subject.

35. The delegation examined the admissions books of the Law and Order Department at Diyarbakır Police Headquarters for the period 1 January to 5 September 2002. This revealed that out of the 1730 admissions, only ten persons had requested to see and had actually met a lawyer (another six persons had requested to see a lawyer but had subsequently withdrawn that request). The presence of a lawyer was also a rare occurrence elsewhere in the Headquarters. According to the latest admissions book of the Narcotics Section, only three of the ninety-nine persons detained between 5 July and 1 September 2002 had requested a lawyer. A similar situation was found in the Anti-Terror Department, an examination of the admissions books revealing only 22 cases out of the 440 most recent entries where a detained person had met a lawyer; in the vast majority of cases, the detained person was recorded as having stated that he/she did not want a lawyer.

It should be added that this phenomenon was not limited to the Police Headquarters. For example, during a visit on 25 March 2002 to the detention facility of the Provincial Gendarmerie Command, it was noted from the custody registers that between that date and October 2001 there was no recorded case of a detained person asking for a lawyer.

36. Law enforcement officials advanced a number of reasons (essentially of a practical or sociological nature) for this apparent lack of interest in having access to a lawyer whilst in police/gendarmerie custody. Certainly, a number of persons interviewed by the delegation (in particular, those suspected or accused of ordinary criminal offences) did state that they saw little advantage - and possible disadvantages - in having a lawyer involved with their case. However, numerous others indicated that they had not been fully informed about the possibility of having access to a lawyer and, more specifically, of benefiting from legal assistance via a lawyer appointed by the Bar Association. Further, many persons detained for terrorism-related offences affirmed that they had been denied access to a lawyer throughout their period of custody.

In the light of the above, the CPT must recommend that the Turkish authorities take all necessary steps to ensure that the right of access to a lawyer for persons in police/gendarmerie custody, as guaranteed by law, becomes effective in practice in the province of Diyarbakır. Persons detained should be fully informed, at the outset of their custody, of their right of access to a lawyer and law enforcement officials should refrain from any action which might discourage such persons from making use of that right. Those persons responsible in the province of Diyarbakır for implementing the compliance monitoring procedure established by the Prime Minister's Circular of 25 June 1999 should pay particular attention to these matters.

Further, the CPT suggests that the Diyarbakır Bar Association be consulted in this context.

37. According to the relevant legal provisions, an apprehended person is entitled to see his lawyer at any time, in surroundings in which third parties cannot hear their conversation (the same right also being enjoyed by apprehended persons suspected of offences falling under the jurisdiction of the State Security Courts, following an extension of their custody beyond 48 hours). However, members of the Diyarbakır Bar Association met by the delegation affirmed that the reality was quite different. In those rare cases when an apprehended person did have access to a lawyer, the confidentiality of the discussion was frequently not respected and was systematically ignored in cases involving terrorism-related offences. Apparently, the amendment introduced in March 2002 had not altered the situation in practice.

Lawyers directly involved in some of the few cases since March 2002 when persons detained in the Anti-Terror Department at Diyarbakır Police Headquarters had been able to meet a lawyer confirmed that the meetings had taken place in the presence of law enforcement officials. They also stated that those officials had objected when the issue of how the detained person was being treated had been raised; more generally, the presence of the officials had prevented a meaningful discussion with the detainee. Further, it was claimed that the length of the meetings with the detainee was always limited by the officials present to a maximum of some ten minutes.

Law enforcement officials in the Anti-Terror Department flatly denied the above assertions. They stated that meetings between lawyers and persons in the Department's custody now always took place in private (they acknowledged that in the past a police officer had on occasion been present during such meetings, when the detained person was particularly dangerous). As regards the length of the meetings, the law enforcement officials considered that this was at their discretion, and felt 30 minutes should on average be the maximum. Asked about the possibility of repeat visits by a lawyer to the same detained person, they stated that this would have to be agreed to by the public prosecutor.

Everyone agreed on one point, namely that lawyer/detainee meetings at the Anti-Terror Department took place in the room specifically set aside for this purpose. The delegation found that the room was perfectly adequate for such meetings. Further, thanks to a window in the room's door, it would be possible for the meeting to be monitored visually from outside without impinging on the confidentiality of the discussion.

38. In the light of the above, **the CPT recommends that a specific register be established in law enforcement establishments, in which lawyers would be requested to indicate the precise length of each meeting they have with a person in custody and whether the confidentiality of the meeting was respected. The register should also include a section for comments by law enforcement officials.** Such a register should make it easier to establish the objective verity in this sensitive area and would be a valuable tool in the context of the previously-mentioned compliance monitoring procedure.

The CPT also recommends that law enforcement officials be reminded that apprehended persons have a legal right to meet a lawyer at any time. This implies inter alia that no unreasonable restrictions should be placed on the length of a given meeting and that no obstacles should be placed in the way of repeated meetings between the lawyer and the detained person. Compliance with this latter requirement in particular is essential for the right of access to a lawyer to act as an effective safeguard against ill-treatment.

3. Medical examination of persons in police/gendarmerie custody

39. The CPT is deeply disturbed by its delegation's findings concerning the manner in which the system for the medical examination of persons in police/gendarmerie custody operates in Diyarbakır (cf. Appendices 2 and 3). Far from acting as a safeguard against torture and ill-treatment, this system as currently applied in Diyarbakır is almost certainly having the perverse effect of rendering it all the more difficult to combat these crimes.

As regards persons in the custody of the Gendarmerie or the Anti-Terror Department of the Police Headquarters, law enforcement officials systematically insist on being present in the room where the medical examination takes place; as regards persons in the custody of other police units, the confidentiality of the medical examination is also frequently violated. As a result, persons who have been ill-treated can be easily deterred from informing the doctor of this fact, and the examining doctor easily deterred from raising this issue with the detainee on his own initiative. Moreover, a copy of the report on the examination is handed directly to the law enforcement officials, who do not hesitate to read the results on the spot. Consequently, if they are not satisfied with the report, they are in a position to seek to have it changed, or to take the detained person elsewhere for another medical examination. From the delegation's interviews with countless detained persons and its extensive discussions with members of the medical profession in Diyarbakır, it is clear that abuses of this kind do occur in practice. Further, the delegation received reports that certain doctors who had insisted on recording injuries they observed had been the subject of threats and/or transferred to another post.

At the end of the September 2002 visit, the CPT's delegation made an immediate observation on this subject under Article 8 (5) of the Convention, requesting that the necessary steps be taken as a matter of urgency to guarantee the confidentiality of medical examinations of persons in police/gendarmerie custody.

40. By letter of 15 October 2002, the Turkish authorities responded to the immediate observation by informing the CPT of an amendment made on 18 September 2002 to the final paragraph of Article 10 (Health Control) of the Regulation on Apprehension, Police Custody and Taking of Statements. The original wording of that paragraph ("In cases where there is no restriction with regard to the investigation and to security considerations, the doctor and the person will be left alone during the examination") has now been replaced by the following:

"It is essential for the doctor and the person being examined to be left alone and that the examination is carried out within the framework of a doctor-patient relationship. However, the doctor or the suspect, accused or apprehended person may request, on the ground of anxiety for his personal safety, the presence of security forces during the examination. This request will be documented and met."

41. Ever since the above-mentioned Regulation was adopted in 1998, the CPT has been recommending that Article 10 be amended so as to stipulate clearly that medical examinations of persons in police/gendarmerie custody:

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

Albeit a step in the direction recommended by the CPT, the new wording of Article 10 is not sufficient to guarantee the confidentiality of the medical examination.

Firstly, the stipulation that not only the doctor but also the detained person may request the presence of security forces during the examination leaves the door wide open to abuse. There is every reason to believe that law enforcement officials frequently warn detained persons not to make any complaints to the doctor; it would be naive to think that such officials will not be tempted to place pressure on detained persons to request their presence during the examination. And why is it necessary to accord this possibility to the detained person? The CPT fully accepts that certain detained persons may distrust the doctor; but the notion that some of them may fear that being left alone with the doctor will put their personal safety at risk is fanciful.

Secondly, the new wording does not make clear that in those cases where the presence of security forces is requested, the latter must remain out of the hearing of the doctor-patient discussion.

Consequently, the CPT recommends that the final paragraph of Article 10 be amended once again so as to remove the possibility for the suspect, accused or apprehended person to request the presence of security forces during the examination, and to make clear that in those exceptional cases when the doctor requests their presence, they must remain out of the hearing of the doctor-patient discussion.

42. When making the immediate observation referred to in paragraph 39, the delegation also stressed that guaranteeing the confidentiality of the medical examinations of persons in police/gendarmerie custody also involved steps to ensure the confidential transmission of the medical reports concerned to the relevant judicial authorities. This equally crucial question is not addressed in the Turkish authorities' response to the immediate observation.

The CPT recommends that instructions be adopted stipulating that a copy of the medical report is under no circumstances to be given to the law enforcement officials accompanying the detained person; the report should be transmitted to the judicial authorities by independent means.

43. The CPT wishes to emphasise once again that it attaches great importance to an improvement of the situation, in the light of the Committee's recommendations, as regards the conditions under which persons in the custody of law enforcement officials are medically examined.

44. In Diyarbakır as in many other parts of Turkey, the routine medical examinations of persons in police/gendarmerie custody are carried out at the State Hospital or health centres in the city (as distinct from the State forensic medicine service). The CPT has no objections to this approach. However, it might be advisable to designate one specific medical facility as having the responsibility for carrying out such examinations. This would both help to counter the phenomenon of “health-care unit shopping” on the part of law enforcement officials and facilitate the provision of appropriate training for this particular task to the doctors concerned.

The CPT would like to receive the comments of the Turkish authorities on this suggestion.

45. Finally, in the context of this section of its report, the CPT feels it should inform the Turkish authorities that numerous persons met by its delegation during the March and September 2002 visits expressed misgivings about the operation of the Diyarbakır Branch Office of the Institute of Forensic Medicine, insofar as cases involving allegations of ill-treatment by law enforcement officials were concerned. Apparently, the timely examination by the Branch Office of persons making allegations of ill-treatment was not always ensured, there was on occasion reluctance on the part of the Branch Office to have specialist examinations carried out, and the relevant conclusions were not always drawn from the results of such examinations.

The delegation’s own discussions during the March 2002 visit with the doctor in charge of the Branch Office indicated that there might be scope for developing the Office’s contribution in relation to cases involving allegations of ill treatment by law enforcement officials. The delegation was particularly struck by the doctor’s statement that he could not remember a single case in 2001 in which there were clear injuries suggesting torture or ill-treatment.

4. Article 3 (c) of Legislative Decree N° 430

46. Article 3 (c) of Legislative Decree N° 430 makes it possible, in provinces subject to a state of emergency, for prisoners whose statements are needed during the investigation of crimes which caused the declaration of the state of emergency to be taken out of prison, by court decision, for renewable periods of up to ten days.

In the past, this provision has apparently been resorted to mainly in relation to prisoners who have agreed to co-operate with the authorities (the so-called “confessors”). However, towards the end of 2001 it began to be used increasingly vis-à-vis prisoners who had just been remanded in custody; some of the prisoners in question were apparently returned to police/gendarmerie premises immediately after the decision to remand in custody, without even being admitted to prison. As such the resort being made to Article 3 (c) began to resemble a de facto (and very lengthy) extension of the initial period of police/gendarmerie custody. According to reports received, certain persons were held on police/gendarmerie premises for periods of up to 40 days on the basis of this provision, and allegations were made that they had been severely ill-treated during this period.

47. This matter was addressed by the Minister of Justice in a Circular dated 4 February 2002, in which he stressed, *inter alia*, that requests under Article 3 (c) must be made only after the person concerned has been admitted to prison, and that the prisoners' state of health must be verified when they leave and return to prison.

At the same time as welcoming the Minister's Circular, the CPT made a number of recommendations in the report on its September 2001 visit (adopted on 8 March 2002) as regards the application of Article 3 (c) (cf. paragraphs 17 to 19 of CPT/Inf (2002) 8). The Committee emphasised that a request under Article 3 (c) should be rejected unless the requesting authority can demonstrate that the questioning and taking of statements cannot be carried out in an effective manner on prison premises, that the maximum possible period of ten days should not be systematically granted, and that the prisoner concerned should be heard by the judge before the latter agreed to any subsequent extension of the ten-day period. Further, the Committee pointed out that as the application Article 3 (c) did not change the legal status of the prisoner concerned, he/she should continue to enjoy the right to have access to his/her lawyer at all times.

48. Shortly after the adoption of the report on the September 2001 visit, the CPT's delegation began its March 2002 visit and was able to examine on the spot in Diyarbakır issues relating to Article 3 (c). These issues were pursued further during the September 2002 visit.

The delegation found that, in line with the Circular of 4 February 2002, persons remanded in custody to whom Article 3 (c) was applied were now first being admitted to prison (Diyarbakır I). However, in certain cases, the persons concerned had been returned to police/gendarmerie premises the very same day of their admission, without ever being placed in the prison's detention area; their stay at Diyarbakır I had lasted just long enough to complete the formalities for their registration in the establishment. The requirement that the prisoners' state of health be verified when they left and returned to prison was in principle being met, though on this point reference should also be made to the remarks in paragraph 15.

As for the recommendations made in the September 2001 visit report, they had not (yet) been implemented. The relevant prosecutorial and judicial authorities were not examining in depth whether requests made under Article 3 (c) were justified but merely verifying that the legal formalities were respected. Requests made under Article 3 (c) were always granted, and always for the maximum period of 10 days. Further, in those (not rare) cases when an extension of the ten-day period was requested, the prisoner was not being brought before the judge who decided upon that request. To mention one case found during the September 2002 visit, a person detained for 7 days (15 to 22 April 2002) in the Anti-Terror Department at Diyarbakır Police Headquarters was remanded in custody and, after spending a few hours at Diyarbakır I Prison, was returned to the Anti-Terror Department, where he stayed for a further period of five weeks (22 April to 28 May); at no time during this latter period (involving three extensions of the original Article 3 (c) decision) was the person concerned brought before a judge.

Further, the information gathered by the delegation clearly indicated that the right of access to a lawyer was no more effective in practice during periods spent on police/gendarmerie premises in application of Article 3 (c) of Legislative Decree N° 430 than during the initial period of police/gendarmerie custody.

49. The situation described in paragraph 48 is indefensible and could only damage the credibility of the recent constitutional and legislative changes concerning custody by law enforcement agencies. This point appears to have been recognised by the Turkish authorities, who stated in their response to the preliminary observations made by the CPT's delegation after the March 2002 visit that legislation designed to remedy the shortcomings of Article 3 (c) of Legislative Decree N° 430 was being prepared.

The preparation of that legislation was subsequently abandoned, following the announcement that the state of emergency in the two remaining provinces where it applied (Diyarbakır and Sırnak) was to be lifted at the end of November 2002, a development which apparently will render the whole of Decree N° 430 ineffective. Notwithstanding this positive development, the CPT's delegation made an immediate observation under Article 8 (5) of the Convention at the end of the September 2002 visit, calling for judicial practice to be modified immediately so that a decision under Article 3 (c) to take a prisoner out of prison is under no circumstances extended without the prisoner concerned being brought before the judge who rules on the request for an extension. The delegation considered that such a modification was indispensable in the interests of preventing ill-treatment during the period up to the end of November 2002 .

50. The Turkish authorities subsequently forwarded to the CPT a Circular, issued on 13 September 2002, in which the Minister of Justice formally requested judicial authorities to ensure that prisoners in respect of whom the extension of a decision under Article 3 (c) is requested, are brought before a judge prior to any such extension being authorised. By a further Circular issued on 22 October 2002, it was stipulated that prisoners in respect of whom such an extension is requested must undergo a forensic medical examination immediately before being brought before the judge.

The CPT welcomes the prompt action taken by the Turkish authorities in response to the immediate observation made by its delegation.

51. Under the circumstances, the CPT will refrain from pursuing the other issues referred to above concerning the application of Article 3 (c). However, **the Committee wishes to receive confirmation that:**

- **the state of emergency has, as previously announced by the Turkish authorities, been lifted in all provinces in Turkey and that, as a consequence, Legislative Decree N° 430 is no longer effective;**
- **no provisions granting powers comparable to those provided for in Article 3 (c) of Legislative Decree N° 430 are currently in force in any part of Turkey or are foreseen.**

APPENDIX 1

List of the CPT's recommendations, comments and requests for information

A. Communal activities in F-type prisons

requests for information

- a full account of the communal activities in operation in each of the F-type prisons as of three months from the receipt of the visit report, including:
 - each type of communal activity taking place;
 - the total number of hours during which each communal facility is in use by prisoners per week;
 - the total number of prisoners (broken down by category of prisoner) engaging in communal activity per week;
 - the number of prisoners (broken down by category of prisoner) participating in each communal activity per week;
 - the largest number of prisoners (broken down by category of prisoner) participating at the same time in each communal activity;

(paragraph 12).

B. Other prison-related issues pursued by the delegation

recommendations

- the Turkish authorities to make it clear that all medical examinations of prisoners, whether on a prisoner's admission to prison or *at a later stage*, should take place out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of sight of custodial staff (paragraph 14);
- appropriate steps to be taken without delay to ensure that all prisoners receive a proper medical examination on their arrival at Diyarbakır I Prison and that all injuries or other medical conditions displayed by the prisoners, as well as any statements made by them concerning those injuries or conditions, are fully recorded (paragraph 15).

comments

- the CPT trusts that the Turkish authorities will remain vigilant and take rapid and effective action if and when any evidence of ill-treatment in F-type prisons comes to light (paragraph 13);
- current efforts to provide staff assigned to F-type prisons with adequate training should be maintained and, if possible, intensified; staff should be made fully aware of the crucial importance of building positive relations with prisoners (paragraph 13).

requests for information

- details of the precise charges which have been brought against members of the Gendarmerie on duty at Bayrampasa Prison at the time of the December 2000 intervention and a full account of the current state of the court proceedings (paragraph 16);
- the conclusions drawn for the future from the experience of the December 2000 prison interventions, as regards the use of tear gas devices and other munitions during operations of this kind (paragraph 17).

C. Combating ill-treatment by law enforcement officials

1. Ill-treatment – findings during the March and September 2002 visits

recommendations

- a comprehensive inquiry to be carried out by an independent (preferably judicial) body into the methods used by officers of the Anti-Terror Department at Diyarbakır Police Headquarters when questioning persons in their custody (paragraph 26);
- law enforcement officials in the province of Diyarbakır to be reminded of the precepts set out in paragraph 27 (paragraph 27).

requests for information

- in respect of the period 1 November 2001 to 1 November 2002, a full account of:
 - all complaints lodged alleging ill-treatment during custody at the Provincial Gendarmerie Command at Diyarbakır or the Anti-Terror Department of the Diyarbakır Police Headquarters;
 - action taken to investigate those complaints and, when appropriate, to bring criminal proceedings against the law enforcement officials concerned;

(paragraph 25).

2. Implementation of recent legal reforms concerning custody by law enforcement agencies

recommendations

- detained persons to have the possibility of being assisted by a lawyer when brought before the judge examining a request for extension of their custody from four to seven days (paragraph 31);
- the entry in the custody register concerning notification of a relative also to indicate by whom, and when, the notification was given (paragraph 32);
- the Turkish authorities to take all necessary steps to ensure that the right of access to a lawyer for persons in police/gendarmerie custody, as guaranteed by law, becomes effective in practice in the province of Diyarbakır. Persons detained should be fully informed, at the outset of their custody, of their right of access to a lawyer and law enforcement officials should refrain from any action which might discourage such persons from making use of that right. Those persons responsible in the province of Diyarbakır for implementing the compliance monitoring procedure established by the Prime Minister's Circular of 25 June 1999 should pay particular attention to these matter (paragraph 36);
- a specific register to be established in law enforcement establishments, in which lawyers would be requested to indicate the precise length of each meeting they have with a person in custody and whether the confidentiality of the meeting was respected. The register should also include a section for comments by law enforcement officials (paragraph 38);
- law enforcement officials to be reminded that apprehended persons have a legal right to meet a lawyer at any time. This implies inter alia that no unreasonable restrictions should be placed on the length of a given meeting and that no obstacles should be placed in the way of repeated meetings between the lawyer and the detained person (paragraph 38).

comments

- the CPT trusts that the points highlighted in paragraph 11 (third subparagraph) of the report on the September 2001 visit have been brought to the attention of the relevant judicial authorities, including at the Diyarbakır State Security Court (paragraph 30);
- the CPT suggests that the Diyarbakır Bar Association be consulted in the context of steps to ensure that right of access to a lawyer for persons in police/gendarmerie custody becomes effective in practice in the province of Diyarbakır (paragraph 36).

requests for information

- why the notification of custody to a relative requires a decision of a public prosecutor instead of being an obligation placed upon the law enforcement agency concerned (paragraph 33).

3. Medical examination of persons in police/gendarmerie custody

recommendations

- the final paragraph of Article 10 of the Regulation on Apprehension, Police Custody and Taking of Statements to be amended once again so as to remove the possibility for the suspect, accused or apprehended person to request the presence of security forces during the examination, and to make clear that in those exceptional cases when the doctor requests their presence, they must remain out of the hearing of the doctor-patient discussion (paragraph 41);
- instructions to be adopted stipulating that a copy of the medical report is under no circumstances to be given to the law enforcement officials accompanying the detained person; the report should be transmitted to the judicial authorities by independent means (paragraph 42).

requests for information

- the comments of the Turkish authorities on the suggestion that one specific medical facility be designated as having the responsibility for carrying out the routine medical examinations of persons in police/gendarmerie custody (paragraph 44).

4. Article 3 (c) of Legislative Decree N° 430

requests for information

- confirmation that :
 - the state of emergency has, as previously announced by the Turkish authorities, been lifted in all provinces in Turkey and that, as a consequence, Legislative Decree N° 430 is no longer effective;
 - no provisions granting powers comparable to those provided for in Article 3 (c) of Legislative Decree N° 430 are currently in force in any part of Turkey or are foreseen;

(paragraph 51).

APPENDIX 2

**Statement made on Wednesday, 27 March 2002,
by Ms Silvia CASALE (Head of delegation), during the final talks
with senior Turkish officials held at the end of the March 2002
visit of the CPT to Turkey**

Ladies and Gentlemen,

The visit has only just finished and the rest of the delegation remained in Diyarbakır until this morning, to complete our work. Thus they are unable to be present here today. In accordance with our standard practice, I would like to present the delegation's first impressions.

During this visit we focused on three main areas:

- the development of communal activities in F-type prisons;
-we visited Sincan F-type Prison in order to explore this question;
- implementation of recent legal reforms concerning custody by law enforcement agencies, and
- resort to Article 3 (c) of Legislative Decree N° 430;
-these two questions were explored in particular in the Diyarbakır Province.

We should stress at the outset that co-operation was very good throughout the visit. In particular, we enjoyed prompt access to all places of detention which the delegation wished to visit. Though we have come to expect this level of co-operation from the Turkish authorities, we still wish to express our appreciation of it.

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1. As regards the development of communal activities in F-type prisons, we were pleased to note at Sincan that some of the workshops were now up and running. We also welcome the fact that open visits and access to telephone were developing, including with participation by some prisoners held under the Law to Fight Terrorism. This is encouraging.

We were also pleased to see that association (conversation) periods, as per the Circular of 18 January 2002, had begun. Further, the conditions under which those association periods were operating appeared to be satisfactory.

However, we noted that practically all the prisoners held under the Law to Fight Terrorism were still refusing to take up the offer of communal activities. In this connection, **we strongly reiterate the recommendation made in the report on the CPT's visit in September 2001 (cf. paragraph 70 of document CPT (2002) 12), namely that the possibility of participating in association (conversation) periods should not be linked to prior participation in at least one of the other programmed communal activities.**

Such a link was never envisaged when we first proposed such association periods in our preliminary observations after the September 2001 visit, and we consider that the presence of the link could well act as a brake on the move towards getting prisoners held under the Law to Fight Terrorism out of their living units. It is not being suggested that, if the link is dropped, the situation will be transformed overnight; however, we feel that removing the link will promote confidence among prisoners in the overall operation of activities. We are convinced that, for a considerable number of prisoners held under the Law to Fight Terrorism, taking part in association (conversation) periods could be the first step towards broader participation in communal activities.

There is another argument in favour of the approach recommended. Dropping the link, and doing so quite openly, will be a clear demonstration of the Turkish authorities' determination to promote activities outside of the living units and hence provide a solid counter-argument to those who claim a system of isolation is being applied in the F-type prisons.

2. We are pleased to be able to inform you that we heard no recent allegations of ill-treatment of prisoners in Sincan F-type Prison and, in particular, no allegations of ill-treatment during the headcount procedure. However, the issue of medical confidentiality remains a problem; it is clear that prison staff are still present during medical examinations. **We ask you to put a stop to that practice.**

3. Practically no-one was in custody in the various law enforcement facilities visited in Diyarbakır. However, from other sources, including prisoners interviewed, the delegation received a considerable number of allegations of ill-treatment by law enforcement officials, both police and gendarmes, in the Diyarbakır province.

The strength of those allegations is currently being assessed. Nevertheless, we must tell you that the delegation gathered compelling evidence of the severe ill-treatment, amounting to torture, of several persons held by the gendarmerie in Diyarbakır in late 2001. The ill-treatment in question apparently began during the initial period of custody and continued when the persons detained had been returned to the custody of the gendarmerie under Article 3 (c) of Legislative Decree N° 430. Very detailed and consistent accounts of such ill-treatment were received from several persons interviewed individually and in different prisons. In two cases, medical evidence consistent with the ill-treatment alleged was gathered.

The delegation visited the detention facility of the gendarmerie in which the ill-treatment was said to have occurred. It was located in the Provincial Gendarmerie Command, situated a few kilometres outside Diyarbakır on the road to Elâzığ. The information gathered there reinforced the credibility of the allegations. **We wish today to make an immediate observation under Article 8 (5) of the CPT's Convention, calling upon the Turkish authorities to substantially modify the interrogation room in that facility or to withdraw it from service.** Indeed, it was of an oppressive and intimidating nature, not unlike the facilities criticised in the report on the September 2001 visit (cf. paragraph 24 of CPT (2002) 12). **We request that the reply concerning interrogation facilities due by 20 June 2002 (cf. paragraph 26 of CPT (2002) 12) also set out the action taken in response to this immediate observation.**

We understand that formal complaints have been lodged concerning the alleged ill-treatment in at least certain of the cases referred to above. **We trust that the relevant public prosecutors will thoroughly and expeditiously investigate those complaints; if authorisation from an administrative authority were to be required for such an investigation to take place, we trust that such authorisation would be forthcoming.** These cases can be seen as a test for the system of accountability of law enforcement officials, in the same way as the Yeter case referred to in previous CPT reports (cf. most recently, paragraph 38 of document CPT (2002) 12).

More generally, we have serious concerns about the application of Article 3 (c) of Legislative Decree N° 430; we shall return to that matter shortly.

4. You know the importance the CPT attaches to the conditions under which persons in the custody of law enforcement officials are medically examined. In this connection, we were very concerned to discover that, in Diyarbakır, law enforcement officials are systematically present when suspects are examined at the outset and at the end of their custody. Everyone we spoke with confirmed this, including the doctors concerned, some of whom indicated that the law enforcement officials had been present despite their objections.

Many prisoners interviewed stated that they had been warned not to make any complaints to the doctor about how they had been treated, and that the presence of law enforcement officials during the medical examination had further deterred them from making complaints. Moreover, doctors spoken to mentioned cases in which reports which they had drawn up recording injuries had been torn up by law enforcement officials.

This state of affairs is totally unacceptable. **We trust that the CPT will receive very shortly information about the planned amendments to Article 10 of the Regulation on Apprehension, Police Custody and Taking of Statements, spelling out that the medical examination must in all cases be conducted out of the hearing of law enforcement officials and must be conducted out of sight of such officials unless the doctor concerned requests otherwise in a particular case.** Of course, even assuming this amendment is introduced, strenuous efforts must also be made to ensure that the regulations are complied with in practice.

5. As regards implementation of the recent legal reforms concerning custody by law enforcement agencies, information gathered during the visit suggests that the shorter custody periods are being respected. This is a positive development. Further, as regards collective offences falling under the jurisdiction of the State Security Courts committed in provinces subject to a state of emergency, the delegation was informed that the requirement that suspects be brought before the judge who must decide on any request for extension of custody beyond four days was gradually being implemented.

With regard to the new provisions for improved access to a lawyer and for notification of custody to a relative, the situation remains unclear. During a brief visit to the Anti-Terror Department at Ankara Police Headquarters, the delegation gathered evidence of the first instances of application of the changed provisions. In contrast, to date the delegation has found no evidence of implementation of these provisions in the Diyarbakır province.

We wish to highlight in particular the issue of access to a lawyer. This clearly has been, and apparently remains, a significant problem in Diyarbakır. For example, practically every person detained over the last nine months in the Anti-Terror Department and the Narcotics Section at Diyarbakır Police Headquarters (and this amounts to hundreds of persons) was recorded as having waived their right of access to a lawyer. This is scarcely credible. It should be added that countless prisoners interviewed claimed that they had been denied access to a lawyer. **We call upon the Turkish authorities to take all necessary steps to ensure that access to a lawyer is guaranteed, as foreseen by the law.**

6. Finally, we return briefly to Legislative Decree N° 430, which has been the subject of considerable debate recently. The CPT has made proposals in the report on its September 2001 visit as regards the application of Article 3. c) of the Decree (cf. paragraphs 17 to 19 of CPT (2002) 12). **The validity of those proposals has been confirmed by our findings during the present visit. The current safeguards surrounding the application of this provision are not satisfactory, and the Minister of Justice's Circular of 4 February 2002 has not been sufficient to rectify this situation.** We can provide further details today on this subject, if you wish. We should also tell you that the issues concerned are of such gravity that the CPT may be obliged to return to Turkey in the near future in order to pursue this matter.

APPENDIX 3

**Statement made on Friday, 6 September 2002,
by Mr Mark NÈVE (Head of delegation), during the final talks
with senior Turkish officials held at the end of the September 2002
visit of the CPT to Turkey**

Ladies and Gentlemen,

What were the aims of this visit?

Organised just a few months after the ad hoc visit in March 2002, one aim of the visit was to assess the implementation of various recent legislative amendments concerning custody by law enforcement agencies and to re-examine the use made of Article 3 (c) of Legislative Decree n° 430. We also wished to reassess the situation as regards the conditions under which persons in police/gendarmerie custody undergo medical examinations.

Our full report, which will of course include the facts found during the ad hoc visit in March 2002, will be transmitted to you in November, once it has been approved by the CPT at its next plenary meeting.

At this stage, the Committee's delegation wishes to notify you of four observations in particular, the first two of them being made under Article 8, paragraph 5, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment.

However, before making those observations, I wish to stress that all the authorities we met readily cooperated with us, and we are grateful for this.

By way of a preliminary remark, we think it essential to point out that the Committee's delegation has once again received a not considerable number of allegations of ill-treatment by law enforcement officials (both the police and the gendarmerie) in the province of Diyarbakır. In several cases, the delegation found medical evidence consistent with these allegations.

1. Observation under Article 8, paragraph 5, of the Convention concerning the implementation of Article 3 (c) of Legislative Decree n° 430

In the wake of observations already made by the CPT concerning the implementation of Article 3 (c) of Legislative Decree n° 430, which are mentioned in the report on the periodic visit carried out in September 2001, the delegation believes that the judge who is to rule on a request for an extension of a removal from prison under Article 3 (c) should in no circumstances order such an extension without the prisoner concerned appearing before him.

Even if it is true that this legislation will no longer be applicable once the state of emergency is lifted at the end of November 2002, the Committee thinks it indispensable, in the interests of preventing ill-treatment, that judicial practice be modified immediately in this respect.

2. Observation under Article 8, paragraph 5, of the Convention concerning medical examinations undergone by persons in police/gendarmerie custody

The problem of the conditions under which persons in police/gendarmerie custody undergo medical examinations has been repeatedly raised in the different reports addressed to the Turkish authorities by the CPT.

In many cases, it appears that the confidentiality of these examinations is not at all guaranteed in the province of Diyarbakır. This applies mainly to persons held in custody by the gendarmerie and by police forces assigned to anti-terrorism units.

Moreover, it is perfectly well known and acknowledged that these examinations are not confidential. Both the Provincial Governor and the Director of the Diyarbakır Police argued that in many cases it was inconceivable for law enforcement officials not to be present when these examinations were carried out.

At the end of its ad hoc visit in March 2002, the Committee had already stated that this situation and all the potential consequences were unacceptable. It goes without saying that this practice undermines the credibility and reliability of the medical reports drawn up.

The Committee now believes it indispensable that urgent and necessary measures be taken without delay so that in all cases, and at all stages, the confidentiality of medical examinations undergone by persons in police/gendarmerie custody is fully guaranteed. This means that, except where the doctor expressly requests their presence, law enforcement officials should not be present during a medical examination. Furthermore, it must be ensured that confidentiality is equally strict when medical reports are sent on to the competent judicial authorities.

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As pointed out beforehand, these are the two immediate observations made pursuant to Article 8, paragraph 5, of the Convention. In respect of each of them, the Committee asks the Turkish authorities to inform it by 15 October 2002 at the latest of the follow-up measures taken.

3. Access to a lawyer

The delegation noted that the right of access to a lawyer accorded to persons held in police/gendarmerie custody is barely effective in Diyarbakır. Close examination of the custody registers at Diyarbakır Police Headquarters revealed that only a very small number of people detained by the police, either for ordinary criminal offences or for offences falling within the jurisdiction of the State Security Courts, have access to a lawyer during their custody.

This is decidedly a difficult and indeed complex situation, since there are numerous aspects to be taken into account in analysing and understanding this issue. We will cover it in greater detail in our report.

Nevertheless, the Committee wishes to stress at this stage that, concerning the confidentiality of discussions with lawyers in the place of police/gendarmerie custody, it is confronted with diametrically opposed accounts. On the one hand, law enforcement officials claim that confidentiality is guaranteed in all cases, and, on the other hand, the lawyers we spoke to said that confidentiality is disregarded, particularly in the case of persons suspected of involvement in offences falling within the jurisdiction of the State Security Courts.

In the Committee view, it is vital that all the authorities concerned take the necessary measures to ensure that the confidentiality of discussions between lawyers and persons in police/gendarmerie custody is effectively guaranteed.

4. Notification to relatives

The constitutional provision concerning notification to relatives has recently been amended to remove all exceptions. However, we were told, notably by the Chief Prosecutor at the Diyarbakır State Security Court, that the exceptions set forth in the 1998 Regulation on Apprehension, Police Custody and Taking of Statements are still applicable. We find such a state of affairs difficult to envisage from a legal point of view.

The Committee believes it essential to put an end to the confusion between the texts in force, so that the constitutional provision in this area may be fully respected and, if necessary, elucidated.

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Thank you for your attention. As I have already said, the CPT's report on the visits carried out in March and September 2002 will be transmitted to you in November 2002. Your replies to the observations I have just made will be taken into account in the drawing up of the report.