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

from 7 to 15 September 2003

The Turkish Government has authorised the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2004) 17.

Strasbourg, 18 June 2004

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Copy of the letter transmitting the CPT's report

Strasbourg, 12 March 2004

Dear Deputy Director General,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Turkish Government drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Turkey from 7 to 15 September 2003. The report was adopted by the CPT at its 53rd meeting, held from 1 to 5 March 2004.

The CPT requests the Turkish authorities to provide within three months a response to the recommendations, comments and requests for information set out in **bold type** in paragraphs 9, 11, 12, 16, 18, 22, 25 to 27, 29 to 31, 33 to 36, 38 to 40, and 42 of the visit report. The Committee would also welcome any observations which the Turkish authorities might wish to make on other parts of the report.

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

Yours faithfully,

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

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

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

I. INTRODUCTION

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereafter referred to as the Convention), the CPT carried out an ad hoc visit to Turkey from 7 to 15 September 2003.

The primary aims of the visit were to examine current treatment of persons in the custody of the law enforcement agencies and assess the extent to which the safeguards recommended by the CPT in previous reports, incorporated in recent legislative reforms and discussed in detail with senior Turkish officials (most recently in the course of high-level talks in Ankara in July 2003), were being implemented in practice. As such, the visit was very much a follow-up to the CPT's previous ad hoc visits in March and September 2002.

2. The visit was carried out by three members of the CPT: Silvia CASALE (President of the CPT and Head of delegation), Renate KICKER and Jean-Pierre RESTELLINI. They were supported by Trevor STEVENS (Executive Secretary of the CPT) and assisted by Derrick POUNDER (Professor of Forensic Medicine at the University of Dundee, United Kingdom) as well as by Zeynep BEKDİK, Ömer BOZKURT, Belgin DÖLAY and Kudret SÜZER (interpreters).

3. The CPT's delegation visited the Police Headquarters in Adana, Diyarbakır and Mersin as well as various other police and gendarmerie establishments in those cities and in Bismil and Çınar. Visits were also made to the E-type prisons in Adana and Mersin and to Diyarbakır I and II Prisons, for the purpose of interviewing persons who had recently been in the custody of law enforcement agencies. In addition, the delegation went to health facilities in Adana, Diyarbakır and Mersin, in order to review the operation of the system for the medical examination of persons in police/gendarmerie custody.

4. During the visit, the CPT's delegation held talks with senior members of the judicial and prosecutorial authorities. In particular, it met Cemal Sahir QÜRÇAY, Chief Public Prosecutor of the Republic in the Adana Province, Fevzi ELMAS, Chief Prosecutor at the Adana State Security Court, Hüseyin CANAN, Chief Public Prosecutor of the Republic in the Diyarbakır Province, and Şeban ERTÜRK, Chief Public Prosecutor at the Diyarbakır State Security Court.

The delegation also held discussions with representatives of the Adana and Diyarbakır Branches of the Human Rights Association, of the Bar Associations in Adana and Diyarbakır, and of the Diyarbakır Branch of the Turkish Medical Association.

At the end of the visit, during talks in Ankara with senior officials from the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Justice and the Ministry of Health, the CPT's delegation provided the Turkish authorities with its preliminary observations.

5. The CPT's delegation received excellent cooperation from the Turkish authorities. The delegation enjoyed rapid access to all places which it wished to visit and was provided promptly with all information requested. In addition, there was a manifest willingness to take into account the delegation's considerations on substantive issues.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Preliminary remarks

6. Over the last two and a half years, the Turkish authorities have been engaged in a vast programme of legislative reform which has included numerous positive changes in areas related to the CPT's mandate. The most important changes made up to November 2002 were highlighted in the report on the Committee's ad hoc visits in March and September 2002 (cf. paragraph 28 of doc. CPT/Inf (2003) 28).

Since then, further significant improvements have been introduced via the 4th, 6th and 7th "harmonisation packages". All detained persons regardless of their suspected offence now have a formal right of access to a lawyer as from the outset of their custody, and the precise content of that right is the same for everyone; prosecutors no longer need to seek authorisation from an administrative authority to instigate proceedings under Articles 243 (torture) and 245 (ill-treatment) of the Criminal Code; procedural amendments have been adopted to ensure the speedy investigation and prosecution of offences under Articles 243 and 245, and sentences imposed under those Articles can no longer be converted into a fine or suspended.

Equally welcome is the fact that at the end of November 2002, the state of emergency was lifted in the two remaining provinces where it was applied. Consequently, the maximum period of police/ gendarmerie custody is now four days throughout Turkey, and Legislative Decree No 430 is currently not in force in any part of the country. It is also noteworthy that the Turkish authorities nevertheless took the opportunity of the 4th harmonisation package to amend Article 3.c of Legislative Decree No 430¹; the new wording of this provision is in line with the recommendations made by the CPT on this subject.

7. The legislative and regulatory framework necessary to combat effectively torture and other forms of ill-treatment by law enforcement officials has been put in place; the challenge now is to make sure that all of the provisions concerned are given full effect in practice. The CPT intends to offer every possible assistance to the Turkish authorities in their efforts to meet that challenge; this was the spirit in which the ad hoc visits in 2002 and September 2003 were organised, and the same will be true of visits to follow.

Issuing circulars and instructions will undoubtedly constitute an important element of the implementation strategy. However, as the CPT had occasion to point out during the first years of its activities in Turkey, attacking the root of the problem of torture and other forms of ill-treatment involves above all transforming mentalities, a process which is required not only amongst law enforcement officials but throughout the criminal justice system. The Committee noted with interest that the Deputy Prime Minister, Mr Abdullah GÜL, expressed a similar sentiment in his statement to the Grand National Assembly on 10 December 2003, on the occasion of the 55th anniversary of the approval of the Universal Declaration of Human Rights.

¹ Under this provision, it was possible to return prisoners to police/gendarmerie custody for prolonged periods.

The CPT also greatly welcomes the numerous formal statements emanating from the highest levels of the Turkish Government, condemning torture and ill-treatment and emphasising the Government's resolve to combat such methods. This is an example that other Governments might usefully follow.

B. Torture and ill-treatment by law enforcement officials: findings during the September 2003 visit

8. The facts found in the regions of Turkey visited by the CPT's delegation are globally encouraging. The Government's message of "zero tolerance" of torture and ill-treatment has clearly been received, and efforts to comply with that message were evident.

The information gathered in Adana, Diyarbakır and Mersin indicates that resort to methods such as suspension by the arms, the application of electric shocks, squeezing of the testicles or stripping persons naked and hosing them with cold water, is now an infrequent occurrence in these parts of the country at least. Representatives of the Bar Associations and Human Rights Association Branches with whom the delegation had discussions acknowledged that there had been a sharp decline in "heavy torture". A similar opinion was received from doctors who regularly examined detained persons at the end of periods of police/gendarmerie custody as well as from representatives of the Diyarbakır Branch of the Turkish Medical Association. Above all, numerous detained persons interviewed by the delegation emphasised the vivid contrast between, on the one hand, the manner in which they were treated whilst in police/gendarmerie custody in the course of 2003 and, on the other hand, the very harsh methods applied to them during periods of custody in previous years. This change in approach had clearly surprised some of the delegation's interlocutors – "the gendarmes actually started talking to me about my rights!".

However, the picture which emerges from the information gathered by the CPT's delegation is certainly not entirely positive. The delegation did receive a number of allegations of recent ill-treatment during police/gendarmerie custody, and in some cases gathered medical evidence consistent with those allegations.

9. Several persons interviewed independently alleged that they had recently been subjected to electric shocks whilst detained in the armed robbery or theft/pick pocketing sections of the Law and Order Department of Diyarbakır Police Headquarters. Their accounts were both detailed and consistent. During the talks with senior officials at the end of the visit, the delegation stressed that the existence of such serious and concordant allegations concerning a specific police department warranted the carrying out of an inquiry. **The CPT wishes to be informed of the steps subsequently taken by the Turkish authorities in relation to this matter.**

10. In each of the regions visited, some allegations were received of beatings during recent periods of police/gendarmerie custody; the establishments concerned by these allegations included the Anti-Terror Department at Adana Police Headquarters, the Law and Order Departments at Diyarbakır and Mersin Police Headquarters, and the Bağlar and Çarşı police stations in Diyarbakır.

In some cases, medical evidence consistent with allegations of ill-treatment made to the delegation was found in end-of-custody medical reports and/or in reports drawn up on entry into prison. For example, a detained person interviewed in Diyarbakır alleged that he had been beaten on various parts of the body immediately after his arrest and later whilst in custody at a local police station. Fresh injuries to the left arm and shoulder and under the right eye were recorded in both the end-of-custody medical record and the medical report drawn up on entry into prison. Another detained person interviewed in Adana alleged that he had been beaten about the head, back and shoulders whilst in custody at Adana Police Headquarters. Medical reports examined by the delegation recorded injuries to the scalp, face, neck and left shoulder.

In a few cases, medical members of the delegation observed injuries consistent with allegations made. For example, a detainee who alleged to have been punched in the face and struck on the cheek with the barrel of a pistol three weeks previously in a local police station in Diyarbakır was found on examination to have visible bruising to the right eyebrow and surrounding swelling to the lateral aspect of the eyebrow. Another detained person interviewed in Diyarbakır alleged that one week previously he had been beaten whilst handcuffed in the street and later in a local police station. On examination he was found to bear injuries to the face (resolving purple bruise to the left eye and pink healing laceration to the eyebrow) and right calf (linear bruise 5 x 1.5 cm, purple in colour) which were consistent with the allegations.

11. The information gathered during the visit also indicates that methods such as sleep deprivation, prolonged standing and threats to harm the detainee and/or members of his family have yet to be eradicated in Anti-Terror Departments and, more particularly, in the Department at Diyarbakır Police Headquarters. The CPT is perfectly aware that being questioned in relation to offences under the anti-terror legislation cannot be expected to be a pleasant experience. However, methods of the kind described above are clearly designed to break a detained person's will and have no place in the interrogation process.

Such methods constitute a flagrant violation of Article 135/a ("Forbidden interrogation procedures") of the Code of Criminal Procedure and Article 23 of the Regulations on Apprehension, Custody and Taking of Statements. **The CPT recommends that all Police Chiefs and Heads of Anti-Terror Departments throughout Turkey be reminded of this fact.**

12. From the interviews with detained persons during the September 2003 visit, it would also appear that the old habit of blindfolding persons in police/gendarmerie custody has not yet been completely discarded. A number of allegations of blindfolding were received, in particular in relation to recent periods of custody at the Anti-Terror Department of Adana Police Headquarters.

The unacceptable nature of this practice was emphasised in the report on the September 2001 visit (cf. CPT/Inf (2002) 8, paragraphs 30 and 31) and the CPT recommended that the blindfolding of persons who are in the custody of law enforcement agencies be expressly prohibited. Clearly, the action subsequently taken by the Turkish authorities (Circular No.0100 of 23 May 2002) has not been sufficient. **The CPT recommends that further steps be taken to put a stop to blindfolding.**

13. The information gathered during the CPT's September 2003 visit demonstrates that although the general trend is positive, it is essential for the Turkish authorities to pursue vigorously their efforts to combat all forms of ill-treatment by law enforcement officials. The fact that credible reports continue to appear of ill-treatment by such officials in different parts of the country underscores this point.

It is axiomatic that the effectiveness of the impressive legal and regulatory framework which has been established will ultimately depend on the existence of a determined intention that it be complied with in practice. The key elements for ensuring that such an intention does indeed exist, and is sustained, are appropriate training for all concerned and an effective system of control by both internal and external authorities (cf. also paragraphs 37 to 42).

C. Application of custody periods and safeguards against ill-treatment

14. As already mentioned, one of the main aims of the September 2003 visit was to examine the implementation in practice of recent reforms. This concerned custody periods and certain fundamental safeguards such as notification of custody to a relative and access to a lawyer.

a) custody periods

15. As a result of the recent legal amendments, the initial police/gendarmerie custody period is 24 hours or, in the case of offences falling under the jurisdiction of the State Security Courts, 48 hours. In the case of collective offences (three or more persons), the custody period may be extended up to a maximum of four days, by written order of the public prosecutor.

The information gathered during the visit clearly indicated that the reduced police/gendarmerie custody periods were being respected in practice, including in Diyarbakır Province (where the maximum period of custody was reduced to four days at the end of 2002, following the lifting of the state of emergency). Further, an examination of registers and dossiers showed that when an extension of custody was deemed necessary, the relevant procedure was being followed.

16. Public prosecutors are not obliged to hear a detained person before ordering an extension of custody, and in practice they do not do so. **The CPT considers that in the interests of the prevention of ill-treatment, it would be preferable for persons in respect of whom an extension of custody is sought to be always physically brought before the prosecutor responsible for deciding the question of extension, and for them to be able to be assisted by a lawyer at this hearing.**

b) notification of custody

17. All exceptions to the right to have a relative notified without delay of one's custody have been removed by the recent legal reforms. Nevertheless, in the reports on its most recent visits, the CPT expressed concern about the fact that under the new provisions, notification was to be given "by decision of the prosecutor"; the Committee expressed the view that notification of a relative should instead be an obligation placed upon the law enforcement agency concerned.

At the high-level talks in July 2003, the Turkish authorities stressed that there was a clear obligation in all cases to notify a relative without delay, and argued that the reference to the public prosecutor (who must be immediately informed of every apprehension) was simply a safeguard to ensure that the notification was given. The information gathered during the September 2003 visit tended to confirm this position. Public prosecutors and senior police officers with whom this matter was raised were adamant that there were no exceptions to the rule of notification without delay; unless the person concerned expressly indicated that he did not want a relative to be informed of his custody, notification was always given. Further, in practice, the law enforcement agency took the initiative to give the notification without waiting for a decision by the prosecutor.

18. From interviews with detained persons and the examination of custody registers, it would appear that the obligation to notify without delay the relative of an apprehended person is, on the whole, being complied with in practice. Further, the fact that the relative had been notified was being recorded on a new custody follow-up form. However, an unusually high proportion (more than one third) of the persons taken into the custody of the Anti-Terror Department at Adana Police Headquarters in 2003 were recorded as having declined to exercise their right to inform a relative. The CPT fully understands that certain detained persons, in particular if apprehended in relation to offences dealt with by Law and Order Departments, may well not wish to have a relative informed of their situation. However, this will be highly unusual in the case of persons suspected of offences dealt with by Anti-Terror Departments (a fact confirmed by the registers consulted at the Anti-Terror Departments in Diyarbakır and Mersin).

The CPT invites the Turkish authorities to verify that the right of detained persons to have a relative informed of their situation is being systematically respected in the Anti-Terror Department at Adana Police Headquarters. More generally, the Committee recommends that whenever a detained person does not wish to make use of his right to notify a relative, he be required to fill out himself the relevant entry in the custody register, and to add his signature.

It should also be noted that some allegations were received that relatives had not been promptly notified of a person's custody. In this regard, the delegation observed that custody registers did not always indicate the precise time of notification or the name of the law enforcement official giving the notification. The CPT was pleased to learn that by virtue of amendments to the Regulations on Apprehension which entered into force on 3 January 2004, it is now expressly required that the relevant entry in the custody register include the name and signature of the official giving the notification, as well as both the date and time at which the notification was given.

c) access to a lawyer

19. Since the entry into force of the 4th harmonisation package in January 2003, all persons detained by the police or gendarmerie, including persons suspected of offences falling under the jurisdiction of the State Security Courts, have a formal right of access to a lawyer as from the outset of their custody. Further, since July 2003, by virtue of the entry into force of the 6th harmonisation package, the precise content of the right of access to a lawyer enjoyed by persons suspected of State Security Court offences has been aligned on that of all other criminal suspects; in particular, such persons now have the right to the presence of a lawyer when giving a statement to the police/gendarmerie and may benefit from the assistance of a lawyer appointed by the Bar Association.

20. Notwithstanding the above-mentioned legal provisions, the facts found during the September 2003 visit show that in practice in the Adana, Mersin and Diyarbakır regions, the great majority of detained persons are not benefiting from access to a lawyer whilst in police or gendarmerie custody. Consultation of custody registers in several of the Departments of Police Headquarters visited revealed that only from 3 to 7% of persons detained in recent months had had access to a lawyer. As regards the Bismil Gendarmerie Headquarters, according to the custody register not a single one of the 65 persons detained there since the beginning of 2003 had requested access to a lawyer, and the same was true at Çınar Gendarmerie Headquarters. The situation was somewhat better at the Anti-Terror Department of Diyarbakır Police Headquarters, where some 30% of persons detained in 2003 were recorded as having had access to a lawyer.

21. A number of possible explanations for this state of affairs emerged from the delegation's interviews with detained persons and its discussions with representatives of Bar Associations. First of all, it is clear that a considerable number of detained persons (in particular those suspected of ordinary criminal offences) see little advantage – and possible disadvantages- in having a lawyer involved with their case at the stage of police/gendarmerie custody; to request a lawyer could be seen as an admission of guilt, could unduly prolong the procedure, could render it all the more difficult subsequently to challenge in court statements made to the police/gendarmerie, etc. However, there are also other factors at work.

Several persons interviewed stated that they would have liked to have had access to a lawyer but had been unaware that they enjoyed this right or that legal assistance was available free of charge. Apparently, law enforcement officials had not enlightened them on this subject and in some cases had even suggested the contrary (“you have no money, so how can you have a lawyer?”). A number of other persons interviewed alleged that the police had discouraged them from exercising the right of access to a lawyer, or that their requests for a lawyer had been specifically turned down.

The CPT is particularly sceptical about the low take-up of access to a lawyer among persons detained in Anti-Terror Departments. At Adana Police Headquarters, a mere eight of the 153 persons detained by the Anti-Terror Department since the beginning of 2003 had apparently requested access to a lawyer. The figure was even lower in Mersin (three out of the last 107 persons detained), no doubt explained at least in part by the fact that officers in this Department themselves systematically filled out the custody register to the effect that the detained person did not want a lawyer, and then presented it to him for signature. As already indicated, the figure was somewhat higher in Diyarbakır (143 out of the last 476 persons detained), but still surprisingly low for this category of detainee. According to country-wide figures provided by the Turkish authorities, in the first 6 months of 2003 only 834 of the 2813 persons detained by Anti-Terror Departments exercised their right of access to a lawyer (i.e. 29.6%). The CPT has the firm conviction that these figures reflect above all a reluctance on the part of law enforcement officials working in such Departments to fully embrace the new legal situation as regards access to a lawyer for persons in their custody.

22. Actively promoting the right of access to a lawyer is as much in the legitimate interests of law enforcement officials as it is in those of detained persons. In particular, an effective presence of lawyers during the stage of police/gendarmerie custody will greatly facilitate the countering of unfounded allegations of ill-treatment.

The CPT recommends 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 fully effective in practice. Particular attention should be paid to the situation in Anti-Terror Departments.

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 persons from making use of that right. Detained persons should be required to fill out themselves the relevant entry in the custody register concerning whether or not they wish to have access to a lawyer, before adding their signature. Further, the possibility for persons without the necessary resources to obtain free legal assistance from a lawyer appointed by the Bar Association should be spelt out in the Form on Suspects' and Accused Persons' Rights.

The Committee also wishes to highlight the desirability of cooperation with Bar Associations in order to promote knowledge among the general public about the right of access to a lawyer for persons detained by the law enforcement agencies.

23. In its report on the 2002 ad hoc visits, the CPT addressed the issues of the confidentiality and length of meetings between lawyers and persons in police/gendarmerie custody (cf. CPT/Inf (2003) 28, paragraphs 37 and 38), and these matters were also discussed during the high-level talks in July 2003. The CPT is pleased to note that by a Ministry of Interior circular of 1 August 2003, instructions in line with the Committee's recommendations were issued. In particular, it is stipulated that at the end of a detainee/lawyer meeting, a record should be drawn up indicating the length of the meeting and whether its confidentiality had been observed, this record to be signed by both the lawyer and the detained person. During the September 2003 visit, the CPT's delegation saw several examples of such documents.

It is also stipulated in the above-mentioned circular that a suitable room should be set aside for meetings between detained persons and lawyers in all law enforcement units dealing with custody procedures. The CPT's delegation observed that such rooms already existed in many of the establishments visited; the Committee trusts that they are all now being used for the purpose of detainee/lawyer meetings (including the excellent facility in the Anti-Terror Department at Adana Police Headquarters).

d) information on rights

24. Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. Consequently, it is imperative that persons taken into police/gendarmerie custody are expressly informed of their rights without delay and in a language which they understand.

The CPT's delegation found evidence of very recent efforts to ensure that detained persons are promptly informed of all their rights. This contrasted with many allegations of lack of, or insufficient, information during earlier periods of custody.

25. The delegation observed that the Suspects Rights Form being distributed to detained persons did not accurately reflect the current legal situation, in particular as regards notification to a relative and access to a lawyer. The CPT notes that the necessary amendments to the Form have recently been made via amendments to the Regulations on Apprehension which entered into force on 3 January 2004. **The CPT trusts that all law enforcement establishments have now been provided with copies of the Form in its fully up-to-date version. Further, the Committee recommends that the form be made available in a suitable range of foreign languages, and that clear instructions be given to the effect that illiterate persons must receive a full oral explanation of their rights.**

According to Article 6 of the Regulations on Apprehension, the detained person should be given a copy of the Rights Form; **compliance with this important requirement should also be closely monitored.**

e) specific issues related to juveniles

26. Article 18 of the Regulations on Apprehension makes special provision for minors apprehended in relation to a criminal offence. In particular, it is specified that their relatives and lawyers must be informed of the apprehension and that they should immediately be brought before the public prosecutor, who must himself conduct the preliminary investigation.

The CPT recommends that a specific version of the Suspects Rights Form, setting out the particular position of detained minors, be developed and given to all minors taken into custody.

27. Article 18 (b) 4 stipulates that a statement may be taken from a detained minor, provided that his lawyer is present. However, the delegation which carried out the September 2003 visit observed in the juvenile departments at both Adana and Diyarbakır Police Headquarters that it was common practice to oblige juveniles to sign, in the absence of a lawyer, an “apprehension” report. This report sets out a detailed account of the alleged offence and the apprehension, drawn from a number of sources including witnesses, and can even include statements said to have been made by the juvenile at the time of his apprehension. A minor should certainly not be obliged to sign a document of this nature in the absence of a lawyer appointed to assist him.

The CPT recommends that steps be taken to ensure that juveniles do not make any statement or sign any document related to the offence of which they are suspected without the benefit of a lawyer being present.

D. Medical examination of persons in police/gendarmerie custody

28. Over the years, the CPT has given a great deal of attention to the existing system for the medical examination of persons in police/gendarmerie custody, and with good cause. If it operates satisfactorily, the system will constitute a significant safeguard against ill-treatment; if not, it will have the perverse effect of rendering the task of combating torture and ill-treatment all the more difficult.

It is clear from the information gathered during the September 2003 visit that, despite some modest progress, the system continues to display major deficiencies. However, the CPT has noted with interest that, in the light of the delegation’s observations at the end of the visit, a new circular on “points to be borne in mind in providing forensic medical services and drawing up forensic reports” was issued by the Ministry of Health on 10 October 2003, addressed to the 81 Provincial Governors’ Offices.

29. The CPT has repeatedly emphasised the fundamental importance of law enforcement officials not being present in the room where the medical examination is carried out.

A majority of the detained persons interviewed in the course of the September 2003 visit alleged that law enforcement officials had been present during the examination. A somewhat different picture emerged from the delegation’s discussions with health care staff in Adana, Diyarbakır and Mersin. They indicated that on the whole it was now possible to ensure the absence of law enforcement officials. However, there were exceptions; for example, staff at Diyarbakır State Hospital stated that, whereas the police had in recent times been displaying a more cooperative attitude, it was still impossible to persuade members of the gendarmerie to leave the examination room.

The above-mentioned circular of 10 October 2003 stipulates that the medical examinations “must be conducted out of the hearing and sight of members of the law enforcement agencies. The person to be examined must be received in a room in which only health personnel are present...”. **The CPT trusts that Provincial Governors’ Offices are taking all necessary steps to ensure strict compliance with this requirement.**

It should be added that the CPT was very pleased to learn that, via the amendments which entered into force on 3 January 2004, the possibility for the detained person himself to request the presence of law enforcement officials during the examination has been removed from Article 10 of the Regulations on Apprehension, thereby implementing one of the CPTs recommendations in this area.

30. For the confidentiality of the medical examinations to be preserved, it is also essential that all the health care facilities concerned have a suitable room designated for this purpose; this was not the case in certain of the institutions visited in September 2003. The room should among other things be secure i.e. be a place from which a person being examined could not easily escape. This will make it possible to counter any “security concerns” raised by the law enforcement officials providing the escort.

The need for a suitable examination room is emphasised in the October 10 circular; **the CPT trusts that due attention is being given to this requirement.**

31. As regards the precise modalities of the medical examination, the delegation observed significant variations in the practice followed in the different health care facilities visited (and even between different doctors in the same facility). For example, some doctors systematically requested the person being examined to undress; others only did so if the person voiced complaints about his treatment. Some doctors recorded any allegations made by the person examined; others only recorded allegations if physical injuries were observed. Further, as had been the case during previous visits, a variety of different forms were used for recording the doctor’s findings.

The October 10 circular stipulates that the detained person, after being provided with the necessary information, must be examined unclothed; the CPT approves of this requirement, provided the requirement that the detained person must be received in a room in which only health personnel are present is also respected.

As regards the precise form to be used for recording the medical examination, this is a matter for the Turkish authorities to decide. However, whatever form is used, it should contain distinct sections for the detainee’s statements (including any allegations of ill-treatment), the doctor’s objective medical findings, and the doctor’s conclusions in the light of those two elements.

The CPT recommends that the Turkish authorities redouble their efforts to ensure that a form meeting the above requirements is used for recording the medical examination of persons in police/gendarmerie custody, and that doctors systematically complete each of the form’s sections. In particular, any allegations of ill-treatment must be recorded, irrespective of whether physical injuries are observed.

32. Guaranteeing the confidentiality of the medical examinations of persons in police/gendarmerie custody also involves steps to ensure the confidential transmission to the relevant authorities of the medical reports drawn up after such examinations. As an assiduous reader of CPT visit reports and the Turkish authorities' responses will know, much ink has been expended on this subject.

The delegation which carried out the September 2003 visit observed that the above-mentioned requirement of confidential transmission was still not being met. According to current instructions, a copy of the medical report is to be given in a sealed envelope to the law enforcement officials accompanying the detained person. With one exception, this was not being done in any of the health establishments visited by the delegation. At best the report was handed over in an unsealed envelope, and in most cases the report as such was given directly to the law enforcement officials. Consequently, law enforcement officials were in a position to read the report and, if they were not satisfied with it, take the detained person elsewhere for another medical examination. Health care staff at the State Hospital in Adana informed the delegation of one relatively recent case in which precisely that had happened.

It should be added that, even if the existing instructions were to be followed to the letter and the report handed over in a sealed envelope, this would still not guarantee that confidentiality is preserved. Quite apart from the possibility of law enforcement officials opening a sealed envelope, the instructions stipulate that the copy of the report to be kept by the health care institution must be signed by one of the accompanying law enforcement officials, thereby providing an ideal opportunity for that official to see its contents.

33. The Committee has in the past voiced serious misgivings about the relevant provisions of Article 10 of the Regulations on Apprehension, and in particular the stipulation that one of the four copies of the medical report shall be forwarded to the law enforcement agency which requested the medical examination (cf. the report on the CPT's visit in 1999; CPT/Inf (2000) 17, paragraph 19). In response, the Turkish authorities have insisted that there are entirely legitimate reasons for such a procedure.

Even if the Regulations remain unchanged on this point, the CPT must itself insist that the precise procedure whereby the medical report is forwarded to the law enforcement agency concerned (as well as to the other authorities which receive a copy) ensures that the report is not read by the law enforcement officials escorting the person to be medically examined. The only foolproof method of achieving this is to refrain from giving the report to those officials.

Consequently, **the CPT reiterates the recommendation** (already made in the report on the ad hoc visits in 2002) **that existing instructions be revised and stipulate that a copy of the medical report is under no circumstances to be given to the law enforcement officials escorting the detained person; instead all copies of the report should be forwarded to the authorities concerned by means which are entirely separate from the escort team.** Implementation of this recommendation will not require any amendment of Article 10 of the Regulations on Apprehension.

34. In Adana, Diyarbakır and Mersin, the routine medical examinations of persons in police/gendarmerie custody are carried out at State Hospitals or health centres in the cities. In Adana, the University Institute of Forensic Medicine had previously performed most of these examinations; however, the Institute ceased to perform this function in the course of 2002.

In the report on the ad hoc visits in 2002, the CPT commented that it might be advisable in a given city to designate one specific medical facility as having the primary responsibility for the carrying out of such examinations. In their response to that visit report and at the high-level talks in July 2003, the Turkish authorities stated that this proposal was being assessed.

The facts found during the September 2003 visit have reinforced the CPT's conviction that the above-mentioned approach would be desirable. Centralising in one facility the examinations of persons in police/gendarmerie custody would obviously counter the phenomenon of "health-care unit shopping"; further, by virtue of its status as the specifically designated facility for such examinations, the institution concerned would be better placed to ensure strict observance of their confidentiality. There would also be other advantages; in particular, the provision of appropriate training to the doctors responsible for this particular task, and the application of uniform working methods and standards, would be facilitated.

Consequently, **the CPT recommends that the Turkish authorities examine the possibility of designating in each city one specific medical facility with primary responsibility for performing the routine medical examinations of persons in police/gendarmerie custody.**

E. Detention and interrogation facilities

35. The information gathered during the September 2003 visit demonstrates that progress continues to be made towards improving conditions of detention in law enforcement establishments. In practically all of the establishments visited, material conditions of detention were on the whole adequate for the periods of custody involved. Specific reference should be made to the Anti-Terror Department at Diyarbakır Police Headquarters; its custody area – once one of the worst ever seen by a CPT delegation – has now been brought up to a satisfactory standard.

The CPT also welcomes the gradual establishment throughout the country of juvenile departments in Police Headquarters, thereby avoiding holding juveniles in ordinary police detention facilities. Conditions of detention in the juvenile departments at the Adana and Diyarbakır Police Headquarters were found by the Committee's delegation to be of an acceptable standard.

However, the delegation observed that in certain of the establishments visited, it was still quite common for persons detained overnight to be provided only with blankets. **The CPT reiterates the recommendation it has already made on several occasions that steps be taken to ensure that anyone obliged to spend the night in the custody of a law enforcement agency is provided with a mattress.**

36. The CPT's delegation observed that interrogation facilities were gradually being brought into line with the standards recently introduced for such premises. It was particularly impressed by the new interview rooms of the Anti-Terror Department at Diyarbakır Police Headquarters; they should serve as a model for other law enforcement establishments. One of the two interview rooms in the Anti-Terror Department at Adana Police Headquarters was also of a good standard, and the Committee was pleased to learn that material improvements were immediately made to the second room in the light of its delegation's observations.

However, the delegation was less impressed by other interrogation facilities seen, for example those of the Law and Order and Organised Crime and Trafficking Departments at Adana Police Headquarters. Despite having been decorated in a light colour, they retained an intimidating atmosphere. **The CPT trusts that these facilities and others like them will be either improved or taken out of service at the earliest opportunity.**

F. Training and systems of control

37. Does the progress already made in combating torture and ill-treatment reflect a real change in mentality or merely a reluctant compliance with orders from above? Only if the former is the case will there be a solid basis for further improvement. Consequently, it is imperative that legal reform be accompanied by a massive investment aimed at transforming attitudes.

38. The best possible safeguard against ill-treatment is for all officials involved in the law enforcement process themselves to unambiguously reject resort to such methods. Appropriate professional training, incorporating the principles of human rights, is therefore an essential component of any strategy for preventing ill-treatment. This training must take place at all levels of the law enforcement infrastructure and be on a permanent footing.

One basic objective of such training must be to ensure that all those involved (law enforcement officials, forensic doctors, public prosecutors, judges, etc) have a good grasp of both the precise wording and the underlying intent of the texts governing their work. Emphasis must also continue to be placed on advanced methods of crime investigation, thereby reducing reliance on information and confessions obtained via interrogations for the purpose of securing convictions. The change in philosophy of going "from the evidence to the suspect" rather than "from the suspect to the evidence" must be firmly rooted in the criminal justice system.

The information at the CPT's disposal shows that important efforts have been made in the area of professional training for officials involved in the law enforcement process. More specifically, it is clear from observations made during visits in recent years that the quality of staff in police departments has improved. **The Committee encourages the Turkish authorities to maintain and, as far as possible, intensify those efforts and in so doing to take into account the above remarks.**

39. As regards more particularly public prosecutors and judges, they should be made fully aware not only of the importance of medical reports in the context of combating ill-treatment but also of the limitations of such reports. From the information gathered during the September 2003 visit, it is clear that there is still a tendency for routine medical reports drawn up at the end of police/gendarmerie custody which record “Darp cebir izine rastlanmadi” (no signs of blows or violence found) to be treated as a guarantee that ill-treatment has not occurred. Nothing could be further from the truth.

Even assuming that the examination on which such a report is based was carried out under satisfactory conditions (which at present is still far from always being the case), it is a well recognised forensic medical fact that the absence of physical marks does not necessarily mean that the person examined has not been ill-treated. Many of the methods of ill-treatment known to have been used in Turkey do not leave visible physical marks, or will not if carried out expertly. It follows that in order to make an accurate assessment of the veracity of allegations of ill-treatment, it may well be necessary to look beyond the medical reports drawn up during police/gendarmerie custody and to take evidence from all persons concerned and arrange in good time for on-site inspections and/or specialist medical examinations.

The CPT recommends that particular attention be given to these points during the professional training of public prosecutors and judges.

40. Naturally, compliance with legal requirements and professional standards must be supervised by effective systems of control. The compliance monitoring procedure established in Turkey has been referred to in previous reports (cf. in particular the report on the visit in July 2000; CPT/Inf (2001), paragraph 59). **The CPT recommends that all necessary steps be taken to maintain the vitality of that procedure.**

The situation in all law enforcement establishments must continue to be thoroughly checked at appropriate (and irregular) intervals. Senior officials and public prosecutors carrying out those checks must examine all issues related to the treatment of persons in custody; those issues concern not only material conditions of detention but also questions such as the recording of detention, information on rights and the actual exercise of those rights (in particular the rights of access to a lawyer and to notify a relative of one’s custody), and compliance with the rules governing the medical examination of persons in police/gendarmerie custody. To explore these different issues in an effective manner will involve interviewing in private persons who are in detention.

Further, the manner in which doctors carry out medical examinations of persons in police/gendarmerie custody should be closely monitored by the Ministry of Health.

41. Finally, it is axiomatic that one of the most effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by the relevant authorities of all complaints of such treatment and, where appropriate, the imposition of a suitable penalty. This will have a very strong deterrent effect.

The recent legal reforms have included extremely positive measures in this area. The requirement in certain cases for prosecutors to seek authorisation from an administrative authority to instigate proceedings under Articles 243 (torture) and 245 (ill-treatment) of the Criminal Code has been removed. Further, sentences imposed under those Articles can no longer be converted into a fine or suspended (and it should also be recalled that the maximum penalties under Articles 243 and 245 were increased in 1999). Most recently, by virtue of the 7th harmonisation package which entered into force on 7 August 2003, amendments have been made to the Code of Criminal Procedure which stipulate that investigations and prosecutions in respect of persons who commit offences covered by Articles 243 and 245 are to be considered as urgent matters and treated without delay as priority cases; hearings of cases related to these offences can not be adjourned for more than 30 days unless there are compelling reasons, and these cases will also be dealt with during court vacations.

42. The intent of the legislator could not be more clear: the criminal justice system should adopt a firm attitude vis-à-vis offences under Articles 243 and 245 of the Criminal Code. This intention was subsequently confirmed in a circular addressed by the Minister of Justice on 20 October 2003 to all Chief Public Prosecutors' Offices. Particular mention should be made of the Minister's stipulation that "investigations concerning the offences of torture and ill-treatment are not to be left to the law enforcement agencies but to be conducted in person by the chief public prosecutor or a public prosecutor appointed by him".

The CPT greatly welcomes the measures referred to in paragraphs 41 and 42. **It would like to receive the Turkish authorities' assessment (supported as appropriate by statistics) of the manner in which those measures have been implemented in practice during 2003 and the first quarter of 2004.**