CPT/Inf (2006) 31

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

from 7 to 14 December 2005

The Turkish Government has requested the publication of this response. The report of the CPT on its December 2005 visit to Turkey is set out in document CPT/Inf (2006) 30.

Strasbourg, 6 September 2006

REPORT OF THE TURKISH GOVERNMENT IN REPLY TO THE RECOMMENDATIONS, REQUESTS FOR INFORMATION AND COMMENTS SET OUT IN THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE ON ITS VISIT TO TURKEY FROM 7 TO 14 DECEMBER 2005

The views of the Turkish Government on the points made by the European Committee for the Prevention of Torture (CPT) in the report on its visit to Turkey from 7 to 14 December 2005 are set out below in the order adopted in the report. (*)

Paragraph 14

Request for comments of the Turkish authorities on the possibility for a sentence of imprisonment for the offence of ill-treatment to be suspended.

Articles 94, 95 and 96 of the Turkish Penal Code[1] (no. 5237) regulate the offences of torture, torment and ill-treatment. The offence of torment referred to in Article 96 entails the commission of an act which is incompatible with human dignity and which causes a person to suffer both physically and psychologically and/or be degraded. In case the offence of torment as defined in Article 96 is committed by public officials, this act is considered within the scope of the offence of torture as defined in Article 94. Therefore, Article 96 shall penalise the offences of torment committed by individuals other than public officials. The lower limit of imprisonment as provided in Articles 94 and 95 shall be three years for public officials for the offences defined in Article 96. The sentence of imprisonment defined for the offence of torture, torment and ill-treatment committed by public officials cannot be converted to a fine or suspended under the provisions of Articles 94 to 96.

Paragraph 15

Request for comments of the Turkish authorities on the absence in the new Code of Criminal Procedure of provisions of the previous Code aimed at ensuring the speedy investigation and prosecution of alleged offences of torture or ill-treatment.

The Code of Criminal Procedure (no. 5271) has introduced effective investigation measures and arrangements in order to ensure the completion of trials in the possible shortest period as prescribed by the additional Article 7 of the previous Code. The new Code prescribes the completion of a trial in one hearing. Necessary mechanisms were included in the said Law to this end. As regards ensuring the collection of all case-related evidence during the process of investigation, Article 174 provides that courts may return any indictment without sufficient evidence. Thus, public prosecutors are prevented from preparing an indictment not compatible with the conditions set out in Article 170 and from filing a suit before collecting existing evidence that is supposed to affect the establishment of the offence.

(*) Appendices II to VI of the Turkish Government's response are available in Turkish and can be obtained upon request to the CPT's Secretariat *(Human Rights Building - Council of Europe - F - 67075 Strasbourg Cedex, France - tel: +33 (0)3 88 41 39 39 - fax: +33 (0)3 88 41 27 72 - E-mail: cptdoc@coe.int - Internet: http://www.cpt.coe.int).*

1 See Appendix I.

On the other hand, the duration of the judiciary holiday has been re-arranged. In accordance with paragraph 1 of Article 331 of the Code of Criminal Procedure, offices and courts with criminal duties shall be on judiciary holiday from August 1 to September 5 every year. The new regulation has seemingly eliminated the time conflict between the hearing schedule and the judiciary holiday.

Paragraph 20

Comment on the continuation of the vigorous pursuit of the efforts of the Turkish authorities to combat all forms of ill-treatment by law enforcement officials.

a. The Crime of Torture and Ill-treatment

As a result of the amendments made in domestic law since the year 2000 for the effective investigation of torture and ill-treatment allegations, the offence of torture has been redefined and significant steps have been taken in the fight against torture and ill-treatment by increasing the penalty for the said offences.

Judicial and administrative investigations are launched for officials who have allegedly violated rights by individually acting against the general principles and policies of the Turkish Police, and those who are found guilty are punished.

b. Doctor Reports

In accordance with Article 9 of the Regulation on Arrest, Detention and Interrogation which entered into force on 1 June 2005, if the arrested person is to be remanded or if he has been arrested by force, he is subjected to a medical examination and the condition of his health at the time of arrest is recorded.

The condition of health is also recorded by doctor reports before the proceedings for the transfer of the remanded person to another place for any reason, the extension of the period in custody, release or bringing the remanded before legal authorities.

It is essential that the doctor and the person examined meet in privacy and that the examination is conducted on the basis of patient-doctor relationship.

c. Training

To raise awareness on human rights and on studies prepared in international fora, pre-service training given to police officers in educational institutions is reinforced by seminars, panels, conferences and symposiums with the participation of domestic and foreign experts.

Since the year 2000, “Human Rights” and “Public Relations” are included as compulsory courses in all in-service training programmes. Since 2004, at least 2 hours of courses on “Human Rights”, “Serving with Public Support” and “Professional Ethics of the Police” are included for all in-service training programmes that require a transfer to another branch.

Moreover, in accordance with the yearly training plan, at least one fifth of the total personnel are trained within the context of the "General Improvement Training" organised by Headquarter units and Provincial Police Headquarters. Within these programmes, the "Human Rights" course is given for 3 hours during a single term.

d. Twinning Projects

With a view to implementing the National Programme to meet the requirements for Turkey's membership to the European Union, various twinning projects are prepared by relevant bodies to inform public institutions on the practices of EU member countries (Twinning is a system first developed in 1998 by the EU Commission in order to support candidate states' public institutions in their restructuring efforts to ensure the implemention of the EU legislation).

Also the Turkish Police continues to improve human rights standards through its projects some of which may be listed as follows:

1. Project on Improving Interrogation Techniques and Rooms
2. Project on Improving the Responsibility, Productivity and Effectiveness of the Turkish Police
3. Project on Developing the Judicial Capacity of the Police

e. The Circulars

Local Police Headquarters have been sent circulars issued in accordance with the recommendations mentioned in CPT reports prepared following the Committee's visits in Turkey and the importance of monitoring has been emphasized in these circulars regulating the following fields:

- Carrying out interrogation in compliance with rules,
- Avoiding any attitude or behavior that can lead to allegations of human right violations
- Complying with custody periods,
- Keeping custody records properly and accurately,
- Rules to be applied for foreign detainees,
- Fully observing the Regulation on Arrest, Detention and Interrogation.

Paragraph 20

Recommendation that the methods used by police officers belonging to the three police departments in İstanbul and Van referred to in paragraph 19 when detaining and questioning suspects be the subject of an independent and impartial inquiry.

The Directorate General of Security of the Ministry of the Interior has recently launched an investigation concerning the points raised in paragraphs 19 and 20 of the report. The outcome of the investigation will be conveyed to the CPT in due course.

Paragraph 20

Request for information on the results of the inquiry referred to in the second sub-paragraph of paragraph 20.

An Inspector has been nominated to investigate the points referred to in paragraphs 19 and 20 of the Report. Information concerning the outcome of the investigation shall be communicated at a later time.

Paragraph 20

Request for information on the outcome of the investigation into the complaint lodged in respect of the detained person referred to in the second sub-paragraph of paragraph 19.

The Report states that, on the third day of the visit to Istanbul of the CPT delegation, it has been found, upon a medical examination by a doctor affiliated with the CPT, that a person, understood to be named as C. P. , detained at the Beyoğlu District Police Headquarters had been subjected to ill-treatment. Having been provided by the Office of Beyoğlu Chief Public Prosecutor, detailed information and documents on the investigation into the aforementioned allegation of ill-treatment are enclosed herewith[2].

Paragraph 20

Comment on the need to ensure that the improved legal framework for detention and questioning and the reinforced supervision of law enforcement facilities does not engender illegal practices of the kind described in the third sub-paragraph of paragraph 20.

Article 26 of the Regulation on Arrest, Detention and Interrogation provides that "competent units of law enforcement officials shall carry out supervision in order to ensure that custody and statement-taking rooms are compatible with standards."

Law enforcement officials are monitored by public prosecutors and authorised units pursuant to the provision that "The chief public prosecutors or the public prosecutors whom they shall nominate shall, as part of their judicial duty, supervise the custody rooms where persons are kept and, if any, the rooms where their statements are taken, the situation of the detained persons, the reasons for and the period of custody, all relevant proceedings and records, and shall register the related information in the Custody Records."

[2] See Appendix II.

Paragraph 22

Comment on allegations of delays in notification of a relative as well as of absence of feedback to the detained person (whether notification had indeed been made or when).

In accordance with Article 95 of the Code of Criminal Procedure and Article 6 of the Regulation on Arrest, Detention and Interrogation, regardless of the offence attributed, a relative of the detainee or a person chosen by him/her is notified, without delay and upon the order of the Public Prosecutor, of the arrest and of the order concerning the prolongation of custody period.

If the detainee is a foreign national and unless s/he objects in writing, the consulate of the country of which s/he is a national is notified of his/her situation.

In accordance with the Regulation on Arrest, Detention and Interrogation, regardless of the offence charged, suspects or the accused who are arrested or detained are given the "Suspects' Rights Form".

The allegation that notification had not been made to detainees or their relatives in a few cases has not been investigated due to lack of concrete information concerning the allegations.

Paragraph 23

Recommendation that all necessary steps be taken to ensure that the right to access to a lawyer for persons in police/gendarmerie custody, as guaranteed by law, is fully effective in practice as from the outset of custody.

As regards the full provision of the right to access to a lawyer by detained persons at the outset of the custody, Article 20 of the Regulation on Arrest, Detention and Interrogation provides that "the suspect or the accused shall be able to receive the assistance of one defender or more throughout all the phases of investigation or prosecution and, if s/he has a legal representative, the latter also may choose a defender for the the suspect or the accused," and that "In the investigation or prosecution of offences with a punishment of at least five years of imprisonment as an upper limit, a defender shall be nominated irrespective of the presence of a demand by the suspect or the accused". Training activities as well as due controls and supervision are carried out in order to ensure that all personnel duly comply with these provisions.

Due diligence is provided as regards the communication between detained persons and their defenders, an indicator of which are the results in the "Statistics on Defender Communication" which is enclosed herewith[3].

[3] See Appendix III.

Paragraph 24

Comment on the need to closely monitor the compliance with the requirement of giving detained persons a copy of the "Suspects Rights Form" at the outset of their custody.

Article 6 of the Regulation on Arrest, Detention and Interrogation regulates the requirement that detained persons are to be given a copy of the "Suspects Rights Form" at the outset of their custody: "…The person arrested shall be given a copy of the signed 'Arrest and Detention Record Suspect and Accused Rights Form' which indicates that the person arrested was notified in writing of his/her rights and comprehended the information therein…"

The implementation of the said Article is being closely monitored by the relevant authorities.

Paragraph 26

Recommendation that the Turkish authorities redouble their efforts to improve the confidentiality and quality of the medical examinations of persons in police/gendarmerie custody, in the light of the remarks made in paragraph 26 and the CPT's previous recommendations on this subject, which will require that suitable and secure rooms be provided for such examinations and the doctors performing them receive appropriate training.

As regards the privacy of the medical examination of the detained persons, Article 9 of the Regulation on Arrest, Detention and Interrogation provides that "It is fundamental that the doctor and the person examined see each other in privacy and that the examination is conducted on the basis of patient-doctor relationship. However, the doctor may, on grounds of concern for his personal safety, request that the examination be conducted under the supervision of law enforcement officials. Such a request shall be documented and fulfilled. Also the defender may be present during the examination provided that his/her presence does not cause any delay."

The privacy of the medical examination of detained persons is also regulated in Circular no. B.10.0.TSH.013.003-13292 (2005/143) dated 22 September 2005 of the Ministry of Health. The main purpose of the Circular is to ensure that services in both medical examinations during custodial proceedings and other forensic examinations "are conducted in accordance with human dignity and the nature of fundamental rights and freedoms".

There are articles in the aforementioned Circular in parallel with the provisions of the Regulation on Arrest, Detention and Interrogation. For instance, in the section titled "3.2 Medical Examination of Cases", in paragraph 3.2.4.b under the title "Points to Take into Account in Medical Examinations and Examination Conditions", it is mentioned that "fundamental rights and freedoms and rules of respect for privacy will be strictly followed in medical examinations". Paragraph 3.2.4.c states that "it is fundamental that the examination be carried out in a place out of sight and earshot of others, that the doctor and the person examined see each other in privacy and that the examination is conducted on the basis of patient-doctor relationship. Special care must be attached to this in examinations for custodial proceedings. In other examinations, if the doctor deems it necessary, a member of the health service can be present at the examination spot. However, the doctor may

demand the attendance of a security officer on grounds of individual security concerns. Such a demand shall be documented and fulfilled. If the examination is made when the security officer is present and should the examined demand, the defender may also appear in the examination on the condition not to cause any delay". Finally, according to paragraph 3.2.4.f, "In all cases and especially during the examination of the remanded, if the doctor who is carrying out the examination finds any sign indicating that offences defined in Articles 94 to 96 of the Turkish Penal Code have been committed, s/he shall immediately inform the public prosecutor about this situation. In such cases, proceedings shall be carried out in accordance with Articles 7 and 8 of the Regulation on Physical Examination, Genetic Investigation and Determination of Physical Identity in Criminal Procedure".

Furthermore, there is also a section in the Circular on examination conditions in the judicial report forms rearranged by the Circular with a view to preventing human rights violations. As seen under the title "report forms" at "*http://www.adlitabiplik.saglik.gov.tr*", the doctor carrying out the examination shall document the examination conditions in the report s/he is to prepare.

It is essential that law enforcement officials not be present in examination rooms in all forensic examination cases and, particularly, during medical controls carried out as part of arrest proceedings. There exists no relevant information or feedback at the Ministry of Health that this rule has been violated in the last year. In brief, it is considered that (although it is seen from the information that some problems, though few, were experienced several years ago) there exist no serious problems concerning the privacy of forensic medical examination. Necessary investigation is carried out along with proceedings to search any negligence and measures are taken to prevent their recurrence if concrete information on relevant claims by detainees is forwarded to the Ministry of Health.

Another point stated in paragraph 26 of the Report is that the requirement that medical reports be transmitted to the prosecutor in closed and sealed envelopes is often not being complied with. The submission of reports is also regulated by the aforementioned Circular of the Ministry of Health in accordance with the superior legislation. Under the title "Preparation of Reports and Their Submission to Judicial Authorities" in paragraph 3.3.4 of section 3.3 entitled "Preparation of Forensic Medicine Reports", it is stated that "the forensic reports shall be prepared in three copies. The authorities to which each copy shall be sent vary depending on whether the case is within the context of the Regulation on Physical Examination, Genetic Investigation and Determination of Physical Identity in Criminal Procedure or the Regulation on Arrest, Detention and Interrogation. If the context within which the person brought for examination has not been stated in the forwarding documents, this information shall be obtained from the police/gendarmerie forces that brought the person. The distribution of the reports shall be as follows: In accordance with the Regulation on Arrest, Detention and Interrogation, in cases where physical examination of persons arrested by force and detained as well as preparation of reports are requested, if there is an arrest or detention, one copy shall be kept by the medical institution, the second copy shall be given to the detainee, and the third copy shall be given to the police/gendarmerie to be put in the investigation file. If the period in custody is extended or there is a change of place or the person is released from custody, one copy shall be kept by the medical institution and the remaining two copies shall be sent as soon as possible to the relevant Office of Public Prosecutor in a closed and sealed envelope by the medical institution that prepared the report…" According to paragraph 3.3.5, "Rules of privacy shall be observed in the preparation of the reports and their submission to judicial authorities. Due measures shall be taken in this regard." In addition, paragraph 3.3.6 provides that "Due measures

shall be taken in accordance with the relevant legislation with a view to ensuring the preservation of report copies that must be kept by medical institutions". In other words, as a measure to prevent human rights violations, it is fundamental that reports which are prepared as part of arrest proceedings during medical examinations be written, transmitted and filed according to the rule of confidentiality. If the Ministry of Health is notified of a violation of this rule with concrete evidence, necessary investigation will be launched and proper measures will be taken, if needed.

Similarly, in paragraph 26 of the Report, it is stated that "detained persons were still usually medically examined with their clothes on and that, in most cases, the medical findings were limited to 'No signs of physical ill-treatment/injuries'". In this respect, paragraph 3.2.4 of the said Circular has been amended to read as "The examination should be made on the entire body of the person detained".

The work of the Ministry of Health on the issues raised in paragraph 26 already underway can be outlined under these main headings: making necessary legislative and administrative regulations, training of forensic doctors, supervision and monitoring. Adequate legislative infrastructure has been created as of today by contributing to the preparation of the regulations issued in relation to the said matter in accordance with the Code of Criminal Procedure and immediately following the issuance of the aforementioned Circular.

The said Circular also introduced necessary administrative regulations (in the form of guidelines) on conducting forensic medicine services. Local health administrations are encouraged on the training of forensic doctors, and, to this effect, training programmes have been conducted by making use of the potential of departments of forensic medicine in universities' faculties of medicine, and that of the Department of Forensic Medicine of the Ministry of Justice. However, in districts where there is no such potential, (in Van, for instance, as stated in the Report), forensic medical training is not possible. To resolve this problem, when circumstances allow, the preparation of a standard training module and its nationwide application as in-service training on forensic medicine are considered.

As for the recommendation on the provision of "suitable and secure rooms" for medical examinations, as is known, the Department of Forensic Medicine of the Ministry of Justice was basically and exclusively established to offer expertise to judicial authorities while medical establishments of the Ministry of Health provide forensic medical examination services as an obligation in addition to their main services. In these medical establishments, therefore, it might not be possible to allot a place for forensic examinations. However, polyclinic rooms or other consulting rooms where forensic examinations are held are already qualified enough to meet confidentiality and privacy requirements. Only hospitals' emergency rooms may not meet these requirements. The above-mentioned Circular emphasizes that hospital administrations must take measures on this matter.

Training activities as well as due controls and supervision are carried out in order to ensure that all personnel duly comply with the provisions.

All central and provincial security units have been informed on the privacy of medical examinations of detained persons.

Paragraph 26

Recommendation on examining 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.

As mentioned earlier, forensic medicine services in Turkey are, in accordance with the legislation, given by the units of the Department of Forensic Medicine of the Ministry of Justice, departments of forensic medicine in universities' faculties of medicine and medical establishments of the Ministry of Health. In fact, according to the current legislation, forensic medicine services should first and essentially be given by units affiliated with the Department of Forensic Medicine. Pursuant to the Law no. 2659, the Council of Forensic Medicine, a body of the Ministry of Justice, has been established to deliver scientific and technical opinion on issues relating to forensic medicine submitted by courts, judgeships and offices of public prosecutors. The branches of the Council are authorised to carry out forensic medicine services where they are located. However, due to the fact that the Council does not have a unit in every province or district, forensic medicine services are carried out by institutions affiliated with the Ministry of Health. That is to say, in provincial and district centres where units of the Council of Forensic Medicine exist, forensic examinations are provided entirely by these units or through the support of institutions affiliated with the Ministry of Health. On the other hand, through the Circular dated 22 September 2005 of the Ministry of Health, arrangements are made so as to ensure that forensic medicine services are provided as far as possible by central health institutions and that the responsibilities of the institutions are clearly defined for both during and after work hours where more than one health institution is to be charged with these services (see the section entitled "2. Local Arrangement of the Service: Procedures to be Fulfiled and Measures to be Taken by the Provincial Health Departments"). In brief, although designating, in each city, a medical facility with primary responsibility for performing the routine medical examinations of persons in police/gendarmerie custody is impossible under the current circumstances, no serious problem can be said to exist concerning this issue.

Paragraph 28

Comment on inviting the Turkish authorities to take appropriate steps to encourage human rights boards to monitor, on-site, the situation in law enforcement establishments.

In accordance with Articles 12 and 13 of the Regulation on the Establishment, Duties and Work Principles of Provincial and District Human Rights Boards published in the Official Gazette dated 23 November 2003 and numbered 25298, the Provincial and District Human Rights Boards are authorised to visit relevant institutions and organisations to monitor on-site human rights practices, examine police stations and custody supervision forms, deliver recommendations to relevant authorities on eliminating defects -if any-, advise on improving custody conditions and making them compatible with the relevant legislation, conduct investigation and research to ensure that suspects' rights are effectively implemented, investigate applications concerning allegations of human rights violations, evaluate the results of investigations and researches conducted, submit their conclusions to offices of public prosecutors or relevant authorities on the basis of their subject matter, and follow the outcome.

Provincial and District Human Rights Boards visit police stations and detention facilities accordingly, and evaluate supervision forms. The Boards prepare reports on their activities which are delivered to the Human Rights Presidency of the Prime Ministry which publicises the activities of the Boards.

The Human Rights Presidency of the Prime Ministry and the Human Rights Boards established in 81 provinces and 850 districts carry out awareness-raising activities in the field of fighting against torture and ill-treatment through their work in the form of seminars, panels, meetings and publications. Some examples regarding these activities are listed below:

1. The informative work in September 2004 entitled "Annulling Torture in Custody in Turkey: Analyses and Suggestions" was delivered to all Provincial and Local Human Rights Boards in order to ensure that this work could provide guidance.

2. On 9 June 2005, "The Seminar on the Rights of the Accused and Suspects" was held in Ankara with the participation of the members of 81 Provincial and 34 Local Human Rights Boards, 26 non-governmental organisations, lecturers from various universities, press members and officials from the Ministry of Justice, the Ministry of Education and the Human Rights Presidency.

3. Between 2003 - 2006, 32 regional round-table conferences each of which lasted for two days were organised in various provinces of Turkey within the context of education projects for Provincial and Local Human Rights Boards jointly conducted by the European Union and the Human Rights Presidency. A group of approximately 1,000 people which consisted of the presidents and members of the participant Provincial and Local Human Rights Boards and of officials from the Information and Application Desk of the Human Rights Presidency was trained on basic human rights issues including fight against torture and ill-treatment and techniques of communication with victims.

4. A Manual on the Rights of the Accused and Suspects for Provincial and Local Human Rights Boards was prepared. It is planned that the manual be distributed to Provincial and Local Human Rights Boards and other relevant institutions through the Boards.

On the other hand, the "Individual Application Form for Human Rights Violation Claims" has been made available and is used by all the Boards since the beginning of 2004 with a view to ensuring that human rights violations be inquired effectively and to obtaining reliable data concerning the nature and evolution of violations. The numerical data obtained by these application forms are also publicised. The publicised data includes also information regarding alleged violations of the prohibition of torture and ill-treatment.

Paragraph 29

Request for detailed and up-to-date information on the measures put into practice in recent years by the General Command of Gendarmerie with a view to strengthening respect for human rights and the rule of law.

The concrete measures put into practice by the General Command of Gendarmerie on a recent date with a view to reinforcing respect for human rights and rule of law may be summarized as follows:

1. A course titled "Human Rights" has been in the curricula of Gendarmerie Schools since the 1992-1993 academic year.

On the other hand, the subjects studied during the courses on Turkish Criminal Law, Criminal Procedure Law, Administrative Law, Gendarmerie Vocational Knowledge, Public Relations, Gendarmerie Professional Ethics, Combat against Smuggling and Organised Crime Organisations, and Domestic Security are taught in connection with human rights.

Two subsidiary publications entitled "Legislation on Judicial Law Enforcement" and "The Power of the Law Enforcement Officials to Arrest and Take into Custody" were disseminated in addition to textbooks with a view to teaching the latest legal amendments on the issue and the related legislation.

2. In the context of vocational courses introduced within the Gendarmerie Schools Command;

   a. The "Course on the Training of Judicial Investigation Trainers" which was attended by 128 officers practising in Gendarmerie Domestic Security Units was executed in two periods in 2005.

   b. The "Law and Order Department Course" attended by 15 officers in May-June 2005 included a two-hour lecture on "Human Rights, the judgments of European Court of Human Rights and the Misbehavior and Attitude of Law Enforcement Officials in light of the CPT's findings".

   c. During the "Gendarmerie District Command Course" attended by 24 army officers in June 2005, a two-hour course was given with a content focusing on the points to be taken into consideration with regard to international standards of human rights and the practice of human rights as well as information on sample events from the European Court of Human Rights cases and on the findings of the CPT.

3. In April-May 2000 and April-May 2001, 142 officers and 88 non-commissioned officers attended the "Course on the Training of Human Rights Trainers" introduced by the Gendarmerie Schools Command with a view to training the gendarmerie personnel of all ranks on human rights and nominating them as trainers in the courses to be given by other Gendarmerie units.

4. Within the context of human rights seminars and conferences held in Gendarmerie units between 1999-2004, a total number of 18,547 personnel participated in these training activities.

5. In November 2005, human rights and public relations conferences were held for 1,055 officers within the context of the training of the trainers by mobile education teams created by the Gendarmerie Training Command.

6. In March-May 2005, informative seminars to which 3,000 personnel attended were held in Gendarmerie Schools Command and 11 Gendarmerie Regional Commands by legal practitioners belonging to the Judicial Consultancy of the General Command of Gendarmerie with a view to informing the Gendarmerie personnel on the Turkish Penal Code, the Code of Criminal Procedure, the Law on Execution of Sentences and Security Measures and the Law on Compensation of Losses Resulting from Terrorist Acts and the Measures Taken Against Terrorism, and to finding out legal questions which may be experienced during implementation.

7. In addition, in July 2005, the instruction on the "Implementation of New Legal Legislation" that includes brief legal explanations on the said laws was published.

8. In February 2006, a seminar titled the "Functions and Responsibilities of Gendarmerie within the Context of Code of Criminal Procedure" to which 129 personnel attended was held by the Ankara Gendarmerie Regional Command in order to explain the amendments on the functions and responsibilities of the gendarmerie introduced by, in particular, the Turkish Penal Code and the Code of Criminal Procedure.

9. In addition to these activities, enlisted members of the military are still being trained on human rights for 2 hours a week and a total of 16 hours during their basic training (pre-service training) and for an hour a week or every two weeks within the context of Education on Patriotism following the completion of their basic training.

10. Within the context of the "Police, Professionalism and Community Project" implemented by Turkey in cooperation with the Council of Europe and the European Union the following activities were held:

a. During the first part of the project in accordance with the "Training of the Trainers of Human Rights Trainers" project;

1. In 2002, 9 officers attended a course three weeks of which were executed in Turkey and the other two weeks abroad,

2. In September-November 2003, 30 officers attended a course three weeks of which were executed in Turkey and the other two weeks in seven EU member countries.

3. In December 2003, the training of 39 officers in the Gendarmerie Schools Command was completed,

4. A "Trainers' of Trainers Pool" was formed in the Gendarmerie Schools Command with the participation of the personnel trained within the context of the project.

b. Within the context of the second part of the project, the books titled "Discussion Techniques" and "Human Rights and Law Enforcement Officials" as well as the booklet titled "Law Enforcement Officials Handbook" were translated into Turkish by the General Command of Gendarmerie and provided for the use of the trainers.

c. Within the context of the third part of the project, the curricula of the Vocational High School for Non-Commissioned Gendarmerie Officers were submitted for review to the Council of Europe. The results of the review have not been received as of today.

As a result of the agreement reached in project evaluation meetings with the Council of Europe officials, two more projects on the "Human Rights Education of Law Enforcement Forces" and on the "Improvement of the Human Rights Curricula of Gendarmerie Schools" were decided to be launched.

d. Within the framework of the "Human Rights Education of Law Enforcement Forces" project;

1. In May-June 2005, 2 seminars were held in Turkey, attended by a total of 40 officers and police headquarters officials,
2. In October-December 2005, 18 officers visited Denmark, the Netherlands and Belgium.

11. Within the context of the "Improving Professionalism in Gendarmerie Force Service" project contained in the EU's 2004 Monetary Cooperation Programme;

a. During the course of the module entitled "Supporting the Development of an Action Plan for Restructuring Law Enforcement", issues such as reviewing the functioning of the Gendarmerie's Centre for the Investigation and Evaluation of Human Rights Violations (JİHİDEM) and the training of its personnel as well as the revision and improvement of the standards of detention rooms and interview rooms have been dealt with,

b. During the course of the module entitled "Developing the Conformity of Implementation in Personnel Issues with Current EU Standards", the issue of developing a revised guide for ethic attitude in the law enforcement activities of the Gendarmerie has been considered.

12. In accordance with the recommendations of the CPT, continuous efforts are made within budgetary limits for the equipment of detention rooms in line with the standards prescribed in Article 25 of the Regulation on Arrest, Detention and Interrogation.

In this context, out of 2,456 detention rooms of the Gendarmerie throughout Turkey, 1,638 have been equipped in line with the standards and work is underway for the equipment of the remaining 818.

Special attention is given for the non-use of detention rooms which do not meet the standards.

13. Continuous efforts are made within budgetary limits to renovate the rooms used for statement-taking and for meetings between detainees and their lawyers in Gendarmerie units and to make use of technical means for recording during statement-taking.

In this context, 348 video cameras were purchased and distributed to Gendarmerie units for recording during statement-taking. The purchase of 1,901 more video cameras is underway.

14. In addition to all these measures, for the purposes of receiving complaints and applications and investigating allegations of human rights violations during the performance of the duties of the Gendarmerie personnel within the purview of the Gendarmerie or relating to it, the Centre for the Investigation and Evaluation of Human Rights Violations (JİHİDEM) was established on 26 April 2003 and has been effectively functioning since then.

A national or foreigner who believes that s/he, his/her relatives or any person has been subjected to a violation of human rights by Gendarmerie officials may apply to the 24-hour active JİHİDEM via the Internet (*www.jandarma.gov.tr*) or by phone, fax, petition, post or in person.

A total of 760 applications have been so far submitted to JİHİDEM. It has been considered that 185 of these applications fall under the authority of JİHİDEM while the remaning 575 do not. The subject-matters of the 185 applications which fall under the authority of JİHİDEM are: ill-treatment (113), unlawful custody (12), lack of effective investigation (26), torture (13), violation of the right to life (11), breach of the suspect's rights (6), intrusion into private life (3), violation of the right to property (1).

As a result of the investigations carried out, 18 out of the 185 applications were transmitted to legal authorities; the cases in 33 applications have been found to have been previously judicially investigated; in 3 applications the accused personnel have received disciplinary punishment and 130 applications were found to be groundless. Investigation is underway in respect of one application.

Out of the 575 applications which are not considered to fall under the authority of JİHİDEM, 401 applications considered to be related to the Gendarmerie were forwarded to the relevant Gendarmerie units while the applicants of the remaining 174 applications were notified of that the applications had no relation to the Gendarmerie.

Paragraph 30

Comment on conditions in the cells on the ground floor of Sirkeci Police Station, attached to Eminönü Police Headquarters in İstanbul.

Necessary arrangements have been initiated to ensure that the detention room in Sirkeci Police Station, attached to Eminönü Police Headquarters, be equipped in conformity with standards.

Paragraph 31

Comment on the need for additional efforts to ensure that in all law enforcement establishments, persons obliged to spend the night in custody are provided with a proper mattress, in addition to blankets.

All law enforcement establishments of İstanbul Police Headquarters that are authorized to take into custody and that have detention rooms have been warned to use due diligence in supplying proper mattresses in addition to blankets for those who have to spend the night in custody.

Paragraph 32

Comment on the need to make special arrangements in advance to cope with the possible detention of large numbers of persons when large-scale law enforcement operations are planned.

Detention facilities established for the detention of individuals taken into custody are planned within the scope of the construction of the premises of Local Security Directorates taking into consideration several factors such as local population and crime density as well as physical suitability of premises and budgetary limits in addition to established standards.

Where large numbers of persons are taken into custody following major social events or large-scale operations, which occur very rarely, other detention facilities available in Local Security Directorates are used.

In addition to this precaution**,** in operations carried out against criminal organisations where there is a possibility of arresting a large number of suspects;

a. Assignment of additional lawyers in coordination with bars,
b. Allocation of meeting rooms for additional lawyers,
c. Allocation of additional interrogation rooms,
d. Additional measures about medical examination in coordination with health institutions,

are ensured in accordance with the orders of the public prosecutor.

Paragraph 33

Recommendation that steps be taken to ensure that detained persons have ready access to drinking water and are provided with food at appropriate times, including at least one full meal every day.

Article 11 of the Regulation on Arrest, Detention and Interrogation reads as follows: "Costs relating to nutrition, transference, maintenance of health, necessary treatment and notification of the relatives of the person taken into custody are covered by the budgetary allocation of the Ministry to which the relevant unit is attached.

In accordance with this provision, the allocation of the necessary budget for meeting the nutrition requirements of persons taken into custody is considered as a priority issue.

Moreover, with a view to ensuring that the above-mentioned points and other recommendations and assessments in the CPT's latest report are diligently pursued and in order to prevent shortcomings during implementation, a circular dated 14 June 2006 was issued to inform the relevant units of the Security General Directorate and Local Security Directorates on the matter (A copy of the circular is enclosed[4]).

[4] See Appendix IV.

Paragraph 36-37

Recommendation on giving a very high priority to the bringing into service of the new facility in İstanbul for immigration detainees referred to in paragraph 36, and making every attempt to accelerate the completion of the ongoing renovation work.

Recommendation that the standards set out in Paragraph 29 of the 7th General Report on the CPT's activities (CPT/Inf (97) 10 be taken fully into account as regards the material conditions and regime activities to be offered in the facility referred to in paragraph 36 and the staffing arrangements therein.

Request for information on further details of the measures taken to improve conditions in the existing detention unit for immigration detainees at İstanbul Police Headquarters.

Reparations, which started on 26 December 2005 for the facility in Eminönü District in İstanbul to better accommodate foreigners, are underway. The reparation work is scheduled to be finished in 8 months. However, the Foreigners Section's guesthouse (situated on the ground floor (Building B) of the facility of the İstanbul Police Headquarters on Vatan Street) which was criticised by the CPT has been moved to the 6th and 7th floors of the Zeytinburnu District Police Headquarters with better conditions until reparations in Eminönü District are completed. Great diligence has been used for accommodating foreigners in better conditions.

During the reparations concerning the aforementioned facility, due consideration has been given by Turkish authorities to the standards set out in Paragraph 29 of the 7th General Report on the CPT's activities (CPT/Inf (97) 10).

Paragraph 38

Comment on the conditions referred to in paragraph 38 as regards the central detention unit to be set up in building B at İstanbul Police Headquarters.

All law enforcement establishments of the İstanbul Police Headquarters that are authorised to take into custody and that have detention rooms have been warned to use due diligence to ensure that the officials which will be assigned to work in the central detention unit planned to be set up in building B of the İstanbul Police Headquarters be specially trained and not be placed under the command of the operational units authorised to take into custody.

Paragraph 40

Comment on further encouraging the custodial staff in F-type prisons to interact with prisoners.

A large number of the prison staff are higher education graduates and have undergone pre-service and in-service training including courses on topics such as human relations, detainee and convict psychology, communication skills, human rights, and communication between the staff and prisoners is continuously encouraged.

Paragraph 41

Comment on dealing with disobedience displayed by any prisoner.

Penalties to be imposed on detainees, convicts and those who commit disciplinary offences in prisons are defined in detail in the penal legislation. Articles 37 to 52 of the Law no. 5275 on the Execution of Sentences and Security Measures regulate disciplinary offences and actions, implementation clauses, complaints and objections to the said offences. The same issue is regulated by Articles 143-158 of the Rules on Prison Administration and Execution of Sentences and Security Measures in line with the relevant laws. Under the provisions mentioned above, convicts and detainees cannot be subject to punishment for acts that are not defined as crime, and, for acts which constitute disciplinary offences, no punishment other than disciplinary penalties prescribed by law or the said Rules may be imposed. Furthermore, convicts and detainees may appeal the disciplinary penalties they have been imposed before the court of execution, which is often the case in practice. In case there are officials imposing penalties arbitrarily, judicial and administrative investigation against these officials is carried out and necessary penal sanctions are imposed.

Under Section 68/4 of the Law on the Execution of Sentences and Security Measures, letters, faxes and telegraphs addressed to official authorities by convicts and detainees in prisons are sent to the relevant body without being checked, ensuring that convicts and detainees may convey their complaints freely to relevant bodies. Judicial investigations concerning allegations of ill-treatment are carried out impartially and independently by the relevant Office of the Chief Public Prosecutor the decisions of which are open to judicial supervision.

Paragraph 41

Recommendation on carrying out an independent and impartial inquiry into the manner in which inmates of Adana E-type Prison are currently being treated by staff.

Request for information on the results of the inquiry concerning Adana E-type Prison.

Regarding the ill-treatment allegations of convicts and detainees in Adana E-type Prison, the Office of Adana Chief Public Prosecutor has conducted numerous investigations as a result of which public prosecutions were lodged or decisions of non-prosecution were issued. Related to the issue, 4 indictments used to file public prosecution concerning the suspected officers and 4 decisions of non-prosecution are presented in Appendix V. Both administrative and judicial investigations are conducted and finalized concerning all types of ill-treatment claims. No complaint has been ever received regarding the use of falaka as a form of ill-treatment in this prison.

Paragraph 41

Request for information on further details of the measures taken and/or planned to address the problem of overcrowding in Adana E-type Prison.

The problem of overcrowding in Adana E-type prison originates from the fact that the institution is being used as a remand prison. Pursuant to Article 193 of the Code of Criminal Procedure, remand prisoners are obliged to appear in the court throughout the trial. Furthermore, Article 10 of the 2nd Section of the Circular no. 45 on the Allocation and Transference Procedures of Prisons and Other Provisions states that remand prisoners are to be accommodated in prisons located at the place where they are being tried. For this reason, remand prisoners whose sentences have been finalized and who have therefore become sentenced prisoners are transferred to other prisons fitting their positions, unless they are detained on remand for another offence. In addition, as there is a Faculty of Medicine hospital located in Adana, remand and sentenced prisoners who come from surrounding provinces and districts for treatment are accommodated in this prison throughout their treatment and this leads to an increase of the population of the prison. On the day of the CPT's visit to the prison, there were 171 sentenced prisoners waiting for transference.

Efforts are underway to reduce the number of the current population of remand and sentenced prisoners in the prison by sending sentenced prisoners to other prisons.

Being a rapidly developing metropolis with an influx of migrants, Adana is undergoing an increase in the number of criminals in parallel to population growth. Osmaniye T-type Prison which will be opened for tender in 2006 will also serve for Adana. Thus, the problem of overcrowding in Adana E-type Prison will be overcome and more communal activity areas will be created in the spaces left open. Besides, in the complexes currently being built except for E-type Prisons, facilities for workshops, sporting activities and vocational training are established. Such facilities will be established also in a group of E-type Prisons in the second phase and Adana E-type Prison is one of these prisons.

Paragraph 42

Request for detailed information on the investigation into the death in July 2005 of a soldier who had been held in the 6th Army Corps Command Class 1 Military Prison in Adana.

The required information concerning the inquiry being conducted upon the death of Private Murat Polat who had been detained in the 6th Army Corps Command Class 1 Military Prison in Adana is given below:

a. The investigation into the case of Murat Polat who had been detained by the personal arrest warrant of the İskenderun Magistrate's Court no. 2005/97 dated 17 June 2005 and put in 6th Army Corps Command Class 1 Military Prison in Adana for attempted theft and who died on 27 July 2005 at the hospital he was receiving medical treatment has been conducted by the Office of the Military Prosecutor of the 6th Army Corps Command.

b. At the end of the investigation, a decision of non-jurisdiction regarding the suspects was issued on 3 February 2006 by the said Office of the Military Prosecutor and the file was sent to the Office of Adana Chief Public Prosecutor.

c. On 6 April 2006, the Office of Adana Chief Public Prosecutor lodged a case with the Adana Assize Court against a total of 30 persons working for the prison administration for the acts committed against Murat Polat and six other victims who had then been detained in the prison, according to the offences defined in Article 94 (torture) and 95 (severe torture with respect to its consequences) of the Turkish Penal Code.

d. On 10 April 2006, the Adana Assize Court which had been conducting the trial issued a decision of non-jurisdiction with respect to all the accused on the grounds that the case fell under the jurisdiction of the military court. Following the finalization of the judgment, the case-file will be sent to the Military Court of the 6th Army Corps Command where the trial will resume.

e. Five of the accused are currently on remand.

Paragraph 47

Recommendation that all necessary steps be taken to develop communal activity programmes in F-type prisons, that immediate action be taken to ensure that there is a significant increase in the amount of association time offered per week, and that particular attention be given to improving access to out-of-unit activities for inmates at Tekirdağ F-type Prison No 2.

Efforts are underway to increase the number of personnel working in prisons within the limits of the amount allocated to the Ministry of Justice from the general budget and of current permanent staffing possibilities.

Continuous training is provided in order to benefit more efficiently from the existing staff and to make them adapt themselves to contemporary administrative methods.

Intense efforts have been made for all remand and sentenced prisoners throughout Turkey to participate in educational, social and cultural activities and to develop their personal skills.

As long as no security risks are imposed, willing remand and sentenced inmates are allowed to form groups of at most 10 people for conversation not exceeding 5 hours per week within the framework of social activities in visitors' centres and other common areas. This time is entirely used if circumstances allow and such activities are continuously encouraged.

In Tekirdağ F-type High-Security Closed Prisons No. 1 and No. 2 and Adana F-type High-Security Closed Prison No. 2, members of terrorist organisations and profit-oriented criminal organisations are accommodated. Some of the convicts who are members of such organisations do not participate in activities in line with the decision of their organisations. Furthermore, there is enmity among criminal organisations, which prevents some of the convicts from going out to common areas. Continuous work is carried out for convicts to make more use of facilities in communal activity areas and for enabling their participation.

Paragraph 51

Recommendation that the Regulation on the application of the Law on execution of sentences and security measures (LESSM) exploit to the full the possibilities for a more developed regime for prisoners serving aggravated life imprisonment.

Comment on rethinking the philosophy underlying Article 25 of the LESSM taking into account that the decision whether or not to impose an isolation-type regime should lie with the prison authorities and always be based on an individual risk assessment of the prisoner concerned, and that the regime should be applied for as short a time as possible, which implies that the decision imposing it should be reviewed at regular intervals.

The Law on Execution of Sentences and Security Measures may be considered to be the most modern and contemporary enforcement law adopted in Europe in recent years. Many legal practitioners, academics, scientists and certain civil society representatives have participated in the preparation of this Law. Opinions have been taken from many institutions and organisations. Furthermore, it has been prepared in the light of international prison standards and human rights documents. None of the principles that appear in this Law are contrary to international standards.

According to the Law, as in most of the Council of Europe member states, prisons are classified, in respect of the security standard, as “high-security”, “normal-security” and “low-security”. In high-security prisons, the state of “dangerous offenders” is evaluated according to the level of danger they pose or the court decisions regarding the offences they have committed and their convictions and the regime prescribed by law is applied to them. This practice emanates from the recommendation of the Committee of Ministers of the Council of Europe no. R. 1982(17) on confinement and treatment of dangerous offenders and its explanatory memorandum. In the previous Enforcement Law no. 647, there existed no categorisation concerning “dangerous offenders” and the regime to be applied to them and, in addition, prisons were not classified in terms of security. The execution regime to be applied to dangerous offenders has certainly to be different from others. The current practice fully complies with international standards. Moreover, according to Article 25/c of Law on Execution of Sentences and Security Measures, concerning those who are subject to the aggravated life sentence regime, on the condition that they are in a state of good conduct, the length of their access to open air may be extended and they may be restrictively allowed to contact the sentenced prisoners in the same unit while they may also be able to perform an artistic or vocational activity provided that it is approved by the board of administration and allowed by the conditions of the prison.

In addition to Article 25 of the Law on the Execution of Sentences and Security Measures which regulates the regime for prisoners serving aggravated lifetime imprisonment, pursuant to Article 47 of the Regulation on the Administration of Prisons and the Execution of Sentences and Security Measures, such prisoners are kept in a single room and allowed to have access to open air for an hour a day. However, on the condition that they are in a state of good conduct, the length of their stay in open air may be extended while they may perform an activity as circumstances allow, be visited by their spouses, relatives, siblings and guardians for one hour at most once every 15 days. Furthermore, they may also be visited by their lawyers.

In conclusion, prisoners serving aggravated lifetime imprisonment must manifest “good conduct” in accordance with relevant legal regulations in order for the provision of a more developed regime.

Paragraph 53

Recommendation that the Turkish authorities:

- **Motivate and train medical staff and psychologists working in prisons to diagnose cases of prisoners with psychiatric disorders and to participate actively in their management;**

- **Provide specialist care within prisons for such cases by assigning a psychiatrist to make regular consultations;**

- **Ensure that, when necessary, longer term hospital care with an active psychosocial element is possible.**

The attendance of doctors and psychologists working in prisons to professional training programmes and seminars is ensured. All kinds of health problems of remand and sentenced prisoners are monitored carefully. Although prison doctors and psychologists have sufficient knowledge to diagnose psychiatric disorders, in cases beyond their field of education and specialization, remand and sentenced prisoners are transfered to state or university hospitals to receive the required treatment. It is ensured that the prisoner gets proper treatment in the related medical institution. When hospitalised treatment is recommended by medical institutions, prisoners receive such treatment in relevant institutions.

Although the CPT recommends the assignment of psyciatrists to prisons to conduct regular examination, there is no such position as “psychiatrist” in the Ministry of Justice. Remand and sentenced prisoners who are believed to be in need of consultation by a specialized psyciatrist by the prison doctor or psychologist are transfered to psychiatry departments of state or university hospitals.

On the other hand, in accordance with Article 18 of the Law no. 5275 on the Execution of Sentences and Security Measures, the sentences of those who suffer from mental disorders due to being imprisoned and other reasons and who are sent back to prison upon the medical decision that they are not required to be kept in mental hospitals shall be executed in special units which are being established in prisons in places where there are mental hospitals. The prospective medical staff of these psychiatric departments, including psychiatrists, shall be employed by the Ministry of Health.

Paragraph 53

Recommendation that the mental state of the prisoner referred to in paragraph 52 be the subject of a thorough psychiatric examination and that the necessary measures be taken in the light of the outcome of that examination for him to be provided with appropriate treatment and care.

Request for information on the measures taken to provide the prisoner referred to in paragraph 52 with appropriate treatment and care.

In Tekirdağ F-type High-Security Closed Prison No. 2, no remand or sentenced prisoner accepts to stay with the person referred to in paragraph 52, and the surrounding rooms are kept empty as he shouts and sings aloud at nights sometimes makes noise by hitting the doors and thus consistently disturbs other inmates. He is compulsorily detained alone in his room and regularly controlled by the prison doctor and psychologist as there is a possibility that he may harm himself or other inmates.

The above-mentioned prisoner was transferred to Tekirdağ F-type High Security Closed Prison No. 2 on 20 May 2004. He was examined at the Tekirdağ State Hospital's Psychiatry Department for his psychiatric problems on 22 November 2004, 4 April 2005, 6 May 2005, 29 December 2005 and 5 January 2006, and was sent to the Council of Forensic Medicine upon the request of the courts which had been trying him.

With a view to determining whether the illness of the aforementioned sentenced prisoner required his being placed in a psychiatric institution, he was transferred to the Tekirdağ State Hospital's Psychiatry Department on 8 May 2006. A report[5] no. 6110/2746 dated 8 May 2006 was issued by Dr. Ali Rıza Özen. The report stated that "there was no need for the prisoner in question to be placed in a secure psychiatric institution and his treatment should be continued". In line with this report prepared by the medical expert, the treatment of the prisoner was continued and he was kept on being accommodated in the said institution with the necessary measures taken.

Paragraph 54

Recommendation on taking appropriate steps to ensure that newly-arrived prisoners benefit from daily outdoor exercise throughout the observation period.

Under Article 23 of the Law no. 5275 on Execution of Sentences and Security Measures, sentenced prisoners are subject to observation and classification and their observation is carried out by the observation board in single rooms. Throughout the observation period, sentenced prisoners have a right to benefit from outdoor exercise at least one hour a day and there exists no provision which would prevent their enjoyment of this right. Institutions pursuing a contrary practice are warned and the sentenced prisoners in these institutions are enabled to duly benefit from outdoor exercise. Adana F-type High-Security Closed Prison has also been given instructions to this effect.

[5] See Appendix VI.

Paragraph 57

Recommendation that a full-scale review be carried out, without further delay, of the organisation and resources of prison health-care services with the overall aim to ensure that prisoners enjoy a level of medical care equivalent to that provided to persons in the outside community, which implies the greatest possible participation of the Ministry of Health in the field of prison health-care, and that particular attention be given to the principles of the independence of prison doctors in the performance of their duties and of medical confidentiality, as well as to the specific training required by such doctors for them to perform their duties satisfactorily.

All remand and sentenced prisoners accommodated in prisons are enabled to benefit from the health-care services available in these institutions. However, remand and sentenced prisoners who have health problems which cannot be treated in their prisons are transferred to state or university hospitals. Examination, control and treatment costs of sentenced prisoners who do not have any social security are covered by the Ministry of Health while prescription charges are covered by the Ministry of Justice. The level of medical care provided to remand and sentenced prisoners accommodated in prisons is no less than the one provided to regular citizens. In fact, it is even higher than the medical care level provided to regular citizens without social security. Prison doctors perform their duties independently and due importance is attached to medical confidentiality. There is neither a preventative provision in the legislation concerning this issue nor an actual circumstance to the contrary in practice.

In addition, a protocol was signed by the Ministries of Justice, the Interior and Health on 30 October 2003 for remand and sentenced prisoners accommodated in prisons to be able to better use health-care services.

Paragraph 67

Recommendation on according a high priority to ensuring that all psychiatric establishments in which electroconvulsive therapy (ECT) is used are provided with the necessary staff, equipment and facilities so that this treatment can be administered in its modified form (i.e. with both anaesthetic and muscle relaxants) and in an effective manner (preferably with the aid of an electroencephalogram).

Recommendation that a clear written policy on recourse to ECT be elaborated and distributed to each establishment where this treatment is used, that ECT be administered only by staff who have been specifically trained to provide it, and that, as with other psychiatric treatment, recourse to ECT be part of a written individualized treatment plan, included in the patient's medical record.

A comprehensive "Application Guidebook" and ECT directives which include the following are being prepared: written consent of the patient, physical condition of the ECT unit, registration form of the patient and the ECT, ECT indications and counter indications, application rules of the ECT before, during and after application, number of equipment and staff necessary in the ECT unit. Thus, it will be ensured that ECT is practised in all hospitals throughout Turkey in accordance with ethic rules and indications.

When the ECT Application Guidebook is put into practice, all the issues raised in paragraphs 67 and 68 will be regulated under the procedure set out in the Guidebook.

Paragraph 67

Request for full information concerning two new ECT units to be set up at the Bakırköy Hospital (in particular, a detailed description of their equipment and staff resources) and the planned date of their entry into service.

The new unit which is planned to be opened has been set up. However, it has not yet been put into service due to the inadequate number of anaesthetic experts at the hospital.

Paragraph 71

Request for the comments of the Turkish authorities on the remarks made in paragraph 71 concerning involuntary hospitalisation without judicial intervention.

As a general principle, it is essential to obtain the consent of the patient concerning his/her hospitalisation procedures and treatment. However, patients who have suffered psychiatric disorder and are in a state of harming themselves or the others around them are transferred, in line with court judgments or the demands of their guardians, to regional hospitals of mental health in provinces where they reside. In case doctors in these hospitals deem it necessary for the prisoner in question to receive hospitalised treatment following their reevaluation of the prisoner's state of health, the prisoner is hospitalised.

As it is summarized in the Ministry of Health Circular no. 14160 (2005/155) dated 13 October 2005 on the transference and follow up of patients with mental disorders, issued under Articles 397[6], 405, 409, 432, 437, 446, 447, 462 and 474 of the Turkish Civil Code (no. 4721) dated 22 November 2001;

- For the outpatient or hospitalised treatment of a minor or an incapacitated person under guardianship in a medical institution, the permission of the guardianship authorities in the concerned residential area is necessary.

- In case there is no permission of the guardianship authority for treatment, the guardian must first be enabled to take permission from the guardianship authority.

- If the state of health of a patient who is brought for treatment is threatening his or herself and/or other people around, the guardian may fulfil in person the hospitalisation procedures. However, the medical institution must follow whether or not the guardianship authority has been notified of the hospitalisation of the patient.

[6] According to Article 397 of the Turkish Civil Code, Guardianship Authority is the relevant Civil Peace Court.

- The state of a minor or of an adult who is not under guardianship and who has mental disease or defect and for whom treatment or protection is considered necessary by the doctor of a medical institution should be immediately communicated by the concerned institution to the guardianship authority of the region where the patient is present or resides.

Paragraph 72

Request for clarification of the situation as regards procedures for automatic review of the placement of patients and complaints and inspection procedures.

Within the framework of the Regulation on Patient Rights which entered into force on 1 August 1998, applications concerning ill-treatment and infringement of rights in hospitals may be submitted to patient rights units in hospitals or via the relevant internet site for applications. When the constitutive elements of an offence are found out as a result of the investigation into the application, proceedings are initiated against those concerned in accordance with laws.

Paragraph 75

Request for the results of the investigation concerning living conditions at Adana Mental Health Hospital and a full account of the measures being taken to improve material conditions in that establishment.

As a result of the correspondences with Adana Dr. Ekrem Tok Mental Health Hospital, it has been found out that the problems stated in the CPT report arise from the inadequacy of the staff and of the physical conditions under the current workload. A study has been initiated by the Ministry of Health for the determination of the needs of mental health hospitals while efforts to increase the number of staff in these institutions will continue.

APPENDIX I

***Section 3: Torture and Torment** (1)*

Torture

ARTICLE 94- (1) The public official who performs any acts towards a person that is incompatible with the human dignity, and which causes that person to physically or mentally suffer, effect the person's perception or ability to act on one's will, insult him/her shall be imprisoned from a term of three to twelve years.

(2) If the offence is committed against

a) A child, a person who is physically or mentally incapable of defending him/herself,

b) A public official or a lawyer due to his/her service,

The perpetrator shall be imprisoned for a term of eight to fifteen years.

(3) If the acts take the form of sexual harassment, the perpetrator shall be imprisoned for a term of ten to fifteen years,

(4) Those other individuals participating in the commission of this offence shall be punished like the public official.

(5) If his crime is committed by way of negligence there shall not be reduction in the sentence.

Aggravated torture due to consequences

ARTICLE 95- (1) where the act of torture results in

a) Permanent impairment of one of the senses or functions of an organ,

b) A permanent speech defect,

c) A permanent scar on the face,

d) A risk for the victim's life

or

e) If the act has been committed agains a pregnant woman and has caused her to give birth prematurely,

the penalty determined in accordance with the article above shall be increased by half.

(2) Where the act of torture results in

a) An incurable illness or if it has caused the victim to enter a vegetative state,

b) The loss of one of the senses or functions of an organ,

c) The loss of speech or the ability to have children,

d) Permanent disfigurement of the face

or

e) If the act has been committed against a pregnant woman and has caused her to miscarry

The penalty determined in accordance with the article above shall be increased by one.

(3) If the acts of torture results in fracture of victim's bones, the perpetrator shall be imprisoned for a term from eight to fifteen years in proportion to the severity of the damage in respect to vital functions.

(4) Where the acts of torture case the death of the victim, the penalty shall be strict life imprisonment.

---

(1) Unofficial translation of Article 94 to 96 of the Turkish Penal Code.

Torment

ARTICLE 96- (1) the person who performs any acts which result with the torment or another person is imprisoned for a term of two to five years.

(2) Where the acts falling under the above paragraph are committed against:

a) A child, a person physically or mentally impaired so that (s) he cannot defend her/himself,

or

b) An ascendant or descendant, an adoptive parent or the spouse,

The perpetrator shall be imprisoned for a term of three to eight years.