



CPT/Inf (2011) 14

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 4 to 17 June 2009

The Turkish Government has requested the publication of this response. The report of the CPT on its June 2009 visit to Turkey is set out in document CPT/Inf (2011) 13.

Strasbourg, 31 March 2011



Ankara, 28 February 2011

Dear Mr. President,

I would like to inform you that the Turkish Government authorizes the publication of the CPT's report of 16 December 2009 - CPT (2009) 63 - drawn up by the Committee following its visit to Turkey on 4-17 June 2009, together with the Government's response of 11 June 2010 as annexed, as well as the present letter. I would appreciate your getting in touch with the Turkish Permanent Representation to the Council of Europe in Strasbourg with regard to the date of a press release.

I would also like to draw your attention that the response of the Turkish Government only encompasses the achievements until 11 June 2010. since then several developments have taken place. It is particularly worth mentioning that the Turkish Grand National Assembly has recently passed the Law approving the ratification of the Optional Protocol to the Convention against Torture (OPCAT). The provisions of the Law no. 3713 on Combating Terrorism related to children who commit terrorism offences were amended on 27 July 2010.

Mr. Mauro PALMA
President
European Committee for the Prevention of Torture
and Inhuman or Degrading Treatment or Punishment
Council of Europe
Strasbourg

cc. H.E. Mr. Daryal BATIBAY
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of
the Republic of Turkey
Strasbourg

cc. Mr. Trevor STEVENS
Executive Secretary to the CPT
Strasbourg

In accordance with the recommendations in paragraphs 145 and 146 of the abovementioned CPT's report, the possibility to appeal against the decisions regarding the disciplinary punishments has been introduced to Law no. 353 on the Establishment and Trial Procedure of Military Courts. The Regulation on Execution of Sentences and Management of the Military Prisons and Detention Houses has also been amended to enable family contact for the prisoners kept in solitary confinement as disciplinary punishment.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'K. ESENER', with a stylized flourish at the end.

Kaan ESENER
Minister Plenipotentiary
Deputy Director General for
Council of Europe and Human Rights

**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 4 TO 17 JUNE 2009**

INTRODUCTION

1. The views 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 4 to 17 June 2009 are set out below in the order adopted in the report. Extracts from the CPT's report are reproduced in bold typeface with paragraph references.

2. The Turkish Government has given the recommendations of the report serious consideration and has been taking necessary measures to implement them, to the extent possible.

CO-OPERATION BETWEEN THE CPT AND THE TURKISH AUTHORITIES

3. The Turkish Government is pleased to learn that the CPT received very good co-operation at all levels during its visit.

Co-operation

recommendations

appropriate steps to be taken by the relevant authorities to enable the CPT to have effective access in future to any criminal investigation files which are related to the alleged ill-treatment of detained persons (paragraph 7).

comments

CPT trusts that the relevant authorities will make the necessary arrangements to ensure that the Committee is provided detailed information on the content of the two investigation files referred to in paragraph 7 (paragraph 7);

The CPT delegation visiting the Office of the Chief Public Prosecutor of Diyarbakır has requested access to two files concerning investigations, initiated by the notifications of the management of Diyarbakır D-type prison.

The Chief Public Prosecutor has rejected the delegation's request to examine the said files on the grounds that in both cases the investigations were still underway.

Article 157 of the Turkish Code of Criminal Procedures states that "...procedural actions in the investigation phase shall be confidential."

On the other hand, article 8, paragraph (d) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment set limits for the information requested by the CPT as "...In seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics."

Paragraph 64 of the explanatory report of the Convention further clarifies the situation stating that "...it is acknowledged that particular rules concerning disclosure of information may be applicable in member states. Accordingly, the Committee is for its part obliged, when seeking information from a Party, to have regard to applicable rules of national law and ethics."

Turkey has a very good record in terms of cooperation with the CPT. In line with this cooperation and in the spirit of mutual understanding, the Ministry of Justice submitted to the delegation an information note on the above mentioned investigation files, relying on the CPT's respect for confidentiality.

The CPT trusts that the Turkish authorities will take the necessary steps to prevent in future any repetition of situations of the kind described in paragraph 8 (paragraph 8).

The situation experienced during the visit of the CPT delegation to Ağrı Guesthouse for Foreigners results from a misunderstanding about the requests of information. A copy of the custody register of Ağrı Guesthouse for Foreigners, covering the month of June 2009 is enclosed herewith (**Annex A**).

The CPT delegation arrived at the Batman Police Headquarters entrance gate on 6 June 2009. When the delegation requested to visit the detention area at the Anti-Terror Department, the officials informed the officer-on-duty, as required. Since the visit took place during the weekend, the superior officers in charge were not present; hence they were informed by telephone. The officer in charge immediately ensured the transfer of the delegation to the Anti-Terror Department. The superior in charge arrived in a short while and accompanied the delegation during the visit of the detention area. There were no suspects in the detention area.

Monitoring of places of deprivation of liberty

requests for information

a list of all places of deprivation of liberty which have been visited by provincial/district human rights boards in every province since January 2008 (if possible, with an indication as to whether a visit had been announced in advance or not) (paragraph 11);

Provincial and Sub-Provincial Human Rights Boards visited 4.732 gendarmerie and police detention centers in 2008. 2.345 of these visits were to gendarmerie detention centers and 2.387 of them were to police detention centers. The number of unannounced visits was 3.658 and the announced ones were 1.074. Human Rights Presidency's report on the physical conditions of the detention centers including a list of visits is enclosed herewith. (**Annex B**)

for each type of establishment (including a law enforcement detention facility, a detention centre for foreigners, a prison and a psychiatric hospital), one representative example of a visit report drawn up by a human rights board (paragraph 11);

Three representative examples of visit reports drawn by Human Rights Inquiry Committee of the Turkish Grand National Assembly are enclosed herewith. (**Annex C**)

detailed information on the preparations being made by the Turkish authorities for the ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), especially as regards the National Preventive Mechanism(s) envisaged (paragraph 12)

Turkey's signing of the Optional Protocol to the Convention Against Torture (OPCAT) is a testimony to its commitment to strengthening its national and the international human rights machinery. The OPCAT is presented to the Turkish Grand National Assembly (TGNA) for ratification, and is currently before the Foreign Affairs Committee of the TGNA.

Law enforcement agencies

Ill-treatment

recommendations

a formal statement emanating from the relevant authorities to be delivered to all law enforcement officials in the Diyarbakir area, reminding them that they should be respectful of the rights of persons in their custody and that the ill-treatment of such persons will be subject of severe sanctions.

law enforcement officials throughout Turkey to be reminded, at regular intervals, that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are not acceptable and will be punished accordingly. Law enforcement officials should also be reminded that no more force than is strictly necessary is to be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them (paragraph 14);

In accordance with the above mentioned recommendations of the CPT delegation, all central and provincial security units in Turkey were instructed by a Circular No.5002 dated 3 March 2010.

Paragraph 7 of the said Circular reminds law enforcement officials that persons liable for human rights violations are subject to judicial and administrative sanctions in line with the Turkish Government's zero tolerance policy against torture and ill-treatment, and states that the resort to practices contrary to laws and regulations as well as acts against human rights and freedoms should be avoided.

Paragraph 5 of the Circular refers to the CPT recommendation stating that no more force than necessary is to be used when affecting an apprehension and that, once apprehended persons are brought under control, there can be no justification for use of force and the rights of detained person should be respected.

According to Article B/4 of the Circular on the fight against illegal migration (No. 632 dated 19 March 2010) return centers will be subject to announced or unannounced monitoring at least every six months by the Governor (or by a deputy-Governor designated by the Governor), District Governor, the Provincial Chief of Police and twice a year by the Directorate of Security. At the end of every monitoring, a report shall be prepared and conclusions of these reports shall be taken into account during the inspections.

Article B/6 of the said Circular provides that the allegations of inhumane treatment in the return centers shall be examined immediately and, if any violation is detected, necessary judicial and administrative proceedings shall be launched.

According to the Article 17 under the “Basic Elements” Section of the Circular, camera recording systems shall be set up in return centers. The system shall allow the surveillance of the rooms or common areas in the centre and the maintenance of the records belonging to previous six months.

In an amendment proposal introduced to the Law No. 5683 on Residence and Travel for Aliens in Turkey, it is clearly indicated that the people accommodated in return centers should be treated in conformity with human dignity.

14th High Penal Court of Bakırköy has issued its decision on 1 June 2010 concerning the case of Engin Çeber who died on 10 October 2008 due to cerebral hemorrhage following his custody and arrest. The court convicted four personnel including three prison guards and the director on duty of Metris T-type Closed Prison to aggravated life imprisonments for causing death by torture in accordance with the Article 95 (4) of Turkish Penal Code which states that “If death occurs as a result of torture a sentence of aggravated life imprisonment be imposed.” Their aggravated life imprisonments were mitigated to life sentences in accordance with the discretionary discount stipulated in Article 62 of the Penal Code.

Three police officers and two guardians also received prison sentences of seven years and six months each in accordance with the Article 94 (1) of Turkish Penal Code which provides that “Any civil servant who carries out actions against a person that lead to bodily or mental pain incompatible with human dignity, that influences their ability to perceive or their will or is degrading, will be punished by imprisonment of between three and twelve years.” The prison doctor is also convicted of issuing forged medical reports to three years, one and a half months imprisonment.

A total of 60 public servants who are believed to be involved in the acts that led to Çeber's death, were tried in this case. Among the suspects there were police officers, prison officers from the lowest to the highest ranks. At the end of the trial, responsible officers received prison sentences starting from 5 months to life sentence with the charges of negligence, misconduct, failure to report the crime, causing malicious injury due to disproportionate use of force, torture and aggravated torture.

This case constitutes a good example that all forms of ill-treatment and torture of persons deprived of their liberty are not acceptable and subject to severe criminal sanctions.

appropriate steps to be taken by the relevant authorities to put an immediate end to the resort to sleep deprivation at Diyarbakir Police Headquarters. As a rule, a detained person should be allowed within a given period of 24 hours a continuous period of at least eight hours for rest, free from questioning or any activity in connection with the investigation (paragraph 15);

Article 148 of the Turkish Criminal Procedure Code (Law 5271 as of 1 June 2005) on “Prohibited methods of statement taking and questioning” states that the statements given by the suspect or accused should derive from his own free will, any physical or psychological intervention that would hamper free will - such as ill-treatment, torture, the administration of medicines or drugs, and the infliction of fatigue, deception, the use of compulsion or threat, and the use of certain equipment shall be prohibited.

The same article also provides that the statements obtained through the prohibited methods shall not be used as evidence notwithstanding that they were given with the person’s consent. In compliance with the above-mentioned Article of the Turkish Criminal Procedure Code, these issues are underscored once again at paragraph 4 (a) of the Circular (No.5002 dated 3 March 2010). The paragraph, in accordance with the CPT’s recommendation states that the necessary measures should be taken to prevent sleep deprivation and within a given period of 24 hours a continuous period of at least eight hours for rest, free from questioning or any activity in connection with the investigation should be provided to the detained person.

During the visit of the CPT delegation to Anti-Terror Department at Diyarbakir Police Headquarters on 5 June 2009, the delegation reportedly interviewed two of the eight people taken into custody on 4 June 2009 for having Molotov cocktails with the aim of providing support to the terrorist organization PKK/KONGRA-GEL. The suspects’ access to lawyer had been restricted for 24 hours since their arrest in line with the court decision (as per subparagraphs (b) and (d) of Article 10 of the Anti-Terror Law). The suspects were allowed access to their lawyers after 24 hours, and they made no complaints concerning sleep deprivation. According to the interview records, there exists no such allegation verbally or in written form forwarded either by the suspects or their lawyers. Furthermore, the official records disclose that basic needs such as food, sleep and rest were met adequately.

Under the standard operating procedures, suspects under custody are taken within reasonable time intervals from the detention area to the interview rooms for investigation-related procedures, interviews and for meeting their relatives. The time spent in custody is recorded by 16 cameras and kept for seven days, to enable recourse in case of future allegations.

requests for information (Paragraph 18)

In respect of the period from 1 January 2007 to the present time,

- the number of criminal/disciplinary proceedings which have been instituted as well as;
- an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment by law enforcement officials are enclosed herewith. (**Annex D**)

Safeguards against ill-treatment

recommendations

law enforcement officials throughout Turkey to be reminded of their legal obligations regarding the implementation of the right of notification of custody (paragraph 19);

Turkish legislation has explicit provisions regarding the implementation of the right of notification of custody as well as the liability of the relevant law enforcement officials who execute the apprehension and detention proceedings, with respect to the implementation of this right. Article 95 of the Turkish Criminal Procedure Code; Section 8 of the Regulation on Apprehension, Detention and the Taking of Statements; as well as Article 13 of the Law on Police Duties and Powers stipulate this right. The Detention Regulation (Article 12 (1) (d)) also enforces that the proceedings of notification should be recorded at the custody registry.

In light of the Turkish legislation and in compliance with the CPT's recommendation, law enforcement officials throughout Turkey were reminded of their legal obligation regarding the implementation of the right of notification of custody by a Circular No.5002 dated 3 March 2010.

the Turkish authorities to take the necessary steps to ensure that the right of access to a lawyer for persons in police/gendarmerie custody is fully effective in practice as from the very outset of custody (paragraph 21);

All central and provincial security units throughout Turkey were instructed by a Circular No.5002 dated 3 March 2010 to ensure that the right of access to a lawyer for persons in police/gendarmerie custody is fully effective in practice as from the very outset of custody.

According to Article 4 of the Circular on the fight against illegal migration (No. 632 dated 19 March 2010) those accommodated in return centers, shall be upon their demand, allowed to meet with a lawyer, provided that they meet the costs.

the Turkish authorities to take all necessary steps - including of a legislative nature - to ensure that every person detained by a law enforcement agency under anti-terror legislation has the right to talk in private with a lawyer, as from the very outset of deprivation of liberty, it being understood that, whenever there are reasonable doubts about the professional integrity of the lawyer chosen by the detained person, another lawyer will be appointed *ex officio* (paragraph 22);

The amendments made by Law No. 5532 to the Law on the Prevention of Terrorism (Law No. 3713) are in compliance with the following sections of the “Guidelines on human rights and the fight against terrorism” adopted on 11 July 2002 at the 804th meeting of the Ministers’ Deputies.

-Section I on “States’ obligation to protect everyone against terrorism”:

States are under the obligation to take necessary measures to protect the fundamental rights of every person within their jurisdiction against terrorist acts, especially the right to life.

- Section IX, paragraph 3 on “Legal proceedings”:

The imperatives of the fight against terrorism may nevertheless justify certain restrictions to the right of defense, in particular with regard to:

- (i) the arrangements for access to and contacts with counsel;
- (ii) the arrangements for access to the case-file;
- (iii) the use of anonymous testimony.

-Section XI, paragraph 2 on “Detention”:

The imperatives of the fight against terrorism may nevertheless require that a person deprived of his/her liberty for terrorist activities be submitted to more severe restrictions than those applied to other prisoners, in particular with regard to:

- (i) the regulations concerning communications and surveillance of correspondence, including that between counsel and his/her client;
- (ii) placing persons deprived of their liberty for terrorist activities in specially secured quarters;

According to Article 10 (b) of the Law on the Prevention of Terrorism (Law No. 3713), a detainee’s access to legal counsel can be delayed by 24 hours upon the request of the prosecutor and the decision of the judge; the suspect in detention may not be interrogated during those 24 hours. Moreover, there are no negative implications of the amendments introduced to Law No. 3713 for the Government’s “zero tolerance policy” against ill-treatment and torture which is still being implemented with determination.

steps to be taken to ensure that, whenever the access of a detained person to the lawyer of his/her own choice is delayed/denied, the reasons for the decision are recorded and a written copy of the decision and the reasoning are provided to the person concerned (paragraph 22);

All central and provincial security units throughout Turkey were instructed by a Circular (No.5002 dated 3 March 2010) to ensure that, whenever the access of a detained person to a lawyer of his/her own choice is delayed/denied, the reasons of a such delay/denial are recorded and a written copy of the decision and the reasoning are provided to the person concerned.

appropriate steps to be taken by the relevant authorities to ensure that medical examinations of persons in police/gendarmerie custody are carried out in full compliance with the requirements set out in Section 9 of the Detention Regulation. Further, steps should be taken to put an end to the use of handcuffs during such examinations (paragraph 23);

Section 9 of the Regulation on Apprehension, Detention and the Taking of Statements establishes that if the apprehended person is to be taken under custody or if he has been apprehended by use of force, his health at the time of the apprehension shall be examined through a medical control. His state of health will also be examined by medical authorities in cases of location change, period of custody extension, hand over to judicial authorities or release.

According to Article 7 of the said regulation and Article 93 of the Code of Criminal Procedure, persons who have been apprehended or arrested and are to be transported from one place to another could be handcuffed if there are indications that they might escape or jeopardize their own lives or their bodies or of others. Use of handcuffs under such circumstances is a law enforcement measure to prevent a person from hurting himself / herself or others as well as to preclude the possibility of escape.

If adequate security measures are available, it is not necessary to handcuff a person in custody during the medical examination. In order to ensure the safety of that person as well as the security of medical staff, minimum standards are guaranteed at the places of medical examination.

The removal of handcuffs during medical examination can be considered on condition that:

- a) The examination room has a single door for entrance and exit and its control is ensured by the police.
- b) Security measures such as iron railings on windows, ventilation etc. are provided to prevent any attempt to escape.
- c) The doctor gives his/her consent for the removal of handcuffs of the person in custody during the medical examination.

On the other hand, medical examination can be conducted under the surveillance of the law enforcement officer, if the doctor has personal security concerns or the attitudes and actions of the person in custody create a negative impression on the accompanying law enforcement officer.

In accordance with the recommendation of the CPT, central and provincial security units throughout Turkey were evoked by a Circular No.5002 dated 3 March 2010 to comply with the requirements set out in Section 9 of the Detention Regulation and to be attentive not to use handcuffs during medical examinations.

the Turkish authorities to take the necessary measures to ensure that all persons detained by law enforcement agencies - for whatever reason - are fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police/gendarmerie). This should be ensured by the provision of clear information given orally at the very outset, and

supplemented at the earliest opportunity (that is, immediately upon their arrival at a law enforcement establishment) by the provision of the Suspects Rights Form. Further, the persons concerned should always be given a copy of the form (paragraph 25);

Paragraph 4 under Article 6 of the Regulation on Apprehension, Custody and Taking of Statements provides that, in any case, from the very outset of the deprivation of liberty and regardless of the offence charged, the apprehended person, is informed in writing of the reason of detention, allegations against him/her, the rights to remain silence; to access to a lawyer; to appeal against detention and of any other legal rights. If this is not possible, oral information on these rights is given immediately.

Paragraph 7 of the said Article also stipulates that the apprehended person shall be given a signed copy of the “Form on Suspects’ and Accused Persons’ Rights” which provides a testimony that he/she has been informed of his/her rights in writing and he/she has apprehended them.

In accordance with these provisions, all suspects are given a copy of the Form on Suspects’ and Accused Persons’ Rights which reminds them of their rights in writing. All law enforcement officers are obliged to implement this procedure.

With the aim of informing the personnel about the new provisions, “the Regulation on Apprehension, Custody and Taking of Statements” as well as “The Regulation on Judicial and Preventive Search” have been printed as booklets. 80 thousand booklets have been distributed to law enforcement offices in 81 cities in 2006.

Additionally, cards containing the rights of the detained persons have been printed to be given at the time of apprehension. On the reverse side of the card, it is mentioned that legal liability arises from not informing the apprehended person of his/her rights with a reference to Article 40 of the Turkish Constitution. Article 40 states that “Damages incurred by any person through unlawful treatment by holders of public office shall be compensated for by the state and the state reserves the right of recourse to the official responsible”. 200 thousand cards have been distributed to the personnel in central and provincial security units throughout Turkey in 2004. A sample card is enclosed herewith. (**Annex E**)

In accordance with the recommendation of the CPT, central and provincial security units throughout Turkey were instructed by a Circular (No.5002 dated 3 March 2010) to ensure that all persons detained by law enforcement agencies are fully informed of their fundamental rights given orally at the very outset of their deprivation of liberty and supplemented at the earliest opportunity by the provision of the Suspects Rights Form and always given a copy of the form.

According to Article 6 under the “Basic Elements” Section of the Circular on the fight against illegal migration (No.632 dated 19 March 2010), illegal migrants accommodated in the return centers shall be notified in a language that they apprehend, about their legal situation and legal application methods in writing and a signed copy of this notification shall be kept on file.

appropriate steps to be taken to put a stop to any practice of subjecting minors to informal questioning by law enforcement officials without having a lawyer present (paragraph 27);

Statement taking procedures for minors subject to criminal investigation are stipulated under Article 15 of the Law No. 5395 on Juvenile Protection; Article 236 of the Code of Criminal Procedure and Section 19 of the Regulation on Apprehension, Detention and the Taking of Statements. Accordingly;

a) Law No. 5395 on Juvenile Protection

Article 15- (1) Investigations related to juveniles pushed to crime shall be carried out personally by the public prosecutor assigned at the juvenile bureau.

(2) During interrogation and other procedures related to the juvenile, the juvenile may be accompanied by a social worker.

b) Code of Criminal Procedure

Article 236 - (2) The child or the victim whose psychology has been disturbed as a result of the crime committed can only be listened once as a witness during the investigation or the proceeding being carried out with regard to that crime. Cases whereby this is necessary in order to reveal the concrete truth constitute an exception.

Article 236 - (3) While witnesses of juvenile victims or other victims whose psychologies have been disturbed as a result of the criminal act are being heard, a person who is an expert in psychology, psychiatry, medicine or pedagogy shall be kept present. These psychiatric/medical experts are subject to the same provisions as experts.

c) For children, authority to detain and taking of statements are limited. (Section 19 of the Regulation on Apprehension, Detention and the Taking of Statements)

Children from 12 to 18 years old may be apprehended because of a crime. These children are referred immediately to the public prosecutor while the child's parents/relatives as well as child's lawyer are promptly notified; the investigation regarding these children are conducted personally by the chief public prosecutor or by a public prosecutor he/she entrusted. In this process,

- A lawyer is summoned in all cases regardless of the request of the child. The child's parents or guardian can employ the lawyer.

-The statement of the child suspect is taken on the condition of the presence of a lawyer.

-Unless it is determined that it is against the law or the best interest of the child, the child's parents or guardian can be present during the taking of the child's statement.

-If the crimes stated in the Law on the Establishment, Duties and Trial Procedures of Juvenile Courts are committed with the adults, the documents of the child are separated during the investigation stage and investigations are carried out separately.

In case of any practice contrary to the law, judicial proceedings should be initiated against those responsible. The responsibility regarding the compliance of the investigation procedures to the law rests with the competent public prosecutor.

In accordance with the recommendation of the CPT, central and provincial security units throughout Turkey were instructed by a Circular (No.5002 dated 3 March 2010) not to register short conversations with the juveniles “as statements” (Article 4/h).

law enforcement officials to be reminded of the importance of opening custody records promptly in every case and of ensuring full, accurate and timely record keeping (paragraph 29);

Section 13 of the Regulation on Apprehension, Detention and the Taking of Statements stipulates that the proceedings of detention should be recorded from the very beginning to the registry for detained persons and it is compulsory to open custody records in every case. The superiors or the competent judicial authorities may control whether the custody records are properly kept or not.

In accordance with the recommendation of the CPT, central and provincial security units throughout Turkey were instructed to implement strictly the above-mentioned provision of the law by a Circular (No.5002 dated 3 March 2010).

steps to be taken to ensure that a record is made and kept in every law enforcement establishment of every instance of a person being deprived of his/her liberty on the premises of that establishment (paragraph 30);

In every law enforcement establishment where persons deprived of liberty or detained are kept, the records should be made in accordance with the legislation and kept for a certain period of time; criminal investigation is initiated against the personnel who do not keep the records properly.

In accordance with the recommendation of the CPT, central and provincial security units throughout Turkey were reminded of these obligations by a Circular No.5002 dated 3 March 2010 (Article 4/i).

According to Article 1 under the Section “Basic Elements” of the Circular on the fight against illegal migration (No.632 dated 19 March 2010), a detailed official record shall be kept in line with the provisions of the Directive on illegal migrants issued by the Directorate General of Security. Those records shall be kept for five years.

According to Article B/4 of the Circular on the fight against illegal migrants (No. 632 dated 19 March 2010), a directive will be prepared by the Directorate General of Security to be disseminated to Governorships, on the physical condition requirements of the return centers and basic management elements of these centers.

This Directive will cover the issues such as establishment and administration of return centers, arrangement of in kind and monetary assistance allocated by the NGOs, relations with these organizations, registries on illegal migrants accommodated in these centers (compulsory registry books and modalities of safekeeping precious belongings as well as other belongings of illegal migrants that cannot be used at return centers) and modalities of transferring illegal migrants from provinces where holding capacity has been surpassed to other provinces with available places.

The said directive will also involve the rules regarding the collection of statistical data on apprehended, deported or accommodated illegal migrants in return centers, duration of their accommodation and the number of illegal migrants accommodated by the Directorate General of Security, Gendarmerie and Coast Guard Headquarters (to be prepared separately by each unit).

the Turkish authorities to take steps to ensure that all interviews of detained persons in Anti-Terror Departments are electronically recorded (by audio and video recording) and that recordings are kept for a reasonable period and are made available to be viewed by appropriate persons. The Committee also invites the Turkish authorities to consider the possibility of introducing recording of interviews of detained persons in all law enforcement departments (paragraph 34).

In accordance with Article 147/1 of Turkish Code of Criminal Procedures which came into force on 1 June 2005, it is possible to use technical means for recording in statement taking or questioning procedure.

Within the framework of the Turkey-EU Financial Cooperation, a project on “Improvement of Statement Taking Methods and Statement Taking Rooms in the Republic of Turkey” has been initiated and carried out by the PHARE-Twinning mechanism till February 2006. Within this project, 30 pilot statement-taking rooms developed across 27 cities of Turkey. These rooms, 10 of which are at anti-terror departments, were equipped with video and audio recording systems in conformity with international standards.

Statement-taking rooms built within this project at the Anti-Terror Departments in Batman, Erzurum, Mardin and Van, are the ones which the CPT delegation visited.

Within scope of the project on “Purchase of Machinery and Equipment for Detention and Statement Taking Rooms”, video and audio recording systems were set up at anti-terror departments of police headquarters in 32 cities, between the years 2007-2009.

As the assessment and need analysis of the anti-terror departments are ongoing; the project will continue in 2011, so that recording interviews in other anti-terror departments will be also possible.

In accordance with the recommendation of the CPT, a Circular (No.5002 dated 3 March 2010) was issued and disseminated to the central and provincial security units throughout Turkey.

Necessary steps were also taken by Gendarmerie Command to implement the recommendations of the CPT delegations visiting Turkey. All lockups of Gendarmerie are now in conformity with the international standards. Video recording systems were set up and the recordings are kept for one year. Suspects' Rights Form is displayed in Turkish, English, German and French at the entrance of every lockup. All the proceedings of detainees are recorded at registry books and they are controlled by public prosecutors, public inspectors and by their respective superiors.

prosecutors in all provinces to be encouraged to carry out more robust on-the-spot checks of law enforcement establishments, in line with the criteria set out by the Committee in paragraph 40 of the report on the 2003 visit (CPT/Inf (2004) 16) (paragraph 35).

comments

as regards the medical examination of persons in police/gendarmerie custody, there needs to be reflection by all relevant parties (justice, health, police and gendarmerie) on the way forward, with a view to developing a system which is more simplified but still effective in terms of prevention of ill-treatment by law enforcement officials; the Committee is ready to take part in this process (paragraph 24);

Ministry of Health is of the opinion that in order to prevent cases of ill-treatment, medical examination of a person in police/gendarmerie custody should be carried out in full compliance with the requirements set out in Section 9 of the Detention Regulation. The Ministry believes that introduction of compulsory medical examination as a part of the custody procedure (at entry, transfer and release) has yielded positive results.

Turkish authorities consider training and awareness raising of the medical personnel as an important means for implementation of the legal and institutional arrangements. A noteworthy activity in this respect was a project titled "Training Programme on the Istanbul Protocol: Enhancing the Knowledge Level of Non-Forensic Expert Physicians, Judges and Prosecutors". The European Union funded project was led by the Turkish Medical Association and beneficiaries were the Ministry of Justice and the Ministry of Health. In this context, 160 doctors attended "train of the trainee" programmes and 3475 doctors received 3-day practical training with the aim to increasing the efficiency of medical examination relating to torture allegations and legal proceedings.

The positive implications of such training on the participants are evident. As an example, at some districts of İstanbul, the copy of the forensic report is directly sent to the relevant public prosecutor in a sealed envelope. Before, handing it to the law enforcement official accompanying the detained person was a common practice. Following the training programmes, Ministry of Justice issued a Circular (No.59622 dated 21 October 2009) and reminded the public prosecutors that they should receive the forensic reports in sealed envelopes directly from medical authorities.

Additionally, the doctors who have attended “train of the trainees” programme continue to carry out the programme and provide training to the medical personnel and law enforcement officials at the local level in İstanbul, Gaziantep and Kocaeli.

Turkish authorities are aware of the fact that the quality of the reports drafted upon these medical examinations does not meet the standards at every province. Ministry of Justice has produced standard forms of forensic report which are accessible at the Ministry’s web site (www.adlitabiplik.saglik.gov.tr).

The Government continues to seek to identify problems and provide appropriate solutions, including the improvement of the quality of forensic medical examination. In the framework of the above-mentioned project, preparation of a report on guidelines, instruction manuals and modalities of service regarding forensic report and medical examination forms in line with İstanbul Protocol is underway.

Through aforementioned efforts and active cooperation achieved among Ministries of Health and Justice as well as the law enforcement units, it is considered that the quality of forensic medical services concerning the medical examination in custody will improve, which may alleviate the problems encountered in this field.

the CPT encourages the Turkish authorities to extend to all law enforcement establishments the practice of displaying, in detention areas, notices setting out the rights of detained persons (paragraph 26);

Article B/5 of the Circular on the fight against illegal migration (No.632 dated 19 March 2010) states that “the necessary conditions of the return centers where illegal migrants are accommodated until their deportation and the basic elements of implementation in these centers are enclosed and procedures shall be conducted according to these elements until the Directive issued by the Directorate General of Security enters into force.”

According to Article 19 of the “Basic Elements” Section of the Circular following procedures shall be conducted regarding the centers;

- a. An “intervention plan” shall be prepared in case of incidents.
- b. Notices on the rights of illegal migrants shall be displayed in several languages.
- c. The rules of the centre shall be displayed in several languages.
- d. Illegal migrants will be informed during their admission of the measures that will be taken should they breach the rules of the center.
- e. Necessary measures shall be taken for adequate access to natural light.
- f. Outdoor exercise on a daily basis shall be offered to persons held for 24 hours or more.
- g. Necessary measures shall be taken in order to provide longer hours and a greater variety of activities to the illegal migrants accommodated in the centre.
- h. Television sets shall be provided for the use of illegal migrants.

it would be desirable for CCTV cameras in the interview rooms of Anti-Terror Departments to be adjusted so as to provide an image of the entire room and of all persons present in it (paragraph 33);

Article 10 (ç) of the Anti-Terror Law (No. 3713) protects the officials involved in the fight against terrorism, stating that “instead of disclosing the identity of the relevant officials, only their badge numbers are written to the records kept by the law enforcement.”

Article 6 (1) of the said Law foresees punishment for disclosing or publishing the identity of officials on anti-terrorist duties, or for identifying such persons as targets.

Officials on anti-terror duties face a constant threat from terrorist organizations. It is essential for the authorities to take the necessary measures to prevent the disclosure of the identity of these officials on anti-terror duties and protect them from becoming a target for the terrorist groups they fight.

In this respect, recording the interview room in its entirety brings the risk of disclosure of the identity of officials on anti-terrorist duties that are protected under the Anti-Terror Law (No. 3713). Although the identity of a policeman at the anti-terror department is secured in the written documents if videotaped, his/her identity might be disclosed at a later stage.

Conditions of detention

recommendations

material conditions of detention to be improved in all the Anti-Terror Departments visited, in the light of the remarks made in paragraph 37 (paragraph 37);

Police Headquarters in Batman, Diyarbakır, Erzurum, İstanbul, Konya, Mardin and Van were instructed through a correspondence dated 3 February 2010 to take necessary steps to make up for the deficiencies of the detention facilities of anti-terror departments.

It has been reported back that;

- Necessary arrangements to provide adequate natural light at the detention facilities were initiated at Police Headquarters in Konya.

- The standards were met in the detention rooms at the Anti-Terror Department of Erzurum Police Headquarters in 2008 although the current location of the building is not suitable to offer outdoor exercise for the detainees.

- A project has been initiated in coordination with the Van Directorate of Public Works to improve the conditions and make up for the deficiencies of detention centers at the Police Headquarters in Van. Blankets, upon the request of the detainees and hot showers are provided at these facilities for 24 hours.

-Police Headquarters in Mardin would undertake necessary arrangements to enlarge the windows of detention facilities at the Anti-Terror department for more access to natural light.

-Anti-Terror Bureau of Police Headquarters in Nusaybin district would undertake necessary arrangements to enlarge the windows of detention facilities for more access to natural light. Video recording system would be set up both at the anti-terror bureau and the detention facility in Nusaybin. Upon the request of the detainees, exercising is permitted at the corridors of the detention facility.

- There are 6 detention rooms, facing 94cm wide and 150cm tall windows which are 170cm distant from the bars at the Anti-Terror Department of Batman Police Headquarters. The current location of the building is not suitable to offer outdoor exercise for the detainees.

-Detention rooms of the Anti-Terror Department of Diyarbakır Police Headquarters do not have windows. Natural light and ventilation are provided through the window at the corridor and by the ventilation system.

The detained suspects are exceptionally kept for a maximum period of 4 days. The detainees whose proceedings are completed are handed over to judicial authorities in a shorter time. The detained suspects, apart from their sleeping hours, are frequently taken out of their rooms for medical control, finger printing, an interview with the lawyer and for taking statements etc. They are allowed to walk along the corridor of the detention center as well.

There is a plan to move Anti-Terror Department in 2010 to the new Police Headquarters building which is still under construction in Diyarbakır.

- In light of the assessment on the deficiencies of the anti-terror department of İstanbul Police Headquarters, the necessary budgetary allocation is requested from the Ministry of the Interior.

the Turkish authorities to review the conditions of detention in all law enforcement establishments where persons may be held for 24 hours or more, in order to ensure that the detention facilities have adequate access to natural light (paragraph 37);

Article 25 of the Regulation on Apprehension, Detention and the Taking of Statements stipulates that “...adequate natural lighting and ventilation facilities are provided...”. In this respect, necessary attention is paid during the inspections and the work on standardizing the detention rooms.

In accordance with the recommendations of the CPT delegation, all central and provincial security units in Turkey were instructed by a Circular No.5002 dated 3 March 2010 (Article 4/k).

the Turkish authorities to explore the possibility of offering outdoor exercise on a daily basis to persons held for 24 hours or more by law enforcement agencies; the need for outdoor exercise facilities for detained persons should also be taken into account in the design of new premises (paragraph 37).

This recommendation will be taken into consideration by the relevant authorities during the construction of new premises and facilities in the future.

comments

it is regrettable that no provision had been made for outdoor exercise at the new Common Detention Facility at Istanbul Police Headquarters (paragraph 36);

Istanbul Police Headquarters has been informed about this issue with a letter.

it would be desirable for the current detention arrangements at Istanbul Police Headquarters to be further developed by deploying dedicated and specially trained custodial officers to the Common Detention Facility, as well as by establishing a single custody register (paragraph 38);

Istanbul Police Headquarters has been also informed about this issue with a letter.

According to Article 16 under the “Basic Elements” Section of the Circular on the fight against illegal migration (No.632 dated 19 March 2010), following measures shall be taken regarding the personnel;

- a. Sufficient number of male and female personnel shall be employed. If possible, these personnel will not be employed in other tasks i.e. sports matches, demonstrations,... etc.
- b. Personnel employed in the centers shall undergo periodic health controls. Necessary health measures shall be taken considering the risks these personnel face with.
- c. Preliminary training shall be provided to the personnel who are in direct contact with illegal migrants. Directorate General of Security will take necessary measures to include the interpersonal communication skills training to the programme.

the CPT encourages the Turkish authorities to create common police detention facilities also in other provinces of the country (paragraph 38).

Different factors such as the financial means of the Turkish Police Force, transportation facilities, personnel capacity as well as the intensity/diversity rate of the criminals in the area surrounding detention centers are taken into account when an ordinary police detention facility is to be built. There is no short-term project at present but CPT recommendations will be taken into account in the future during the construction of new facilities.

In accordance with Article B/2 of the Circular on the fight against illegal migration (No.632 dated 19 March 2010), the Directorate General of Security gave instruction to create facilities with a capacity of at least fifty persons. On the other hand, quite a high number of illegal migrants are being apprehended in some provinces whereas the facilities are not sufficient to accommodate those persons until their deportation.

In this context;

Necessary measures shall urgently be taken in the provinces of Ağrı, Balıkesir, Çanakkale, Mersin, Hatay, Muğla, Batman and Gaziantep to create additional capacity and the procedures shall be monitored by the Governors of each province.

The course of illegal migration within years shall be observed semi-annually in Şırnak, Şanlıurfa, Konya, Tekirdağ, Iğdır and Düzce where such facilities do not exist. Necessary steps shall be taken to construct return centers with a capacity of 100 people in these provinces. Return centers with 50 people capacity shall be created in other provinces.

While establishing these centers, general budget, local facilities as well as project-based funding shall be capitalized and priority shall be given to the utilization of public buildings. Written information on the construction of return centers and the creation of additional capacity shall be given to the Development and Implementation Office for Asylum and Migration Legislation and Administrative Capacity every six months. The process, if necessary, shall be monitored by the Office and assessment reports shall be presented to the Ministry of the Interior.

According to Article B/3 of the Circular, illegal migrants who cannot be accommodated in provinces where return centers do not exist or are with full occupancy, shall be transferred to the closest provinces with available capacity by the Aliens, Border and Asylum Office of the Directorate General of Security so that each and every return center will be utilized efficiently.

Foreign nationals held under aliens legislation

Detention centres for foreigners

recommendations

police officers at the detention centres in Agri, Edirne-Tunca and Kırklareli to be reminded that all forms of ill-treatment of immigration detainees are not acceptable and will be punished accordingly (paragraph 41);

The Governorships of Ağrı, Edirne and Kırklareli have been alerted on this issue with an official letter. Additionally, all governorships in Turkey are instructed with a letter dated 16 February 2010 stating that ill-treatment of illegal migrants accommodated at the return facilities are not acceptable and will be punished accordingly.

the Turkish authorities to take the necessary steps to prevent any "informal deportations" from occurring in the future (paragraph 43);

There have been no "Informal deportations" from the Eastern borders of Turkey for a long time. Since 2007, adequate financial means have been allocated to the budget of the Directorate General of Security for returning illegal migrants in accordance with Article 22 of the Passport Law No. 5682 which regulates that "the State will cover the return expenses of the deported persons who cannot afford". In this respect, since 2007, the Directorate General of Security has been returning illegal migrants by air which is a safer and more humane way.

According to Article C of the Circular on the fight against illegal migration, quick returns of illegal migrants are essential in combating illegal migration. This represents a deterring effect on probable illegal migration flows to Turkey and alleviates the burden of illegal migrants.

Following the transfer of apprehended illegal migrants to the law enforcement units, the return procedures shall be carefully conducted and necessary measures shall be taken. At this stage, Governors and other relevant units shall monitor the appropriate and timely conduct of work, coordinate and facilitate the work of officials and provide the necessary means.

The CPT calls upon the Turkish authorities to prevent any repetition of the severe overcrowding which reportedly occurred at Van Detention Centre in August and September 2009 (paragraph 44);

In the report of the CPT, the number of illegal migrants accommodated at Van Detention Center is given as 289 at the end of August and as 118 at the end of September 2009. These numbers do not indicate the numbers of the illegal migrants accommodated at the Center the same day, but the total numbers of illegal migrants lodged in a time frame of 30 days. The numbers differ from day to day depending on the apprehension and the return of the migrants. For instance; there were 27 foreigners at the Center on 1 September 2009, whereas 118 foreigners in total during the month of September.

According to Article B/3 of the Circular on the fight against illegal migration (No.632 dated 19 March 2010), illegal migrants who cannot be accommodated in provinces where return centers do not exist or are with full occupancy, shall be transferred to the closest provinces with capacity by the Aliens, Border and Asylum Office of the Directorate General of Security so that the capacity of the return centers will be utilized efficiently.

Article 7 under the “Basic Elements” Section of the Circular on the fight against illegal migration provides the following conditions regarding women and families;

- a. Separate sections shall be designated for women, men and families.
- b. Physical measures shall be taken to block transition between the sections designated for women, men and families.
- c. A healthy environment shall be provided to accommodate children with their mothers.

steps to be taken to significantly reduce the official capacity of Istanbul-Kumkapi Detention Centre and to ensure that future occupancy levels are always kept within the limits of the new capacity (paragraph 45);

Although İstanbul is a target area for illegal migrants, they are mostly apprehended in and return to the country of origin from this city.

As part of the investment projects implemented in cooperation with the European Union, new return centers will be built in Ankara and Erzurum, each with a capacity of 750 persons. Additionally, relying on the National Budget, construction of another four centers, each with a capacity of 600 persons, are underway in Edirne, Aydın, Van and Bitlis. After these new centers become operational, necessary steps to reduce the occupancy levels of the return centers will be taken.

urgent steps to be taken to ensure that the detention centres at Agri, Kirklareli (unit for male adults), Konya and Van are kept in an acceptable state of repair and hygiene (paragraph 48);

All the governorships are instructed to meet the necessary conditions of hygiene and sanitation at these centers by a letter of the Ministry of the Interior, dated 9 March 2010.

According to Articles 9, 10, 11, 12 and the “Basic Elements” Section of the Circular on the fight against illegal migration;

-Hot water shall be provided throughout the day.

-Sufficient number of toilets shall be constructed both in men’s and women’s sections.

-Sufficient number of washing machines shall be provided. Sheets and blankets utilized by illegal migrants shall be regularly washed to meet hygiene conditions.

-Mineral water shall be provided on a daily basis to illegal migrants, where tap water is not potable.

-The services provided to illegal migrants (such as food and cleaning) shall be realized by outsourcing, in principle.

the Turkish authorities to take steps at all the detention centres visited to ensure that foreign nationals are offered a greater number and broader range of activities (paragraph 49);

Although there is no standard set for social activities at the centers for illegal migrants, all the governorships are instructed by a letter dated 9 March 2010 to allow access to open air for at least one hour per day and to create spaces for social activities at the centers.

the provision of food to immigration detainees to be reviewed in all the detention centres for foreigners, to ensure that it is adequate in terms of both quantity and quality (paragraph 51);

Daily boarding money per person is set as 5,6 TL (approx. € 3) in 2010, at these centers. There is an effort to increase the appropriations for food.

Article 13 under the “Basic Elements” Section of the Circular on the fight against illegal migration provides the following conditions regarding the meals delivered to illegal migrants;

- a. Meals with calories calculated shall be given to illegal migrants three times per day. Warm meals shall be served during lunch and dinner. If the general budget is insufficient to serve meals three times a day, project-based funding shall be allocated by the Social Assistance and Solidarity Foundations.
- b. Menus shall be fixed on a monthly basis. The most and the least popular menu items shall be determined and necessary measures shall be taken about the least consumed ones.
- c. Food shall be served at the refectory of the return center, and if not possible, at a designated place of the room where illegal migrants stay.

the necessary steps to be taken in all the detention centres for foreigners to:

- **ensure that all newly-arrived detainees are promptly examined by a doctor or by a fully-qualified nurse reporting to a doctor;**
- **arrange for the daily presence of a person with a recognised nursing qualification, the length of time of that presence depending on the number of immigration detainees; a nurse should be present on a full-time basis at Istanbul-Kumkapi. Such nursing staff could in particular perform the initial medical screening of new arrivals, receive requests from foreign nationals to see a doctor, ensure the provision and distribution of prescribed medicines, keep the medical documentation (thus ensuring confidentiality of medical data) and supervise the general conditions of hygiene (paragraph 52);**

All illegal migrants are examined by a doctor when they are apprehended and lodged at the centers. Outpatient treatment of those who are in need of are promptly arranged, those who have severe illnesses are transferred to full-fledged state hospitals and the medicines are provided free of charge. Daily presence of a nurse is requested from the Ministry of Health by the Ministry of the Interior.

Article 15 under the “Basic Elements” Section of the Circular on the fight against illegal migration (No. 632 dated 19 March 2010), foresees the following procedure regarding health services;

- a. Hygiene of the centers shall be assured.
- b. Illegal migrants shall be examined by a doctor at the entry to and exit from the centers.
- c. Medical records shall be kept for five years.
- d. In case of an epidemic, necessary measures shall be promptly taken and the Ministry of the Interior shall be informed without delay.
- e. Illegal migrants facing urgent health problems shall be immediately taken to the closest healthcare centre.
- f. Medical expenses of those accommodated at such centers are met from the general budget as a rule. However, it is observed that different provinces have different practices on this issue. In order to ensure a standard implementation, the Directorate General of Security will allocate necessary funds and the cost of medications will be met from the general budget. If this fund is insufficient, the cost of medications shall be covered by Social Assistance and Solidarity Foundations to the extent possible.
- g. Demands for treatment by a doctor shall be evaluated. Treatment of those about whom there is a judicial decision of deportation shall be conducted on the basis of medical decision taken exclusively for each case. Such a decision requires the treatment of the relevant person by a doctor. Excluding well-defined exceptional situations, medical treatment shall be realized upon the consent of the person concerned. Each stage of the medical treatment shall be registered by the relevant authorities in accordance with the procedures.

Taking into account the CPT's recommendations, consultations between relevant ministries are ongoing. CPT will be informed about the developments as is due.

steps to be taken in all detention centres for foreigners to ensure that police officers working in direct contact with immigration detainees receive appropriate initial and continuous training (including in interpersonal communication skills) (paragraph 59).

All officers working at the departments for foreigners receive basic training. Officers working at the units combating illegal migration also attend expert training programmes. In 2009, 536 personnel received basic training and 87 personnel attended expert training programmes. 99 officers were also trained on human rights issues.

For further information please see paragraph 38.

comments

the Agri Detention Centre should under no circumstances operate above its official capacity. Further, it is in any event totally unsuitable as a place to hold young children with their mothers (paragraph 46);

If possible, families with children are lodged in places other than return centers while their return procedures are underway. Children without parents are accommodated in facilities of Social Services and Child Protection Agency in coordination with the Ministry of the Interior.

television sets should be provided in all detention centers for foreigners (paragraph 50);

There are several instructions of the Ministry of the Interior that aim to improve social facilities at return centers. Recently (on 9 March 2010), governorships are called upon to continue allocating social areas. As it is indicated in the report of the CPT, television sets are provided for all centers the CPT delegation has visited.

a custody register for immigration detainees should be established at the temporary detention facilities at Konya Police Headquarters (paragraph 54);

the CPT trusts that the rules on disciplinary procedures in detention centres for foreigners, which are being prepared by the Ministry of the Interior, will be in compliance with the criteria indicated by the Committee in paragraphs 132 and 133 (paragraph 55);

the Turkish authorities are invited to extend to all detention centres for foreigners the practice of allowing immigration detainees to keep their mobile phones (paragraph 56);

There is no prohibition of the use of mobile phones. However, illegal migrants, in line with the security measures to prevent possible theft incidents, are allowed to use their mobile phones under control.

Article 14 under the “Basic Elements” Section of the Circular on the fight against illegal migration (No. 632 dated 19 March 2010) provides that sufficient number of payphones shall be made available for illegal migrants.

steps should be taken in all detention centres for foreigners to put an end to the practice of systematically censoring the correspondence of immigration detainees (paragraph 57);

The Ministry of the Interior has not received any claims to this effect, either from the illegal migrants themselves or from human rights/ international organizations or the lawyers.

the Turkish authorities are invited to allow immigration detainees to receive visits also from non-family members (paragraph 58).

There are no restrictions for illegal migrants to receive visits from lawyers and family members.

Article 4 of the Circular on the fight against illegal migration (No. 632 dated 19 March 2010) stipulates that illegal migrants, who would like to contact the United Nations High Commission for Refugees, shall be permitted to do so. Upon their request, they shall be allowed to meet with a lawyer provided that the costs are borne by themselves.

According to an amendment proposal introduced to the Law No. 5683, illegal migrants who are accommodated in return centers for repatriation, shall be allowed to receive visits from their relatives, legal representatives, UNHCR officials, representatives of the relevant NGOs and consular officials of their country.

requests for information

confirmation that all foreign nationals held at Agri and Istanbul-Kumkapi Detention Centres are able to benefit from at least one hour of outdoor exercise per day (paragraph 47);

Relevant authorities are instructed accordingly with the letter of the Ministry of the Interior No. B.05.1.EGM.0.13.07.03.İllegal-7/24-5/6767-48603, dated 9 March 2010.

progress made in constructing an outdoor exercise area at the detention facilities at Konya Police Headquarters (paragraph 47);

detailed information on the implementation of the plans to construct several regional detention centres for foreigners, as well as on the out-of-cell activities which will be offered to persons held in these new centres (paragraph 48);

The relevant authorities are instructed accordingly with the letter of the Ministry of the Interior, dated 9 March 2010.

Legal situation of immigration detainees

recommendations

the Turkish authorities to take steps to ensure that all immigration detainees are able to have unrestricted and confidential access to a lawyer throughout their detention (paragraph 63).

comments

the CPT trusts that the Turkish authorities will take all necessary steps of a legislative and administrative nature to ensure that the deficiencies concerning the legal safeguards for immigration detainees described in paragraph 61 and addressed by the European Court of Human Rights in the judgment of *Abdolkhani and Karimnia v. Turkey* (dated 22 September 2009) are remedied as a matter of priority (paragraph 62);

Relevant authorities are instructed accordingly with the letter of the Ministry of the Interior of 09.03.2010.

the Turkish authorities are invited to introduce a maximum period for the administrative detention of foreign nationals under aliens legislation (paragraph 62);

every effort should be made to avoid resorting to the deprivation of liberty of minors in detention centres for foreigners. In line with Articles 3 and 37 (b) of the United Nations Convention on the Rights of the Child, detention of children is rarely justified and, in the Committee's view, can certainly not be motivated solely by the absence of residence status. When, exceptionally, a child is detained, the deprivation of liberty should be for the shortest possible period of time (paragraph 62).

The above objectives are addressed in the draft law amending certain provisions of the Law No. 5683 on Residence and Travel for Foreigners in Turkey.

requests for information

updated information on the project of setting up a legal counselling service and of arranging the regular presence of a lawyer at Istanbul-Kumkapi Detention Centre (paragraph 63);

confirmation that all foreign nationals held in detention centres are now informed that they are allowed, if they so wish, to contact and receive visits by representatives of UNHCR (paragraph 64).

Asylum applications of foreigners staying at return centers are taken in accordance with the Regulation on Asylum/Refugee No. 1994/6169 and the Implementation Directive No.57 dated 22 June 2006 and processed by the Ministry of the Interior. Foreigners who have lodged asylum applications shall be notified within three days, of the asylum procedure in oral and written form starting from the date of the application including information about the registry of their application by the UNHCR.

If requested, UNHCR officials shall also be allowed to meet the applicants who are held at return centers.

Holding facilities for foreign nationals in the transit zone of Istanbul International Airport

recommendations

the Turkish authorities to take the necessary steps to ensure that foreign nationals held in the transit zone are allowed to contact and meet representatives of UNHCR (paragraph 67).

According to the article on “The access of applicants to asylum procedures” under the “Basic Principles” Section of the Implementation Directive no.57, if the refugee/asylum application is lodged at a law enforcement unit at border regions, border gates or inner regions other than the assigned authorities, the applicant is required to apply without delay to the relevant Governorate or the Foreigners Department. There exists no restriction for the UNHCR to access these applicants.

Deportation of foreign nationals by air

recommendations

the Turkish authorities to draw up detailed instructions on the procedure to be followed and, more particularly, on the use of force and/or means of restraint authorised in the context of deportations by air. Those instructions should take into account the principles set out in the CPT's 13th General Report (CPT/Inf (2003) 35, paragraphs 27 to 45) and Guidelines 15 to 20 of the Guidelines on Forced Return (adopted by the Committee of Ministers of the Council of Europe on 4 May 2005) (paragraph 69).

According to Article B/4 of the Circular on the fight against illegal migrants (No. 632 dated 19 March 2010), a directive will be prepared by the Directorate General of Security to be disseminated to Governorships, on the physical condition requirements of the return centers and basic management elements of these centers.

This Directive will cover the issues such as establishment and administration of return centers, arrangement of in kind and monetary assistance allocated by the NGOs, relations with these organizations, registries on illegal migrants accommodated in these centers (compulsory registry books and modalities of safekeeping precious belongings as well as other belongings

of illegal migrants that cannot be used at return centers) and modalities of transferring illegal migrants from provinces where holding capacity has been surpassed to other provinces with available places.

comments

any administration of medication to persons subject to a deportation order must always be carried out on the basis of a medical decision taken in respect of each particular case; the taking of such a decision necessarily involves the person concerned being physically seen and examined by a medical doctor. Save for clearly and strictly defined exceptional circumstances, medication should only be administered with the informed consent of the person concerned. Further, all instances of administration of medication in the context of deportation procedures should be duly recorded by the services involved (paragraph 69).

For further information see paragraph 52.

Establishments under the Ministry of Justice

Preliminary remarks

recommendations

the Turkish authorities to vigorously pursue the adoption and implementation of a coherent strategy designed to combat prison overcrowding, in the light of Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole) and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse (paragraph 64).

In many metropolitan cities there is a growing tendency in criminal activity together with the increase in population and migration. Therefore in addressing the problem of prison overcrowding, priority is given to the construction of F Type penitentiary institutions in these cities for dangerous criminals. The constructions of new penitentiary institutions are ongoing. New penitentiary institutions are designed according to room system and meet the standard rules for prisons set by the Council of Europe and the United Nations.

As of 25 February 2010, there exist 371 penal institutions in Turkey. In view of the unexpected increase in the number of detainees and prisoners, the construction of new penal institutions as well as additional buildings to existing premises is underway. Construction of additional buildings is planned to be concluded by the end of 2010. There exists 15 ongoing projects in 4 high security penitentiary institutions; 59 projects are undertaken within the framework of investment program in 29 similar institutions and 58 etude projects are being realized in 31 such centers. Construction of 131 open and closed penitentiary institutions is planned to be concluded by the end of 2015.

On the other hand, within the framework of technical support provided by the European Union Technical Support and Information Exchange Office (TAIEX), a group of high-ranking officials from the Ministry of Justice paid a working visit to Sweden, to examine “Electronic Monitoring”, from 13 to 20 September 2009. There are new initiatives aiming to enlarge the scope of judicial control measures in the “Regulation on the Placement of Prisoners to Open Penal Institutions”, entering into effect on 17 June 2005 with the Official Gazette No. 25848, which arranges the placement conditions of prisoners in penal institutions to open penal institutions.

Following amendments are envisaged to be made to the Law no. 5275, which constitutes the basis of the above-mentioned regulation;

- Article 14/3 to be amended as follows “punishment of first time offenders who are sentenced to less than three years’ imprisonment is directly implemented in open penal institutions”,
- following to be added as 143/5 “those who are convicted but not subjected to final judgment might be separated to open penal institutions upon their demand, through taking into consideration the conditions related to convicts“ to the above-mentioned Article as the 5th clause
- “absconding” to be added among reasons for transferring prisoners to closed penal institutions. Amendment of the above-mentioned regulation will be considered after these amendments are realized in the Law.

The draft law for extending the scope of probation services has been prepared and submitted to the General Directorate of Law.

Ill-treatment

recommendations

staff at Konya E-type Prison to be firmly reminded at regular intervals that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions (paragraph 78);

Necessary measures are taken to ensure that detainees and prisoners at Konya E-Type Closed Penitentiary Institution, regardless of their offense, are not subjected to mistreatment.

The administration of the prison reminded the staff in writing that all forms of mistreatment are not acceptable and will be subject to severe sanctions.

Although allegations of a number of physical mistreatment and verbal abuse of convicts within the framework of anti-terror legislation are mentioned in the CPT’s report, further investigation provided that no ill-treatment has taken place. However, an exclusive meeting was held to remind the personnel of their responsibility to act in conformity with the protection of and respect to human dignity.

the Turkish authorities to develop a strategy with a view to addressing the problem of inter-prisoner violence at Konya E-type Prison, in the light of the remarks made in paragraphs 81 and 82 (paragraph 83);

The administration of Konya E-Type Closed Penitentiary Institution has carefully examined inter-prisoner violence and initiated an administrative investigation on this issue; medical examinations have also been conducted in that regard. Chief Public Prosecutor has been promptly informed about the incidents for judicial pre-inquiry. Discipline investigations, injuries as well as discipline measures and punishments have been registered in the execution files of detainees/convicts and in the files of the Disciplinary Board.

Konya E-Type Closed Penitentiary Institution is one of the 90 penal institutions which have been selected as model prison under the Joint Programme of the Council of Europe and European Union on the “Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey”. Within this project, the prison staff will be trained especially in human rights issues and Anger Control Program of the prison will be revised.

Inter-prisoner violence in the penal institutions of Turkey is rather low compared to other European countries. New projects on Herm Reduction (MATRA-45.000 Euro), Mental Health (Drug Addiction and psychiatric problems) (1.500.000 Euro) and Improvement of Execution Services were submitted to the European Union.

a centralised system for recording injuries to be introduced at Konya E-type Prison and, where appropriate, in other prisons in Turkey (paragraph 83).

Records of incidents in penal institutions are kept and sent to relevant authorities for administrative and judicial investigations. Incident records are also sent by fax to Discipline and Public Order Offices of General Directorate for Penitentiary Institutions of the Ministry of Justice and they are kept in the files of the prisons.

Comments

custodial staff at Erzurum H-type Prison should receive further encouragement to interact with prisoners (paragraph 80).

Execution and Protection Officer and Officers-in-Chief employed in Erzurum H Type Closed Penitentiary Institution treat all detainees/convicts in conformity with Article of the Law No. 5275 on Execution of Punishment and Security Measures which provides that “The rules about the execution of penalties and security measures shall be applied without discrimination or privilege on the basis of race, language, religion, sect, nationality, color, sex, political or other views or ideas, philosophical beliefs, national or social origin, birth, economic or other social status.”

Prison staff attends in-service training seminars on team-work, communication, “realize your power” and courses on human rights, detainee/convict psychology. Interaction of the personnel with detainees/convicts has been further encouraged by these courses, positive outcomes have been observed. Within the framework of the protocol concluded between the Ministry of Justice and the Anatolian University, the personnel also attended Justice High School.

Erzurum H Type Closed Penitentiary Institution is one of the model prisons selected under the Joint Programme of the Council of Europe and European Union on the “Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey”. Within this project, training programmes on European Prison Rules and human rights behaviour are ongoing.

Requests for information

detailed information on the action taken in response to the complaint lodged by the prisoner referred to in paragraph 79 about alleged ill-treatment by prison officers at Erzurum H-type Prison (paragraph 79).

Convict ██████████ lodged a complaint petition to the Directorate of Erzurum H-Type High Security Closed Penitentiary Institution on 2 February 2009, claiming that a personnel of the prison slapped him while he was cleaning up his room. His petition was put into process on the same day. It is observed that execution and protection officers-in-chief ██████████ and ██████████ and execution and protection officers ██████████ and ██████████ appear on camera records however there exists no sign of assault, torture or insult. No trace of beating or coercion was detected as a result of medical examinations conducted by a doctor on the same day.

Administrative discipline investigation was launched by the Discipline Directorate of Erzurum H-Type High Security Closed Penitentiary Institution; statements of above-mentioned personnel were taken. The Discipline Directorate of the Institution by its decision no. 2009/15 and 16, dated 8 June 2009 concluded that there exists no basis for punishment of the personnel. Complaint petition, statement records and medical reports of the prisoner were submitted to Erzurum Chief Public Prosecutor’s Office with the correspondence No. 2009/715 dated 4 March 2009. The Chief Public Prosecutor’s Office, as a result of the judicial investigation conducted, decided on 20 July 2009 that there is no need for prosecution.

Conditions of detention of adult prisoners at Erzurum E-type and H-type Prisons and Konya E-type Prison

recommendations

the Turkish authorities to take immediate steps to ensure that every prisoner at Konya E-type Prison is provided with his/her own bed. More generally, the necessary steps should be taken to ensure that occupancy rates in all prisoner accommodation units of Erzurum and Konya E-type Prisons are kept at a reasonable level (paragraph 86);

Beds were renewed in Konya E-Type Closed Penitentiary Institution and each convict/detainee was provided with a bed. The capacity of the prison is 650, the number of convicts of the institution stood at 984 as of 18 February 2010; the occupancy average is around 1000. Efforts are ongoing to create more suitable environment for prisoners.

There were 830 convicts and prisoners in Erzurum E Type Closed Penitentiary Institution as of 17 February 2010 and reasonable conditions for detainees/convicts are provided under the current circumstances.

steps to be taken at Erzurum E-type and H-type Prisons and Konya E-type Prison and, where appropriate, in other prisons in Turkey to ensure that all prisoners are provided with:

a range of essential personal hygiene items and materials to clean their living units;

bed linen which is cleaned by the prison at regular intervals

(paragraph 90);

Detainees/convicts whose financial situations are not sufficient are provided with personal hygiene materials by Konya E-Type Closed Penitentiary Institution. Sheets and bed linen of inmates are laundered every 15 days.

In Erzurum E-Type and H-Type Closed Penitentiary Institutions, detainees and convicts can provide personal hygiene items and materials from the canteen. In H-Type Penitentiary Institution, where there is no laundry, inmates wash their sheets and bed linen themselves. In E-Type Closed Penitentiary Institution, sheets and bed linen are washed once a week and replaced in due course.

immediate steps to be taken at Konya E-type Prison to improve the provision of food for children (paragraph 91);

In accordance with the Regulation on Food Supplies of Detainees/Convicts and Prison Personnel, 3000-3500 calorie of food, incl. 550g bread, amounting to 4 TL per day/person is provided to inmates and the personnel. Daily boarding money per person is determined in coordination with the Ministry of Health.

There are 5 women inmates with small children at Konya E-type Prison. While providing food to these small children as well as to child convicts, their age and development level are taken into consideration. Food allocated to small children who stay with their mothers corresponds to the half of a portion given to an adult.

Administrators of the institution control every phase of cooking in the kitchen of the institution and due attention is paid to provide a variety of tasty food under hygienic conditions. Just allocation of food is also ensured.

the Turkish authorities to take steps, at Erzurum E-type and H-type Prisons and Konya E-type Prison to improve facilities for organised activities and to significantly increase the number of prisoners who benefit from such activities (paragraph 99);

Necessary steps are taken to improve the conditions of the facilities for organized activities at Konya E-Type Closed Penitentiary Institution. Classrooms, multipurpose-hall, conference room and handicraft workshop were painted and furnished with necessary equipment. The number of inmates benefiting from these facilities increased from 30 to 65.

Following the visits of Human Rights Commission of the Turkish Grand National Assembly, CPT delegation and General Director of the Penitentiary Institutions of the Ministry of Justice, Mr. Nizamettin Kalamam to Erzurum H-Type High Security Closed Penitentiary Institution, 240.000 TL was allocated to improve the execution conditions of the inmates. In this regard several modifications were made in the prison; a part of the scullery was reconstructed as two conversation rooms, two workshops and an office for the Chief Officer.

As a result of these modifications, the prisoners are now benefiting from the following activities; (Each group consists of 10 prisoners.)

- gathering for conversation for 6 groups every day (It was for two groups previously)
- painting for 4 groups every week;
- sports activities for 2 groups every week;
- access to library for 4 groups every week;
- bookbinding, chess, dart and saz (a Turkish musical instrument) courses for 2 groups every week.

Erzurum E-Type Closed Penitentiary Institution contains a multi-purpose hall where prisoners can benefit from sportive and social activities according to a schedule. Inmates at the observation rooms of both institutions in Erzurum are benefiting from open air exercise for one hour per day.

steps to be taken at Erzurum H-type Prison to increase the possibilities for conversation periods (the goal being to reach the maximum duration of conversation periods permitted under the Ministry of Justice Circular No. 45/1) (paragraph 99).

Programs are prepared for prisoners in Erzurum H-Type Closed Penitentiary Institution in line with the first clause of the Chapter on “Joint Activities” of the Circular no. 45/1, dated 11 January 2007.

Activity program, prepared for the 1st, 2nd, 3rd and 4th terms of 2009 and 1st term of 2010 by the Education Board of Erzurum H-Type Closed Penitentiary Institution, was put into effect and announced to prisoners.

All prisoners in 28 groups, each of which consists of 10 persons, are taken out every day to conversation room, sport area or library and provided binding, painting, chess, dart and “saz” (a Turkish musical instrument) courses. Since there is no sports hall in the institution, prisoners benefit from the garden in H Bloc to play volleyball, football and basketball according to a schedule. Social activities are conducted at two conversation rooms and two handicraft workshops which have recently come into service. Other workshop is allocated for bookbinding and officials’ dining hall is used for organizing seminars and conferences. Necessary steps are taken to increase the duration of conversation periods and to reach the maximum duration permitted under the said Ministry of Justice Circular.

comments

steps should be taken to improve the state of the beds in the admission cells at Konya E-type Prison (paragraph 88).

New beds were provided to the admission rooms of Konya E-Type Closed Penitentiary Institution. Admission rooms were painted, sanitary installations were renewed and hygienic conditions were maintained.

requests for information

updated information regarding the planned repair work at Erzurum H-type Prison (paragraph 85);

As indicated in Paragraph 99, 240.000 TL was allocated for the following modifications at Erzurum H-Type High Security Closed Penitentiary Institution;

1. A part of the scullery was designed as 2 conversation rooms and 2 handicraft workshops. The number of prisoners benefiting from conversation hours is increased from 20 to 60 as a result of these modifications. Toilets were also constructed in new conversation rooms.
2. All wards, dormitories and common areas were painted with plastic paint and doors, windows and radiators in the wards were painted with oil paint.
3. Broken tiles of toilets and showers in the wards were completely repaired.
4. Next to the X-Ray machine, one female and one male body search areas were built in line with the standards.
5. The area previously allocated to lawyers was renovated as to serve three lawyers independently at the same time. The ground was covered with granite, the walls were painted with plastic paint and doors were changed with PVC glass.
6. Iron gate of the entrance and joineries were replaced with heat insulated aluminum joineries. Walkthrough metal detector and X-ray machine were covered with PVC glass to enable safe passage.
7. Grounds of the institution were covered with bright and matt granite.
8. Entryway is repaired.
9. Backyard walls were surrounded with wire to increase the security.
10. Electronic air curtain was set up to the entrance gate.

detailed information on the measures taken to find new accommodation for the sex offenders at Konya E-type Prison (paragraph 87);

Following the visit of the CPT delegation, capacity of the rooms were improved and prisoners were classified by age and the type of crime committed. Due to full occupancy rate, sex offenders who were first replaced in other rooms were lodged again in Hobi-1 and Hobi-2 wards which were painted and necessary hygiene conditions were provided.

confirmation that the prisoners kept in the "observation cells" of Erzurum E-type Prison are offered at least one hour of outdoor exercise per day (paragraph 101).

Prisoners in the observation rooms of Erzurum E-Type Closed Penitentiary Institution are provided one hour exercise per day.

Conditions of detention of juvenile prisoners

recommendations

the Turkish authorities to take appropriate measures at Konya E-type Prison and, where appropriate, in other prisons in Turkey, to ensure that juveniles are provided with a programme of organised activities, in the light of the remarks made in paragraphs 105 and 106 (paragraph 106).

Training and Psycho-Social Service Unit of the Konya E-Type Closed Penitentiary Institution have been regularly organizing several activities for juvenile convicts and ensure their participation.

comments

steps should be taken at Konya E-type Prison to ensure that the quantity of food provided to juvenile prisoners is adapted to the needs of growing adolescents (paragraph 103);

See paragraph 91.

The CPT considers that a juvenile should not be kept in solitary confinement for the sole reason that he is suspected of a terrorism-related offence (paragraph 104).

Provisions of the Law on Combating Terrorism, No: 3713 related to children who commit terrorism offences would be amended. In this regard;

(a) Irrespective of their ages, all children who commit acts of terrorism would be heard before the child courts;

(b) Aggravated sentencing contained in the law in certain cases would not be applicable to children;

(c) “Postponement of the promulgation of sentence”; “converting the sentence into optional sanctions or postponement of sentence” would be applicable to all children irrespective of their age.

The draft law is currently before the Justice Committee of the Turkish Grand National Assembly.

the CPT trusts that the Turkish authorities will take steps to ensure that there is no recurrence of overcrowding at Batman M-type Prison (paragraph 107).

The construction plan of Batman Closed Penitentiary Institution was conceived as an M-Type Penitentiary Institution with a capacity of 336 persons; however there were 580 inmates in the institution as of 12 February 2010. The capacity of the institution will be extended as soon as the conditions permit in order to prevent overcrowding.

Most of the inmates of the said penal institution are standing trial in the courts of Batman or other neighboring cities on charges such as terrorism and organized crime which necessitate high security measures. Given the full occupancy rate of other penal institutions in the neighboring cities, the problem of overcrowding can be overcome through the construction of a High Security Closed Penitentiary Institution in Batman.

On the other hand, although some prisoners are given the privilege of an open prison, they do not want to leave their hometown and their families who are living in Batman. Therefore, plans are made to construct an open prison in Batman in order to prevent the problem of overcrowding at Batman M-Type Penitentiary Institution. In this regard, transfer of an immovable property belonging to General Directorate of Tekel, Batman Leaf and Tobacco Factory, registered in parcel no. 16369 in İluh village of Batman with an area of 60.804 m² to the Ministry of Justice will soon be concluded.

requests for information.

detailed information regarding the plans to set up a juvenile prison in Izmir (paragraph 108).

A contract was signed on 30 April 2009 for the construction of a campus consisting of four T-type, one woman, one juvenile and one open penal institutions. The construction, which is envisaged to be completed in 1200 days, has already started and 25 % of physical realization has been achieved.

Construction of a Juvenile Penitentiary Complex and a personnel training center in İzmir have been added to the 2010 investment program.

Kırıkkale F-type Prison

recommendations

the Turkish authorities to step up their efforts to further develop communal activity programmes at Kırıkkale F-type Prison, as regards both the range of activities on offer and the number of prisoners engaging together in such activities. Steps should be taken as a matter of priority to increase the possibilities for sports activities and conversation periods (the goal being to reach the maximum duration of conversation periods permitted under the Ministry of Justice Circular No. 45/1) (paragraph 111);

For the year 2010, literacy courses; second level courses for adults (primary school diploma is issued upon completion); distance education programs for elementary, high school and university; preparation for university entrance exam; conferences on religious education; library activities, chess, checkers, debate and knowledge contests, theatre, concert, documentary, ceremonies and commemoration days, painting and handcraft workshops, vocational training courses and several conferences by Provincial Directorate of Agriculture, Directorate of Health, Provincial Directorate of Employment, Mufti of Kırıkkale and Kırıkkale University are planned to be organized.

Psycho-Social Service is organizing individual and group workshops; family meetings and sports-conversation programs under the socio-cultural activities for 40 groups per week, each group consists of 2 to 10 prisoners. Almost all inmates are attending these activities except those who are subject to disciplinary punishments and who are unwilling to participate to these programmes.

According to Article 21 of the internal regulation of the institution on “common activities”, each group of sports-conversation programs shall not exceed 10 persons and the duration of the programs shall not exceed 10 hours for each detainee/convict per week. These programs are organized based on relevant law, regulation, bylaw and circulars and might be rearranged or updated by the institution administration if necessary.

In conformity with the Circular No.45/1, sports and conversation periods shall be increased to the extent possible, while taking into consideration the criminal backgrounds of the convicts as well as possible situation of animosity existing among detainees/convicts with a view to maintaining the order in the institution and preventing possible outbreaks of inter-prisoner violence.

the Turkish authorities to reconsider their policy vis-a-vis prisoners sentenced to aggravated life imprisonment, in the light of the remarks made in paragraph 112, and to amend the relevant legislation accordingly (paragraph 112).

European Prison Rules and examples of legislation on the execution of sentences currently in force in Europe were taken into account during the preparatory work of the Law No. 5275 on the Execution of Sentences and Security Measures.

Health care

recommendations

steps to be taken at Erzurum E-type and H-type Prisons and Konya E-type Prison and, where appropriate, in other prisons in Turkey to ensure that dental treatment provided to prisoners free of charge is not limited to dental extractions (paragraph 120);

Ministry of Health, within the framework of its duties and jurisdiction, is working to improve health services at prisons taking into consideration the CPT’s recommendations and opinions at paragraphs 120, 122, 125 and 128. Progress will be reported to CPT.

Erzurum H-Type High Security Closed Penitentiary Institution contains a dental care unit with adequate equipment; dental examination and operations such as dental extraction, cleansing, filling and denture repair are conducted at this unit. Detainees and convicts are taken to hospitals for operations such as root canal, denture implants or laser filling. These treatments are free of charge. Prisoners and prison personnel are only requested to pay an insignificant amount for the services of the technicians for denture implants.

In coordination with Provincial Directorate of Health, a dentist visits every Friday the Erzurum E Type Closed Penitentiary Institution to conduct dental examinations and operations such as dental extraction and to write out prescriptions for prisoners. Dental treatments realized at the institution and necessary advanced examination and treatment realized at hospitals, are free of charge for prisoners. The medications are provided by the institution.

Deficiencies of the dental treatment unit at Konya E Type Closed Penitentiary Institution were identified and reported to Provincial Directorate of Health in order to ensure that dental treatment provided to prisoners is not limited to dental extractions. Efforts are ongoing to provide the needs.

urgent steps to be taken to arrange for regular visits by a psychiatrist to all the prisons visited by the delegation and, where appropriate, to other prisons in Turkey (paragraph 122);

Prisoners at Erzurum E and H-Type Penitentiary Institutions who have psychiatric problems have been transferred to psychiatry polyclinics of hospitals for treatment by the resident doctors of the institution. At present, there is no psychiatrist paying regular visits to the said institutions.

Konya E Type Closed Penitentiary Institution applied to Provincial Directorate of Health to arrange regular visits of a psychiatrist to the said institution.

the Turkish authorities to review the current system of prison health care, in the light of the remarks made in paragraphs 115 to 124. Immediate steps should be taken to set up a task force within the Ministry of Health, charged with planning, co-ordination and evaluation of health services in the Turkish prison system (paragraph 125);

The Protocol on the Regulation of Medical Services in Prisons between the Ministry of Justice and the Ministry of Health came into effect as of 30 April 2009. According to this protocol, the practice of family medical practitioner was introduced at Erzurum E and H-Type Penitentiary Institutions as of 15 October 2009. Practitioners provide medical service to prisoners within a programme for five days per week. Dental care services are provided once a week by a dentist assigned by the Directorate of Health.

Patient density at the E Type Closed Penitentiary Institution has been alleviated by temporary assignment of a doctor from the Provincial Directorate of Health to assist family medical practitioner. At present, there is no delay or malfunction in the institution regarding health services.

the Turkish authorities to take the necessary steps in all prison establishments to ensure that:

all newly-arrived remand prisoners are subject to a comprehensive medical examination, including screening for transmissible diseases, by a medical doctor (or a fully qualified nurse reporting to a doctor) as soon as possible after their admission and that all prisoners are provided with information regarding the prevention of transmissible diseases;

Detainees/prisoners as well as remand prisoners newly arrived to Erzurum E and H Type Penitentiary Institutions are promptly examined by the resident doctor. After admission, a comprehensive medical examination is carried out at the institution and prisoners are transferred to hospitals for a detailed screening for transmissible diseases. Prisoners are informed regarding the prevention of transmissible diseases by the resident doctor.

All newly arrived detainees/prisoners are provided medical examination at Konya E Type Closed Penitentiary Institution and information about previous diseases and current state of health are recorded. Medical screenings are carried out on a regular basis throughout the institution.

the record drawn up after a medical examination of a prisoner, whether newly-arrived or not, contains (i) a full account of statements made by the prisoner which are relevant to the medical examination (including any allegations of ill-treatment made by him/her), (ii) a full account of objective medical findings based on a thorough examination, and (iii) the doctor's conclusions in the light of i) and ii); in his/her conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings (a copy of the conclusions should be made available on request to the prisoner concerned and his/her lawyer);

Medical records (sağlık fişi) drawn up following medical examinations of newly arrived or other detainees/prisoners contain examination findings and medical biography incl. previous illnesses and allergic diseases. Medical test results, reports, the name of the transferred hospital, reasons of transfer and all medical documents are kept in health files of the prisoners. The resident doctor in his/her examination indicates the degree of consistency between any allegations made and the objective medical findings (a copy of the conclusions is made available on request to the prisoner concerned and his/her lawyer);

whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is immediately brought to the attention of the relevant prosecutor (paragraph 128);

Whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is immediately brought to the attention of the Public Prosecutor by the Directorate of the institution and judicial and administrative investigations are initiated accordingly.

the Turkish authorities to take immediate steps to ensure that all medical examinations of prisoners (whether upon arrival or at a later stage) are conducted out of the hearing and -unless the doctor concerned expressly requests otherwise in a particular case - out of the sight of prison officers. The Ministry of Health should treat this as a priority (paragraph 130).

Medical examinations of prisoners are conducted in accordance with Article 117/2 of the Statute on Prison Management and the Execution of Sentences and Security Measures which states that unless otherwise requested by the prison doctor, none other than medical personnel, shall be present during the examination and necessary measures shall be taken by the prison management, for security purposes and in order to protect the patient-doctor confidentiality.

comments

the Turkish authorities are invited to consider separating the responsibility for the health care of inmates and prison staff (paragraph 117);

Personnel employed in penal institutions benefit from health services of the institution only if they are at work and in a way that does not prevent detainees/prisoners from enjoying medical services. So far, no complaint or problem has been communicated on this issue.

it is necessary that all doctors working in prisons are trained to diagnose and manage common psychiatric disorders and to recognize serious disorders requiring specialist care (paragraph 122).

Family practitioner employed in Erzurum E and H-Type Penitentiary Institutions is trained in general medicine. Detainees/prisoners enjoy basic medical services at the institution and if necessary, they are provided further examination and treatment at a hospital. Resident doctors attend several conferences and seminars on various issues.

requests for information

confirmation that the prisoner referred to in paragraph 119 has been transferred from Erzurum H-type Prison to a suitable establishment (paragraph 119).

Convict [REDACTED] filed a petition to the Ministry of Justice on 15 January 2009, requesting his transfer from Erzurum H Type High Security Closed Penitentiary Institution to Diyarbakır D Type High Security Closed Penitentiary Institution because of his disability and the inconvenient physical conditions of Erzurum H Type Penitentiary Institution. Administration and Observation Board of the Institution, with its decision no. 2009/32, dated 10 February 2009, concluded that he may serve the remaining portion of his prison sentence in another high security closed penal institution. Necessary documents and the report of the health board were submitted to General Directorate of Penitentiary Institutions of the Ministry of Justice. The General Directorate did not approve the transfer request of the convict with the correspondence No. B.03.0.CTE.00.11.00/2419/29635, dated 19 March 2009, with reference to the report no. 485, dated 5 March 2009 issued by the Health Board of Erzurum Education and Research Hospital which states that “at the current state of the patient, the follow-up treatment shall be conducted at this hospital”.

Following the visit of CPT’s delegation, convict [REDACTED] filed another petition to the Ministry of Justice on 8 June 2009 requesting his transfer to Diyarbakır D Type High Security Closed Penitentiary Institution. The above-mentioned procedure was pursued. The request of the convict was not approved by the Ministry of Justice based on the medical report issued by Erzurum Education and Research Hospital.

Other issues

recommendations

the rules governing disciplinary sanctions to be revised so as to ensure that disciplinary punishment of prisoners does not involve a total prohibition of family contact and that any restrictions on family contact are imposed only where the offence relates to such contact (paragraph 132)

Rules of disciplinary punishments are regulated by Articles 39, 40, 41, 42, 43 and 44 of the Law on the Execution Sentences and Security Measures (No. 5275). Deprivation of visits as a disciplinary punishment is imposed in accordance with Article 43 of the said Law.

the shortcomings regarding the disciplinary procedure described in paragraph 133 to be remedied (if necessary, by amending the relevant legal provisions) (paragraph 133);

According to the Law on the Execution Sentences and Security Measures (no. 5275), none of the disciplinary punishments prohibit family contact. Even the convicts who are deprived of visits are able to contact with their families on the phone once a week.

the Turkish authorities to take immediate steps to either withdraw from service or completely refurbish the "observation cells" at Erzurum E-type Prison (including by installing windows) (paragraph 135);

inmates placed in the "observation cells" at Erzurum E-type Prison to be guaranteed appropriate human contact (paragraph 135);

There are 25 observation rooms at Erzurum E-type Closed Penitentiary Institution. Wide windows have been designed for ventilation of these rooms. Access to open air is possible for detainees/convicts from 12.30 to 13.30 at the garden of the Room E-5, where temporary convicts are accommodated.

the prisoners' allocation policy to be reviewed at Erzurum E-type Prison and, where appropriate, in other prisons in Turkey so as to ensure that an environment free from passive smoking is provided to all prisoners who request this, without prejudice to their access to adequate living conditions (paragraph 136).

While lodging convicts and prisoners at Erzurum E and H-Type Penitentiary Institution, criteria such as age, animosity, type of crime and state of health are taken into consideration and procedures regulated in the Law on the Execution of Punishment and Security Measures No. 5275 are followed. The requests of the convicts for a non-smoking environment are taken into account, without prejudice to their living standards. Necessary arrangements are ongoing considering the capacity and physical conditions of the prisons. In this regard, one ward was designed as a non-smoking area and detainees and convicts who apply for it are accommodated in this ward.

comments

steps should be taken to improve the state of repair and hygiene of the disciplinary cells at Konya E-type Prison (paragraph 134).

Old cotton mattresses were replaced with sponge mattresses at Konya E Type Closed Penitentiary Institution. The walls were painted and sanitary installations were renewed to ensure hygiene of the disciplinary cells.

Request for information

clarification regarding the steps taken to ensure that there is sufficient access to natural light in the admission and disciplinary punishment cells at Konya E-type Prison (paragraph 137);

It is ensured that Observation-I and Observation-II rooms, used as admission rooms at Konya E Type Closed Penitentiary Institution have sufficient access to natural light. The shutters are installed out of necessity, to prevent contact of detainees and convicts in discipline cells with those staying in the rooms below, incidents of intimidation and incitement and attempts of escape. Sufficient access to natural light and ventilation are taken into account while installing the shutters.

a list of all visits to Erzurum E-type and H-type Prisons and Konya E-type Prison by prison monitoring boards since January 2008 and copies of the reports on the most recent visit to each of the three establishments (paragraph 138).

Erzurum Penitentiary Institutions and Detention Centers Monitoring Board Presidency visited Erzurum H-type High Security Closed Penitentiary Institution on 18 January 2008; 16 April 2008; 1 September 2008; 19 September 2008; 2 December 2008; 18 February 2009; 8 April 2009 and 16 July 2009. Human Rights Inquiry Committee of Turkish Grand National Assembly visited Erzurum H-type prison on 14 April 2009.

Erzurum Penitentiary Institutions and Detention Centers Monitoring Board Presidency visited Erzurum E-type High Security Closed Penitentiary Institution on 18 January 2008; 17 March 2008; 19 September 2008; 24 December 2008; 17 March 2009; 24 November 2009 and 16 December 2009.

Konya Penitentiary Institutions and Detention Centers Monitoring Board Presidency visited Konya E-type High Security Closed Penitentiary Institution on 16 May 2008; 8 August 2008; 16 January 2009; 17 April 2009; 14 August 2009 and 22 January 2010.

Copies of the reports on the most recent visits are enclosed herewith (**Annex F**).

Hasdal Military Prison

recommendations

the relevant authorities to redouble their efforts to devise and implement a comprehensive regime of organised activities for all prisoners, including those on remand, at Hasdal Military Prison and, where appropriate, in other military prisons (paragraph 142);

the rules governing disciplinary sanctions in military prisons to be revised so as to ensure that disciplinary punishment of prisoners does not involve a total prohibition of family contact and that any restrictions on family contact are imposed only where the offence relates to such contact (paragraph 145);

the shortcomings identified regarding the disciplinary procedure (i.e. decisions usually taken by military judges without having heard the prisoner concerned; lack of a possibility to appeal against the judge's decision) to be remedied by amending the relevant legal provisions (paragraph 146).

comments

the confidentiality of contacts between a prisoner and his lawyer is a fundamental safeguard against ill-treatment and that, consequently, such contacts should be subject only to scrutiny *ex post facto*, leading if necessary to prohibitive measures if the deontological and ethical rules applicable to lawyers have not been observed (paragraph 144).

requests for information

detailed information on all investigations carried out in relation to the incident which apparently occurred at Hasdal Military Prison at the beginning of October 2008 and resulted in the deaths of two prisoners, and on the action subsequently taken. The Committee would also like to receive copies of the two autopsy reports (paragraph 140).

As a result of the inquiry launched by the Military Prosecutor's Office of the 3rd Corps Command regarding the event which took place in 3rd Corps Command Special Type Military Penitentiary Institution in October 2008 which resulted in the death of two convicts/prisoners, Military Prosecutor's Office of the 3rd Corps Commandership filed a criminal case on 5 February 2009 with the Indictment no. 2009/70-120 against [REDACTED] and [REDACTED] for military insurgency, regarding the death of Air Force Infantry Soldier [REDACTED] and Munitions Soldier [REDACTED] and decided that there is no need for prosecution about [REDACTED] and [REDACTED]. Following the rejection of the objection brought by the wife of [REDACTED], [REDACTED] against the decision of Military Prosecutor's Office, the case filed against [REDACTED] and [REDACTED] is pending in the Military Court of the 3rd Corps Command.

Efforts have been exerted to create and put into practice a far-reaching regime for the organization of activities towards all convicts and prisoners, including those in Military Penitentiary Institutions and to modify the rules for disciplinary punishments in a way that this will not completely prohibit the contact of convicts/prisoners with their family unless the action that required the disciplinary punishment was not directly related to the contact. Work on the amendment of the legislation has been launched in order to eliminate the deficiencies detected with regard to judgments issued by military judges without having listened to the convict/prisoner and the lack of possibility of appeal against the judgment of the military judge.

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The annexes are available on the CPT's website (www.cpt.coe.int)