



CPT/Inf (2007) 6

**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 22 November to 3 December 1992

The Turkish Government has authorised the publication of this response. The report of the CPT on its November / December 1992 visit to Turkey is set out in document CPT/Inf (2007) 5.

Strasbourg, 11 January 2007

Note:

In accordance with Article 11, paragraph 3, of the Convention, certain names have been deleted.

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(received on 13 April 1994)

I. INTRODUCTION

1. The European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) carried out its first periodic visit from 22 November to 3 December 1992. It transmitted its report on the visit to the Turkish Government on 21 September 1993.

2. The Turkish Government had already made every effort to implement the recommendations set out in the two reports drawn up by the CPT after its previous visits. On this occasion too, adopting the same approach and in the spirit of cooperation provided for by Article 3 of the Convention for the Prevention of Torture, the Government has conducted a very serious and meticulous examination of the recommendations and comments and endeavoured to make the necessary improvements. However, it must be pointed out that some of the CPT recommendations set out in the report of 21 September 1993 cannot be implemented in as little as six months. Naturally, the Turkish Government is also persevering in its efforts to carry out the CPT recommendations requiring long-term measures.

3. Act N° 3842, which came into force on 1 December 1992, should be seen in a long-term perspective. It made profound changes to the Code of Criminal Procedure, introducing concepts and institutions which are entirely new to the Turkish legal system; **among the most important of these are the possibility of opposing police custody, the new regulations governing the duration of police custody and detention and the presence of a lawyer during the interrogation of a suspect as part of the preliminary investigation.**

The circular issued by the Prime Minister's Office on 4 January 1994 requested information on the application of the act. The information received as a result of the circular is set out in Appendix 1.

4. We fully share the view stated in paragraph 19 of the CPT report of 21 September 1993 that legislative improvements must be accompanied by progress in education on human rights and in the professional training of law enforcement officials. However, as indicated above, this is naturally a long-term task, to which the Turkish Government attaches the greatest importance.

5. Attention should also be drawn to a point made in paragraph 9 of the CPT report. In this paragraph, the report stresses the importance of making detailed information on the CPT's terms of reference and the obligations of Parties to the Convention available to all authorities concerned, including health authorities.

The Turkish Government has repeatedly addressed circulars to the administrative authorities and other institutions concerned to inform them of the CPT's duties and powers. However, according to paragraphs 6 and 9 of the report, the CPT delegation encountered a few difficulties in the performance of its duties during the periodic visit, chiefly because of inadequate information.

In order to ensure more effective and more detailed information, so as to remedy certain deficiencies, the Turkish Government suggests that a training programme be set up by the CPT with the participation of Turkish police officers, gendarmerie officers and medical personnel. Strong support for the organisation of such training programmes was in fact expressed at the seminar held in Strasbourg on 7 and 8 November 1988 (see Final Report, Louis Joinet, General Rapporteur, in II.D). A seminar or meeting of this kind would greatly help to increase awareness of the CPT's powers and responsibilities and establish a climate of mutual understanding with the members and leadership of the CPT, in circumstances other than those of a monitoring visit, and this could be a means of strengthening cooperation.

6. On 21 December 1992 the CPT made a public statement on Turkey under Article 10/2 of the Convention.

Turkey has already informed the Committee of its views on the statement in its letters of 16 November 1992 and 19 February 1993.

As we pointed out at the liaison officers meeting in Strasbourg on 4 March 1994, given the consequences of the Public Statement of 21 December 1992, it is important to review the substantive and temporal conditions governing the application of this provision and to pursue cooperation in a spirit of greater openness.

7. The Turkish Government wishes to express its satisfaction at the CPT's strong condemnation of terrorism in its Public Statement of 21 December 1992.

The international community has repeatedly found that terrorism is a blatant violation of the most basic human rights and endangers both the democratic system and the rights and freedoms that depend on it.

As indicated to the CPT delegation during its latest visit, Turkey is confronted with two pressing needs: firstly, to combat the scourge of terrorism while respecting human rights and, secondly, to pursue its progress in the matter of human rights.

The Turkish Government hopes that the CPT will take due account of the conditions in which Turkey currently finds itself.

8. Offences relating to torture and ill-treatment are covered by Articles 243 and 245 of the Criminal Code. The statistics concerning the application of these provisions to members of the police force are supplied in Appendix 2.

II. ACTION TO COMBAT TORTURE AND ILL-TREATMENT

Page 10, paragraph 15

9. Death of R. B.: according to the information provided by the authorities concerned, on 23 October 1992, R. B. and two of his friends, all members of the TIKB, were pursued by the security forces on suspicion of having raided the Monopoly Sales Depot, threatening the officials on duty and stealing 511,520,000 TL. The suspects opened fire on the security forces. In the ensuing struggle with the security forces, R. B. received injuries to the head and various parts of the body. At about 11.30 pm on the same day, he was taken ill while in police custody and died on the way to hospital. Three police officers connected with the incident are being prosecuted before the Adana Third Assize Court (case no. 1992/279) for manslaughter. The proceedings are pending; the Committee will be provided with information on the subject under separate cover once they are completed.

The documents received on the subject from the Turkish authorities concerned are reproduced in Appendix 3.

Page 12, paragraph 20

10. Article 135 of the Code of Criminal Procedure, as amended by Section 12 of Act No. 3842, provides that, in the taking of statements by police supervisors and officers and by the public prosecutor and in the conduct of interrogations by judges, the accused shall have the right to appoint a defence lawyer and, if unable to designate a defence lawyer, may request a lawyer to be appointed by the Bar Association and shall be entitled to benefit from legal aid.

Article 136 of the Code of Criminal Procedure, as amended by Section 14 of Act No. 3842, provides that at every stage of the investigation including the investigation conducted by the police, the defence lawyer shall have the right to communicate with the apprehended person or the accused, to be present during the taking of statements and periods of interrogation and to provide the person with legal assistance (Appendix 4).

11. Article 138 of the Code of Criminal Procedure, as amended by Section 15 of Act No. 3842, provides that, in the event of the apprehended person or the accused declaring that they are not in a position to select a defence lawyer, the Bar Association shall, if they so request, appoint a defence lawyer for them. In the event of the apprehended person or the accused not having attained the age of 18, or in the event of their being deemed unfit to defend themselves by way of their being disabled or being deaf or dumb, and in the event of there being no defence lawyer appointed, a defence lawyer shall be appointed for them without a request having been made.

12. Article 146 of the Code of Criminal Procedure provides that defence lawyers appointed by the Bar Association shall, in addition to the expenses resulting from the performance of their duties, be paid a fee calculated on a separate basis from the advocates' scale of fees, but in accordance with the procedure applied to the preparation of this scale of fees.

13. The President of the Federation of Turkish Bar Associations states in his letter No. 2/4 of 11 February 1994 concerning the application of the above-mentioned provisions that 41,266,790,000 TL of the amount paid into the account of the Federation of Turkish Bar Associations by the Ministry of Finance has been paid to lawyers providing legal aid to apprehended persons, that there have been no difficulties to date in the procedure for the appointment of a defence lawyer provided for in Article 135, paragraph 2, line 3 of the Code of Criminal Procedure and that defence lawyers have been appointed in approximately 55,000 investigations.

No difficulties are arising in the appointment of defence lawyers under the above-mentioned articles of the Code of Criminal Procedure.

14. The extension of police custody to eight days in the event of several persons being jointly involved in the commission of an offence is provided for by Article 128 of the Code of Criminal Procedure. This article provides that the custody period may be extended at the request of the public prosecutor and by decision of the justice of the peace. Whether the accused is actually brought before the judge at the time of the decision to extend the custody period is a matter for the judge's discretion. If the justice of the peace so wishes, he may have the accused brought before him and rule on the request for extension after seeing him.

Pages 12-13, paragraph 21

15. Under Section 30 of Act No. 3842, in the investigation of offences within the jurisdiction of the State Security Courts, the police custody period is 48 hours and, in the case of offences committed collectively, no more than 15 days; these periods are doubled in state-of-emergency regions (a detailed memorandum on the subject appears in Appendix 5).

Act No. 3842 restricts the jurisdiction of the State Security Courts. It must also be borne in mind that a state of emergency has been declared in ten provinces. To ensure effective action against terrorist offences, Parliament has provided for longer periods of police custody in the case of offences within the jurisdiction of the State Security Courts than in mat of other offences. These periods may be reduced only by further amendments to the law.

16. As regards the matter of not informing the next-of-kin of persons held in police custody during the investigation of offences within the jurisdiction of the State Security Courts:

Article 19, paragraph 8 of the Turkish Constitution provides that the next-of-kin of persons arrested or detained shall be informed at once of their arrest or detention, except where it is absolutely imperative to prevent the scope and subject of the investigation from becoming known.

17. Article 135, paragraph 3 of the Code of Criminal Procedure, as amended by Act No. 3842, provides for the relative of the accused person's choice to be informed that he has been apprehended. However, it is not possible to apply this article to offences within the jurisdiction of the State Security Courts. The relatives of persons held in police custody in connection with such offences may be informed if the public prosecutor conducting the investigation does not consider it prejudicial. In other words, the public prosecutor has discretionary powers in the matter.

18. If the accused is arrested, his next-of-kin and other persons very closely connected with him may, if the accused so wishes, be informed of the fact, provided that this is not detrimental to the purpose of the arrest. When the arrested person is brought before the judge, the judge shall order his next-of-kin to be informed of the fact immediately (Article 107 of the Code of Criminal Procedure).

19. If the competent judicial authorities consider it harmful to inform the accused person's next-of-kin that he has been apprehended or arrested, this shall cease to be the case when the same judicial authority decides that such information is no longer harmful or when the indictment is drawn up.

Page 13, paragraphs 22-24

20. To ensure that forensic reports are drawn up in greater detail and with greater care so as to prevent any abuses during the provision of forensic institute medical services, the Ministry of Health has circulated instructions to health service officials requesting that these medical certificates include all statements made by persons examined (remand prisoners, persons in police custody, persons accompanied by members of the security forces or examined as a result of a complaint), which are relevant to the medical examination, including any complaints concerning their state of health and any allegations of ill-treatment together with all physical and psychological findings based on a comprehensive examination and the doctor's conclusions in the light of the points referred to above. Furthermore, under the terms of the Ministry of Health instructions, persons providing forensic institute medical services will, where necessary, be entitled to request specialist medical examinations. In cases where specialist examinations are requested, the medical certificate will be drawn up by the specialist performing the examination, bearing in mind the information provided by the forensic institute.

The Ministry of Health circular on the subject and the circular sent to local medical associations by the Office of the Chairman of the Executive Council of the Turkish Medical Association on the occasion of Human Rights Day on 10 December 1993 are reproduced in Appendices 6 and 7.

Page 14, paragraph 27

21. The Ministry of the Interior has approved the use for training purposes of the book "Human Rights and the Police" by John Alderson, member of a Council of Europe committee of experts on human rights. In addition, Dr Feridun Yenisey's book "Human Rights" is used as a course book in police schools. The programme of the constitutional law course taught in police schools now includes the Universal Declaration of Human Rights and the new provisions introduced by the recent amendments to the Code of Criminal Procedure. Also used as a course book in police schools is the book "Human Rights (Rights of the Accused and Powers of the Police)" produced by the Directorate of Police in the Ministry of the Interior. The book covers numerous national and international instruments such as the European Convention on Human Rights, court judgments, the Code of Practice for Interrogation and the Custody Regulations (the documents in Appendix 8 will be sent to the Committee separately).

22. Members of the gendarmerie force likewise receive human rights training; accordingly, one hour a week of human rights tuition is provided in the officers' basic training centres, the junior officers' schools and the senior gendarmerie officers' schools in which gendarmerie personnel are trained, for 20, 17 and 12 weeks respectively.

23. Following representations to the Council of Europe, as part of the implementation of the European Convention on Human Rights and, more particularly, of measures to prevent acts of torture and ill-treatment, arrangements have been made for 20 members of the police and gendarmerie forces to be sent for training to Council of Europe member countries. Several of them have completed their training - 5 in Sweden, 2 in Britain and 5 in Belgium - and returned to Turkey. Steps are being taken to send 3 officers to Germany and 5 to Italy in the near future. Once the programme is completed, an evaluation meeting will be held in Ankara, as proposed by the Council of Europe.

24. In addition to these training activities, human rights violations are investigated by the Civil Service Inspection Board of the Ministry of the Interior, the inspection boards of the Directorate of Police and the Gendarmerie Central Command and the unit commanding officers of the organisations concerned.

25. The rules which the security forces are required to observe during custody and interrogation - when most allegations of torture and ill-treatment are made - are laid down in the "Code of Practice for the Conduct of Interrogations and the Taking of Statements", which has been sent to all units. Compliance with the Code of Practice is closely monitored.

26. The Turkish Parliament's Human Rights Inquiry Commission is pursuing its representations to the Ministry of Education on the subject of human rights education. On 23 February 1994 the Bureau of the Commission met the Minister for Education, Mr Nevzat Ayaz, to discuss the matter. The position stated to the Minister at the meeting was that it would be advisable to provide human rights education at middle-school level and to broaden the scope of the present "civics" course so as to devote more time to fundamental rights and freedoms, or else" to develop a half-course on human rights alone. The Minister said that he was not opposed to the proposal in principle, but that the matter would have to be studied by experts in terms of syllabuses and teaching methods and that he would be able to consider their request only after this study had been conducted.

Pages 14-15, paragraph 28

28. As the procedure for the enactment of the bill establishing a Human Rights Organisation, which was on the Turkish Parliament's agenda, lasted longer than expected, the Government decided to establish a Human Rights Organisation by legislative decree.

Legislative Decree No. 502 establishing a Human Rights Organisation was published in the Official Gazette and came into force on 6 September 1993. The task of the Human Rights Organisation, which is to consist of two main bodies, the National Council for Human Rights and the Office of the Under-Secretary for Human Rights, is to secure the institutionalisation of human rights in Turkey, monitor and assess international developments, take steps to bring Turkish domestic law into line with international standards, make proposals to ensure that the education system is equipped at all levels to heighten and spread public awareness, exchange information with institutions, organisations and individuals active in the human rights sphere, coordinate activities conducted jointly by public institutions and organisations and voluntary organisations and draw up proposals for legislative and administrative measures to improve legislation and regulations. The National Council for Human Rights will be empowered to investigate alleged human rights violations in Turkey, either in response to applications or on its own initiative, and, where necessary, set up commissions of inquiry to carry out investigations on the spot.

28. Formally speaking, however, the legislative decree establishing a Human Rights Organisation was based on the enabling Act amending certain acts and institutional acts concerning civil servants and other public servants. As a result of the proceedings brought before the Constitutional Court by Mr Mesut Yilmaz on behalf of the parliamentary group formed by the main opposition party in the Turkish Parliament, this last Act was repealed by the Constitutional Court on 16 September 1993, which also entailed the repeal of the legislative decree establishing the Human Rights Organisation.

Page 15, paragraph 29

29. Once the training courses for members of the security forces sent to Council of Europe member countries are completed, an evaluation meeting will be held in Turkey in 1994 with the participation of Turkish officials and of the officials in charge of the training programmes in the countries concerned.

Page 15, paragraph 29

30. The report also refers to the plans to establish a judicial police corps.

The Judicial Police Force bill drawn up by the Ministry of Justice was submitted to the Prime Minister's Office on 2 May 1992 and is still there.

Pages 15-16, paragraphs 30-31

31. Work on the insertion of an additional section into the Act governing the Turkish Parliament's Human Rights Inquiry Commission in order to ensure that the Commission delegations are granted access, without conditions or restrictions of any kind, to persons deprived of their liberty by public authorities in places such as detention centres, remand cells and prisons, and that information is provided on the action taken on the Commission's reports, has reached its final stages. The bill will be discussed by the Commission as a matter of priority, then submitted to the Speaker of the Turkish Parliament; the necessary steps will be taken to ensure that it becomes law as soon as possible. The Human Rights Inquiry Commission plans to consider the question of visits as a matter of priority after the local elections.

III. POLICE AND GENDARMERIE

CONDITIONS OF DETENTION

1. ANKARA POLICE HEADQUARTERS

Page 17, paragraph 34

32. a) In the Narcotics Department, of the 8 cells measuring 3 m² each which were not in use, 2 have been enlarged to the required size and are now used as remand cells, while 5 of the remaining 6 are used for departmental purposes.

b) In the Anti-Terror Department, the construction of 3 cells in accordance with the CPT's recommendations has been completed; the building of other cells has begun and the alterations are continuing.

c) Adequate lighting has been provided in the cells in Ankara district police stations.

2. DIYARBAKIR POLICE HEADQUARTERS

Page 17, paragraph 35

33. a) As recommended by the CPT, a sufficient number of mattresses and blankets has been provided in the Narcotics Department cells.

b) In Dicle Police Station, where the cells were described as very small, dark and unventilated and were stated to be unacceptable despite the very short periods of police custody, alterations have been undertaken to remedy this shortcoming.

3. ISTANBUL POLICE HEADQUARTERS

Page 19, paragraphs 38-39

34. a) The new Istanbul Police Headquarters building has been completed and is expected to be put into service in spring 1994.

b) The following units will be moved to the new Police Headquarters:

- Documents and Archives Department, Traffic Control Department, Personnel Department, Legal Investigation Department, Social Defence Consultancy, Passport Department, Tourism Department, Social Services Department, Vehicle Registration Department, Sensitive Areas Protection Department, Photography and Film Department, Budget Department, Supplies Department, Training Department, Press Protocol Department, [EKKM] Department, Construction and Real Estate Department, Forensic Science Laboratories,
- Law and Order Department, Finance Department, Narcotics Department, Arms Trafficking Department, Gun Licence Department,
- Anti-Terror Department, Intelligence Department, Security Department, Police Protection Department and Data Processing Department.

c) The cells, equipment, conditions of detention and interrogation facilities in the new Police Headquarters building have been designed with European standards in mind. All technical equipment in these areas will be installed when the units concerned move in.

d) The detention areas in the old Police Headquarters building have been equipped with wooden floors, single bunks and beds and wall-to-wall seats.

35. The CPT report drew attention to the poor conditions of detention on the third floor of the Beyoğlu District Central Police Station. An on-the-spot check showed that there had not been a fixed bench in the holding room as indicated in the report, but that a radiator had been installed there when the premises were built; it had later been removed and the metal bracket holding the radiator had remained. This had subsequently been cut and thereby made safe; the window in question had been fitted with a glass pane on the outside and wire netting on the inside; and conditions of detention had been radically improved.

36. Close attention is being paid to the pursuit of efforts to bring those detention areas in police and gendarmerie establishments which are not in an acceptable state up to the material standards required by the CPT. The offices of provincial governors have been notified of the need to bring detention areas up to the required standards and apply to the Ministry for the necessary funds for the purpose; they have been informed that any delays arising from lack of funds will not be considered justified. The grants requested for this purpose in particular are being transferred to the recipients without delay.

4. ADANA POLICE HEADQUARTERS

37. The single cells in which detainees were held in the Anti-Terror Department at Adana Police Headquarters have been withdrawn from service; detainees are held in large areas to the extent permitted by existing facilities.

III. PRISONS

38. In 1993 officials of the Ministry of Justice visited Istanbul-Bayrampaşa, Diyarbakır, Ankara and Adana closed prisons, conducted on-the-spot investigations of matters relating to the Committee's recommendations and requests for information and secured the necessary changes, as indicated below.

1. ISTANBUL-BAYRAMPAŞA CLOSED PRISON

page 21, paragraphs 45-46

39. a) All the wards, both in the area of the prison accommodating prisoners convicted of terrorist offences and in that accommodating ordinary offenders, are kept clean and tidy.

The central heating operates regularly and all wards are therefore adequately heated.

At present there are no sentenced or remand prisoners in need of psychiatric care in either area; mentally unbalanced prisoners are immediately transferred to hospital for treatment.

b) There are no nursing mothers in the women's ward in the area where prisoners convicted of terrorist offences are held. In the area where ordinary offenders are held, nursing mothers and their children are provided with milk and other food necessities by the prison administration; special care is taken in the matter.

c) Work, recreational and educational activities are provided in the wards to the utmost extent permitted by the prison's physical structure and other facilities.

d) The necessary security measures have been taken to prevent such fights as occur from time to time among prisoners.

2. ANKARA CLOSED PRISON

Page 22, paragraphs 47-55

40. a) The repairs to Ward 14 of Ankara Closed Prison have been completed and the shortcomings remedied. The ground floor of the ward has been refurbished and is now ready for use. As the cells on the upper floor of Ward 14 are sufficient, the ground floor is not used.

b) Prisoners in need of psychiatric care are first examined and treated by the prison doctor; those in need of further examinations and treatment are rapidly transferred to Ankara Numune Hospital and Ankara Medical Faculty Hospital. At present there are no sentenced or remand prisoners in need of psychiatric care in the prison. The hospital in Istanbul for prisoners in need of psychiatric care is expected to come into service in 1994.

c) Material conditions in the women's ward have been reviewed and improvements made; the visiting area has been cleaned up and repairs have been carried out in the toilet and kitchen areas. The premises are periodically painted and whitewashed. A telephone link with the prison switchboard has been installed to meet emergencies in the women's ward.

d) Visits are long and no complaints have been received from prisoners on the subject. Open visits take place as permitted by the Ministry of Justice and subject to the regulations.

e) Among the prisoners held in Ward 14 in 1991-1992, A. A. was released on 10 December 1992, R. A. on 15 December 1992 and B. A. on 28 January 1993.

Page 24, paragraph 54

41. The construction of a 2,000-place closed prison and a 300-place semi-open prison in Ankara province, in view of the age of the existing prisons, continues. Building work on the prison, for which a call for tenders was issued on 17 November 1987, is in progress in Ayaş district, Ankara province. A subsidy of 26,522,000,000 TL (approximately 1 million US dollars), on the basis of 1993 unit costs, is needed.

Page 24, paragraphs 56-57

3. DIYARBAKIR 1 E-TYPE CLOSED PRISON

42. There are no windows in the architect's plans for the segregation cells on the ground floor of the prison. Opening windows endangers the security of the prison. However, the cells have been withdrawn from service on the grounds that they are unhealthy. The ground floor cells are currently used for storage purposes.

4. ADANA E-TYPE CLOSED PRISON

Pages 25-28, paragraphs 58-71

43. a) Every possible facility has been provided, to the extent permitted by the prison conditions, in the areas of work, education and sport; a special workshop has been set up for sentenced prisoners to engage in craftwork. A stock of 3,099 books has been provided for the benefit of remand and sentenced prisoners. Inter-ward volley-ball, table football and table tennis matches are held. To encourage prisoners to take part, symbolic prizes are awarded at the end of the matches.

b) The segregation and disciplinary cells area has been whitewashed. It is washed with soap and water every other day to keep it clean.

c) Transfers of prisoners to hospital for treatment are operating smoothly; the prison ambulance is in service.

d) The shortage of doctors in the prison has been remedied; two general practitioners and a dentist are now in post.

5. DIYARBAKIR 2 PRISON

Pages 28-31, paragraphs 72-84

44. Diyarbakır 2 Prison was not intended as a prison at the time; it was built for other purposes and, given the age of the building, material and sanitary conditions in the building are inadequate.

However, the necessary refurbishment is carried out from time to time to ensure adequate sanitary conditions. Refurbishment of the visiting booths is accordingly in progress, the kitchen area is being modernised and the women's ward is being equipped with a kitchen, bathroom and toilet facilities.

The procedure for allocating land for the new prison to be built in Diyarbakır Province has been completed. It is planned to start building the prison on the land allocated for the purpose under the 1994 investment programme, and accordingly to issue a call for tenders.

Educational activities are conducted regularly in Diyarbakır Closed Prison. In 1992, 42 prisoners (out of 479 in 1990, 470 in 1991, 177 in 1992) who attended the Level 1 literacy classes held in the prison received certificates; 36 prisoners (out of 145 in 1990, 147 in 1991, 15 in 1992) who attended the Level 2 primary school courses received their primary school certificates.

In 1990-91 and 1992, 32 prisoners sat the middle school final examinations as external candidates; 15 of them received their middle school certificates. In 1990-91 and 1992, 13 prisoners sat the final examinations for high school or equivalent schools as external candidates; 6 of them received their school-leaving certificates.

In 1990 horticulture (flowers) and tailoring/dressmaking courses were opened in the prison; they were attended by 174 prisoners. The horticulture, tailoring/dress-making and book-binding courses provided in 1991 were attended by 228 prisoners. In 1992 horticulture, tailoring/dress-making, book-binding and craftwork courses were provided; they were attended by 414 prisoners.

As may be seen from the above, in 1990-91 and 1992 considerable efforts were made to raise the educational and cultural standards of remand and sentenced prisoners in Diyarbakır Closed Prison and positive results were achieved. Work along these lines will continue in 1993.

Sentenced and remand prisoners placed in the segregation unit are periodically allowed out for open-air exercise.

II. C. BAKIRKÖY MENTAL AND PSYCHOLOGICAL HEALTH HOSPITAL

Pages 32-38, paragraphs 85-114

45. a) On 5 February 1993, at the request of the Office of the Director of the Forensic Institute, the observation block and administrative block of the 500-bed unit built in the grounds of the Bakırköy Mental and Psychological Health Hospital were assigned, with the Minister's approval, to the Forensic Institute's observation department; however, as the furnishings have not been completed, the department has not yet been able to occupy the premises.

b) When negotiations by the Ministry of Health for the transfer of the 500-bed unit to Bakırköy Hospital became deadlocked, work started on plans for a 400-bed unit in the hospital garden. When the funds for the purpose are released, the project will be set in train; the Judicial Psychiatry Service, which is housed in several different buildings, will be brought together; as a result, Ward 13, the only unit where material conditions are inadequate, will be closed and the patients transferred to the new building.

c) Physical restraint is used in cases where patients are liable to cause injury to themselves and those around them, if medication (or intensive medication) involves a risk; it is used under a medical specialist's instructions (in an isolated room under close observation) and is recorded in the patient's medical file.

d) Indications for the use of ECT are in line with those in contemporary psychiatry literature. ECT is used in routine cases with the consent of the patient or his next-of-kin and, in emergency cases, after a specialist consultation between the consultant, the deputy consultant and the head registrar (at night, at weekends and on public holidays, a consultation between two specialists on duty). According to the method used in the hospital, ECT is administered bilaterally, with pre-medication (where necessary), with narcocurarisation (where necessary). Where this is unnecessary, the traditional method is used.

e) In cases where patients are admitted to the hospital by court decision for three weeks' observation under Article 74 of the Code of Criminal Procedure, the court is applied to for a three-week extension if the period proves too short.

Patients committed by a court under Article 46-2 of the Criminal Code for custody and treatment lasting at least a year are discharged at the end of that period, with the permission of the court in question, if their state of health has improved.

In cases where patients are liable to cause injury to themselves or those around them, if medication or intensive medication involves a risk, the specialist's instructions are carried out in an isolated room under close observation and recorded in the patient's medical file.

f) Complaints relating to the Ministry of Health are lodged with the Istanbul Health Directorate, the Office of the Governor of Istanbul Province and the Ministry of Health. Investigations are conducted by Ministry of Health inspectors or by investigating officials appointed by the provincial authorities. Where necessary, a decision authorising the commencement of criminal proceedings is given and the investigation file is referred to the courts.

APPENDIX 1

APPLICATION OF THE CODE OF CRIMINAL PROCEDURE

September 1993 - 31 December 1993

ACCUSED	11-15 age group		15-18 age group		18-65 age group		over 65		Total
	Women	Men	Women	Men	Women	Men	Women	Men	
Accused persons taken into police custody	160	2080	366	6876	3155	58154	20	252	71063
Accused persons arrested	2	215	47	2345	1092	16189	1	21	19912
Accused persons released	158	1865	319	4531	2063	41965	19	231	51151
Accused persons provided with lawyers	96	1527	248	4939	431	4915	3	13	12172

TYPE OF OFFENCE	BREAKDOWN OF OFFENCES COMMITTED								
	11-15 age group	15-18 age group	18-65 age group	over 65	Total				
Theft	42	1268	113	3199	556	8482	1	13	13974
Robbery	8	29	1	124	17	500	-	7	686
Battery	20	94	39	663	344	5677	4	29	6933
Murder	2	16	6	78	30	560	-	2	694
Sexual abuse and kidnapping	7	7	10	113	32	750	-	2	931
Wounding	7	178	21	696	149	3687	2	16	4783
Fraud	30	12	16	21	51	712	-	4	933
Offences under Act No. 6136	5	27	4	180	51	4198	-	12	4503
Threats, insults	4	20	4	55	51	947	-	3	1091
Vandalism	2	17	-	43	18	639	1	1	723
Possession of narcotics	1	2	3	16	27	566	1	3	620
Obstructing an officer in the performance of his duties	2	4	2	68	39	1240	-	1	1373
Other offences	30	406	147	1620	1790	30196	11	159	33819

(The age groups are the same as in the previous table above.)

APPLICATION OF THE CODE OF CRIMINAL PROCEDURE

January 1994

ACCUSED	11-15 age group		15-18 age group		18-65 age group		over 65		Total
	Women	Men	Women	Men	Women	Men	Women	Men	
Accused persons taken into police custody	48	749	124	2212	832	15684	4	57	19710
Accused persons arrested	10	65	9	456	52	2226	-	4	2822
Accused persons released	38	684	115	1156	780	13458	4	53	16888
Accused persons provided with lawyers	39	474	110	1469	133	1379	-	5	3609

TYPE OF OFFENCE	BREAKDOWN OF OFFENCES COMMITTED								
	11-15 age group	15-18 age group	18-65 age group	over 65	Total				
Theft	15	465	40	1184	154	2437	1	8	4304
Robbery	1	6	1	22	3	137	-	-	170
Battery	4	17	14	164	83	1667	1	5	1955
Murder	-	5	1	15	15	119	-	-	155
Sexual abuse and kidnapping	2	2	-	12	7	231	-	2	256
Wounding	3	42	3	183	27	1022	-	2	1282
Fraud	7	2	1	10	11	178	-	-	209
Offences under Act No. 6136	1	4	3	69	10	1433	-	1	1521
Threats, insults	-	5	4	16	18	303	-	-	346
Vandalism	-	8	-	22	1	381	1	1	414
Possession of narcotics	-	-	1	-	4	142	-	-	147
Obstructing an officer in the performance of his duties	2	1		12	4	397	-		416
Other offences	13	192	56	503	495	7237	1	38	8535

(The age groups are the same as in the previous table above.)

APPLICATION OF THE CODE OF CRIMINAL PROCEDURE

February 1994

ACCUSED	11-15 age group		15-18 age group		18-65 age group		over 65		Total
	Women	Men	Women	Men	Women	Men	Women	Men	
Accused persons taken into police custody	41	557	94	1823	790	14114	6	25	17450
Accused persons arrested	2	70	10	499	87	1966	-	-	2634
Accused persons released	39	487	84	1324	703	12148	6	25	14816
Accused persons provided with lawyers	40	406	85	1146	138	1535	-	2	3352

TYPE OF OFFENCE	BREAKDOWN OF OFFENCES COMMITTED								
	11-15	15-18	18-65	over 65	Women	Men	Women	Men	Total
Theft	12	323	35	932	141	1927	1	1	3372
Robbery	-	1	2	23	2	94	-	-	122
Battery	3	18	6	120	67	1252	-	-	1466
Murder	-	4	2	16	3	101	-	-	126
Sexual abuse and kidnapping	2	2	-	19	5	206	-	-	234
Wounding	3	51	-	140	22	705	1	1	923
Fraud	4	7	-	15	14	209	-	-	249
Offences under Act No. 6136	4	6	2	29	23	957	-	-	1021
Threats, insults	1	7	1	23	7	202	-	-	241
Vandalism	1	13	1	18	7	113	-	-	153
Possession of narcotics	-	-	-	2	1	125	-	-	128
Obstructing an officer in the performance of his duties	1	1	-	8	3	207	-	-	220
Other offences	10	124	45	478	495	8016	4	23	9195

(The age groups are the same as in the previous table above.)

APPENDIX 2

**OFFICIALS AGAINST WHOM JUDICIAL AND ADMINISTRATIVE ACTION WAS
TAKEN UNDER ARTICLE 245(1) OF THE CRIMINAL CODE
BETWEEN 1 DECEMBER 1993 AND 28 FEBRUARY 1994**

(1) Ill-treatment or assault by law enforcement officials in the course of their duties.

JUDICIAL	YEAR					TOTAL
	1993	1994				
	Dec.	Jan.	Feb.	March	April	
No. of incidents	17	-	-			17
Officials against whom action was taken	33	-	-			33
Officials brought before the courts	26	-	-			26
Officials acquitted	13	-	-			13
Decision not to prosecute	-	-	-			-
Officials convicted	-	-	-			-
Officials against whom charges were dismissed	7	-	-			7
Proceedings pending	13	-	-			13

ADMINISTRATIVE	YEAR					TOTAL
	1993	1994				
	Dec.	Jan.	Feb.	March	April	
No. of incidents	17	-	-			17
Officials given warnings	-	-	-			-
Officials given reprimands	-	-	-			-
Officials whose pay was docked	-	-	-			-
Officials suspended	-	-	-			-
Officials dismissed	-	-	-			-
Officials dismissed from public service	-	-	-			-
Officials given CTMO	16	-	-			16
Administrative measures pending	17	-	-			17

**OFFICIALS AGAINST WHOM JUDICIAL AND ADMINISTRATIVE ACTION WAS
TAKEN UNDER ARTICLE 243(1) OF THE CRIMINAL CODE BETWEEN 1 DECEMBER
1993 AND 28 FEBRUARY 1994**

(1) Torture or ill-treatment by public servants to obtain confessions

JUDICIAL	YEAR					TOTAL
	1993	1994				
	Dec.	Jan.	Feb.	March	April	
No. of incidents	2	-	-	-	-	2
Officials against whom action was taken	3	-	-	-	-	3
Officials brought before the courts	3	-	-			3
Officials acquitted	2	-	-			2
Decision not to prosecute	-	-	-			-
Officials convicted	-	-	-			-
Officials against whom charges were dismissed	-	-	-			6
Proceedings pending	1	-	-			1

ADMINISTRATIVE	YEAR					TOTAL
	1993	1994				
	Dec.	Jan.	Feb.	March	April	
No. of incidents	2	-	-	-	-	2
Officials given warnings	-	-	-			-
Officials given reprimands	-	-	-			-
Officials whose pay was docked	-	-	-			-
Officials suspended	-	-	-			-
Officials dismissed	-	-	-			-
Officials dismissed from public service	-	-	-			-
Officials given CTMO	1	-	-			1
Administrative measures pending	2	-	-			2

APPENDIX 3

MINISTRY OF JUSTICE

International Law and External Relations Department

No.: B.03.O.UIG.0.00.00.00.0 3b7.6.1992

ANKARA

Subject: R.B.

TO: MINISTRY OF FOREIGN AFFAIRS

(Council of Europe and CSCE Department)

- REF: a. Fax No. 148 of 24 February 1993
b. Letter No. B.03.0.CIG.0.00.00.0.3.7.6.1992-9278 of 2 March 1993

With reference to the death of R. B., on which information was provided in our letter referred to under b., letter No. 1063 of 22 March 1994 from the Office of the Adana Chief Public Prosecutor states that public prosecution No. 1992/279 before the Adana Third Assize Court is still pending and that the hearing has been postponed to 14 April 1994. A copy of the indictment in the case is appended.

Turgut AYDIN
Director

Appendices

Adana Chief Public Prosecutor's Office

Fax/1993/

B.03.4.CBS.4.01.00.01
No: Ministry B.14/A-959

1/3/1993

TO: CRIMINAL AFFAIRS DEPARTMENT
MINISTRY OF JUSTICE

ANKARA

REF: Your letter No. 3.7.6.1992.8967 of 25 February 1993

With regard to the questions asked in the above document:

1. The file on the investigation conducted following the allegation that Çağayan KARTAL GENÇ had been killed on 21 August 1992 by the TDKP organisation has been sent, together with decision 1992/32810-1232 of 28 December 1992 declining jurisdiction on account of the place where the offence was committed, to the Office of the Erdemli Chief Public Prosecutor.

2. S. B., M. Y. and R. B., who were found to be members of the illegal TIKB organisation, raided the Adana Monopoly Sales Depot on 23 October 1992, threatened the officials present with guns and seized 511,520,000 TL. The matter was reported to the police and members of the security forces followed the accused, who opened fire on them; in the ensuing gunfight S. B. was killed on the spot, while R. B. and M. Y. were apprehended. During the struggle with the police officers apprehending him, the accused R. B. received injuries to the head and on various parts of the body. At about 11.30 pm on the same day, while in police custody, he was taken ill and transferred to hospital; he died on the way. It was concluded that death had been caused by a head injury received during the struggle that took place while he was being apprehended. Public Prosecution No. 1992/279 was accordingly brought before Adana Third Assize Court under indictment No. 1992/26274-13709-506 of 3 December 1992 against the police officers on duty E. S., Ö. K., S. Ö and A. Y. . R. B.s fiancée, Z. B., and the Contemporary Lawyers' Association applied to intervene in the proceedings, but the court dismissed their application. The proceedings are pending.

The indictment, the decision declining jurisdiction and notification No. 1992/279 of 26 February 1992 from the Third Assize Court are appended.

Vahap GÜNEŞ

Chief Public Prosecutor

ADANA CHIEF PUBLIC PROSECUTOR'S OFFICE

Preliminary investigation No.: 1992/26274

Case No.: 1992/13709

Indictment No.: 1992/506

INDICTMENT

TO: ADANA THIRD ASSIZE COURT

VICTIM: R. B., son of B. and A.B.

REPRESENTATIVES: Hüsnu ÖNDÜL, lawyer practising in Ankara
Kazım BAYRAKTAR, lawyer practising in Ankara

ACCUSED:

1. E. S., police officer in the Adana Vehicle Registration and Traffic Control Department
2. Ö. K., police officer in the same department
3. S. Ö., police officer in the same department
4. A. Y., police officer in the same department

OFFENCE: MANSLAUGHTER

DATE OF OFFENCE: 23 OCTOBER 1992

The preliminary investigation document drawn up concerning the accused is appended.

On 23 October 1992, three persons identified as members of the illegal organisation TIKB carried out an armed robbery at the Monopoly Sales Depot in Abidinpaşa Street; they left the depot with the money they had stolen; following a pursuit, one of them was killed and the other two captured alive together with the money and their weapons.

During the apprehension of R. B., who was captured alive, a struggle took place between the offenders and the police officers named in the indictment, as detailed in the incident report recording their apprehension drawn up on 23 October 1992, and as a result R. B. received injuries to the head and various parts of the body. He was ' then taken to Adana Police Headquarters; there, following the procedure and measures described in the report drawn up at 6.45pm on 23 October 1992 and as is apparent from the letter dated 2 December 1992 received from Adana Police Headquarters, he was suddenly taken ill at about 11.30pm on the same evening and transported to Adana Numune Hospital. He died on the way to hospital. The examination of the corpse and autopsy subsequently conducted established that the victim's death was caused by a subdural haematoma and subarachnoidal haemorrhage due to a heavy blow on the head.

The information provided indicates that, according to the investigation conducted and the evidence collected, the interrogation procedure had not yet started and no ill-treatment likely to cause death was inflicted on the victim while he was at the Police Headquarters; it has therefore been concluded that the victim died as a result of the blows he received on the head at the hands of the accused while they were apprehending him.

I accordingly request, on behalf of the State, that it be decided to try each of the accused and sentence them separately under Article 452/1 (with reference to Article 448) and Article 251 of the Criminal Code.

3 December 1992

ETHEM EKIM - 21417
Adana Chief Public Prosecutor

[ADANA ASSIZE] COURT
Office of the President
No.: 1992/279

TO: OFFICE OF THE CHIEF PUBLIC PROSECUTOR,
MINISTRY BUREAU

ADANA

REF: Your letter Ministry B.14/A-959 of 26 February 1993

The hearing of case No. 1992/279, currently pending before this court, about which you enquired in the above-mentioned letter, has been postponed to 6 April 1993; R. B.'s fiancée, Z. B., and the Contemporary Lawyers Association have applied to intervene in the proceedings, but the court has dismissed their application. A photocopy of the indictment is appended.

26 February 1993
President Y.21908

ADANA CHIEF PUBLIC PROSECUTOR'S OFFICE

No.: B.03.4.CBS-01.00.01 .B. 2/A-1063

22 March 1994

TO: INTERNATIONAL LAW AND EXTERNAL RELATIONS DEPARTMENT,
MINISTRY OF JUSTICE

ANKARA

- REF.: a) your letter No. 12550 of 22 March 1994
b) our letter No. B.2/A-863 of 4 March 1994

With reference to your inquiry in the above-mentioned letter, case No. 1992/279 brought against three police officers in connection with the death of R. B. is pending before the Adana Third Assize Court. The hearing has been postponed to 14 April 1994. Information on this point was provided to you in above-mentioned letter b.

Vahap GÜNEŞ
Chief Public Prosecutor

APPENDIX 4

MUSTAFA T. MAVİGÜL / TALKING LEGAL

On call for CMUK

Under the amendments in the Turkish Criminal Trial Procedure Law (CMUK), which is known as the judicial reform package and became effective in November 1992, bar associations are required to assign attorneys to provide legal aid for suspects (those below 18 and those who cannot afford a lawyer) who are taken into custody on charges of serious crimes such as theft, robbing, burglary and so on. The attorney's fee is paid by the bar associations through a special fund administered by the Justice Ministry.

At the outset, bar associations were assigning volunteer attorneys experienced in criminal law to perform this task. However, seeing that there were not enough of them to meet the increasing demands, the bar associations decided also to use other attorneys, like myself, who mainly deal with civil cases. I have twice been assigned to this duty since the law was put into effect.

The last time I was asked to respond to a call from a police station was nearly a month ago. It was about 2:30 a.m. and the phone woke the whole household. The call was from my colleague at the bar association, whose round-the-clock job it was to dispatch the attorneys on call to provide assistance to suspects who want to consult an attorney before making a statement. Before seeing my client, whom I could not refuse to meet without a proper excuse, I received a short briefing on the phone and was told that he was accused of vandalism. In order to get a clearer picture about the legal aspects of the alleged offense, I immediately consulted the Penal Code to see what was the maximum sentence should he be

found guilty. After refreshing my memory about other relevant legal details, I went outside hoping that I would be able to find a taxi at such an hour. Fortunately, I was.

At the police station a police officer gave me information about the suspect and the complaint that a woman had lodged against him. After I had read the complainant's written statement, in which she also blamed two other individuals for breaking the windows of her house, the police officer ordered his colleagues to bring the suspect in. Before I met him, in a separate room, the police officer said that the woman believed that the suspects had thrown stones at her house because her son, who had been arrested by police in another city on charges of theft, had given their names to the police.

During our private meeting, the suspect, who seemed very calm, denied all the charges made against him. He told me that the police had reminded him of his rights under CMUK to remain silent or consult an attorney before making any statement. Because he had told the police that he wanted to give his testimony in the presence of an attorney, the police officer was obliged to call the bar association. Both the suspect and I signed the statement which he made in my presence after making sure that it was an accurate statement of all that he had said. Since the number of attorneys is high in metropolitan areas, a practicing attorney's turn to be on call for such duties comes only about twice a year. I had to attend several suspects — most were thieves, muggers and pickpockets — during my first assignment. Although it is not all it should be, I believe CMUK is a good start to stopping claims of ill-treatment.

APPENDIX 5

NOTE ON THE RECENT LAW AMENDING SOME PROVISIONS OF THE TURKISH CODE OF CRIMINAL PROCEDURE, THE LAW ON STATE SECURITY COURTS, THE LAW ON THE STATE OF EMERGENCY, THE LAW ON COMBAT AGAINST TERRORISM AND THE LAW ON THE DUTIES AND POWERS OF THE POLICE

The Law N° 3842 which was published in the Official Gazette on December 1, 1992 and entered into force on the same day, has made important amendments to the Code of criminal procedure and introduced new and modern concepts and elements to the Turkish criminal procedure law. Some of these amendments provide new rights to the accused such as, the right to appeal to a judge against being taken into custody. Other amendments have shortened the periods of custody and detention or include provisions aiming at the prevention of torture or ill treatment, which are already criminal offenses subject to prosecution. Abolishment of confidentiality as a rule in preliminary investigations, and confining its application to exceptional cases and allowing the presence of lawyers during the interrogation by police are some of the substantial improvements made by the recent amendments.

With the exception of the new provisions, prohibiting certain methods which can be considered as torture or ill-treatment during the interrogation and the evaluation of the statements extracted by these methods as evidence by judge, the amendments made to the code of criminal procedure will not apply to offenses within the jurisdiction of State Security Courts. The jurisdiction of State Security Courts has been restricted so as to cover only criminal offenses of terrorist nature and smuggling of arms and drugs.

The recent amendment to the criminal procedure code provides the following improvements in the rights of the accused:

I. Shortening of the period of police custody:

1. Accused persons who have committed collective offences (offences committed by 3 or more persons) which do not fall under the jurisdiction of the State Security Courts cannot be held in police custody more than 4 days without having an order from a judge (previously this period was 15 days).

By shortening the period of police custody from 15 to 4 days maximum, the relevant provisions of the Turkish law have been brought in conformity with the decisions of the European Commission of Human Rights and the judgments of the European Court of Human Rights.

As the period of police custody for ordinary individual offences (i.e. offences which do not fall under the jurisdiction of the State Security Courts) was maximum 24 hours. This remains unchanged.

2. The period of the police custody for the collective crimes that fall under the jurisdiction of the State Security Courts, 15 days maximum, was also remained unchanged.

As the period of the police custody for individual offences that fall under the jurisdiction of the State Security Courts was 24 hours maximum, it has been considered unnecessary to make any change.

3. The period of police custody applied to offences committed in the region of the state of emergency has been changed. Previously, when ordinary offences and the offences which fall under the jurisdiction of the State Security Courts were committed in the region of the state of emergency, the period of police custody could be prolonged twice. According to the previous rule, the periods of the police custody could be extended from 24 to 48 hours for ordinary individual offences; from 15 to 30 days for ordinary collective offences; from 48 to 96 hours for individual offences which fall under the jurisdiction of the State Security Courts; from 15 to 30 days for collective offences which fall under the jurisdiction of the State Security Courts.

By the recent amendments, prolongation of the period of the police custody shall no longer be possible for "ordinary offences" (either individual or collective), with the exception of the offences that fall under the jurisdiction of the State Security Courts.

II. The right to have access to one's lawyer :

The right to have access to one's lawyer has been provided for by the recent amendments from the very beginning of the period of police custody. This right comprises the presence of a lawyer during the interrogation by the police. Moreover, the right concerned has been facilitated by the provision that no power of attorney shall be requested from the lawyer in order to be present during the interrogation made either by the police or by the judge.

III. The right to have free access to and consultations with one's lawyer during police custody or detention :

With the recent amendments, the accused under custody or detention is granted the right of consultation with his lawyer whenever he wishes and without being subject to any supervision.

IV. Right to appeal to a judge against being put under police custody and the prolongation of the period of custody :

Accused persons are granted the right to appeal to a judge against being taken into custody or the prolongation of the period of custody. This right is safeguarded not only by granting it to the person under custody or his lawyer but also to his legal representative, spouse or relatives of first or second degree.

This right to appeal to a judge will facilitate the application of "habeas corpus" guarantee as cited in the explanatory memorandum of article 19 of the Turkish Constitution.

V. Limits for the period of detention :

Limits for the period of detention upon an order or a decision of a judge has been laid down for the first time by the recent amendments. With these amendments, (except for offences falling under the jurisdiction of the State Security Courts) the length of the period of detention during the preliminary investigation stage is restricted to 6 months. As to the trial stage, the period of detention shall not exceed 2 years.

IV. Reduction of the reasons for detention :

Previously, according to the Law, it was presumed that persons who were accused of having committed grave offences punishable by heavy penalties (death, heavy imprisonment and imprisonments of 10 or more years) in any case would try to evade justice. As a consequence of the recent amendments, suspects will no longer be detained solely on the ground of being accused of having committed grave offences that are punishable by heavy penalties. Henceforth, under such conditions the suspects will only be detained if there are strong indications which lead to believe that he will try to evade justice.

Persons accused of having committed offences falling under the jurisdiction of State Security Courts are also affected by this amendment because, most of the offences included in the jurisdiction of the State Security Courts are grave offences and punishable by heavy penalties. Therefore, persons accused of having committed offences falling under the jurisdiction of the State Security Courts will no longer be tried necessarily under detention, unless there is evidence indicating that they will escape.

Detention of an accused upon the order of a judge that is based merely on the "suspicion of evading justice" complies with the provisions of Article 5 of the European Convention of Human Rights.

VII. Statements taken by the police :

1. The points that should be contained in the records of the interrogation in which the statements are written, have been indicated by the recent amendments. There, the most important amendment relating to the records of interrogation is that these records should bear the full identities of the signatories (i.e. persons who give statements or testifying witnesses, lawyers and the officers who take statements).

2. The accused will be informed of his right to remain silent and the right of access to a lawyer prior to the beginning of the interrogation.

3. Prohibited methods of interrogation which can be considered as torture or ill-treatment have been specified for the first time by the recent amendments. It has clearly been prescribed that every statement shall be based on one's own volition. Obstruction to one's volition through torture or ill-treatment, giving medicament against his will, deception, exhaustion, using physical force or violence, causing disturbance of mind and mental competence and giving unlawful promises have been laid down as prohibited methods of interrogation. When the statements are taken through these methods, those statements shall not be evaluated as evidence even though the person gives consent thereto.

This last provision constitutes a substantial guarantee against torture and ill-treatment. Previously, as the result of the principle that the judge can evaluate all related evidence through conscientious conviction, the statements extracted under ill-treatment could be assessed by a judge if there were supplementary corroborating evidences.

VIII. Appointment of a lawyer by the Bar Association

If the person who has been put under police custody cannot afford a lawyer acting as a defence counsel, the Bar Association shall appoint one for him. This provision will reinforce the right of defence.

IX. The confidentiality of the documents of the preliminary investigation :

Unless the judge decides that the documents pertaining to the preliminary investigation should be confidential, the lawyer shall have access to the documents concerned. Previously, as a general rule, the documents of the preliminary investigation were confidential.

X. Restricting of the jurisdiction of the State Security Courts :

By the recent amendments, the following offences have been excluded from the jurisdiction of the State Security Courts:

1. The offences contained in the Law of Assemblies and Demonstrations.
2. The offences contained in the Law of Collective Labour Agreements, Strikes and Lockouts.
3. The offences contained in the Law of Associations.
4. The offences contained in the Law on Wireless Appliances.
5. The offences contained in the Law of Prohibition of Smuggling and Prosecution of Smugglers.
6. The following offences to the extent that they are violating the territorial and national integrity and the constitutional order:
 - (1) Transportation of the publication which itself constitutes an offence.
 - (2) Offences against the president of a foreign state.
 - (3) Offences against personal liberty.
 - (4) Offences against the inviolability of domicile.
 - (5) Offences against the freedom to work.
 - (6) Offences pertaining to the failure of the security officers to obey the lawful orders.
 - (7) Offences pertaining the failure of the security officers notifying the competent authorities.
 - (8) Offences of the religious clerics blaming the laws and the administration and humiliating the authorities or inciting public to disobedience against laws and rules.
 - (9) Offences of forcing civil servants by violence or by threat.
 - (10) Offences of avoiding the judicial, political or administrative boards from assembling by violence or by threat.
 - (11) Offences of resisting against an officer by violence or by threat.
 - (12) Battery against civil servants.
 - (13) Hiding the offender, misleading the officers who investigate and destroying or concealing the evidences.

- (14) Setting properties on fire, causing explosion or flood.
- (15) Causing maritime accidents.
- (16) Hindering transportation and communication and larceny against communication appliances.
- (17) Poisoning foods and drinks or endangering public health by similar means.
- (18) Homicide.
- (19) Plundering, kidnapping and waylaying others.
- (20) Offence of purchasing and selling or concealing the property obtained through a crime.
- (21) Causing property damages of others.
- (22) Hanging or sticking on unlawful posters or placards.
- (23) Spoiling or destroying the public signboards and announcements.

Table showing the periods of police custody
before and after the recent amendments made
by the Law no.3842

		Individual Crime of Ordinary Nature	Collective Crime of Ordinary Nature	Individual Crime falling under the jurisdiction of SSC *	Collective Crime falling under the jurisdiction of SSC *
Before the amend- ments	Under Normal Circumstances	24 hours	15 days	48 hours	15 days
	Under State of Emergency	48 hours	30 days	96 hours	30 days
After the amend- ments	Under Normal Circumstances	24 hours	4 days	48 hours	15 days
	Under State of Emergency	24 hours	4 days	96 hours	30 days

* SSC: State Security Courts

APPENDIX 6

MINISTRY OF HEALTH
DEPARTMENT OF BASIC HEALTH SERVICES

No.: B100TSH0140000 6039

Subject: Forensic institute medical certificates

ANKARA
22 December 1993

To ensure that forensic institute medical certificates are drawn up in greater detail and with greater care, in order to prevent any abuses during the provision of forensic institute medical services, the following shall be included in the certificates:

1. All statements made by persons examined (remand prisoners, persons in police custody, persons accompanied by members of the security forces or examined as a result of a complaint) which are relevant to the medical examination, including complaints relating to their state of health and allegations of ill-treatment,
2. All physical and psychological findings based on a comprehensive examination,
3. The doctor's conclusions in the light of the points referred to above.

In addition, persons providing forensic institute medical services shall be entitled to request specialist medical examinations where necessary. In cases where a specialist examination is requested, the forensic institute medical certificate shall be drawn up by the specialist conducting the examination, bearing in mind the information provided by the forensic institute.

Please take appropriate action.

Dr. Aytun ÇIRAY
Deputy Under-Secretary

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For information:

Ministry of Justice
Turkish Medical Association

APPENDIX 7

**TURKISH MEDICAL ASSOCIATION
EXECUTIVE COUNCIL
Chairman's Office**

**THE DOCTOR'S POSITION IN THE FACE OF HUMAN RIGHTS VIOLATIONS SUCH
AS TORTURE AND ILL-TREATMENT**

1. There can be no justification whatsoever for the medical profession taking part in torture or other forms of cruel, inhuman or degrading treatment. A doctor who becomes aware of human rights violations has a moral duty to take immediate action.

Involvement of the medical profession in torture, including the presence of a doctor during the interrogation of a detainee, must be absolutely prohibited.

2. Doctors may witness ill-treatment in the course of their duties. They may not necessarily be directly involved in such ill-treatment. They will first have to assess its nature and severity. Having decided that the matter needs to be followed up, the doctor concerned will have to investigate it further and decide whether it is possible to lodge an official protest within the organisation or whether the matter is serious enough to warrant a protest outside the institution. Even if they witnessed such incidents by pure chance, it is ethically unsound for doctors to tolerate a situation that they know to be wrong.

There can be no justification for doctors voluntarily taking part in torture or ill-treatment, even with "good intentions" or "as medical support". Doctors who are constrained to take part in ill-treatment or torture because of threats to themselves or their families must inform a trustworthy and responsible authority of the fact.

Doctors who refuse to take part in torture or ill-treatment must be protected against possible pressures and threats and against the risk of losing their jobs. Professional organisations have an important duty to perform in this area. If it is not possible to inform them or if these organisations do not show sufficient concern over the information, it may be forwarded to organisations such as the World Medical Association or Amnesty International.

3. Doctors called in to examine or treat prisoners in police custody must be aware, first and foremost, that they have a duty to do their utmost to assist the prisoners. This means that doctors must provide medical assistance only to prisoners who agree to medical intervention.

4. To be able to provide medical assistance to a prisoner who agrees to medical intervention, the doctor must be in a position of "clinical freedom", i.e. entirely free to act and in a place where members of the security forces are not present during examination or treatment. The doctor must inform the prisoner of his/her identity and the prisoner must be in a position to disclose his/her own identity.

5. If the prisoner is, for example, unconscious and is therefore unable to express his/her will with regard to treatment, the doctor must provide medical assistance in accordance with the ethical rules applicable in any emergency case.

6. If a prisoner is taken ill as a result of torture, a doctor's failure to provide medical assistance likewise amounts to torture.

7. A doctor must not examine or treat a patient if the doctor is prevented from disclosing his/her identity, if his/her face is masked or hidden in any other way, if the patient is blindfolded or in the presence of a third person who is likely to disrupt the normal relationship between doctor and patient.

8. Medical certificates concerning persons examined or treated by a doctor as a result of torture must not be mere printed forms; they must be written legibly in the doctor's handwriting and must include, legibly written, the doctor's name, family name, diploma number and, if there is one, medical association number. The doctor's signature must be legible.

9. A controversial issue in this connection is the examination or treatment of persons whose state of health deteriorates during torture. If an "unwanted" health problem arises because the "dose" of torture is excessive, a doctor may be thought necessary. In such cases, the doctor's medical intervention may contribute to the continuation of torture. On the other hand, if the doctor does not intervene, the person's health may deteriorate irreversibly.

The following principles may be adopted in the matter: if it is not an emergency, the doctor should refuse to intervene if he/she is unable to secure conditions of clinical independence (official request, medical intervention in an environment of the doctor's choice where he/she is entirely free to act, possibility of follow-up to intervention, etc.); in emergencies, or if the doctor is compelled to intervene under pressure or for similar reasons, he/she should make the matter known as soon as possible.

10. There can be no justification for doctors providing medical assistance or medication to persons undergoing torture on the grounds that this will reduce the pain. That simply means conferring a false humanity and legitimacy on torture.

11. The misuse of psychiatry for political ends may constitute a form of torture or cruel, inhuman or degrading treatment, as in the case of unwanted and painful medical treatment, beating, physical restraint, insulting and humiliating behaviour and lengthy separation from loved ones. However, the misuse of psychiatry differs from other forms of political abuse in one important respect, namely the environment in which it is carried out. Firstly, legislation enabling persons to be committed to a psychiatric clinic against their will is considered to be in the patients' interests; secondly, the persons carrying out this form of abuse are doctors and other medical personnel who may or may not believe that they are behaving in a manner consonant with the patient's medical needs; thirdly, the procedures followed for the internment of the victim, not only as a destructive and dangerous person, but on account of his/her political opinions, may not allow recourse to the law; historically, the machinery for legal remedies in the event of mental illness has always been weak.

12. Medical personnel working in prisons, in the armed forces and in psychiatric departments, in particular, must be more alert to the possibility of ill-treatment.

13. Doctors who refuse to take part in torture or ill-treatment must be protected against possible pressure and threats and against the risk of losing their jobs. Professional organisations have an important duty to perform in this respect.

Supporting and protecting doctors who oppose human rights violations and resist pressure is a major duty and responsibility of all organisations in the medical field, especially medical associations.

In areas in which human rights are insufficiently observed, the risks facing doctors must be addressed in more comprehensive fashion. Unless doctors are provided with guidance in medical ethics and with support when they take a firm stand and run into danger, there is little point in asking them to respect medical ethics and oppose human rights violations or resist pressure. Medical associations must support doctors who come under pressure on account of their professional or human rights activities.

14. The activities of doctors alleged to have taken part or been involved in torture must be seriously investigated. Those found to have been at fault must be dismissed from the profession.

The great majority of medical associations are reluctant to investigate allegations concerning doctors alleged to have been involved in human rights violations. Medical associations have a duty to investigate such allegations and, where doctors are found to have taken part in such violations, to publicise the matter. It is imperative that all medical associations and disciplinary boards should oppose the involvement of doctors in human rights violations, particularly in torture, and should uphold and apply the rule that doctors found to have taken part in a violation of medical ethics are dismissed from membership and from the profession.

15. Support must be given to centres set up for the purpose of countering the effects of torture on torture victims. It is both meaningful and essential that medical associations should provide material and moral support to these centres, which perform an important function in combating human rights violations.

Without reducing the human rights issue to the activities of these small local centres, it is essential to ensure the spread of such centres, whose activities must be carried out as part of the struggle for human rights and democracy in Turkey.

TURKISH MEDICAL ASSOCIATION

EXECUTIVE COUNCIL