

## The Public Statement on Turkey by the European Committee for the Prevention of Torture

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1. On 15 December 1992 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter referred to as the CPT) issued the first public statement in the four year history of their investigations. This is certainly not the first time that the thorny question of compliance with human rights was raised with respect to Turkey at an international level. Both governmental and non-governmental international organizations (such as the EC and the Council of Europe's Parliamentary Assembly, as well as Amnesty International and Helsinki Watch), and even states (such as the US, which produces the State Department Annual Report on Human Rights in the World) have repeatedly issued alarming reports on this subject, with the objective of engaging world public opinion. One might therefore wonder in what way the CPT public statement differs from the others.

The text of the statement, and the circumstances under which it was issued, show at least two novel elements. The first one concerns the facts upon which it is based: not upon mere allegations, but rather on the findings resulting from inspections conducted by the CPT itself. All CPT findings are buttressed by concrete evidence (such as that contained, for example, in their statement at paragraphs 17-20). Secondly, the statement does not exhibit the characteristics of a 'political condemnation': one can infer from the text itself that it is the outcome of an unbroken dialogue between the CPT and the Turkish authorities. It was issued in a 'constructive spirit' (paragraph 37), with a view to pursuing, in cooperation with the Turkish authorities, the most suitable means for eliminating certain practices.

2. Under Article 10, paragraph 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter referred to as the European Convention),

if a Party fails to cooperate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members, to make a public statement on the matter.

The CPT decision on Turkey was taken in the aftermath of two *ad hoc* visits made by the CPT to that country in the Autumn of 1990 and 1991. After these visits, it had become clear that the measures recommended by the CPT, which concerned the strengthening of legal safeguards

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against torture and other forms of ill-treatment in police establishments, as well as the activities of two specific anti-terrorist departments, had not been satisfactorily implemented. In fact, complaints and allegations of ill-treatment by individuals persisted and continued to reach the CPT throughout 1992. The periodical visit carried out in December 1992 confirmed that the situation had not improved.

The CPT felt it necessary, on this occasion, to depart from the 'general philosophy' underlying the Convention, according to which, for an effective protection of individuals from torture or other kinds of ill-treatment, more can be obtained by discreet contacts than by public exposure or denunciations. This philosophy is based on Article 3 of the European Convention, according to which in 'the application of this Convention the Committee and the competent national authorities of the Party concerned shall cooperate with each other'. The resort to a public statement must be explained in the light of the conclusions reached by the CPT. Public exposure could probably represent an extra tool in the hands of those sectors of the Turkish public opinion and authorities who really want these practices to come to an end. The need to cooperate with the Turkish authorities is in any event stressed time and again: the statement should facilitate the efforts of both parties to improve the situation. In any case, the views adopted by the CPT, albeit formally addressed to Turkey, will certainly have an impact on the entire European system for the protection of human rights.

3. The statement emphasizes in its last paragraph that 'it would have been counterproductive from the standpoint of the protection of human rights for it to have refrained – as it was requested to do by the Turkish authorities – from making this public statement' (paragraph 37). Under Article 10, paragraph 2 of the European Convention, the decision to make a public statement must be taken by the Committee with a two-third majority. Before the actual issuing of the statement, however, the Party concerned must have the opportunity to make known its views. The Committee must then decide whether it considers itself satisfied with the Party's explanations, or whether it wants to proceed with the statement. Is the two-third majority also necessary for the decision to set in motion the procedure? If this was the case the statement issued by the CPT does not so indicate. Nor can any useful pointers be derived from the CPT Rules of Procedure: both Rule 24 (concerning voting procedures) and Rule 44 (concerning public statements) are silent on the matter. A double decision taken by special majority is, in my opinion, necessary. The CPT's competence to issue a public statement is to be defined as 'exceptional', insofar as it departs from the general custom of confidentiality (Explanatory Report, paragraph 74). Hence, the rule should be interpreted in such a way as to afford the Party concerned the highest possible level of guarantee.

In the present case, of course, the contents of the views expressed by Turkey are not known. The Turkish authorities certainly asked the CPT not to issue the statement (as it can be inferred from paragraph 37), but nothing is said about the observations put forward by them, or the reasons why the CPT judged them to be unsatisfactory. It is beyond question, however, that the decision was not taken because of Turkey's failure to cooperate, but rather because of its refusal to improve the situation in the light of the Committee's recommendations (Article 10, paragraph 2).

4. Other reports concerning member States of the European Convention have been published in the past, at the request of the Party concerned (e.g. the reports concerning Austria, the United Kingdom, Malta, Denmark, Sweden, France and Switzerland). Turkey, for its part, did not ask for the publication of the first two reports (whose contents are briefly sketched in the CPT's statement). One may wonder whether, had Turkey accepted to publish them, this would have prevented the issuing of the statement. Under the strict terms of the European Convention it does not seem to be the case. A public statement is issued only under the strict conditions set forth by

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Article 10 paragraph 2 of the European Convention. It cannot be assumed that the decision not to publish a report may amount to a failure to cooperate or to improve the situation. Under Article 11, paragraph 2, a report may be published only at the request of the Party concerned. Yet, it is difficult to dismiss the feeling that, *at least indirectly*, the publication of the two reports would have had an impact on Turkish public opinion. This in turn would presumably have triggered a series of reactions rendering the issuing of a public statement unnecessary.

5. The introductory part of the statement (paragraphs 1-3) briefly mentions the reasons underlying the decision to act under Article 10 paragraph 2 of the European Convention, and the procedure followed, which underscores the unbroken dialogue between the CPT and the Turkish authorities. The findings of the two *ad hoc* visits (paragraphs 4-11) as well as the periodic visit (paragraphs 17-20) are then summarized with an assessment of the measures taken by the Turkish authorities in response to the CPT recommendations (paragraphs 12-16). The decision to set in motion the procedure under Article 10 paragraph 2 of the European Convention was however taken in October 1992, before the periodic visit had been made. The negative conclusions reached by the CPT as a result of the three visits (paragraphs 21-25) are followed by a number of suggestions regarding improvements in the legislation and in the training of police officers (paragraphs 26-36).

The main conclusion reached by the CPT is that the practice of submitting persons in police custody to torture or inhuman or degrading treatment remains widespread in Turkey (paragraph 21). However, it is emphasized that such practices are employed in order to extract confessions or to put under pressure people under suspicion in relation to terrorist and certain other kinds of criminal offences (mainly arms and drug dealing). This explains why these practices are confined to persons in police custody, and do not occur (as acknowledged by the CPT) in prisons, gendarmerie stations and psychiatric establishments (paragraphs 22-25). Hence, for a relatively well-defined range of cases, certain techniques are considered effective methods for obtaining evidence and are routinely employed. This is rendered possible by legislation allowing, for certain offences, periods of incommunicado police custody for up to 15 or even 30 days.

6. It appears very clearly, from the spirit and the contents of the statement, that its purpose is not a mere condemnation of Turkey's behaviour. The CPT's insistence on cooperating with the Turkish authorities is only one indicator of its broader perspective. The CPT is not so much concerned with verifying *in abstracto* the compatibility with international standards of certain practices, or of the internal legislation which permits them (an abstract definition of torture or inhuman or degrading treatment or punishment is absent from the text of the European Convention). Rather, the CPT *directly* ascertains the actual resort to such practices and, when this is found to be the case, actively recommends to the authorities concerned the most suitable means to eradicate them. The dialogue between the CPT and the authorities concerned is therefore continuous: on the basis of its findings the CPT makes certain suggestions. It also intervenes on the implementation of its suggestions.

The measures recommended in the statement may in fact be classified into two categories: those concerning legislative improvements (paragraphs 27-29), and those which one might define as practical (paragraph 26). However, the CPT also asserts that

it can legitimately be advanced that attacking the root of the problem of torture and ill-treatment involves not so much changing laws as transforming mentalities. This process is required not simply amongst police officers but throughout the criminal justice system (paragraph 36).

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The latter goal is of course much more difficult to achieve. One may hope that the publication of the statement can be a first step towards encouraging greater control by Turkish public opinion over certain State powers, which might lead, in turn, to a change in the mentalities.

7. What was the actual effect of the statement, and what are its likely developments? I am not aware, at the moment, of the Turkish reaction. The fact, however, that the statement was public and was issued in a constructive spirit, will presumably not provoke a negative reaction. It will hopefully lead to a gradual implementation of the recommendations (both legislative and practical) made by the CPT.

The legislative measures to be taken were in fact already suggested in the reports issued after the first *ad hoc* visits. They mainly concerned the introduction of formal safeguards against torture or ill-treatment by police authorities: shortening of the maximum periods of custody by the police or gendarmerie; notification of a person's custody to his next of kin or a third party of his choice; access to a lawyer; medical examination of detained persons; a code of practice for the conduct of interrogations (paragraph 8). The statement however also contains an assessment of the state of the legislation in Turkey, particularly of recently introduced statutes, welcoming the introduction of additional safeguards, but deploring the persistence of lacunae and loopholes in crucial areas (paragraphs 27-29).

The legislative improvements suggested by the CPT tend precisely to eliminate the legal grounds which render possible the resort to torture or other kinds of ill-treatment. Thus, if long periods of uncontrolled police custody allow not only for suspects to be subjected to torture, but also for the signs left by this treatment to heal or disappear, legislation intended to reduce such delays would strike at the very root of the problem.

However, legislative safeguards alone would not be sufficient if they are not integrated with other measures which are more 'practical'. These measures are clearly spelled out in paragraph 26 of the statement, and mainly concern the intensification of education on human rights matters and professional training for law enforcement officials (there was already in fact an arrangement to send a number of police officers to be trained in other European countries). The institution of effective *and independent* monitoring mechanisms which could ensure 'managerial control and supervision of law enforcement officials' is also recommended, as well as the adoption of guarantees for the effective independence of forensic institute doctors, whose medical examinations should be broadened in scope.

Finally, the administration of justice and public order fall within the very centre of state sovereignty. It is worth noting that it is rare to find an international supervisory mechanism which states have so jealously preserved as a matter for purely domestic control. This is a striking and deeply innovative feature of the CPT's activities.

## **Annex: Public Statement on Turkey \***

### *Introduction*

1. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has to date organized three visits to Turkey. The first two visits, carried out from 9 to 21 September 1990 and 29 September to 7 October 1991, were of an *ad hoc* nature. They were visits which appeared to the Committee 'to be required in the circumstances' (Article 7, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). The circumstances in question were essentially the considerable number of reports received by the Committee, from a variety of sources, containing allegations of torture or other forms of ill-treatment of persons deprived of their liberty in Turkey. The reports related in particular to persons held in police custody. The third visit took place from 22 November to 3 December 1992, and formed part of the CPT's programme of periodic visits for that year.

2. Throughout 1991 and 1992 an ongoing dialogue has been maintained between the Turkish authorities and the CPT on matters of concern, based on the reports drawn up by the Committee after its first and second visits and the reports provided by the Turkish authorities in response. This dialogue culminated in a number of meetings between the Turkish authorities and a delegation of the CPT held in Ankara from 22 to 24 September 1992.

Subsequently, at its 14th meeting (28 September to 2 October 1992), the CPT reviewed the action taken by the Turkish authorities upon the recommendations made by the Committee in its visit reports. The Committee concluded that the continuing failure of the Turkish authorities to improve the situation in the light of its recommendations concerning (i) the strengthening of legal safeguards against torture and other forms of ill-treatment in police (and gendarmerie) establishments and (ii) the activities of the Anti-Terror Departments of the Ankara and Diyarbakir Police, justified resort to Article 10, paragraph 2, of the Convention.

3. The Turkish authorities were informed of the conclusion reached by the CPT and, in accordance with the Convention, invited to make known their views. Those views were received on 16 November 1992. The CPT examined the views presented by the Turkish authorities at its 15th meeting, held from 14 to 17 December 1992; on the same occasion, the Committee considered the facts found by the delegation which carried out the periodic visit to Turkey in November/December 1992, in particular insofar as they related to matters of police and gendarmerie custody. By the required majority of two-thirds of its members, the Committee decided to make a public statement.

### *The Ad Hoc Visits*

#### **a) First Visit**

4. In the report drawn up following its first visit to Turkey in 1990, the CPT reached the conclusion that torture and other forms of severe ill-treatment were important characteristics of police custody in that country. More specifically, in the light of all the information gathered concerning the Anti-Terror Departments of the Ankara and Diyarbakir Police, the CPT concluded that detectives in those departments frequently resorted to torture and/or other forms of severe ill-

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treatment, both physical and psychological, when holding and questioning suspects. A variety of elements led the Committee to those conclusions.

5. In the first place, the CPT was struck by the extremely large number of allegations of torture and other forms of ill-treatment by the police received in the course of the visit, the wide range of persons making those allegations, and their consistency as regards the particular types of torture and ill-treatment said to have been inflicted. It should be noted that the allegations emanated from persons suspected or convicted of offences under anti-terrorism provisions and from persons suspected or convicted of ordinary criminal offences. As regards the latter, the number of allegations was especially high among persons detained for drug-related offences, offences against property (burglary, robbery, theft) and sex offences. Concerning the types of ill-treatment involved, the following forms were alleged time and time again: suspension by the arms; suspension by the wrists, which were fastened behind the victim (so-called 'palestinian hanging', a technique apparently employed in particular in Anti-Terror Departments); electric shocks to sensitive parts of the body (including the genitals); squeezing of the testicles; beating of the soles of the feet ('falaka'); hosing with pressurised cold water; incarceration for lengthy periods in very small, dark and unventilated cells; threats of torture or other forms of serious ill-treatment to the person detained or against others; severe psychological humiliation.

6. The CPT's medical findings must also be emphasized. Indeed, a considerable number of persons examined by doctors in the CPT's visiting delegation displayed physical marks or conditions consistent with their allegations of torture or ill-treatment by the police. The delegation also met several persons in police custody who, while not stating openly that they had been ill-treated, displayed clear medical signs consistent with very recent torture or other severe ill-treatment of both a physical and psychological nature. Some specific cases were described in the Committee's report.

7. Other on-site observations in police establishments visited (relating in particular to the often extremely poor material conditions of detention, the interrogation facilities and the general attitude and demeanour of police officers) did nothing to reassure the CPT's delegation about the fate of persons taken into custody. The same can be said of the circumstances under which certain of the visits took place, in particular at Ankara Police Headquarters, where the delegation was subjected to a series of delays and diversions (and on several occasions given false information) and a number of detainees were removed in order to prevent the delegation from meeting them.

8. In its report the CPT recommended a series of measures to the Turkish authorities designed to combat the problem of torture and other forms of ill-treatment. These measures related in part to the introduction or reinforcement of formal safeguards against such methods (shortening of the maximum periods of custody by the police or gendarmerie; notification of a person's custody to his next of kin or a third party of his choice; access to a lawyer; medical examination of detained persons; a code of practice for the conduct of interrogations).

The Committee also placed considerable emphasis on the need for a major and sustained effort by the Turkish authorities in the areas of education on human rights matters and professional training for law enforcement officials. It is axiomatic that the best possible guarantee against ill-treatment of persons deprived of their liberty is for its use to be unequivocally rejected by such officials.

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As for the Anti-Terror Departments of the Ankara and Diyarbakir Police, the Committee recommended that appropriate steps be taken immediately to remedy the situation identified in those services.

9. The implementation of these recommendations was the subject of numerous exchanges between the Turkish authorities and the CPT during 1991. However, by the time of the Committee's second visit, few tangible results had been achieved, with the exception of the drawing up and subsequent revision of Regulations for the conduct of interrogations.

### b) Second Visit

10. In the course of its second visit to Turkey in the Autumn of 1991, the CPT found that no progress had been made in eliminating torture and ill-treatment by the police. Many persons alleged that they had received such treatment during the previous twelve months. The types of ill-treatment alleged remained much the same; however, an increasing number of allegations were heard of forcible penetration of bodily orifices with a stick or truncheon. Once again, a number of the persons who claimed to have been ill-treated were found, on medical examination, to display marks or conditions consistent with their allegations. The delegation also had access to a considerable number of reports drawn up during the previous twelve months, at the end of periods of police custody, by doctors belonging to Forensic Institutes; many of them contained findings consistent with particular forms of torture or severe ill-treatment. As regards more specifically the Anti-Terror Departments of the Ankara and Diyarbakir Police, the only conclusion that could be reached in the light of all the information gathered was that torture and other forms of severe ill-treatment continued unabated in those services.

11. In the report on its second visit to Turkey, the CPT reiterated the previously-made recommendations designed to prevent torture and other forms of ill-treatment. Further, the Committee recommended that a body composed of independent persons be set up immediately, with terms of reference to carry out a thorough investigation of the methods used by police officers of the Anti-Terror Departments of the Ankara and Diyarbakir Police when holding and questioning suspects. In the light of the information gathered in the course of the CPT's second visit, it was also pointed out that it would be appropriate for the terms of reference of that body to include the Anti-Terror Department of the Istanbul Police.

### *Review of Action Taken on the Ad Hoc Visit Reports*

12. One year after submission of the CPT's second report, at its meeting of September/October 1992, the Committee reviewed the action taken by the Turkish authorities upon all the recommendations set out in the reports drawn up after its two visits. It was noted that some progress had been made on certain issues. Measures of both a legal and practical nature had been taken in response to the CPT's recommendations on material conditions of detention in police and gendarmerie establishments. The dialogue between the Turkish authorities and the Committee on prison matters also appeared to be bearing fruit. However, implementation of the central recommendations concerning torture and other forms of ill-treatment in police establishments was clearly at a standstill.

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13. Legislation going in the direction of the recommendations made by the CPT on the strengthening of legal safeguards against torture and other forms of ill-treatment had been approved by the Turkish Grand National Assembly on 21 May 1992. However, it was subsequently returned by the President of the Republic to the Assembly for reconsideration; and at the time of the Committee's review of the situation, the fate of that legislation was a matter of conjecture.

14. Further, no satisfactory action had been taken on the CPT's recommendation concerning the Anti-Terror Departments of the Ankara and Diyarbakir Police. The Human Rights Inquiry Commission of the Grand National Assembly – to which the task of carrying out the investigation recommended by the Committee was entrusted – had failed to act expeditiously. It was only on 29 June 1992 that the relevant Sub-Committee of the Commission visited Ankara Police Headquarters for the first time (apparently a second visit was carried out on 7 July 1992). Further, at the time of the meetings between the Turkish authorities and a delegation of the CPT held in Ankara towards the end of September 1992, the Sub-Committee had still not apprised the Human Rights Inquiry Commission of its findings. Nor had the Sub-Committee carried out any visits to the Anti-Terror Department of the Diyarbakir Police (or for that matter the Anti-Terror Department of the Istanbul Police). Moreover, from the information provided to the CPT's delegation by a member of the Sub-Committee, it was clear that the visits carried out to the Ankara Police Headquarters had been of a quite perfunctory nature. Furthermore, it was also clear that the Sub-Committee possessed neither the powers nor the relevant professional competence necessary to carry out a 'thorough investigation' as envisaged in the recommendation made by the CPT in its second report.

15. It should be added that in the course of the above-mentioned meetings in Ankara in September 1992, information received from officials of the Ministry of the Interior indicated that no credible action had been taken at the internal administrative level in response to the successive recommendations of the CPT concerning the Anti-Terror Departments of the Ankara and Diyarbakir Police. The only investigations instigated had been entrusted to the very police forces which the Committee had concluded were resorting to torture. Not surprisingly, they had led nowhere.

16. In short, more than two years after the CPT's first visit, very little had been achieved as regards the strengthening of legal safeguards against torture and ill-treatment and no concrete steps capable of remedying the situation found by the Committee in the Anti-Terror Departments of the Ankara and Diyarbakir Police had been taken. At the same time, the Committee continued to receive reports of torture and other forms of severe ill-treatment in those departments, as well as in many other police establishments in Turkey.

It was under those conditions that the CPT decided on 2 October 1992 to set in motion the procedure provided for in Article 10, paragraph 2, of the European Convention for the Prevention of Torture.

### *The Periodic Visit*

17. The information gathered in the course of the CPT's periodic visit to Turkey, from 22 November to 3 December 1992, shows that the problem of torture and other forms of ill-treatment of persons in police custody has not been resolved, despite the importance which had been attached to this subject by the present government when it came to power at the end of 1991. The



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Committee's delegation was inundated with allegations of such treatment, from both ordinary criminal suspects and persons detained under anti-terrorism provisions. Further, numerous persons examined by the delegation's doctors displayed marks or conditions consistent with their allegations.

18. By way of illustration, reference might be made to the following cases:

- several prisoners charged with offences against property, encountered in the reception unit of Bayrampasa Prison (Istanbul), who bore fresh haematomas consistent with their allegations that they had recently been subjected to *falaka* and to beating on the palms of the hands and ventral face of the wrists;
- a prisoner charged with a drug-related offence being held for observation in a forensic section at Bakirköy Hospital (Istanbul), who had a fresh rounded mark on his penis (reddish-brown and slightly swollen edge, whitish centre without induration), consistent with his allegation that an electrode had been placed by the police on that part of his body some five days earlier in order to deliver electric shocks;
- a prisoner charged with smuggling examined at Adana Prison, who displayed haematomas on the soles of his feet and a series of vertical violet stripes (10 cm long/2 cm wide) across the upper part of his back, consistent with his allegation that he had recently been subjected to *falaka* and beaten on the back with a truncheon while in police custody.

19. Comparable cases in Ankara and Diyarbakir could also have been described, including of persons who had been held by the Anti-Terror Departments of the Ankara and Diyarbakir Police (in particular, cases of motor paralysis of the arms and severe sensory loss consistent with allegations of suspension).

However, the CPT shall instead draw attention to highly incriminating material evidence found in police establishments in those cities.

20. Acting in each case on concordant information independently received from several different sources, the Committee's delegation carried out two impromptu visits to specific rooms situated on the top floors of both the Ankara Police Headquarters (new building) and the Diyarbakir Police Headquarters. The rooms in question were located within the areas occupied by the Law and Order Departments, which deal with ordinary criminal suspects. In the room at the Ankara Police Headquarters, the delegation discovered a low stretcher-type bed equipped with eight straps (four each side), fitting perfectly the description of the item of furniture to which persons had said they were secured when electric shocks were administered to them. No credible explanation could be proffered for the presence of this bed in what was indicated by a sign as being an 'interrogation room'.

In Diyarbakir, the delegation found the equipment necessary for suspension by the arms in place and ready for use (i.e. a three metre long wooden beam which was mounted on heavily-weighted filing cabinets on opposite sides of the room and fitted with a strap made of strong material securely bedded in the middle). On both occasions, the delegation's discoveries caused considerable consternation among police officers present; some expressed regret, others defiance.

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### *Conclusions Based on the Ad Hoc and Periodic Visits*

21. In the light of all the information at its disposal, the CPT can only conclude that the practice of torture and other forms of severe ill-treatment of persons in police custody remains widespread in Turkey and that such methods are applied to both ordinary criminal suspects and persons held under anti-terrorism provisions. The words 'persons in police custody' should be emphasized.

22. The Committee has heard very few allegations of ill-treatment by prison staff in the different prisons visited over the last two years, and practically none of torture. Certainly, there are problems which need to be addressed in Turkish prisons, but the phenomenon of torture is not one of them. As already indicated, the CPT's dialogue with the Turkish authorities on prison matters is on the whole progressing satisfactorily.

23. Further, in the course of its third visit to Turkey, the CPT visited the largest psychiatric establishment in the country, namely the Bakirköy Mental and Psychological Health Hospital. No allegations of torture or other forms of ill-treatment by hospital staff were heard by the Committee's delegation in the course of that visit; nor was any other evidence of such treatment found. In fact, the delegation was favourably impressed by staff-patient relations.

24. As for the gendarmerie (which is responsible for police functions in rural areas), the CPT has heard allegations that suspects are frequently handled roughly and on occasion even beaten by members of the gendarmerie, in particular when apprehended. Further, the CPT has reason to believe that from time to time, ill-treatment occurs in the course of the transport of prisoners (which is another task performed by the gendarmerie). However, the CPT has heard fewer allegations – and found less medical evidence – of torture or other forms of premeditated severe ill-treatment by members of the gendarmerie.

25. To sum up, as far as the CPT can judge, the phenomenon of torture and other forms of ill-treatment of persons deprived of their liberty in Turkey concerns at the present time essentially the police (and to a lesser extent the gendarmerie). All the indications are that it is a deep-rooted problem.

### *Action Required*

26. Action is required on several fronts if this problem is to be addressed effectively. Legal safeguards against torture and other forms of ill-treatment need to be reinforced and new safeguards introduced. At the same time, education on human rights matters and professional training for law enforcement officials must be intensified. In this respect, the recent arrangements to send some 20 Turkish police officers to various other European countries in order to study police methods there are to be welcomed, and the CPT trusts that they represent part of an ongoing process.

Furthermore, public prosecutors must react expeditiously and effectively when confronted with complaints of torture and ill-treatment. On this point, the recent annulment by the Constitutional Court of section 15(3) of the Law to Fight Terrorism of 12 April 1991 (which severely curtailed the possibilities for public prosecutors to proceed against police officers alleged to have ill-treated persons in the performance of duties relating to the suppression of terrorism) is a very positive development. In order to facilitate effective action by public prosecutors, the

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medical examinations of persons in police and gendarmerie custody carried out by the Forensic Institutes should be broadened in scope (medical certificates should contain a statement of allegations, a clinical description and the corresponding conclusions). Further, appropriate steps should be taken to guarantee the independence of both Forensic Institute doctors and other doctors who perform forensic tasks, as well as to provide such doctors with specialized training.

Proper managerial control and supervision of law enforcement officials must also be ensured, including through the institution of effective independent monitoring mechanisms possessing appropriate powers. Neither should the issue of the conditions of service of such officials be overlooked, as satisfactory conditions of service are indispensable to the development of a high calibre police force.

Application of the recently drawn up Custody Regulations, which relate *inter alia* to material conditions of detention, must also be vigorously pursued throughout the whole of Turkey. Considerable progress in this area has been made in Ankara and Diyarbakir, in pursuance of the CPT's recommendations. However, the situation found recently at Adana Police Headquarters (in particular in the Anti-Terror Department) suggests that in other parts of the country, persons detained by the police or gendarmerie may still be held under totally unacceptable conditions.

27. Particular reference must be made to the recently adopted Law amending some provisions of the Code of Criminal Procedure and of the Law relating to the organization and procedure of State Security Courts, which entered into force on 1 December 1992. This is a revised version of the text returned to the Grand National Assembly earlier in the year by the President of the Republic. The new Law *inter alia* clarifies the existence of certain fundamental safeguards against ill-treatment, such as the right to have a relative notified of one's custody and the right of access to a lawyer (safeguards which had been provided for previously but which had been largely inoperative in practice), regulates in detail the mechanics of the interrogation process, introduces a right to apply to a judge for the immediate release of an apprehended person and shortens the maximum periods of police/gendarmerie custody. The introduction of these provisions is a most welcome step forward. However, it is a matter of great regret to the CPT that their application to offences within the jurisdiction of State Security Courts has been specifically excluded. Admittedly, the number of offences under the jurisdiction of such courts has also been reduced by the new Law, but it remains considerable: crimes against the State; terrorist offences; drugs and arms-related offences, etc..

28. The CPT wishes to take this opportunity to underscore that it abhors terrorism, a crime which is all the more despicable in a democratic country such as Turkey. The Committee also deplores illicit drug and arms dealing. Further, it is fully conscious of the great difficulties facing security forces in their struggle against these destructive phenomena. Criminal activities of this kind rightly meet with a strong response from state institutions. However, under no circumstances must that response be allowed to degenerate into acts of torture or other forms of ill-treatment by law enforcement officials. Such acts are both outrageous violations of human rights and fundamentally flawed methods of obtaining reliable evidence for combatting crime. They are also degrading for the officials who inflict or authorize them. Worse still, they can ultimately undermine the very structure of a democratic State.

29. Unfortunately, Turkish law as it stands today does not offer adequate protection against the application of those methods to persons apprehended on suspicion of offences falling under the jurisdiction of State Security Courts; on the contrary, it facilitates the use of such methods.

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Suspects in relation to collectively committed crimes may be held for up to 15 days by the police or gendarmerie (rising to 30 days in regions where a state of emergency has been declared), during which time they are routinely denied any contact with the outside world.

It is true that the provisions of section 13 of the new Law, concerning prohibited interrogation procedures, apply also to persons suspected of offences under the jurisdiction of State Security Courts. However, it would be unwise to believe that these provisions alone will be able to stem torture and ill-treatment. The methods described in section 13 have been illegal for many years under Turkish Law by virtue of the general prohibition of torture and ill-treatment in Article 17(3) of the Constitution. Further, the stipulation that statements made as a consequence of such methods shall not have the value of evidence is merely a welcome reaffirmation of a principle already recognized by the Turkish legal system.

In reality, the long periods of incommunicado custody allow time for physical marks caused by torture and ill-treatment to heal and fade; countless prisoners have described to CPT delegations the treatment techniques applied by police officers. It should also be noted that certain methods of torture commonly used do not leave physical marks, or will not if carried out expertly. Consequently, it shall often be difficult to demonstrate that a statement has been made as a consequence of ill-treatment. The same point applies to the admissibility of other evidence obtained as a result of ill-treatment (cf. section 24 of the new Law).

30. The CPT does not contest that exceptionally, specific legal procedures might be required in order to combat certain types of crime, in particular those of a terrorist nature. However, even taking into account the very difficult security conditions prevailing in several areas of Turkey, an incommunicado custody period of up to 15 days, let alone 30, is patently excessive; it is clear that a proper balance has not been struck between security considerations and the basic rights of detainees.

The CPT calls upon the Turkish Government to take appropriate measures to reduce the maximum periods for which persons suspected of offences falling under the jurisdiction of State Security Courts can be held in police or gendarmerie custody, to clearly define the circumstances under which the right of such persons to notify their next of kin of their detention can be delayed and strictly limit in time the application of such a measure, and to guarantee to such persons, as from the outset of their custody, a right of access to an independent lawyer (though not necessarily their own lawyer) as well as to a doctor, other than one selected by the police.

31. As regards ordinary criminal suspects, the amendments introduced by the above-mentioned Law could deal a severe blow to the practice of torture and ill-treatment. However, much will depend on how the new provisions are applied in practice. This is a matter that the CPT intends to follow carefully in the coming months, in close cooperation with the Turkish authorities. Nevertheless, a number of points should be raised now.

32. The maximum period of police custody for collective crimes (three or more persons), although reduced, remains quite high – up to eight days at the request of a public prosecutor and by decision of a judge. In this regard, the CPT wishes to emphasise that in the interests of the prevention of ill-treatment, it is essential that the person in custody be physically brought before the judge to whom the request for an extension of the custody period is submitted. The new Law is not clear on this point.

33. Although the precise content of the right of access to a lawyer is impressive (cf. in particular sections 14, 15 and 20 of the Law), a potential flaw lies in the fact that, with the exception of persons who are under the age of 18 or disabled, a lawyer will only be appointed if the person in

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custody so requests. A failsafe procedure will have to be found that ensures detainees are (as the Law requires) informed of their right to appoint a lawyer and not subjected to pressure when considering the exercise of that right. The same point applies as regards the right of persons in custody to make known to a relative of their choice that they have been apprehended. Care will also have to be taken that the possibility offered to take a statement, in certain cases, in the absence of the lawyer appointed by the person detained is not abused.

34. Under the new provisions, public prosecutors are in an even better position to exercise considerable influence over the manner in which police officers perform their duties and, more specifically, *treat persons in their custody. The CPT very much hopes that they will make effective use of the possibilities open to them,* with a view to the prevention of ill-treatment.

35. The new Law is silent on the question of the right of persons in police or gendarmerie custody to have access to a doctor. However, by a circular issued by the Ministry of the Interior on 21 September 1992, a right of access to a doctor in the form previously recommended by the CPT (i.e. a right for the detainee to be examined by a doctor chosen by him – if appropriate from among a list of doctors agreed with the relevant professional body – in addition to any examination carried out by a state-employed doctor) was recognized. The CPT welcomes this development, though the inclusion of this right in a law would be preferable. Previous circulars relating to important safeguards for detained persons have remained a dead letter.

36. Finally, it should be re-emphasized that the phenomenon of torture and other forms of ill-treatment by the police will not be eradicated by legislative fiat alone. It shall always be possible for the impact of legal provisions to be diminished by ever more expertly applied techniques of ill-treatment. Indeed, it can legitimately be advanced that attacking the root of the problem of torture and ill-treatment involves not so much changing laws as transforming mentalities. This process is required not simply amongst police officers but throughout the criminal justice system.

37. The CPT is convinced that it would have been counterproductive from the standpoint of the protection of human rights for it to have refrained – as it was requested to do by the Turkish authorities – from making this public statement. The statement is issued in a constructive spirit. Far from creating an obstacle, it should facilitate the efforts of both parties – acting in cooperation – to strengthen the protection of persons deprived of their liberty from torture and inhuman or degrading treatment or punishment.