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**Preliminary observations made by the delegation
of the European Committee for the Prevention
of Torture and Inhuman or Degrading Treatment
or Punishment (CPT) which visited Turkey**

from 21 to 27 March 2002 and

Response of the Turkish authorities

The Turkish authorities have authorised the publication of these preliminary observations and of their response.

Strasbourg, 23 July 2002

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**I. Preliminary observations made on 27 March 2002,
by Ms Silvia CASALE (Head of Delegation),
on behalf of the CPT's delegation**

Ladies and Gentlemen,

The visit has only just finished and the rest of the delegation remained in Diyarbakır until this morning, to complete our work. Thus they are unable to be present here today. In accordance with our standard practice, I would like to present the delegation's first impressions.

During this visit we focused on three main areas:

- the development of communal activities in F-type prisons;
 - we visited Sincan F-type Prison in order to explore this question;
- implementation of recent legal reforms concerning custody by law enforcement agencies, and
- resort to Article 3. c) of Legislative decree N° 430;
 - these two questions were explored in particular in the Diyarbakır province.

We should stress at the outset that co-operation was very good throughout the visit. In particular, we enjoyed prompt access to all places of detention which the delegation wished to visit. Though we have come to expect this level of co-operation from the Turkish authorities, we still wish to express our appreciation of it.

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1. As regards the development of communal activities in F-type prisons, we were pleased to note at Sincan that some of the workshops were now up and running. We also welcome the fact that arrangements for open visits and access to the telephone were developing, including with participation by some prisoners held under the Law to Fight Terrorism. This is encouraging.

We were also pleased to see that association (conversation) periods, as per the Circular of 18 January 2002, had begun. Further, the conditions under which those association periods were operating appeared to be satisfactory.

However, we noted that practically all the prisoners held under the Law to Fight Terrorism were still refusing to take up the offer of communal activities. In this connection, **we strongly reiterate the recommendation made in the report on the CPT's visit in September 2001 (cf. paragraph 70 of document CPT/Inf (2002) 8), namely that the possibility of participating in association (conversation) periods should not be linked to prior participation in at least one of the other programmed communal activities.**

Such a link was never envisaged when we first proposed such association periods in our preliminary observations after the September 2001 visit, and we consider that the presence of the link could well act as a brake on the movement towards getting prisoners held under the Law to Fight Terrorism out of their living units. It is not being suggested that, if the link is dropped, the situation will be transformed overnight; however, we feel that removing the link will promote confidence among prisoners in the overall operation of activities. We are convinced that, for a considerable number of prisoners held under the Law to Fight Terrorism, taking part in association (conversation) periods could be the first step towards broader participation in communal activities.

There is another argument in favour of the approach recommended. Dropping the link, and doing so quite openly, will be a clear demonstration of the Turkish authorities' determination to promote activities outside of the living units and hence provide a solid counter-argument to those who claim a system of isolation is being applied in the F-type prisons.

2. We are pleased to be able to inform you that we heard no recent allegations of ill-treatment of prisoners in Sincan F-type Prison and, in particular, no allegations of ill-treatment during the headcount procedure. However, the issue of medical confidentiality remains a problem; it is clear that prison staff are still present during medical examinations. **We ask you to put a stop to that practice.**

3. Practically no-one was in custody in the various law enforcement facilities visited in Diyarbakır. However, from other sources, including prisoners interviewed, the delegation received a considerable number of allegations of ill-treatment by law enforcement officials, both police and gendarmes, in the Diyarbakır province.

The strength of those allegations is currently being assessed. Nevertheless, we must tell you that the delegation gathered compelling evidence of the severe ill-treatment, amounting to torture, of several persons held by the gendarmerie in Diyarbakır in late 2001. The ill-treatment in question apparently began during the initial period of custody and continued when the persons detained had been returned to the custody of the gendarmerie under Article 3. c) of Legislative Decree N° 430. Very detailed and consistent accounts of such ill-treatment were received from several persons interviewed individually and in different prisons. In two cases, medical evidence consistent with the ill-treatment alleged was gathered.

The delegation visited the detention facility of the gendarmerie in which the ill-treatment was said to have occurred. It was located in the Provincial Gendarmerie Command, situated a few kilometres outside Diyarbakır on the road to Elâziğ. The information gathered there reinforced the credibility of the allegations. **We wish today to make an immediate observation under Article 8 (5) of the CPT's Convention, calling upon the Turkish authorities to substantially modify the interrogation room in that facility or to withdraw it from service.** Indeed it was of an oppressive and intimidating nature, not unlike the facilities criticised in the report on the September 2001 visit (cf. paragraph 24 of CPT/Inf (2002) 8). **We request that the reply concerning interrogation facilities due by 20 June 2002 (cf. paragraph 26 of CPT/Inf (2002) 8) also set out the action taken in response to this immediate observation.**

We understand that formal complaints have been lodged concerning the alleged ill-treatment in at least certain of the cases referred to above. **We trust that the competent public prosecutors will thoroughly and expeditiously investigate those complaints; if authorisation from an administrative authority were to be required for such an investigation to take place, we trust that such authorisation would be forthcoming.** These cases can be seen as a test for the system of accountability of law enforcement officials, in the same way as the Yeter case referred to in previous CPT reports (cf., most recently, paragraph 38 of document CPT/Inf (2002) 8).

More generally, we have serious concerns about the application of Article 3. c) of Legislative Decree N° 430; we shall return to that matter shortly.

4. You know the importance the CPT attaches to the conditions under which persons in the custody of law enforcement officials are medically examined. In this connection, we were very concerned to discover that, in Diyarbakır, law enforcement officials are systematically present when suspects are examined at the outset and at the end of their custody. Everyone we spoke with confirmed this, including the doctors concerned, some of whom indicated that the law enforcement officials had been present despite their objections.

Many prisoners interviewed stated that they had been warned not to make any complaints to the doctor about how they had been treated, and that the presence of law enforcement officials during the medical examination had further deterred them from making complaints. Moreover, doctors spoken to mentioned cases in which reports which they had drawn up recording injuries had been torn up by law enforcement officials.

This state of affairs is totally unacceptable. **We trust that the CPT will receive very shortly information about the planned amendments to Article 10 of the Regulations on Apprehension, Police Custody and Taking of Statements, spelling out that the medical examination must in all cases be conducted out of the hearing of law enforcement officials and must be conducted out of sight of such officials unless the doctor concerned requests otherwise in a particular case. Of course, even assuming this amendment is introduced, strenuous efforts must also be made to ensure that the regulations are complied with in practice.**

5. As regards implementation of the recent legal reforms concerning custody by law enforcement agencies, information gathered during the visit suggests that the shorter custody periods are being respected. This is a positive development. Further, as regards collective offences falling under the jurisdiction of the State Security Courts committed in provinces subject to a state of emergency, the delegation was informed that the requirement that suspects be brought before the judge who must decide on any request for extension of custody beyond four days was gradually being implemented.

With regard to the new provisions for improved access to a lawyer and for notification of custody to a relative, the situation remains unclear. During a brief visit to the Anti-Terror Department at Ankara Police Headquarters, the delegation gathered evidence of the first instances of application of the new provisions. In contrast, to date the delegation has found no evidence of implementation of these provisions in the Diyarbakır province.

We wish to highlight in particular the issue of access to a lawyer. This clearly has been, and apparently remains, a significant problem in Diyarbakır. For example, practically every person detained over the last nine months in the Anti-Terror Department and the Narcotics Section at Diyarbakır Police Headquarters (and this amounts to hundreds of persons) was recorded as having waived their right of access to a lawyer. This is scarcely credible. It should be added that countless prisoners interviewed claimed that they had been denied access to a lawyer. **We call upon the Turkish authorities to take all necessary steps to ensure that access to a lawyer is guaranteed, as foreseen by the law.**

6. Finally, we return briefly to Legislative Decree N° 430, which has been the subject of considerable debate recently. The CPT has made proposals in the report on its September 2001 visit as regards the application of Article 3. c) of the Decree (cf. paragraphs 17 to 19 of CPT/Inf (2002) 8). **The validity of those proposals has been confirmed by our findings during the present visit. The current safeguards surrounding the application of this provision are not satisfactory, and the Minister of Justice's Circular of 4 February 2002 has not been sufficient to rectify this situation.** We can provide further details today on this subject, if you wish. We should also tell you that the issues concerned are of such gravity that the CPT may be obliged to return to Turkey in the near future in order to pursue this matter.

II. Response of the Turkish authorities

30 May 2002

ASSESSMENT OF THE PRELIMINARY OBSERVATIONS MADE BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE REGARDING ITS VISIT FROM 21 TO 27 MARCH 2002

I. In the statement setting out its preliminary observations, the CPT strongly reiterates the recommendation made in paragraph 70 of its September 2001 report (CPT/Inf (2002) 8), namely that the possibility of prisoners participating in association periods should not be linked to prior participation in at least one of the other programmed communal activities in the prison.

Under Ministry of Justice Circular No.2-7 of 18.01.2002, prisoners taking part in at least one of the communal activities may come together in groups of no more than ten persons for conversation periods not exceeding five hours a week.

In almost all its reports on our country, the CPT has strongly emphasised the importance of encouraging remand and sentenced prisoners to take part in communal activities. If prisoners are to be reintegrated into society as law-abiding, productive individuals who will not re-offend, they must take part in all the training and rehabilitation activities arranged for them in prison.

A number of terrorist offenders refuse to take part in these activities, branding those who do so traitors; they do not use the communal areas and they try to intimidate those who do so with organisational harassment and threats. For the reasons listed below, it is not advisable that these offenders should be granted the right to simply come together for up to five hours a week:

- a. This situation conflicts with the CPT's above-mentioned recommendations because the requirement was imposed in order to encourage prisoners to take part in communal activities.
- b. When the subject of F-type prisons first came up, terrorist offenders started death fasts on the pretext that there were no communal facilities in these prisons and that they would not be allowed to take part in any communal activities. Yet although these communal facilities which they previously gave as the reason for their protests now exist, a substantial proportion of terrorist offenders do not use them. This completely contradicts the terrorist organisations' previous arguments and proves that they are not in good faith.
- c. If terrorist offenders who are granted the right to make use of various communal facilities but do not exercise this right are allowed to come together purely for conversation purposes, they will clearly use this opportunity to do organisational work in an ideological context rather than for rehabilitation purposes. Consequently, lifting the requirement in question will certainly not be taken as a sign of goodwill and will be exploited for the wrong purposes.

- d. Prisoners who do not take part in any communal activities are refusing to be rehabilitated. Bringing those who refuse rehabilitation together for conversation purposes only may turn into a practice threatening prison security. The prison administration therefore has to trust the terrorist offenders' goodwill in the matter. Goodwill must not simply be expected of the prison administration: it must be reciprocal.

For these reasons, it is not planned to lift the requirement in question. Otherwise the determination to promote activities outside the living units in F-type prisons would be adversely affected.

II. The CPT says in its statement that in Sincan F-type Prison the issue of medical confidentiality remains a problem and that prison staff are present during prisoners' medical examinations. It asks that this practice be stopped immediately.

Detailed information on this point is provided in paragraph V. The practice in Sincan F-type Prison does not in fact differ from general practice.

III. The CPT says in its statement that its delegation visited the gendarmerie detention facility situated a few kilometres outside Diyarbakır, on the road to Elazığ, where it had heard rumours that alleged ill-treatment had occurred; the evidence and information gathered in that facility reinforced the credibility of the allegations. In the form of an immediate observation under Article 8(5) of the European Convention for the Prevention of Torture, the CPT delegation calls upon the Turkish authorities to modify this interrogation room or withdraw it from service.

The question of gendarmerie interrogation rooms is not taken up separately; a general measure is being taken on the subject.

As the investigation and interrogation sections were abolished under the Gendarmerie Central Command's circular of 1 March 2001, the interrogation rooms are being withdrawn from service one after the other. However, the registers listing the persons interrogated will be kept for ten years.

In response to the allegations of torture and ill-treatment, the Gendarmerie Central Command plans to record the statement-taking procedure electronically with sound and/or video recording equipment, provided that the person giving the statement is aware of the fact and the recording is done openly so that he can see it. Preparations to this effect are under way.

IV. The CPT says in its statement that its delegation has serious concerns about the application of Article 3(c) of Legislative Decree No.430. It adds that the validity of the proposals made in the September 2001 report (paragraphs 17 and 19 of report CPT/Inf (2002) 8) was confirmed by the delegation's findings during its visit in March 2002. It says that the current safeguards surrounding the application of this article of Legislative Decree No.430, together with the Ministry of Justice's Circular of 4 February 2002, have not been sufficient to rectify the situation.

The Ministry of Justice' Directorate General of Legislation is preparing a draft legislative decree to remedy the shortcomings of Article 3(c) of Legislative Decree No.430. Accordingly, consideration is being given to the question of reducing the ten-day custody period to seven days and ensuring that the person concerned is heard by the judge before the decision is taken

In 2000 and 2001, in Diyarbakır province, which is part of the State-of-Emergency Region, the following steps were taken under Article 3 (c) of Legislative Decree No.430 in the area under the responsibility of the police:

- In 2000, seven remand/sentenced prisoners belonging to the PKK terrorist organisation and 36 belonging to the Hisbullah terrorist organisation, totalling 43 prisoners, were removed from prison to be interviewed.
- In 2001, six remand/sentenced prisoners belonging to the PKK terrorist organisation and 43 belonging to the Hisbullah terrorist organisation, totalling 49 prisoners, were removed from prison to be interviewed.

V. In its statement the CPT requests information about the planned amendment to Article 10 of the Regulations on Apprehension, Police Custody and Taking of Statements, spelling out that the medical examination must in all cases be conducted out of the sight and hearing of law enforcement officials unless the doctor concerned requests otherwise in a particular case.

Ministry of Justice Circular No.20/130 of 16.11.2001 sets out the procedure for remand and sentenced prisoners to be medically examined on admission to prison. In practice, unless the prison doctor requests otherwise, the law enforcement officials are not present in the examination area; they simply supervise from a distance. However, this arrangement is not specified in writing in the circular. A new circular will therefore be drawn up, on the basis of the CPT's recommendation that **"prison staff should not be present during the medical examination of prisoners"**, indicating that **"no officials shall be present in the examination room unless so requested by medical staff for security reasons; officials may only observe from a distance while remaining out of earshot"**.

Article 10 of the Regulations on Apprehension, Police Custody and Taking of Statements provides that unless this is detrimental to the soundness of the investigation or to the safety of the doctor or the suspect or accused, the doctor and the person being examined shall be left alone. This provision is consistent with the CPT's recommendations.

VI. In its statement the CPT calls upon the Turkish authorities to take the necessary steps to ensure that access to a lawyer is guaranteed, as foreseen by law. As regards access to a lawyer and notification of custody to the suspect's relatives, the CPT states that it found no evidence of implementation of this amendment in Diyarbakır.

Access to a lawyer and notification of custody to the person's relatives are the rule under the legislation on this point. However, the Ministry of Justice's Criminal Affairs Department will approach the Diyarbakır judicial authorities on the subject and, if necessary, a new circular will be drawn up on the matter.

The Ministry of the Interior has made enquiries on the subject to Diyarbakır Police Headquarters. Diyarbakır Police Headquarters have replied that in the course of their fight against illegal organisations throughout Diyarbakır province, the relatives of persons apprehended are notified of their detention, persons apprehended are notified of their rights and sign to that effect at the outset of custody, the custody supervision forms and suspects' rights forms drawn up on these points are regularly filled in and a copy of each is given to the person concerned at the outset of custody, while the other copies are kept in their file.

Diyarbakır Police Headquarters add that following the amendments to the Constitution, co-ordination has been established with the Chief Public Prosecutor's Office at the State Security Court and implementation of the new amendments has started in accordance with the State Security Court's instructions; staff have also received information on the subject through training courses given to them after the adoption of the amendments.

Drawing attention to the provisions of the State-of-Emergency Law, Diyarbakır Police Headquarters reiterate that before the constitutional amendment of 03.10.2001, persons suspected of terrorist offences were allowed access to their lawyers after the custody period had been extended by court decision; following the amendment, they are allowed access to their lawyers when the additional custody period is ordered by the Chief Public Prosecutor at the State Security Court; during this period they may have access to a lawyer at their own request; practice in Diyarbakır is therefore confined to these arrangements.

