

CLOSED RANKS: TRANSPARENCY AND ACCOUNTABILITY IN TURKEY'S PRISON SYSTEM

FACT-FINDING MISSION REPORT

April 2009

by Nicholas Stewart QC and Walter Jayawardene



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KURDISH HUMAN RIGHTS PROJECT
BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

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Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.



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LIST OF ABBREVIATIONS

AKP	<i>Adalet ve Kalkınma Partisi</i> (Justice and Development Party)
BES	Office Workers’ Trade Union
CAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CLA	Contemporary Lawyers’ Association
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
DTP	<i>Demokratik Toplum Partisi</i> (Democratic Society Party)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
İHD	<i>İnsan Hakları Derneği</i> (Human Rights Association of Turkey)
OPCAT	Optional Protocol to the United Nations Convention against Torture
PKK	<i>Partiya Karkeren Kurdistan</i> (Kurdistan Workers’ Party)
TAYAD	Association for Solidarity with Prisoners’ Families
TIHV	Turkish Human Rights Foundation

INTRODUCTION

The last mission conducted by the Kurdish Human Rights Project (KHRP) on the subject of prisons in Turkey was carried out in 2001, at the height of the F-type prison crisis, during which hunger strikes by prisoners and violent interventions on the part of prison authorities and the gendarmerie caused enormous concern amongst human rights organisations in Turkey and around the world.¹ The 2001 mission preceded the reform period of 2002 to 2005, and focussed very much on the crisis, and the related harassment of human rights defenders and journalists who criticised the authorities for their actions at the time.

Much has happened in Turkey in the intervening years, including a sustained period of EU-encouraged reform from 2002 to 2005, followed by a period of renewed regression in human rights standards² coinciding with a reduction in public and political confidence in the possibility of EU membership.

Throughout 2008 KHRP received reports from media outlets and its partners in the region of increased violations of the fundamental rights of prisoners. Such reports have included many and varied complaints concerning prison overcrowding, the violation of language rights, ill-treatment, torture, casual beatings, deaths in custody, and harassment of prisoners by guards and security forces. In particular, October 2008 saw the death in custody of human rights activist Engin Çeber in an İstanbul prison, allegedly at the hands of prison guards. This case became a high profile story in the Turkish press, so much so that the scandal prompted a rare public admission of responsibility and apology from the Minister for Justice. The trial of the prison guards accused of causing Engin Çeber's death began on 21 January 2009, and is ongoing at the time of writing.³

These reports prompted KHRP to dispatch a mission to the region from 15 to 19 December 2008 in order to gain a picture of the prevailing conditions in the Turkish prison system, to ascertain the veracity and extent of reported violations, and to build a picture of the situations of political, non-political, female and child prisoners.

1 See the KHRP FFM report *The F-Type Prison Crisis and the Repression of Human Rights Defenders in Turkey*, KHRP, 2001.

2 See, for example, *Turkey's Anti-Terror Laws: Threatening the Protection of Human Rights*, KHRP Briefing Paper, 11 August 2008.

3 A KHRP mission travelled to İstanbul from 2 to 4 March to observe these court proceedings. A report detailing the mission's findings will be published by KHRP later in 2009.

The mission travelled to İstanbul, Ankara, Mardin (a city of mixed Turkish, Kurdish and Arab population near the Syrian Border) and Diyarbakır (the biggest city in Turkey's predominantly Kurdish southeast). In all four cities the mission conducted a series of interviews with lawyers, ex-prisoners, prisoners' families, NGOs and human rights advocates. The aim of these interviews was to gauge the situation as interpreted by those working closely with prisoners, both political and non-political. During the mission's time in İstanbul it had the opportunity to speak to Engin Çeber's lawyer, and to get a more detailed picture of the circumstances surrounding his apprehension and his death in custody.

In addition to the questions of ill-treatment, denial of language rights and physical conditions, the mission sought during its interviews to touch upon the question of 'isolation' in F-type and similar prison institutions and the degree to which the Justice Ministry's January 2007 Circular 45/1, which orders the implementation of an improved communal activity regime in high security prisons, has been put into effect. Also on the subject of isolation, the mission spoke to several lawyers representing Abdullah Öcalan⁴, in order to gauge their opinions on recent reports that steps are being initiated to move prisoners to İmralı Island prison, in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).⁵

The mission also requested meetings with Mr Nizamettin Kalaman, Head of the General Directorate for Prisons; Prof Zafer Üskül, *Adalet ve Kalkınma Partisi* (Justice and Development Party, AKP) MP and head of the Parliamentary Human Rights Commission; Mr Akin Birdal, *Demokratik Toplum Partisi* (Democratic Society Party, DTP) MP and Parliamentary Human Rights Commission member; and representatives of the Office Workers' Trade Union (BES), the union that represents Turkey's prison guards. These meetings were seen as central to attaining a balanced view of the situation in Turkey's prisons, particularly to gain an accurate view of the daily operational challenges and risks faced by guards and other prison officials in carrying out their duty, and of the regulatory framework within which these duties are carried out.

Unfortunately, with the notable exception of Mr Birdal, a former head of the Human Rights Association of Turkey (İHD, *İnsan Hakları Derneği*), all of the above meeting requests were either refused, or cancelled at the last minute. These refusals and cancellations leave this fact-finding mission bereft of the opportunity to put

4 Abdullah Öcalan, the founder of the PKK, has been held in solitary confinement in Turkey since his capture in 1999.

5 CPT/Inf (2008) 13 *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*. See paragraphs 33: 'The CPT ... **calls upon the Turkish authorities to completely review the situation of Abdullah Öcalan, with a view to integrating him into a setting where contacts with other inmates and a wider range of activities are possible.**' (emphasis in the original).

questions to such individuals and to hear the official viewpoint at first hand, and deny those working within the Turkish prison system the opportunity to describe their experiences.

In the view of the mission, these refusals and cancellations are illustrative of a philosophy of closed ranks where the Turkish prison system is concerned. As this report will argue, the overarching problem facing the Turkish prison system, and the problem that is central to allegations of torture, ill-treatment, and other rights violations (genuine and otherwise), is a lack of transparency and accountability at the very centre of the operation of the Turkish penal system. This breeds a culture of impunity, increases the likelihood of violations, renders meaningless any pretence to prisoner rehabilitation, and precludes any level of meaningful public trust in the fairness of the penal system. This lack of transparency and independent oversight has been criticised by human rights organisations within and outside Turkey, as well as by international bodies such as the European Union, for many years.⁶ Sadly, in late 2008 the KHRP mission's experience of these issues was much the same.

This report is divided into nine parts. Section I outlines Turkey's international human rights obligations where incarcerated persons are concerned. Chief attention is given to the European Convention on Human Rights and the safeguards of the rights to freedom from torture and ill-treatment, the rights to freedom of language and association, the rights to a fair trial and access to an effective remedy, and the right to be tried for an offence within a reasonable period of time. Turkey's domestic provisions for the prevention of torture and the prosecution of those engaged in ill-treatment are also outlined.

Section II discusses the structure of the prison system in Turkey, outlining the various types of prison, the system of governance within the prisons, the degree of independent supervision of prisons, and the regulations according to which these are governed. This section is based both on information imparted during the mission, and on background research. The section also reflects on the analysis of human rights NGOs, particularly on their opinions of the true degree of independent supervision undergone by prisons in Turkey.

The remaining sections discuss the human rights concerns regarding prisons in Turkey that arose from the mission. These concerns are arranged thematically according to the following categories: general prison conditions; torture and ill-treatment; prison punishment regimes; language rights; the situation of women prisoners; the situation of child prisoners; and the situation of Abdullah Öcalan, including possible moves to improve the conditions of his detention on İmralı Island.

6 See, for example, the comment of the then UN Special Rapporteur on Torture Sir Nigel Rodley in E/CN.4/2001/66, 25 January 2001, para. 1131 where he 'recommends external supervision of all places of detention by independent officials ... Ombudsmen ... as well as by civil society'.

The report finishes with a set of conclusions and a set of recommendations for the Turkish authorities, the European Union and the international community.

References to interviews conducted by the mission will be made in footnotes in the following format: 'FFM interview with representatives of Mazlum-Der, Ankara, 17 December 2008.'

I. TURKEY'S HUMAN RIGHTS OBLIGATIONS VIS À VIS PERSONS DEPRIVED OF THEIR LIBERTY

1. International Obligations

Turkey's international human rights obligations vis à vis persons lawfully deprived of their liberty are enshrined in various international treaties and conventions, chief amongst them being the European Convention on Human Rights (ECHR) and the European Convention for the Prevention of Torture (incorporating the work of the Committee for the Prevention of Torture). The standards set out by ECHR case law and those developed by the CPT are reflected in the Council of Ministers' Recommendation on the European Prison Rules, adopted January 2006.⁷ United Nations instruments include the International Covenant on Civil and Political Rights (ICCPR), and the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Further provisions applicable to detained persons are enshrined in the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Convention on the Rights of the Child (CRC), UN Standard Minimum Rules for the Administration of Juvenile Justice and the UN Convention on the Elimination of Discrimination Against Women (CEDAW). These conventions and treaties cover a range of human rights obligations applicable to a State's treatment of persons deprived of their liberty. These include:

a. The right to life

The right to life is amongst the most fundamental of human rights protections enshrined in customary international law. Turkey's obligation to protect the right to life is enshrined in several treaties and conventions. These include Article 3 of the Universal Declaration of Human Rights, a keystone of customary international law, and Article 6 of the ICCPR. However, the most important of standards pertinent to Turkey is Article 2 of the ECHR.⁸ Article 2 of the ECHR provides that:

⁷ Available at [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2006\)2&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2006)2&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75) (last accessed 24 March 2009).

⁸ Turkey ratified the ECHR on 18 May 1954.

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 2 of the ECHR makes clear that the deprivation of life through the use of force by State agents will only be lawful if force is used due to absolute necessity in the specific circumstances. The principles of proportionality and necessity are central to determining whether or not force was used for legitimate purposes. These principles are also outlined in UN standards such as the Standard Minimum Rules for the Treatment of Prisoners, 1955.⁹

b. Prohibition of torture

As with the right to life, Turkey's obligations regarding the prohibition of torture and other inhuman and degrading treatment find their most effective expression in European Human Rights instruments. ECHR Article 3 provides that:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

This right to freedom from torture or ill-treatment is non-derogable, and it is incumbent on Turkey to carry out effective investigations into alleged acts of torture carried out by state agents, to bring those responsible to justice and to provide adequate redress for victims.¹⁰

As a Council of Europe member, Turkey is also a signatory of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which came into force in 1989. This convention, which seeks a preventative approach to torture, allows for periodic visits by the Council of Europe's CPT to places of detention in Turkey. These visits are carried out by independent experts in law, medicine and criminal justice. Visits are followed up by reports detailing observations and recommendations for improvement of standards within places of detention. The CPT's most recent visit to Turkey took place in 2007 and focused

⁹ Cf. paragraph 54.

¹⁰ Cf. ECHR Article 13.

on the conditions of detention of Abdullah Öcalan in Imralı Island prison.¹¹ The outcome of this visit will be discussed further later in this report. The CPT is an extremely important tool in the prevention of torture and ill-treatment in detention, since it obliges the State Party to submit to both periodical and ad hoc inspections by independent outsiders.

As this report will detail, the CPT is currently one of the only means of reliable independent oversight of prisons in Turkey.

Turkey also signed the United Nations Convention Against Torture (CAT) in 1988, which at Article 2 requires that:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

An Optional Protocol to the CAT (OPCAT) was adopted by the UN in December 2002, opened for signature in February 2003 and came into force in June 2006. This Optional Protocol has a similar preventative aim to the Council of Europe's Committee for the Prevention of Torture, seeking to establish:

a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.¹²

The key aspect of OPCAT is the obligation to:

designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventative mechanism).¹³

The state would be obliged to ensure 'the functional independence' of the national preventative mechanisms while ensuring the availability of necessary funding for their operation (Article 18 OPCAT). Article 19 OPCAT provides that the national preventative mechanisms should be afforded the power:

11 See CPT/Inf (2008) 13 *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*.

12 Article 1 OPCAT.

13 Article 3 OPCAT.

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

OPCAT, therefore, provides for the establishment of an effective and independent domestic regime for the inspection of places of detention with a view to ensuring the prevention of torture and other cruel, inhuman or degrading treatment or punishment. Turkey signed OPCAT on 14 September 2005 but has yet to ratify it. As will be argued later in the report, ratification and effective implementation of OPCAT is central to the improvement of conditions within Turkey's penal system.

It is also worth highlighting in this connection the non-binding UN document, the Istanbul Protocol, or *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, submitted to the UN High Commissioner for Human Rights on 9 August 1999. Turkish medical professionals were involved in the document's inception in response to shortcomings in the investigation of torture in that country. The document 'establish[es] and set[s] out a protocol of best practice for medical and legal experts for the documentation and recording of evidence of torture and ill-treatment, aiming at; Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families; Identification of measures needed to prevent recurrence; Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.'¹⁴

14 Yildiz and Piggott, *Torture in Turkey: An Ongoing Practice*, KHRP, London, 2007, p 144. The protocol is available at <http://physiciansforhumanrights.org/library/documents/reports/istanbul-protocol.pdf> (last accessed 22 February 2009).

c. Freedom of expression and respect for family life

Article 10 of the ECHR provides for the protection of freedom of expression:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Article 8 of the ECHR provides that:

Everyone has the right to respect for his private and family life, his home and his correspondence.

The rights under Articles 8 and 10 of the ECHR are derogable and can be restricted subject to law in the interests of, *inter alia*, national security, public safety, the prevention of crime and the protection of the health of others. Such restrictions can legitimately be applied to persons deprived of their liberty, but must be proportional and deemed 'necessary in a democratic society'.¹⁵

d. Right to an expeditious trial

Article 5, paragraph 3 of the ECHR provides that anyone lawfully detained and charged with a crime is 'entitled to trial within a reasonable time'. This is especially pertinent in the Turkish context where an extremely high proportion of those detained in Turkey's penal system have not yet been tried and convicted of a crime.¹⁶

e. Right to a fair trial

Article 6 of the ECHR, the right to a fair trial and appeal, applies to internal disciplinary measures in prisons. In addition to this, Article 59 (c) of the European Prison Rules stipulates that prisoners charged with disciplinary offences shall be allowed to defend themselves in person or through legal counsel when the interests of justice so require.

f. Right to freedom from discrimination

Article 14 of the ECHR provides that:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

15 Cf. Article 8, paragraph 2 ECHR and Article 10, paragraph 2 ECHR.

16 FFM interview with representatives of Mazlum Der, Ankara, 17 December 2008.

g. Linguistic and cultural rights

Article 27 of the ICCPR provides for the free exercise of language, culture and religion:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The above human rights obligations do not form an exhaustive list of obligations the Turkish state has to persons lawfully deprived of their liberty in its jurisdiction, but cover some of the main areas of human rights concerns raised during the investigations carried out by the mission.

2. Domestic Obligations

The period from 2002 to 2005 in Turkey saw a raft of legislative reforms designed to bring the State's human rights provisions into line with international standards and the Copenhagen Criteria. Many of these reforms related to standards in policing and the criminal justice system, and the development of regulations for the restriction of discretionary police powers, the prevention and detection of torture, improvements in medical examinations of prisoners, and judicial oversight of the prison system.

The Criminal Procedure Code (Law No. 5271) and Penal Code (5237) adopted in 2005 brought together several legislative provisions developed from 2002 for the regulation and prosecution of torture, 'torment' and ill-treatment.¹⁷ The 2005 penal code introduced definitions of torture and ill-treatment more in line with international law.¹⁸ Article 94 of the penal code covers the offence of 'torture'; Article 95 'torture aggravated by consequences' and Article 96 provide for the offence of 'torment' or 'suffering.' Article 94 sets the sentence for torture at between three and 12 years; between eight and 15 if carried out against a lawyer or civil servant due to their profession; and between ten and 15 years if accompanied by sexual abuse. Article 95 provides for doubling the sentence if the torture results in serious physi-

¹⁷ Yildiz and Piggott, fn. 14 above, p 36.

¹⁸ It is worth noting, however, that the penal code has come under heavy criticism by human rights groups, including the KHRP, for many of its provisions, including its restrictions on freedom of expression. See, for example, Suppressing Academic Debate: The Turkish Penal Code - Trial Observation Report, KHRP, London, 2006, online at http://www.khrp.org/component/option,com_docman/task,doc_details/gid,83/ (last accessed 24. February 2009). Anti-terror legislation passed in 2006 was also extremely regressive in terms of human rights standards, allowing a worryingly wide definition of terrorist acts (see, for example, Turkey's Anti-Terror Laws: Threatening the Protection of Human Rights, KHRP Briefing Paper, 11/08/08. Available at http://www.khrp.org/component/option,com_docman/task,doc_details/gid,165/Itemid,47/). Some examples of the draconian use of anti terror legislation against child protesters will be touched upon in a later section.

cal or psychological harm, and for life imprisonment in the event of death.¹⁹ Under Article 96, a sentence of two to five years is applied for the offence of 'torment', with greater sentences if the act is carried out in a targeted way against relatives of defendants or those of a diminished capacity. Torment carried out by public officials is considered to fall within the scope of the offence of torture.²⁰ These articles do not allow for the conversion of sentences to a fine or suspended sentence.²¹

In addition to these criminal code changes, there were several procedural reforms, including removing restrictions on opening cases of torture by security forces and officials, enabling the involvement of complainants in the proceedings, improved medical examination procedures, and the introduction of judicial review of decisions not to prosecute torture cases.²² Measures were also taken to establish prison monitoring boards, 'execution judges' to review prisoners' complaints and provincial and sub-provincial human rights boards.²³

All the above reforms are part and parcel of the Turkish government's self-declared 'zero tolerance' policy on torture. However, concerns remain that despite procedural and legislative changes which in theory increase accountability and discourage rights violations, implementation remains ineffective, meaning that in practice the problem of impunity for rights violations against prisoners continues.²⁴ The issue of impunity and the failure to implement measures against torture and other violations of prisoners' rights was brought up on a regular basis over the course of the mission, and will be dealt with in detail in this report.

19 Yildiz and Piggott, fn. 14 above, p 37.

20 *Ibid.*, p 37.

21 *Ibid.*, p 37. There have been some questions as to how much this is applied in practice.

22 *Ibid.*, p 38.

23 These will be dealt with in more detail in the next section of this report, Outline of Turkey's Prison System.

24 Yildiz and Piggott, fn. 14 above, p 38. On impunity and figures for torture allegations against security forces see pp 68 – 70.

II. OUTLINE OF TURKEY'S PRISON SYSTEM

1. Prison Types in Turkey, and the F-Type Controversy

There is a wide range of different prison types in the Turkish penal system. These include a range of small ward-based prisons with capacities from 30 persons (A-type) to 600 persons (E-type); and also a range of prisons that hold prisoners in cells of one to three persons, such as the D-type, the F-type, the L-type and the T-type.²⁵ Of these, the F-type prison is the most secure, holding prisoners in their cells for most of the day, with minimal contact with other prisoners besides their cellmates. The latter types of prison, based on the Western model of cell-based accommodation as opposed to ward accommodation, were introduced over the past fifteen years and have been the focus of much controversy. According to the Turkish authorities, such prisons were designed to modernise the Turkish prison system and to disrupt networks of prisoners involved in organised crime or political opposition and armed activity; or as the Turkish Directorate of Prisons puts it, to 'mitigate the security vulnerabilities of the ward system'.²⁶

From the point of view of prisoners, particularly political prisoners, movement from the ward system to the cell-based system was viewed as an attempt to impose punitive 'isolation' on prisoners accustomed to a communal existence, and, in the context of a climate of impunity for violent actions by state agents in Turkey, an attempt to increase the ease with which prisoners could be ill-treated.²⁷ As the KHRP's 2001 fact-finding mission report on the F-type prison crisis put it:

Unlike the situation in most European prisons where 1-3 person cells are welcomed as appropriate for prisoners' privacy and mental well being, for the majority of Turkish and Kurdish political prisoners, living in a cell isolated from others amounts to a particular form of mental torture. If one adds to that the

25 Turkish Directorate of Prisons, 'Ülkemizde Ceza İnfaz Kurumları,' available at <http://www.cte.adalet.gov.tr/#> (last accessed 25 March 2009).

26 See paragraph on L-type prisons in, Turkish Directorate of Prisons, 'Ülkemizde Ceza İnfaz Kurumları,' available at <http://www.cte.adalet.gov.tr/#> (last accessed 25 March 2009).

27 For the purposes of this report, the term 'political prisoner' covers anyone imprisoned for membership of, support of and/or actions related to a banned political or terrorist organization (be this Kurdish, Leftist, Islamist, nationalist or other), as provided for in The Law on the Fight Against Terrorism (as amended by Law No. 5532 on 29 June 2006) and related provisions. It does not imply endorsement by the mission of the actions of those imprisoned, nor does it necessarily imply that the actions for which they were convicted did not constitute crimes.

wholly justified fear of ill-treatment and torture in isolation, it becomes easy to understand the motivation behind what has been seen as the prisoners' blind determination against the solitary confinement system introduced by the F-type model.²⁸

The F-type prison crisis of the late 1990s and early 2000s, involving protests by political prisoners at their transfer from ward prison accommodation, resulted in widespread unrest in prisons across Turkey, including violent armed incursions by security forces and hunger strikes by inmates, resulting in dozens of deaths. The conditions of detention in F-type and similar prisons remain controversial, and the mission heard common claims of ill-treatment through 'isolation' during its visit in December 2008. This will be discussed in more detail in a later section.

2. Prison Administrative Structures

Turkey's prison system is managed by the General Directorate of Prisons and Detention Houses, part of the Turkish Ministry of Justice. Prisons are under the supervision of the Chief Public Prosecutor, or a public prosecutor assigned by the Chief Public Prosecutor, depending on the number of prisons in the region. The prosecutor is responsible for supervising the execution of sentences within the prison and signing off on the transfer of prisoners to and from the prison.²⁹ He also is charged with ensuring that prison discipline is adhered to, managing disciplinary punishments and writing indictments against prisoners who commit felonies while in prison. He also examines prisoners' or monitoring boards' complaints of ill-treatment and other unlawful actions on the part of prison staff. An 'execution judge' is responsible for reviewing case files on disciplinary matters within the prison and indictments against prisoners when the alleged act was unlawful, as well as reviewing prisoners' claims of ill-treatment or other unlawful actions on the part of the prison administration and staff.³⁰

Within the prisons, the prison governor runs the daily administration, and answers to the prison prosecutor.³¹ Under the governor serves a deputy governor.³² The prison guards within the prison are civilians³³, while the prison perimeter is policed by the gendarmerie, who conduct searches and security checks on entry and exit,

28 *The F-Type Prison Crisis and the Repression of Human Rights Defenders in Turkey*, KHRP, London, October 2001, in Foreword.

29 Law No. 5275 on the Execution of Sentences and Security Measures, Article 5; and Rules on Prison Administration and Execution of Sentences and Security Measures, Section 4.

30 Law No. 4675 on Enforcement Magistrates, Article 5.

31 Rules on Prison Administration and Execution of Sentences and Security Measures, Section 19.

32 Rules on Prison Administration and Execution of Sentences and Security Measures, Section 20.

33 Law No. 5275 on the Execution of Sentences and Security Measures.

and are responsible for the transfer of prisoners to court, to hospital and to other prisons.³⁴

Those interviewed by the mission widely criticised the roles of prison prosecutors and execution judges. They were commonly viewed as not independent, acting only in the interest of the state and therefore inclined to instinctively ignore or dismiss complaints of ill-treatment and arbitrary punishments within prisons.³⁵ Though the mission was not in a position to gauge the degree to which the prison prosecutors and execution judges are independent, it is certainly not satisfactory, in terms of best practice and conflict of interest, to have the same prosecutor and judge in charge of reviewing and approving punishments against prisoners, while at the same time handling prisoners' complaints of ill and arbitrary treatment by prison staff.

3. Oversight Mechanisms: Monitoring Boards and Human Rights Boards

A system of prison monitoring boards was established in 2001 by Law No. 4681 (amended in 2007 by Law No. 5712). The monitoring boards are connected to the Ministry of Justice, and numbered 131 nationwide as of November 2005.³⁶ They are tasked with inspecting prisons, speaking to staff and prisoners, and 'notify[ing] the authorities of failures and shortcomings they observe at criminal enforcement institutions and detention centres regarding living and health conditions of convicts and detainees, internal security and transport operations.'³⁷ They are further obliged to write a report on their findings three times per year, for submission to the Ministry of Justice, the Parliamentary Human Rights Commission and to the Public Prosecutor's office attached to the district in which they operate.³⁸ The Ministry of Justice is required under the same law to issue annual reports of the boards' findings, including details of which of the boards' recommendations it has fulfilled.

Prison monitoring board members are appointed by the Justice Commission. They are required to be 35 or over and must possess a qualification in medicine, law, public administration, sociology, psychology, social services, science or education, and

34 Law No. 2803 on Gendarmerie Competency and Responsibility, Article 7.

35 FFM interview with Eren Keskin, Istanbul, 15 December 2008; FFM interview with representatives of TAYAD prisoners' family association, Istanbul, 16 December 2008; FFM interview with TUADDER prisoners' family association, Ankara, 17 December 2008. The subject of arbitrary punishments and the role of Execution Judges will be dealt with in a later section.

36 Yildiz and Piggott, fn. 14 above, p 65.

37 Law No 4681, Article 6, paragraphs 1, 2 (translation by KHRP). According to Mazlum-Der, military prisons, and their solitary confinement cells do not fall under the boards' purview (FFM interview with Mazlum-Der, Ankara, 17 December 2008).

38 Law No 4681, Article 6, paragraphs 3. These reports remain confidential (Yildiz and Piggott, *Torture in Turkey: An Ongoing Practice*, KHRP, London, 2007, p 66).

a postgraduate qualification in a similar field. They must also have at least 10 years' experience working in public institutions or in the private sector.³⁹

Civil society organisations and NGOs in Turkey have long been critical of prison monitoring boards for having inadequate numbers of civilian members, and lacking independence and effectiveness.⁴⁰ As Kerim Yildiz and Frederick Piggott put it:

the impact of these monitoring boards and enforcement judges needs monitoring in itself, and civil society representatives have reservations regarding their composition. Decisions of enforcement judges are not always followed up, and complaints are not always made confidentially. Therefore not all complaints are dealt with.⁴¹

The mission heard such criticism when interviewing NGOs in December 2008. Ömer Atalay, a lawyer working with the Mazlum-Der human rights organisation in Ankara told the mission that the boards are neither independent nor effective in highlighting human rights abuses in Turkish prisons.⁴² The Ministry of Justice, he said, assigns members without seeking recommendations from professional associations such as bar associations, instead favouring figures sympathetic to the state such as retired judges and prosecutors. He told the mission that as a result there is little independent civilian participation in such councils. Given this lack of independence, he argues, prison monitoring boards are essentially used in order to counter complaints by NGOs that prisons are not adequately monitored. Oya Aslan of the CLA in Istanbul echoed this opinion, calling the monitoring boards 'completely ineffective', due to the fact that they are government-appointed.⁴³

2003 saw the establishment of provincial and sub-provincial human rights boards. According to the Turkish government, as of 2006 these boards were up and running in 81 provinces and 850 districts, and were:

authorised to visit relevant institutions and organisations to monitor on-site human rights practices, examine police stations and custody supervision forms, deliver recommendations to relevant authorities on eliminating defects -if any-, advise on improving custody conditions and making them compatible

39 Law No 4681, Article 3, paragraphs 1-4.

40 Immigration and Refugee Board of Canada, *Turkey: Prison conditions and the treatment of prisoners in civilian and F-type prisons, including the prevalence of torture and the state response to it (January 2003 - April 2005)*, 28 April 2005. TUR43494.E. Available at: <http://www.unhcr.org/refworld/docid/42df61b219.html> (last accessed 22 February 2009);

US Department of State, *Turkey: Country Reports on Human Rights Practices Bureau of Democracy, Human Rights, and Labor* March 6, 2007, at <http://www.state.gov/g/drl/rls/hr-rpt/2006/78844.htm> (last accessed 22 February 2009)

41 Yildiz and Piggott, fn. 14 above, p 66.

42 FFM interview with representatives of Mazlum-Der, Ankara, 17 December 2008.

43 FFM Interview with representatives of the Contemporary Lawyers' Association, İstanbul, 15 December 2008.

with the relevant legislation, conduct investigation and research to ensure that suspects' rights are effectively implemented, investigate applications concerning allegations of human rights violations, evaluate the results of investigations and researches conducted, submit their conclusions to offices of public prosecutors or relevant authorities on the basis of their subject matter, and follow the outcome.⁴⁴

The human rights boards (HRB's) also, according to the Turkish government, 'carry out awareness-raising activities in the field of fighting against torture and ill-treatment through their work in the form of seminars, panels, meetings and publications', in cooperation with the Human Rights Presidency of the Prime Ministry.⁴⁵

In its 2006 report on Turkey, the CPT raised concerns that human rights boards were not being adequately facilitated in conducting visits to law enforcement and prison establishments, and recommended that the Turkish authorities 'take appropriate steps to encourage human rights boards to monitor, on-site, the situation in law enforcement establishments'.⁴⁶

According to Kerim Yildiz and Frederick Piggott:

Between October 2004 and March 2005, HRBs received 565 complaints of human rights abuses despite considerably higher number of abuses reported in total, bringing into question the efficacy and visibility of the Boards. The Boards vary in effectiveness, and their independence has been questioned by some Turkish human rights NGOs.⁴⁷

Ömer Atalay told the mission that these local human rights boards are slightly more effective than prison monitoring boards in terms of meaningful monitoring, though with the exception of Izmir prison, they have thus far only inspected police stations.⁴⁸ However, they too are appointed in an undemocratic fashion, that is, directly by district deputy governors, without consultation with professional bodies.⁴⁹ As such, argues Atalay, they lack real independence, and do not work in coopera-

44 CPT/Inf (2006) 31, *Response of the Turkish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Turkey from 7 to 14 December 2005*, p 11.

45 CPT/Inf (2006) 31, p 12.

46 CPT/Inf (2006) 30 paragraph 28.

47 Yildiz and Piggott, fn. 14 above, p 57.

48 FFM interview with representatives of Mazlum-Der, Ankara, 17 December 2008.

49 According to Yildiz and Piggott, 'Provincial HRB's are made up of the mayor or deputy mayor, the provincial head or a selected representative of the political parties represented, university rectors or a lecturer, a lawyer or a public official who is a law school graduate, as well as representatives from the Bar Association, Turkish Medical Association, the chamber of industry or commerce, the provincial general assembly, and other professional organizations.' Yildiz and Piggott, *Torture in Turkey: An Ongoing Practice*, KHRP, London, 2007, p 57.

tion with civil society organisations such as Mazlum-Der, ignoring their reports and concerns. He argues that in effect, human rights councils are an ‘acceptable face’, often cited when asked by the EU for examples of national preventative mechanisms and monitoring.

Beyond the state-appointed execution judges, prison monitoring boards and human rights boards, there are no provisions in Turkish penal regulations for civil society or NGO oversight of prison conditions. Non-state supervision or monitoring of prisons in Turkey is, in the words of Ömer Atalay, ‘quite impossible’.⁵⁰ This means that, effectively, aside from occasional visits by the CPT and UN Special Rapporteurs, the Turkish prison system operates with no accountability to non-state actors, and with no obligation to take on board civil society’s concerns. Both Mazlum-Der and the İHD told the mission that they are campaigning vociferously for the ratification of OPCAT and the establishment of functionally independent national preventative mechanisms.⁵¹

Given this blocking of independent oversight, it is perhaps not surprising that the mission failed to secure any form of interview or meeting with officials within the prison system or Government. What the mission was told of the current situation of prisons will be detailed in the coming sections. The common themes arising from the interviews raise several points of great concern. The inability of the mission to obtain the official view on what it heard only reinforces the urgent need for the establishment of truly independent prison oversight in Turkey. The Turkish authorities not only need to institute functionally independent monitoring mechanisms, but need to be seen to do so. Key to achieving this is engagement with civil society groups such as the ones the mission met in December 2008. The mission would call upon the Turkish government to ratify OPCAT, and to establish functionally independent national preventative mechanisms, including the creation of an independent prison Ombudsman.⁵² This should be done in full consultation and engagement with civil society. Until trust can be placed in the monitoring of Turkey’s prison system, violations of prisoners’ rights, and allegations thereof, will continue.

50 The mission applied to the Directorate of Prisons to visit Diyarbakır E-type prison and was refused, on the basis that a visit by an NGO was not permitted by law.

51 FFM interviews with Mazlum-Der and İHD, Ankara, 17 December 2008.

52 The Chair of the Human Rights Presidency of the Turkish Prime Ministry, Hasan Tahsin Fendoğlu, recommended the establishment of a prison Ombudsman during an interview with the television channel NTV in October 2008. However, at the time of writing no proposed legislation has been put forward for setting up such a body.

III. PRISON CONDITIONS

Given the position of those providing testimony to the mission, many being relatives and representatives of prisoners, the mission was very much aware that conditions that might be regarded as inhumane to a family member, may still well be adequate from a human rights perspective and simply cause a level of hardship natural to lawful incarceration. Nonetheless, several themes emerged during interviews regarding prison conditions that are of concern to the mission and which, regardless of the understandably partial feelings of families and friends of prisoners, can be viewed as issues central to prisoner welfare, health, hygiene and prison order.

I. Overcrowding

During the mission's interviews, the problem of prison overcrowding came up on a regular basis. The message relayed to the mission was that there was an unprecedented overcrowding crisis in the Turkish prison system, with a near-doubling in the numbers of detained persons over the past four years. Indeed, in the months preceding the fact-finding mission several reports in the media highlighted the problem of Turkey's prison population already exceeding the national maximum capacity of 90,558⁵³ and surpassing the 100,000 mark.⁵⁴

According to Öztürk Türkdoğan, Chair of the İHD, recent years have seen a significant increase in prison numbers across Turkey and this is a major cause of human rights violations against prisoners.⁵⁵

The extent of the problem was also highlighted by Mazlum-Der in Ankara, who showed mission members official statistics of prison numbers in recent decades. These statistics put the total number of those detained in prison as of 1 December 2008 at 103,296, which signifies an increase from 90,837 in 2007, 70,477 in 2006,

53 Capacity figure taken from: Commission of the European Communities, *Turkey 2008 Progress Report*, SEC(2008) 2699, Bussels, 5.11.08, p 15. This report put the Turkish prison population, as of its publication, at 95,551.

54 See, for example 'Turkey tackles jail overcrowding', Sarah Rainsford, BBC News, 1 April 2008 at <http://news.bbc.co.uk/2/hi/europe/7322431.stm> and 'Justice Ministry mulls new law to address prison overcrowding', Yusuf Bulut, Today's Zaman, 16 May 2008 at <http://www.todayszaman.com/tz-web/de-taylar.do?load=detay&link=142025>

55 FFM interview with Öztürk Türkdoğan, Chair of İHD, Ankara, 17 December 2008.

and 55,870 in 2005.⁵⁶ These statistics reveal a near-doubling in the number of those incarcerated in the period 2005 to 2008. Possibly even more startling than this drastic increase in prisoner numbers in such a short period is the fact that, according to the same set of figures, of those currently detained in Turkish prisons, over half are in pre-trial detention and have yet to be convicted of a crime.

Mr Akin Birdal, a former chair of İHD, an MP for the pro-Kurdish DTP and a member of the Turkish Parliamentary Human Rights Commission, also raised overcrowding and the number of unconvicted prisoners as an area of major concern.⁵⁷ Mr Birdal argued that in the current situation, whereby unconvicted prisoners actually form a small majority in the Turkish prison system, detention on remand has in itself become a form of punishment without trial, due to the delays in getting a hearing. He argued that this situation illustrates the truth behind the phrase 'Justice Delayed is Justice Denied' and has contributed to instances of tension, violence and unrest in prisons.

In both Mardin and Diyarbakır, the mission received specific local accounts of prison overcrowding.

In Mardin the mission spoke to Mr Vahap Bakış⁵⁸, a local trade union leader and politician with the DTP who was arrested and detained following a DTP press conference in Şırnak on 20 October 2008. Brought before a judge four days later, he was charged with membership of a terrorist organisation, and spent five days on remand in Şırnak prison followed by several weeks in Mardin prison before being released on 22 November 2008 (at the time of writing he awaits trial on the above-mentioned charges). Mr Bakış described deplorable conditions of overcrowding in both prisons. In Şırnak prison, which he described as akin to 'a stable', Mr Bakış described being held in a room of approximately 15 by 3.5 metres with around 50 other inmates. Prisoners were expected to eat and sleep in this area. There were only 15 mattresses, and the remaining prisoners were obliged to sleep on the floor. There were also inadequate toilet facilities, and Mr Bakış complained of the indignity of waiting in very long queues for the toilet in the morning, in view of everyone. On being transferred to Mardin, Mr Bakış experienced overcrowded conditions, though less severe (he described them as 'like a four-star hotel' compared to Şırnak). He was in a ten bed dormitory, with a separate eating area. Nonetheless a further eight prisoners were obliged to sleep on the floor, while conditions were cold and an inadequate number of blankets was provided.

56 FFM interview with representatives of Mazlum-Der, Ankara, 17 December 2008. These statistics were published by the Ministry of Justice General Directorate for Judicial Record Statistics and cover the period from 1970 to 2008. The full set of statistics supplied to mission members by Mazlum-Der is available in the Appendix of this report.

57 FFM interview with Mr Akin Birdal MP, Turkish Grand National Assembly, Ankara, 17 December 2008.

58 FFM interview with Mr. Vahap Bakış, offices of İHD, Mardin Branch, 18 December 2008.

Özlem Mungan of the Mardin Bar Association recounted her visit on 8 March 2008 to the women's section of Mardin E-type prison as part of an event held by the Mardin Bar Association Women's Committee and other NGOs to mark International Women's Day.⁵⁹ While in the prison Ms Mungan had the opportunity to view the women's dormitories. The dormitories were extremely cold and the prisoners complained about not having adequate clothing and blankets. The capacity of the women's section was 250 persons, but the population at the time of her visit was closer to 500. A typical dormitory was designed to house eight persons; however each dorm held up to 30, the majority of whom were obliged to sleep on blankets on the floor.

In Diyarbakır the mission heard a typical illustration of prison overcrowding in the city's E-type prison. Diyarbakır's E-type prison houses the region's non-political prisoners (the political prisoners are housed in Diyarbakır D-type prison). According to the website of the Directorate of Prisons in Turkey, E-type prisons operate on a ward system, wherein up to ten persons are housed in their own area. It cites the capacity of such prisons as 600, with a possibility of increasing this to 1000 with the addition of extra beds.⁶⁰

During the mission's visit to Diyarbakır, the extreme state of overcrowding in Diyarbakır E-type was referred to by three organisations interviewed. Ercan Esgin, vice chair of Mazlum-Der, Diyarbakır referred to the prison as 'terribly overcrowded' with prisoners obliged to sleep three-to-a-bed.⁶¹ Serdar Çelebi, head of İHD Diyarbakır Branch's Legal Unit and Prison Commission made similar references to overcrowding in Diyarbakır E-type, saying that the prison currently held double its official capacity.⁶² The Diyarbakır Bar Association Prison Commission also referred to overcrowding in the city's E-type prison as a major problem. Ahmet Ozman, a member of the Bar Association, told the mission that the E-type prison dormitories currently hold up to 50 persons, many of whom sleep on the floor.⁶³ He spoke to the governor of the prison in October 2008 who told him nothing could be done about these sleeping arrangements as the capacity of the prison was 635 persons, while the current prison population was 1357 persons. Mr Ozman's colleague Emin Aktar, chair of the Diyarbakır Bar Association, added that the problem was not simply one of inadequate sleeping space. He pointed out that spaces used for other activi-

59 FFM interview with Ms Özlem Mungan, Mardin Bar Association, 18 December 2008. Ms Mungan noted this 'morale-raising exercise' as an unusual exception to the usual systematic denial of civil society access to prisons. She told the mission that officials were present, and that only female prisoners who had renounced their membership of the PKK were permitted to attend.

60 Turkish Directorate of Prisons, 'Ülkemizde Ceza İnfaz Kurumları,' available at <http://www.cet.adalet.gov.tr/#> (last accessed 25 March 2009).

61 FFM interview with representatives of Mazlum-Der, Diyarbakır, 19 December 2008.

62 FFM interview with representatives of İHD Diyarbakır Branch, 19 December 2008.

63 FFM interview with representatives of Diyarbakır Bar Association, 19 December 2008.

ties, such as reading rooms, gyms, workshops and hairdressers have been turned over to dormitory use. This has caused not only overcrowding, but has damaged the capacity of the prison to provide inmates with recreational activities. Mr Aktar also referred to a reduction in standards of hygiene due to the increased numbers of prisoners, and the resultant risk of disease spreading through the prison.

The mission would call upon the Turkish authorities to tackle the issue of overcrowding in a multi-faceted manner, and not simply through the construction of new prisons. In particular, the Turkish authorities should work to ensure that the trial process is speeded up in order to reduce the inordinate number of pre-trial detainees in its prison system. Indeed, with some reports stating that remand prisoners can wait up to three years before the commencement of a trial⁶⁴, Turkey is arguably failing at a systematic level to adhere to Article 5, paragraph 3 of the ECHR. In addition to this, the mission calls upon the Turkish authorities to redouble efforts to introduce non-custodial punishments such as community service for minor offences, as well as widening the use of bail.

2. Access to Medical Treatment

The mission observed that claims of inadequate or inconsistent access to medical treatment, along with the deliberate withholding of same, were regularly brought up by interviewees.

During a meeting with TAYAD (the Association for Solidarity with Prisoners' Families), Fahrettin Keskin complained of the inadequate treatment received by his son, who is incarcerated in Kandıra F-type prison and suffers from type 1 diabetes.⁶⁵ Mr Keskin explained that his son's condition requires him to receive insulin shots four times daily and a specially prescribed diet. However, he receives his shots irregularly and is routinely denied his required diet. Mr Keskin told the mission that when his son has protested this by shouting and banging doors he is disciplined with bans on family visits.

In İstanbul, during a meeting with the CLA, while discussing the circumstances surrounding the death of Engin Çeber⁶⁶, lawyer Oya Aslan speculated that the Metris prison doctor, required to be present 24 hours a day, was at home nearby for the week of the Bayram holiday, during which time Mr Çeber suffered daily beatings at the hands of staff.⁶⁷

64 'Turkey tackles jail overcrowding', Sarah Rainsford, BBC News, 1 April 2008 at <http://news.bbc.co.uk/2/hi/europe/7322431.stm> (last accessed 24 March 2009).

65 FFM interview with representatives of TAYAD, İstanbul, 16 December 2008.

66 Please see section dealing with torture for full details surrounding the death of Engin Çeber.

67 FFM interview with representatives of the Contemporary Lawyers' Association, İstanbul, 15 December 2008.

Interviewees in İHD Diyarbakır branch raised access to healthcare as a major problem amongst prisoners who make representations to them.⁶⁸ Serdar Çelebi told the mission that sick prisoners are often left waiting two to three months for hospital treatment, and that prison authorities are often reluctant to pay for expensive medications. Mr Çelebi told the mission that delays in medical treatment are common to all prisoners, but that authorities can make political prisoners wait longer 'as a form of punishment [for their political views]'. He added that doctors in hospitals are sometimes reluctant to properly examine political prisoners or are openly hostile to them. He gave the recent example (May 2008) of a Syrian Kurdish member of the *Partiya Karkeren Kurdistan* (Kurdistan Workers' Party, PKK), Suphiye İsmail, who had suffered injuries having stepped on an anti-personnel mine. The doctor in the hospital allegedly withheld treatment from him, saying 'you are killing our people in the mountains and you expect us to treat you?' İsmail was apparently not treated for eight days and eventually had to have his leg amputated near the groin. Mr Çelebi understands that a formal complaint is being pursued against the doctor and hospital involved. During meetings with former prisoners and family members of prisoners in Diyarbakır, the mission heard similar claims of treatment being withheld from injured or sick Kurdish political prisoners.⁶⁹

During the mission's meeting with İHD at their headquarters in Ankara İHD chair Öztürk Türkdoğan named improved access to medical treatment as one of İHD's major goals, arguing that a system of amnesty for seriously ill prisoners should be put in place in order that they can receive necessary treatment.⁷⁰ Mr Türkdoğan cited a recent incident in June 2008 where İHD made representations to the Ministry of Justice and the execution judge on behalf of a prisoner in Siirt Prison, Mr Ali Çekel, who was suffering from a serious liver condition. İHD called for his immediate release to hospital for treatment of his condition, but to no avail, and Mr Çekel died of his condition the following week. In Diyarbakır, İHD Diyarbakır branch provided the mission with a report of human rights violations in the prisons of east and southeast Anatolia over the first half of 2008.⁷¹ Based on written and oral applications made by prisoners to İHD lawyers, the report itemises common complaints

68 FFM interview with representatives of İHD Diyarbakır Branch, 19 December 2008.

69 FFM interview with representatives of TUHAD-DER, Diyarbakır, 19 December 2008.

70 FFM interview with Öztürk Türkdoğan, Chair of İHD, Ankara, 17 December 2008. The mission was provided with a list of 306 ill prisoners in need of urgent treatment, compiled by İHD from January – September 2008 (their conditions included cancer, heart conditions, diabetes and asthma): *Ocak - Eylül 2008 Döneminde Cezaevlerinde Bulunan Hasta Tutuklu ve Hükümlülerin Listesi* (List of Ill Convicts and Detainees in Prisons in the Period January to September 2008), İHD Headquarters, Ankara, October 2008. Available online at: http://www.ihd.org.tr/images/pdf/2008_yili_hasta_tutuklu_ve_hukumlulerin_listesi.pdf (last accessed 23 February 2009).

71 *Branches of East and Southeast Anatolia Regions: Annual Report of 2008 Prison Violations in the Region*, İHD, Diyarbakır, 1 July 2008.

by prisoners in the area of healthcare provision.⁷² These include: months-long delays in basic diagnoses such as x-rays; prohibition of supplementary nutrition provided by family; absence of permanent on-site medical staff and inadequate treatment by same (for example, provision of painkillers) and inordinate waiting times for transfer to hospital when seriously ill.

Though the mission is unable to substantiate all claims of insufficient or withheld medical care, such claims are nonetheless points of great concern, particularly given the İHD's long experience with complaints in the area and recent CPT calls for Turkey to bring access to medical care in Turkish prisons up to acceptable international standards. In its 2006 report on Turkish places of detention the CPT drew specific attention to standards in access to medical treatment for prisoners.⁷³ The report cited examples of inadequately staffed medical services and untrained, inexperienced or absent medical personnel in several of the prisons they visited in Turkey.⁷⁴ The report stated that in circumstances of understaffing or where medical staff are insufficiently trained 'a prison health service cannot be expected to perform its tasks in an effective manner and anomalous situations will inevitably arise.'⁷⁵ The CPT reiterated its 2004 recommendation that a full scale review be conducted of the Turkish prison healthcare system, stating:

the Committee calls upon the Turkish authorities to carry out without further delay the above-mentioned full-scale review of prison health-care services. The overall aim should be to ensure that prisoners enjoy a level of medical care equivalent to that provided to persons in the outside community, which implies the greatest possible participation of the Ministry of Health in the field of prison health-care. Particular attention should be given to the principles of the independence of prison doctors in the performance of their duties and of medical confidentiality, as well as to the specific training required by such doctors for them to perform their duties satisfactorily.⁷⁶

It its response to this recommendation the Turkish government stated:

All remand and sentenced prisoners accommodated in prisons are enabled to benefit from the health-care services available in these institutions. However, remand and sentenced prisoners who have health problems which cannot be treated in their prisons are transferred to state or university hospitals. Examination, control and treatment costs of sentenced prisoners who do not have any social security are covered by the Ministry of Health while prescription charges are covered by the Ministry of Justice. The level of medical care provided to

72 *Ibid.*, paragraph VIII.

73 See CPT/Inf (2006) 30, paragraphs 55-57.

74 *Ibid.*, paragraph 55.

75 *Ibid.*, paragraph 56.

76 *Ibid.*, paragraph 57.

remand and sentenced prisoners accommodated in prisons is no less than the one provided to regular citizens.⁷⁷

This response neither addresses the concerns outlined by the CPT, nor the concerns raised during the KHRP's fact-finding mission of December 2008 by the İHD and others. Nor does it commit to a review of healthcare services as recommended by the CPT. The mission was not made aware of any further developments for the improvement of prison health-care since the release of the 2006 CPT report. The mission would call upon the Turkish authorities to heed the recommendation of the CPT, also echoed by domestic human rights NGOs, and conduct a full review of the state's prison healthcare provision system.

3. Prisoner Stipends

The question of inadequate prisoner stipends was raised by a number of interviewees as having a negative effect on the well-being of prisoners in Turkey. According to the Diyarbakır Bar Association the standard daily stipend is 3 new Turkish Lira (YTL), with some prisons providing even less.⁷⁸ This amount is not, on the face of it necessarily inadequate. However the mission was informed by several interviewees that prison rules prohibit the bringing of food, clothing and other provisions by family members, and that prisoners are obliged to purchase all their food, clothes and provisions from the prison canteen.⁷⁹ Özlem Mungan of the Mardin Bar Association mentioned the difficulties this can cause prisoners in terms of access to basic necessities. In addition to citing shortages in clothing and blankets (mentioned above) she also underlined the difficulties that female prisoners have in getting affordable and adequate sanitary materials, since the prison in Mardin only sells one standard brand, at an inflated price.⁸⁰

Though the mission accepts the need of prison authorities to control the influx of materials into the prison in order to ensure that black marketeering of necessities and contraband is suppressed, the blanket ban on the provision of clothes and food by family members does not seem to be in the best interests of prisoners when their daily allowance is so little. In the context of prison overcrowding and resultant shortages of blankets, bedding and basic necessities, such a ban is even less justified.

77 CPT/Inf (2006) 31, p 25.

78 FFM interview with representatives of Diyarbakır Bar Association, 19 December 2008.

79 FFM interviews with Asrın Law Office, İstanbul, 15 December 2008 and Mardin Bar Association, 18 December 2008.

80 FFM interview with Ms Özlem Mungan, Mardin Bar Association, 18 December 2008.

4. Visiting Conditions

Several common themes surrounding the provision for family visits also emerged during the course of the fact-finding mission. Unnecessary and often seemingly malicious obstacles to family visiting were complained of by many interviewees, particularly by those representing or related to Kurdish political prisoners. In particular, the arbitrary withholding of visiting rights by prison authorities was complained of by several interviewees, particularly in reaction to protests or the use of the Kurdish language. The restriction and denial of visiting rights, was viewed by many of those interviewed as a measure designed to punish the families as much as the prisoner.⁸¹ The question of arbitrary punishment, and its systematic nature in Turkish prisons, will be dealt with in more detail in a later section.

Another complaint encountered by the mission was the undignified nature in which prison authorities would treat visiting families, especially families of Kurdish political prisoners. The mission met representatives of TUAD-DER, an organisation representing the families of Kurdish political prisoners. One interviewee, XY,⁸² has a sister imprisoned in Muş prison for PKK membership. XY described how she and her family had been treated by guards during searching on entry to the prison to visit her sister. She described being obliged to strip and having her clothes scrutinised in detail, including removal of metal and plastic from her bra. She was also subjected to an ‘intimate’ body search.⁸³ During the search, she was subjected to verbal abuse. XY claimed that the search procedure used to consist of a regular body search, but that this had changed recently on the arrival of a new governor.

During the course of the fact-finding mission, the authors heard other claims of undignified treatment of visiting families by prison bureaucracy, such as deliberate cancellations of visits for families who had travelled far, or the deliberate refusal to schedule specific visiting times, obliging families to wait for hours, often outdoors in the cold.⁸⁴ A further common complaint was that many prisons were located well out of public transport range, making visits difficult and expensive, especially

81 Mr Fahrettin Keskin (mentioned above) told the mission that his son is punished with regular denials of family visits for protesting the failure to adequately treat his diabetes. This has meant that Mr Keskin's son has not seen his mother in over four years. This situation will be dealt with in more detail later in the report.

82 FFM interview with representatives of TUAD-DER, Diyarbakır, 19 December 2008. Name withheld for reasons of privacy.

83 The mission members attempted to clarify what was meant by this, however XY was unwilling to go into any further detail due to the presence of men in the room. Discussion of this was the cause of some embarrassment for her, so the mission continued with its questions. It can be assumed, however, that the nature and the extent of the search was beyond what would be considered appropriate or dignified.

84 FFM interview with representatives of TUAD-DER, Diyarbakır, 19 December 2008; FFM interview with representatives of Mardin Bar Association, Mardin, 18 December 2008.

for poorer families.⁸⁵ Though security checks are necessary in a prison context, and although there will naturally be a degree of distress and inconvenience caused to families in visiting incarcerated loved ones, the onus is on the Turkish authorities to facilitate visits in a respectful and dignified manner, both in discharging security duties, and allowing access to the prison.⁸⁶

On a more positive note, on 15 January Turkish prison authorities announced the launch of pilot videoconferencing family visit facility to enable far-away families to communicate with inmates.⁸⁷ Nizamettin Kalamani, the head of the Turkish General Directorate of Prisons is reported to have announced that the plan is being piloted in Sincan prison, before his office considers whether or not to roll it out to other prisons.⁸⁸ Given this, and the fact that the facility will only be made available to families in possession of the necessary technology, it is unlikely, however, that this measure will have a pronounced effect on the visiting conditions of most prisoners' families in Turkey.

85 FFM interview with representatives of TUAD-DER, Diyarbakır, 19 December 2008. This complaint also appeared in a January 2008 report handed to the mission by the Contemporary Lawyers Association in İstanbul on 15 December 2008, entitled *Çağdaş Hukukçular Derneği İstanbul şubesi, Cezaevi İzleme Komisyonu, Ocak 2008 Raporu*.

86 Further issues concerning language rights during prison visits will be dealt with in a later section.

87 'Inmates to converse with family members in Kurdish', *Today's Zaman*, 15 January 2009.

88 *Ibid.*

IV. TORTURE AND ILL-TREATMENT

In the KHRP publication *Torture in Turkey: an Ongoing Practice*, the authors observed in Turkey 'a shift from flagrant to more subtle forms of ill-treatment, leaving few traces or long-term physical signs, as well as an increase in incidences of ill-treatment outside official detention centres.'⁸⁹

During the course of the mission's interviews, it is certainly the case that allegations of the more extreme forms of torture were rare, with most claims of torture referring to casual violence by guards, and 'emotional/psychological torture' such as the deprivation of visiting rights, censorship, isolation and various general complaints relating to the hardship of prison life. Though it is not possible to be confident that the more 'extreme' forms of torture are a thing of the past, there was a general acceptance that the flagrant forms of ill-treatment such as 'Palestinian hanging', *falaka* and electric shocks, commonly used in prisons and police stations in the 1980s and 1990s, were no longer a common occurrence. As Serder Çelebi of İHD Diyarbakır told the mission, 'This extreme type of torture is no longer used, though there is the possibility of isolated incidents.'⁹⁰

I. Medical Examinations

Thorough, accurate and reliable medical examinations of prisoners, both on arrival and departure to and from prisons, and following allegations of ill-treatment, are essential to preventing the ill-treatment of detainees, and to bringing those responsible for ill-treatment to justice. Medical examinations of prisoners in Turkey are carried out by doctors under the aegis of the Forensic Medicine Institution of the Ministry of Justice or, in districts with no departmental presence, under the aegis of the Ministry of Health.⁹¹

The CPT, in its 2006 report on Turkey, raised a number of concerns regarding the manner in which medical examinations of prisoners are carried out. The CPT identified problems such as the conduct of examinations in the presence of law enforcement officials, the failure to keep proper records, and the fact that detained persons

89 Yildiz and Piggott, fn. 14 above, p 18.

90 FFM interview with İHD, Diyarbakır branch, 19 December 2009.

91 CPT/Inf (2006) 31, *Response of the Turkish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Turkey from 7 to 14 December 2005*, p 8.

were ‘still usually medically examined with their clothes on’ so that ‘in most cases, the medical findings were limited to “No signs of physical ill-treatment/injuries”’.⁹² This, the report states, causes obstacles ‘in the context of legal proceedings in respect of allegations of ill-treatment.’⁹³ The CPT called upon the Turkish authorities to ‘redouble their efforts to improve the confidentiality and quality of the medical examinations’ by providing adequate facilities and training.⁹⁴ The mission encountered several general claims of cursory or inadequate medical examinations, or examinations in the presence of security guards or gendarmes.⁹⁵

Turkish courts continue to refuse to recognise independent medical examinations in cases of torture.⁹⁶ Eren Keskin, an İstanbul-based human rights lawyer specialising in representing female prisoners who have suffered rape and other ill-treatment in detention, told the mission that she faces serious obstacles in having independent medical examinations of prisoners who allege rape or ill-treatment recognised by the courts.⁹⁷ The jurisprudence of the appeal court, she said, has meant that only official medical examinations, carried out under the aegis of the Forensic Medicine Institution, have been deemed admissible. This, she added, is in spite of an ECtHR judgment against Turkey which underlines that independent medical examinations are essential where allegations of torture are concerned.⁹⁸ As a result, she told the mission, the recording of the torture of detainees remains very much in the hands of the State.

92 CPT/Inf (2006) 30, paragraph 26. According to Yildiz and Piggott, ‘Reforms introduced in the second harmonisation package stated that detainees have the right to be alone with a doctor during a medical examination. Via amendments in January 2004, the *Regulation on Apprehension, Detention and Statement Taking* saw the provision for medical examinations of detainees to take place in the absence of security officials (notwithstanding a special request for their presence from the examining physician). The possibility for the detained person himself to request the presence of law enforcement officials during the examination was removed from Article 10, reducing the possibility for pressure to be exerted on the detainee to “make” such a request.’ (Yildiz and Piggott, *Torture in Turkey: An Ongoing Practice*, KHRP, London, 2007, p 49).

93 CPT/Inf (2006) 30, paragraph 26.

94 *Ibid.* The CPT further recommended the establishment of central designated facilities in each city to carry out such examinations.

95 For example, representatives of Mazlum Der, in reference to an incident in which children were arrested and ill-treated by gendarmes in Diyarbakır in November 2008, told the mission that doctors’ examinations usually amounted to a cursory glance, and that they invariably took place in the presence of a gendarme, meaning the detainee often feels too threatened to draw attention to his/her injury; FFM interview with Mazlum-Der, Diyarbakır, 19 December 2008. See also the case of Engin Çeber, dealt with below. Also see the above section on prison conditions for examples of inadequate medical examinations and treatment.

96 See Yildiz and Piggott, fn. 14 above, p 51: ‘The Forensic Medical Institute, a body institutionally bound to the Ministry of Justice, enjoys a near monopoly on producing medical reports admissible in court, only in very few cases are medical reports by independent experts recognized.’

97 FFM interview with Eren Keskin, İstanbul, 15 December 2008.

98 Cf. *Aydin v. Turkey* (57/1996/676/866) paragraph 107. This was a ground-breaking KHRP case which established in ECtHR case law that rape is a form of torture.

The mission did not have the opportunity to ascertain from the Turkish authorities whether or not it has moved to improve the system and procedures whereby medical examinations of detainees are conducted, or whether or not it has made an active effort to ensure that in cases involving accusations of torture independent medical reports are not only deemed admissible, but necessary. It does seem, however, that a great deal of work needs to be done to reach the standards required by the CPT, and, indeed, by the İstanbul Protocol.

2. Transfer, 'Welcome Beatings' and Other Casual Violence

The mission received accounts of serious acts of violence by prison guards on prisoners, and of a wider practice of gendarmes subjecting prisoners to casual violence while off prison property, usually during transfers to court or to other places of detention. The practice of 'welcome beatings', whereby gendarmes and/or prison guards would beat up new arrivals to prisons during the security check on entry to a prison, was commonly referred to by those the mission met with. Such beatings, it seems, are often politically motivated, stemming from gendarmes' hostility towards political prisoners.⁹⁹ XY, when speaking to the mission about her sister's treatment in prison, told the mission that during her sister's transfer from Gebze prison to Sincan F-type in November 2008 she was subjected to beatings and insults by gendarmes while boarding the transfer van, to the extent that three weeks later her mother still saw bruising on her resulting from the beating.¹⁰⁰ She was being transferred from Gebze prison following a protest by her and other inmates at allegations of ill-treatment of Abdullah Öcalan.

Serder Çelebi told the mission that, from the applications they receive in Diyarbakır İHD, the most common complaint regarding ill-treatment is beatings during transfer and on arrival to prisons. He pointed out that applications from Bitlis and Erzurum relating to beatings and stripping by prison guards and soldiers on arrival are particularly regular.¹⁰¹ He gave the mission the example of an application they received by Ahmed Kırboğa, a Kurdish political prisoner serving a seven-and-a-half year sentence for PKK membership. According to a 20 June 2008 statement made in person to an İHD lawyer by Kırboğa, on 11 June 2008 in Bitlis E-type prison, guards approached Kırboğa and his three cellmates, requesting that they leave the cell for a headcount. They refused, arguing that as there were four of them they were

99 Note that prison transfers are carried out by the gendarmerie and not the prison staff. Gendarmes also control the prison perimeter, so conduct searches on entry and exit. The gendarmerie is part of the Turkish military and as such is not likely to be well-disposed towards Kurdish political prisoners in the context of the ongoing conflict in the southeast.

100 FFM interview with representatives of TUAD-DER, Diyarbakır, 19 December 2008. This episode is dealt with in more detail in the section of this report focusing on women in the Turkish prison system.

101 FFM interview with İHD, Diyarbakır branch, 19 December 2009.

visible from where they were. The following morning, their cell was raided by 20 to 30 guards who assaulted them. Kırboğa described being thrown to the floor and kicked. He was hospitalised and later transferred to Erzurum H-type prison. From the latter prison, Kırboğa sent İHD Diyarbakır the clothes bloodied in the attack. The mission was shown what was said to be these clothes, which consisted of a shirt, jeans, vest and sweater all stained with blood. The stains were consistent with those likely to result from a severe nosebleed.¹⁰² The July 2008 summary report provided to the mission by Diyarbakır İHD contains similar accounts and general complaints of a culture of casual beatings.¹⁰³

The death of Engin Çeber

The case that is most emblematic of the above-mentioned casual beatings, and of failures of the system of medical examinations, is that of 29-year-old Engin Çeber, who died in an İstanbul hospital on 10 October 2008 having been in a coma for three days, allegedly due to daily beatings by guards in Metris prison, İstanbul. Çeber's death caused a storm of controversy in the Turkish media, leading to a rare public admission of responsibility and an apology from the Turkish Ministry of Justice.¹⁰⁴ The trial of the guards alleged to have been involved began on 21 January 2009 and is ongoing. The mission met with Çeber's legal representative, Oya Aslan of the CLA in İstanbul on 15 December 2008, who gave an account of the circumstances surrounding his death.¹⁰⁵

Aslan's account is set out below:

28 September 2008

At approximately 3pm Engin Çeber and three or four friends (including one female) were arrested during an İstanbul press conference protesting the recent shooting and paralysis by the police of activist Ferhat Gerçek.

At approximately 4pm Engin Çeber was examined by a doctor, whose report found no ill-treatment. At approximately the same time Engin Çeber's friends contacted Oya Aslan to advise her of their detention. Oya Aslan arrived at the detention centre at around 8pm but was denied access to the prisoners. Oya Aslan then contacted colleagues in the Contemporary Lawyers Association. Two arrived to join her at the de-

102 It is worth noting that the mission thought it odd that the prisoner could have managed to mail these garments out of the prison, given the censorship of outgoing mail.

103 *Branches of East and Southeast Anatolia Regions: Annual Report of 2008 Prison Violations in the Region*, İHD, Diyarbakır, 1 July 2008, paragraph V.

104 'Turkey apology over prison death', BBC news online at <http://news.bbc.co.uk/1/hi/world/europe/7670678.stm> (last accessed 22 February 2009).

105 FFM interview with Oya Aslan of Contemporary Lawyers Association, İstanbul, 15 December 2008.

tention centre and together they put pressure on the police to allow them access to the prisoners.

Oya Aslan then entered the detention centre to speak to the prisoners. At this point she was unable to speak to Engin Çeber, as he was being held in a separate detention room. One of Engin Çeber's friends told Oya Aslan that they had all been subject to beatings at the moment of capture and during fingerprinting and body search. The female member of the group had fainted at this point and seemed very unwell. Oya Aslan therefore called the prosecutor to argue that the group should be sent to hospital for a medical check up. The prosecutor authorised this.

Two of the group, seemingly in a worse condition, were sent to the hospital in the first instance. Oya Aslan then had the chance to speak to Engin Çeber, who also gave an account of having been beaten during capture and on arrival to the detention centre. Oya Aslan then accompanied Engin Çeber and the remaining members of the group to the hospital.

In the hospital at 11pm, Engin Çeber was examined by the same doctor as at 4pm. In his written report the doctor detailed trauma and bruising to the head, arms and elsewhere on body and referred Engin Çeber to a larger hospital for a precautionary x-ray. At approximately 1am Engin Çeber was x-rayed in the larger hospital. No internal problems were shown up in this x-ray.

29 September 2008

At around 1pm, in advance of being taken before a judge, Engin Çeber was once again examined by the doctor who conducted the 4pm and 11pm examinations the day before. His report matched that of 11pm the day before. Following the hearing before the judge, a formal arrest order was issued for Engin Çeber at 5pm. At this time, Oya Aslan informed both the judge and the prosecutor that Engin Çeber had suffered ill-treatment in police custody and that his injuries had been documented by a medic. The judge expressed that it was not his problem, though he made a record of it. The prosecutor advised her to make a separate formal complaint on the matter. Oya Aslan did so, though a week later following the Bayram holiday, and just in advance of Engin Çeber's death.

At 8pm Engin Çeber was brought back to the detention centre and from there was transferred on remand to Metris Prison. He was not examined by a doctor on entry to Metris, as per requirements, but a report saying he was healthy was signed off on by the prison doctor (this doctor has since been dismissed). Oya Aslan believes the medic may not even have been present in the hospital due to the Bayram holiday, despite the obligation to have a doctor on-site 24 hours a day.

29 September – 6 October

Oya Aslan explained to the mission that this period coincided with the week-long Bayram public holiday (Eid). During this time neither Oya Aslan, nor any other lawyers, had access to Engin Çeber or his friends in prison due to the holiday period, nor could the prisoners contact the lawyers by phone. This effectively meant that Engin Çeber and his friends were being held incommunicado for this period.

On 6 October, the first working day after the Bayram holiday, a colleague of Oya Aslan went to Metris to see the prisoners and was first to learn of the ill-treatment suffered by them in Metris prison during the week of Bayram. On entry to the prison, they¹⁰⁶ were subjected to strip searches by gendarmes. Engin Çeber and his friends refused to strip and were beaten with batons. Thereafter, the group was subjected to twice-daily beatings. The beatings took place during roll call and were in reaction to the group's refusal to stand up for a headcount. The beatings were extremely severe, and were carried out by up to ten guards.

7 October 2008

At around 1pm a delegation from the Contemporary Lawyers Association (CLA), including Oya Aslan, visited Metris in response to news of the beatings. At this point Engin Çeber was already in hospital, having been sent there in a coma earlier that morning following a beating. Neither his lawyer nor his family had been informed of this. Oya Aslan and her colleagues had to contact his family to inform them of the situation.

10 October 2008

Engin Çeber passed away in hospital. The others in the group, though subjected to similar beatings, were not hospitalised and are now free. They commented to Oya Aslan how easily it could have been them in his place.

The mission asked Ms Aslan whether there was a possibility that this incident evaded the attention of the prison authorities due to the size of the prison (Metris has a population of roughly 1400 prisoners). Ms Aslan responded that the roll call is conducted by over ten guards and in the presence of the deputy governor, and that these beatings could therefore not have gone unnoticed by those in charge at Metris. She argued that the treatment leading to her client's death was not isolated, but emblematic of a culture of casual violence against prisoners in Turkish prisons. She told the mission that she and her colleagues were confident that almost every prison

106 The female member of the group was sent to a separate prison.

in Turkey engages in ill-treatment of this kind, and that it is regarded as routine. She cited police officers speaking on television following Engin Çeber's death commenting that such an incident is an 'occupational hazard'. The media controversy surrounding his treatment, she argued, was simply because he died. Had he lived, she argued, there would not even have been an enquiry into complaints of ill-treatment. Indeed she expressed scepticism that the trial of the officials charged in relation with his death will likely result in meaningful convictions, believing that once the fuss in the press died down, they would get off lightly.¹⁰⁷

According to Oya Aslan's colleague Güray Dağ, a board member of the CLA in İstanbul, this kind of casual violence by gendarmes and guards is systematic in Turkish prisons.¹⁰⁸ Dağ told the mission that although the number of deaths in custody may well have dropped over the past decade¹⁰⁹ and the more extreme forms of torture no longer feature strongly, there is nonetheless widespread ill-treatment of a more subtle and less extreme variety, such as casual violence and the deliberate isolation of prisoners.¹¹⁰ He called the official policy of 'zero tolerance' towards torture 'more of a discourse than a policy' stating that torture remains systematic, and tolerated in a tacit way. He argued that the ongoing impunity of those charged with torture offences is evidence of this. In a climate where ill-treatment and impunity are systematic, he said, 'sending out official circulars is not sufficient'. These opinions were echoed by Akın Birdal MP when quizzed by the mission on the prevalence of torture:

Torture remains systematic... through active encouragement and through the failure to prevent it; through protecting those responsible and through rewarding it.¹¹¹

The mission views the incidents of violence by prison guards and gendarmes recounted to it with great concern, particularly the manner of the recent death of Engin Çeber in Metris prison. If ill-treatment of this kind is not systematic, as Oya Aslan and her colleagues claim, it certainly remains widespread enough to feature strongly in the accounts given to this mission by a cross section of interviewees in four different Turkish cities. This is of enormous concern. The mission regrets that

107 A total of 60 prison guards, police officers and gendarmes are charged in connection with the case, with crimes ranging from failing to report an offence through to aggravated torture. The trial began in early 2009 and is ongoing at the time of writing.

108 FFM interview with Contemporary Lawyers Association, İstanbul, 15 December 2008.

109 According to the İHD's *Balance Sheet of Human Rights Violations of 2008 in Prisons in Turkey*, the year saw 37 prisoner deaths, attributed variously to suicide, health reasons, accidental death, or violence on the part of prisoners or prison staff. Available at: http://www.ihd.org.tr/images/pdf/2008_cezaevleri_balancosu.pdf (last accessed 23 February 2009).

110 FFM interview with Contemporary Lawyers Association, İstanbul, 15 December 2008.

111 FFM interview with Mr Akın Birdal MP, Turkish Grand National Assembly, Ankara, 17 December 2008.

it was not afforded the opportunity to address the issue with members of the prison administration or representatives of prison guards in order to gain their perspective on these claims.

The CPT's 2006 report on Turkey looked at torture and ill-treatment in the prisons it visited in December 2005, including claims of casual violence such as kicking, slapping and punching prisoners in Adana E-type prison. The CPT argued in this report that:

Only if the progress already made in combating torture and other forms of ill-treatment reflects a real change in mentality (and not just a reluctant compliance with orders from above) will there be a solid basis for further improvement.¹¹²

The accounts heard by the mission suggest that there is some way to go before this change in mentality is achieved.

3. 'Isolation' as Torture

As already mentioned in section II, the mission heard common mention of prisoners being tortured through 'isolation.' This was not a reference to solitary confinement, but to the F-type and similar prisons, wherein prisoners are held in cells of one to three persons, as opposed to the wider interaction with the prison population that the ward system entails.

As was the case when discussing torture and ill-treatment with Güray Dağ of the CLA¹¹³, 'isolation' was often cited as a more subtle kind of torture, which affected prisoners psychologically and emotionally. The CLA lawyers were particularly exercised about the conditions in F-type prisons, which are the highest-security of these prison types.¹¹⁴ The issue of isolation in F-types was brought up in a similar vein by human rights lawyer Eren Keskin, and by representatives of TAYAD.¹¹⁵ Numbering 12 prisons in total, inmates at these facilities are held in their cells of one to three persons at all times, with the exception of visiting times, group activity and transfers, and spend their exercise time in custom-built adjacent yards. Meals are also eaten in the cells. This effectively means prisoners largely interact on a daily basis with the same two inmates, an arrangement that Güray Dağ described to the mission as 'killing people day-by-day'.

112 CPT/Inf (2006) 30, paragraph 29.

113 FFM interview with Contemporary Lawyers Association, İstanbul, 15 December 2008.

114 The CLA actively campaigns against what they view as small group isolation regimes in F-type prisons.

115 FFM interviews with Eren Keskin, İstanbul, 15 December 2008; TAYAD (Association for Solidarity with Prisoners' Families), 16 December 2008.

It is important to point out that in and of itself, the system of small cell accommodation is not in violation of a prisoner's right to freedom from ill-treatment. Notwithstanding the cultural objections to the upheaval from a ward system to a cell-based regime, and the attendant and understandable fears of ill-treatment in the Turkish context, the system itself is not enormously different from those used in the penal systems of several countries in Western Europe and in the United States. Risk of 'torture or ill-treatment' depends entirely on the manner in which the prisoners are held, and the treatment they receive. Their confinement to a cell of one to three persons, in and of itself, however undesirable, cannot be deemed to be in contravention of Article 3 rights. The claim depends on other factors, including adequate exercise, nutrition, ventilation, and access to visits and reasonable recreational time with other prisoners.

The CPT said as much in its 2006 report when discussing the F-type prison regime, stating that 'The CPT has never made any criticism of *material conditions* of detention in F-type prisons'¹¹⁶ and even arguing that the regime could, in the right circumstances be 'capable of being rightly regarded as a model form of penitentiary establishment.'¹¹⁷ However the CPT went on to comment that it 'has repeatedly stressed the need to develop communal activities for prisoners outside their living units' and that 'it is unfortunately very clear from the information gathered in December 2005 that the situation in this regard remains highly unsatisfactory.'¹¹⁸

Describing the regime in Adana and Tekirdağ F-type prisons, the CPT pointed out that even the modest regulation allowance of five hours association time per week for groups of up to ten prisoners was far from being offered in Adana. Out-of-unit time for a prisoner in Tekirdağ F-type amounted to an average of six hours a month (including family visits and phonecalls).¹¹⁹ The directors of each of the prisons visited during this CPT investigation cited logistical and staffing difficulties as the reason for their failure to properly implement communal activities. The CPT argued, however, that 'one of the underlying causes of the present situation is a continuing failure on the part of the prison authorities to display a sufficiently proactive, enterprising approach vis-à-vis this subject.'¹²⁰ The F-type prison system, the CPT argues, therefore 'remain[s] open to the accusation of perpetuating a system of small-group isolation.'

In the same report the CPT also highlighted the practice of individually confining certain categories of prisoner, such as those serving 'aggravated life imprisonment',

116 CPT/Inf (2006) 30 paragraph 43. Emphasis is the authors'.

117 *Ibid.*, paragraph 47.

118 *Ibid.*, paragraph 43.

119 *Ibid.*, paragraph 45.

120 *Ibid.*, paragraph 47.

those under observation on arrival and those serving a disciplinary punishment.¹²¹ The CPT was very critical of this, stating:

The application of an isolation-type regime is a step that can have very harmful consequences for the person concerned and can, in certain circumstances, lead to inhuman and degrading treatment. The CPT is of the firm view that the imposition of such a regime should be based on an individual risk assessment, not the automatic result of the type of sentence imposed... the regime should be applied for as short a time as possible, which implies that the decision imposing it should be reviewed at regular intervals.¹²²

Since the CPT's 2006 report, the Turkish authorities have attempted to address its criticisms, and those of civil society organisations regarding the lack of adequate communal activities in F-type prisons. On 22 January 2007 the Ministry of Justice issued a circular, numbered 45/1, which ordered the widening of official provisions for communal activity in F-type prisons. The circular ordered that provision be made to allow up to ten prisoners to meet for conversation and other activities for up to ten hours a week.¹²³ These provisions were to be unconditional automatic rights, and not simply rewards for good behaviour. According to the CLA, the circular came not simply as a result of the CPT criticisms, but also as a move by the authorities towards 'reconciliation' following negotiations surrounding the hunger strikes of 2000-2007 in which 122 people died.¹²⁴

However, Oya Aslan told the mission that to date the circular's instructions have yet to be put into practice, with prisons either only partially implementing it or citing lack of space or personnel for failure to implement it.¹²⁵ Behiç Aşçı, a former hunger striker, lawyer and Director of the TAYAD prisoner families' association gave a similar account to the mission, saying that the circular was currently only being implemented in one prison, İzmir Kırıklar F-type number 1.¹²⁶ He added that over the past two years the circular was also applied briefly in Edirne, Tekirdağ and Bolu. According to Aşçı and his colleagues at TAYAD, the excuses cited by the Turkish prison authorities for failure to implement the circular are inadequate: 'the Ministry of Justice could implement this right away. It is a question of political will to

121 The sentence of 'aggravated life imprisonment' was created under article 25 of the Law on the execution and sentences and security measures to apply to prisoners whose death sentences have been commuted to life imprisonment and to certain other crimes listed in the Penal Code. The most prominent prisoner serving this type of sentence is Abdullah Öcalan, whose incarceration will be discussed in a later section.

122 CPT/Inf (2006) 30 paragraphs 50, 51.

123 Circular 45/1, Paragraph 13. The circular is available on the website of the Turkish Justice Ministry at <http://www.mevzuat.adalet.gov.tr/html/27530.html> (last accessed 24 March 2009).

124 FFM interview with Contemporary Lawyers Association, İstanbul, 15 December 2008.

125 *Ibid.*

126 FFM interview with TAYAD, İstanbul, 16 December 2008.

do so.¹²⁷ They told the mission that the implementation of circular 45/1 would be a good step in the direction of improving conditions for prisoners in F-type prisons.

This state of affairs was of great concern to the mission. Regrettably, it did not have the opportunity to relay these concerns to the prison authorities. The mission therefore is obliged to rely on the opinion of interviewees such as Behiç Aşçı and of the CPT that there seems to be a lack of political will and enterprise to implement circular 45/1.

Given this failure to heed the calls of the CPT and Turkish civil society, and the resultant lack of adequate communal activities for prisoners incarcerated in F-type prisons, it is far from clear that the F-type régime in Turkey is living up to international human rights standards regarding protection from ill-treatment. The Turkish prison system remains very much open, as the CPT put it, 'to the accusation of perpetuating a system of small group isolation'. Holding prisoners in small groups, with little or no access to their cohort, and with minimal access to their families through fortnightly visits and phone calls, if not quite the same as solitary confinement, can arguably have a similar effect on an individual. Wider human contact is essential to a prisoner's well-being. The Turkish Human Rights Foundation (TİHV) pointed this out to members of a Haldane Society mission to Turkey in February 2008: 'the consequences of small group isolation are similar to those in solitary confinement with attendant direct impacts on the physical integrity of prisoners and their psychological health.'¹²⁸ As the CPT put it in its 2006 report:

an isolation-type regime ... can have very harmful consequences for the person concerned and can, in certain circumstances, lead to inhuman and degrading treatment.¹²⁹

The mission asserts that in order to guarantee the freedom of prisoners from ill-treatment in F-type prisons, a comprehensive system of communal recreation and activity time should be implemented throughout Turkey's F-type and similar prisons to ensure that the cell-accommodation system does not risk being, in effect, a small group isolation regime.

127 *Ibid.*

128 Bowring, Bill; Hobson, John; Punto, Ville; Rought-Brooks, Hannah: *Conditions of Detention in Turkey: Blocking Admission to the EU*, Haldane Society of Socialist Lawyers, London, February 2009.

129 CPT/Inf (2006) 30 paragraph 50.

V. PRISON PUNISHMENT REGIMES

The issue of arbitrary punishments of prisoners was a common theme over the course of the mission's interviews. Common punishments complained of by interviewees were the denial of prisoners' family visiting rights and correspondence rights, and the imposition of solitary confinement. Interviewees complained, in particular, of the lack of any form of effective right to appeal such decisions.

Punishments and Appeals

Official sentencing regulations govern the circumstances whereby a prisoner can be punished by a prison disciplinary board, and detail what punishment is appropriate.¹³⁰ The deprivation of correspondence can be imposed for up to three months in punishment for acts such as collective protests, stockpiling medicines, and refusal to carry out assigned work.¹³¹ Deprivation of visiting rights can be imposed for a maximum of three months for refusing to stand for headcounts, refusing searches, resisting transfer, speaking threateningly and gambling. This punishment does not apply to communications with legal counsel.¹³² Solitary confinement of up to 20 days is imposed on a convict for damaging property, escape attempts, inciting riots, causing harm, possession of forbidden items, violent resistance, forming groups, bribery, theft, encouraging or forcing convicts to go on hunger strike, arson, murder, sexual assault, hostage taking, hanging or displaying signs or images supporting a criminal organisation, and engaging in propaganda for criminal organisations. Solitary confinement includes access to fresh air.¹³³

According to Article 5 of the *Law on Enforcement Judges* (4675), the prisoner, his/her legal representative, relative, or a prison monitoring board member can file an objection against a disciplinary sanction to an 'enforcement (execution) judge' within 15 days of being informed of the sanction. Article 6 of the same law provides that the judge decides on the complaint on the basis of the case file, and without holding a hearing (though he is entitled to conduct an *ex officio* examination or request further information from the parties concerned if required). Article 5 of the law

130 Law No 5275 on the Enforcement of Sentences and Preventative Measures, Articles 42, 43 and 44.

131 *Ibid.*, Article 42.

132 *Ibid.*, Article 43.

133 *Ibid.*, Article 44.

also points out that an appeal to an execution judge does not stay the punishment, though the judge has the power to order its stay while the file is being reviewed.

The mission was consistently told by interviewees that the recourse to appeal to the execution judge was meaningless, with the judge effectively functioning as a rubber stamp for the decision of the prison disciplinary boards. Punishments in this context, it was argued, could therefore be applied in an arbitrary, even malicious manner, on flimsy pretexts, with no proper recourse to appeal.¹³⁴ Many interviewees, such as human rights lawyer Eren Keskin, told the mission that punishments are often applied for the use of Kurdish and other minority languages, though there is no legal provision forbidding the use of languages other than Turkish.¹³⁵ The mission also heard several claims of punishments of solitary confinement being imposed for referring to Abdullah Öcalan as ‘Mr Öcalan’ in correspondence, and therefore ‘praising a criminal organisation.’¹³⁶

Akın Birdal, when asked by the mission whether execution judges were adequately protecting prisoners from arbitrary punishments, replied simply that ‘no, they are not’. He blames this on an institutional culture that is blindly pro-state and pro-army, and therefore not sympathetic to rights-based arguments, particularly vis à vis prisoners. He told the mission that, ‘we need to move away from the situation of [a judge’s] individual discretion. A solid human rights basis is needed.’¹³⁷

Fahrettin Keskin of TAYAD, whose diabetic son was referred to in the section on health provision, is an illustrative example of the arbitrary and disproportionate application of prison punishments.¹³⁸ As described above, Mr Keskin’s son suffers diabetes and complains of inadequate provision of insulin. Mr Keskin told the mission that his son protests this by shouting slogans and banging doors (offences that could easily enough fit into the broad list of possible offences listed in articles 42-44 of Law 5275). Mr Keskin informed the mission that his son has been punished by the prison authorities with the withdrawal of family visiting privileges to the extent that his mother has not seen him in four years (Mr Keskin acts as his legal guardian and thus circumvents the punishment). On complaining to the authorities of the excessive nature of such a punishment, he has consistently been met with claims that it is impossible that his son was denied family visits for four years, since according to regulations the punishment is for a maximum of three months. However, Mr Keskin told the mission that his son has been receiving successive three-month

134 FFM interview with Eren Keskin, İstanbul, 15 December 2008; FFM interview with Mazlum-Der, Ankara, 17 December 2008.

135 FFM interview with Eren Keskin, İstanbul, 15 December 2008.

136 FFM interview with Prisoner’s Families Association (TUAD-DER) Ankara Branch, Ankara, 17 December 2008.

137 FFM interview with Mr Akın Birdal MP, Turkish Grand National Assembly, Ankara, 17 December 2008.

138 FFM interview with TAYAD, İstanbul, 16 December 2008.

punishments, which render the official three-month limit meaningless. Mr Keskin told the mission that the execution judge's role in this is simply that of a rubber stamp.

Gülmez v. Turkey

The predicament of Mr Keskin's son, it seems, is not unusual, as the September 2008 ECtHR judgment in *Gülmez v. Turkey* illustrates.¹³⁹ The case concerned complaints by a prisoner in Sincan F-type prison of violations of the right to a fair trial (ECHR Article 6) and the right to respect for family life (ECHR Article 8). The complaints concern the claim that the prisoner was not afforded the opportunity to follow disciplinary proceedings against him in a public hearing, due to the fact that the execution judge based his decision on a case file. He also claimed that the resulting punishments received were applied consecutively, meaning that he was deprived of family visits for over a year.

The Court ruled that the prisoner's right to respect for private and family life under Article 8 had been violated as a result of the lack of specificity and clarity in the relevant legislation. The Court pointed out in this connection that 'under article 60.4 of the European Prison Rules, no disciplinary punishment should include a total prohibition on family contacts.'¹⁴⁰

Significantly, the judgment also ruled that the prisoner's Article 6 rights had been violated. Though acknowledging that under paragraph 1 of Article 6 a public hearing is not an absolute right, and that there is a certain margin of appreciation where this is concerned, the Court pointed out that access to a public hearing is a fundamental principle underpinning public confidence in the administration of justice.¹⁴¹ In the prisoner's case, the Court argued that given the fact that Article 6 of Law 4675 provided only for the consideration of disciplinary appeal by the review of a case file, the applicant could therefore not effectively follow the proceedings against him, and that therefore his Article 6 rights were violated.¹⁴²

When addressing the application of Article 46 of the ECHR, which obliges States to abide by the final judgment of the ECtHR in any case to which they are parties, the Court pointed out that there are several other cases of this kind pending before the Court, and that the problem arises out of flaws in Law No. 4675 on enforcement (execution) judges, which does not provide for prisoners to defend themselves in person or through legal assistance when appealing their punishments.¹⁴³ The Court

139 *Gülmez v. Turkey*, (Application no. 16330/02), Judgment dated 29/9/2008.

140 Paragraph 50.

141 Paragraphs 34, 35.

142 Paragraphs 37-39.

143 Paragraph 60, 61.

indicated, therefore, that the problem is of a systematic nature, requiring reform at a national level:

Having regard to the systematic situation which it has identified, the Court is of the opinion that general measures at national level appear desirable in the execution of the present judgment in order to ensure the right to a fair hearing in accordance with the guarantees set forth in Article 6 of the convention. In this respect, the respondent state should bring its legislation in line with the principles set out in Articles 57 paragraph 2(b) and 59 (c) of the European Prison Rules.¹⁴⁴

The March 2008 CPT report on the conditions of detention of Abdullah Öcalan also details similar difficulties related to disciplinary proceedings against Öcalan and draws the authorities' attention to Rule 59 of the European Prison Rules, which provides that 'Prisoners charged with disciplinary offences shall ... be allowed to defend themselves in person or through legal assistance when the interests of justice so require.'¹⁴⁵

Given the frequency with which the problem was raised, the mission's interviews tend to support the Court's assertion that the violation of prisoners' rights to a fair appeal of disciplinary penalties is of a systematic nature. It is also worth noting that, although in this particular case the alleged violation of Article 3 was deemed to be unfounded, had the prisoner been punished with concurrent terms of solitary confinement, he almost certainly would have had a case under Article 3. Given the systematic nature of the problem, it is extremely worrying that prisoners are potentially at risk of exposure to concurrent spells of solitary confinement with no adequate recourse to appeal. Such a scenario would be a certain violation of a prisoner's Article 3 rights, and illustrates the currently unacceptable state of affairs in Turkish prisons when it comes to disciplinary measures.¹⁴⁶

During the mission's interview with Asrın Law Office in İstanbul, Lawyer İrfan Dündar told the mission that legislation was currently being considered in parliament to allow for the possibility of legal representatives of prisoners taking part in hearings before the execution judge in order to ensure an effective right to appeal disciplinary punishments imposed by the prison administration.¹⁴⁷ The mission

144 Paragraph 63.

145 CPT/Inf (2008) 13, paragraph 24.

146 Indeed, Eren Keskin told the mission that punishments of 6 months solitary confinement are not uncommon, which would suggest up to nine concurrent applications of the maximum penalty. FFM interview with Eren Keskin, İstanbul, 15 December 2008.

147 FFM interview with representatives of Asrın Law Office, 15 December 2008.

welcomes the Court's judgment in *Gülmez v. Turkey* and also welcomes these reported moves by the Turkish authorities to heed the Court's Article 46 recommendation in paragraph 63. The mission would call on the Turkish authorities to ensure that these moves are comprehensive and in line with international human rights standards; this is essential for the proper protection of prisoners' rights under, *inter alia*, Articles 3, 6 and 8 of the ECHR.

VI. LANGUAGE RIGHTS

The report has already briefly touched upon the issue of the use of Kurdish in the section on prison punishments. The denial of language rights to prisoners and their families during visits, along with general prohibitions of conversations, correspondence and reading material, emerged as a common problem amongst former political prisoners and other prisoners of Kurdish origin, as well as their families.

The legal representatives of Abdullah Öcalan told the mission in İstanbul of the *de facto* prohibition of Kurdish to their client during family visits and in correspondence, adding that similar prohibitions are widespread in all F-type prisons.¹⁴⁸ Former Kurdish political prisoner İmam Canpolat told the mission that during his incarceration from 1999 to 2005 he and other Kurdish prisoners were expressly told they could not communicate in Kurdish on the telephone.¹⁴⁹ Their line would immediately be cut if they did, and a disciplinary punishment would be applied. He also told the mission that since his release he has heard from prisoners of a number of instances where inmates were obliged to pay for a translation of correspondence into Turkish for censorship purposes.¹⁵⁰

Havva Özcan, the manager of the Prisoners' Families Association in Ankara, told the mission that she conducts regular visits to prisoners as their appointed guardian in Kırıkkale and Sincan prisons and encounters the prohibition of Kurdish on a regular basis.¹⁵¹ She told the mission that visits are monitored, and that any attempt to speak Kurdish prompts an interruption by the prison guards. She added that one of the prisoners she visits as a guardian is a Syrian Kurd with whom she shares only Kurdish as a common language. The use of the language is nonetheless denied. The mission heard similar accounts from XY regarding visits to her sister in Ankara's Sincan prison. Though she said she and her mother sometimes get away with speaking Kurdish, frequent prohibitions mean that her mother, who does not

148 FFM interview with lawyers of Asrın Law Office, İstanbul, 15 December 2008.

149 FFM interview with İmam Canpolat, Prisoner's Families Association (TUAD-DER) Ankara Branch, 17 December 2008.

150 The mission was informed by the Chair of İHD, Mardin Branch, that an October 2008 ruling by the Mardin Appeal Court deemed it unlawful to require prisoners to pay for translations from Kurdish. This was the only example heard by the mission of any ruling in favour of a prisoner on a Kurdish language issue. The İHD Mardin Chair told the mission he was not aware of any similar instances.

151 FFM interview with Havva Özcan, Prisoner's Families Association (TUAD-DER) Ankara Branch, 17 December 2008.

speak Turkish, often cannot communicate with her daughter.¹⁵² Indeed, she told the mission that guards specifically forbade Kurdish, telling her they could speak Arabic, English, or any other language, as long as it is not Kurdish.

The mission observed that, though this complaint was an extremely common one amongst interviewees, it did not feature across the board. The mission was informed by the Diyarbakır Bar Association that in the D and E-type prisons in Diyarbakır the prohibition of Kurdish for family visits was not a problem.¹⁵³ Akın Birdal also told the mission that during his incarceration in the late 1990s he was permitted by the Kurdish deputy governor to converse with other political prisoners in Kurdish.¹⁵⁴ This suggests that prohibitions on Kurdish and other languages are applied inconsistently, arbitrarily and not necessarily in accordance to a set of rules and regulations specifically covering non-Turkish languages.

According to several lawyers interviewed by the mission there is no lawful basis for the prohibition of the use of Kurdish or other languages during visits or in correspondence. Eren Keskin told the mission that despite this, prison authorities routinely impose punishments for the use of Kurdish, and that these punishments are usually upheld by Execution Judges as being in line with prison rules.¹⁵⁵ Ömer Güneş of the Asrın Law office told the mission that such prohibitions are ‘completely illegal.’¹⁵⁶ Akın Birdal pointed out that there is no ban on Kurdish in the private sphere and noted that since there would soon be a state-sponsored Kurdish TV station, there is a contradiction in denying prisoners the right to speak in Kurdish amongst themselves and their families.¹⁵⁷ He said that nothing is being done on this issue since there is no desire to accept the concept of pluralism of identity at an official level. It remains unclear to the mission the exact basis, if one exists, upon which such prohibitions of the use of Kurdish are justified. However, even if prohibitions were to have a basis in penal regulations or in law, without a justification beyond the simple fact that the language is not Turkish, they would likely be in breach of Articles 8, 10 and 14 of the ECHR.

152 FFM interview with representatives of Prisoners’ Families Association (TUAD-DER), Diyarbakır Branch, 19 December 2008. For more on the case of XY and her sisters, see sections III, IV and VII of this report.

153 FFM interview with representatives of Diyarbakır Bar Association, 19 December 2008.

154 FFM interview with Mr Akın Birdal MP, Turkish Grand National Assembly, Ankara, 17 December 2008.

155 FFM interview with Eren Keskin, İstanbul, 15 December 2008.

156 FFM interview with lawyers of Asrın Law Office, İstanbul, 15 December 2008.

157 FFM interview with Akın Birdal MP, Turkish Grand National Assembly, Ankara, 17 December 2008. The new state-run Kurdish-language television channel TRT6 officially began broadcasting on 1 January 2009.

Reports of Reform

Reports emerged in the Turkish media on 15 January 2009 that the Ministry of Justice was planning to allow inmates to communicate over the phone to their families in non-Turkish languages, including Kurdish.¹⁵⁸ According to the reports, the measure, to be discussed in cabinet soon, would allow inmates to declare their inability to speak Turkish, and thus apply to speak in another language.¹⁵⁹ It seems that this reform only applies to telephone conversations and not family visits, inter-prisoner communications or access to reading materials and correspondence in other languages. Also, officials would have the power to record the conversation and to rescind the right to use languages other than Turkish if the contents of the conversation were deemed illegal. Human rights lawyer Sezgin Tanrikulu, a former president of the Diyarbakır Bar Association, commented on the proposed reform and the peculiar provision for monitoring inappropriate or illegal conversation saying:

This means that Kurdish is still considered a criminal language ... If there was anything criminal in a telephone conversation, whatever language the conversation was in, there are relevant sanctions in the regulations... there cannot be a separate ban according to language. If the same crime was discussed in Turkish, would they ban the use of Turkish?¹⁶⁰

It is certainly odd that this caveat is included in the proposed reform. As Tanrikulu states, surely utterances that contravene prison regulations or the law should be seen as such in their own right, and not on the basis of the language in which they were uttered.

The mission would call upon the Ministry of Justice to expand its proposed reforms by issuing a circular to prisons underlining not only prisoners' rights to freely communicate in their language of choice, but the positive duty of prison authorities to respect this right in all but the most extreme of circumstances, as provided for by Articles 8, 10 and 14 of the ECHR. The mission believes such a circular would bring

158 'Inmates to converse with family members in Kurdish', Today's Zaman, 15 January 2009; 'If there are "criminal acts", Kurdish will be forbidden', Bianet.org, 15 January 2009.

159 'Inmates to converse with family members in Kurdish', Today's Zaman, 15 January 2009.

160 Quoted in 'If there are "criminal acts", Kurdish will be forbidden', Bianet.org, 15 January 2009.

clarity to what seems to be a grey area in terms of what is lawful and not lawful where use of non-Turkish languages is concerned. The mission recognises that the state has legitimate security concerns where communications within and without prisons are concerned. However, the systematic and discriminatory prohibition or obstruction of Kurdish and other languages native to Turkey cannot be justified by these concerns.¹⁶¹

161 Though the mission would not endorse the blanket monitoring of prison visits and telephone calls, it is not convinced that the language barrier between the authorities and prisoners is so prohibitive for monitoring purposes as to pose a security threat. Representatives of Mardin Bar Association told the mission that the authorities would have little difficulty in finding people across Turkey with the requisite language skills for monitoring prisoner conversations and censoring correspondence in Kurdish, Arabic or other languages. Akın Birdal told the mission that Kurdishness was not necessarily an obstacle to entry into the prison service or administration, as long as one was seen as pro-state. FFM interviews with Akın Birdal MP, Turkish Grand National Assembly, Ankara, 17 December 2008 and with representatives of Mardin Bar Association, Mardin, 18 December 2008.

VII. WOMEN IN THE TURKISH PRISON SYSTEM

In the preceding sections this report has touched on some of the difficulties facing certain female prisoners, for example those described by lawyer Özlem Mungan of Mardin's prison, where women prisoners face overcrowding, blanket shortages, and practical inconveniences such as the high price and inadequate availability of sanitary necessities.

During its time in Istanbul the mission spoke to an expert in women's experiences in Turkish prisons. Eren Keskin is an İstanbul-based human rights lawyer whose firm has provided legal assistance to incarcerated women for 11 years, particularly to those who have faced sexual abuse, torture and rape. Her firm currently has around 300 clients, and caters for both political and non-political prisoners. More recently they have taken cases on behalf of transsexuals and transvestites due to increases in the violence they suffer at the hands of the police and prison authorities.¹⁶²

Ms Keskin informed the mission that over the past 11 years there have been quite a few improvements in the legislative framework protecting women, including female prisoners, from rape and sexual assault and other forms of violence. The definition of rape has been expanded¹⁶³ and sexual harassment, not formerly a crime, is now considered as such.¹⁶⁴ Mentalities, however, have not changed she said, and she has yet to get a ruling in a domestic court of torture or ill-treatment by a member of the police or prison authorities.

Ms Keskin's practice had not received a report of rape committed against a female prisoner in over a year. On being asked whether this lack of recent reports reflects a genuine improvement in the situation, Ms Keskin told the mission that this is not necessarily the case; a lack of reporting does not mean it is not happening. She explained to the mission that quite a proportion of the reports and complaints she receives are from political prisoners (leftists or Kurdish activists, for example). Such prisoners are empowered, articulate and more often than not ready to challenge authority and come forward with complaints. She speculated that this has made

162 Interview with Eren Keskin, Istanbul, 15 December 2008.

163 The old definition covered only vaginal penetration by the penis. The current definition includes vaginal, anal and oral rape, and also the use of implements in carrying out a rape. See Turkish Penal Code No. 5237, Article 102, paragraph 2.

164 It is not, however, defined in legislation, though the mission was informed that it has acquired a working definition through jurisprudence to cover verbal threats of rape, fondling and interrogation while naked.

prison authorities more wary of mistreating such prisoners in this way. Non-political prisoners, on the other hand, imprisoned for crimes such as murder and theft, are not organised and are not necessarily aware of their rights or properly equipped to make such complaints. It is therefore possible that rape and sexual abuse against such prisoners is ongoing but goes unreported, she argued.

Other forms of ill-treatment against female prisoners are a common occurrence, Ms Keskin told the mission, including verbal abuse of a sexual nature by guards¹⁶⁵, stripping, casual beatings and the withholding of food and water. The mission later encountered some accounts of such treatment (see below).

The mission asked what would improve the situation in Turkish prisons, both for female prisoners and more generally. Ms Keskin told the mission that effective civil oversight of prisons was essential in order both to uncover and to prevent human rights abuses. Human rights organisations in Turkey have been pressing for this for many years she said. In this connection, and as already mentioned above, she told the mission that the lack of any recourse to independent medical examinations is a major obstacle to her in seeking redress for the clients who have suffered sexual abuse and torture. The Ministry of Justice should take the initiative and enact provisions for the engagement of independent medical examinations of prisoners where ill-treatment is suspected, she said.

1. The Gebze Incident

An incident in Gebze prison a month before the mission's visit was raised by several interviewees, including Eren Keskin¹⁶⁶, Fahrettin Keskin of TAYAD İstanbul¹⁶⁷ and XY of TUAD DER Diyarbakır.¹⁶⁸ Fahrettin Keskin's daughter and XY's sister, indeed, were in the prison during the incident. The incident illustrates the potential danger faced by female political prisoners when the political situation in Turkey disimproves, and typifies some of what Eren Keskin told the mission about the common occurrence of ill-treatment against women in prisons, notwithstanding a reduction in reports of rape.

According to interviewees, in early October 2008, there was a protest by female political prisoners at the alleged treatment of Abdullah Öcalan.¹⁶⁹ Male non-political prisoners allegedly gained access to the female political prisoners' area and

165 According to Eren Keskin there are very few female prison officers in the prison system; only enough to be present during cell searches and body searches.

166 Interview with Eren Keskin, İstanbul, 15 December 2008.

167 FFM interview with TAYAD (Association for Solidarity with Prisoners' Families), İstanbul, 16 December 2008.

168 FFM interview with representatives of TUAD-DER, Diyarbakır, 19 December 2008.

169 This detail, was specifically mentioned by XY, whose sister was involved. FFM interview with TUAD-DER, Diyarbakır, 19 December 2008.

attacked them, throwing missiles and breaking glass while shouting anti-Kurdish slogans.¹⁷⁰ The official claim was that the non-political prisoners stole keys to gain access. Fahrettin Keskin, whose daughter was amongst the political prisoners, expressed scepticism at this, saying keys for separate areas were with different guards, implying to the mission that guards were complicit in granting the male prisoners access to the female prisoners. He added that the prison authorities were slow to act in the defence of the women, taking 20 minutes to arrive on the scene as the women attempted to barricade themselves into their area. On finally intervening they allegedly verbally abused the women, taunting them and threatening to let the prisoners loose to assault them. In the end the women escaped with cuts and bruises. The incident, he says, was reported in the newspapers and complaints have been submitted to the prosecutor. There has been no official public comment on the incident, and at the time of interview no official investigation or internal inquiry had been initiated.

2. The Case of XY's Sisters

A further account heard by the mission illustrating Eren Keskin's assertion of routine ill-treatment against women was that of XY's sisters. Indeed, the sister of XY, whose alleged mistreatment during transfer from Gebze to Sincan prison in November 2008 has already been mentioned in section IV, was being transferred to Sincan for her part in the protest that triggered the incident in Gebze.¹⁷¹ Her treatment on arrival to Sincan F-type following the transfer was severe according to XY's testimony. Transferred wearing only pyjamas, on arrival to Sincan in November 2008 she and the other transferees were verbally abused by gendarmes and ordered to strip naked for a search by female prison guards. On refusing, the women were threatened by the prison guards, who said that if they continued to refuse to strip the gendarmes would strip them.¹⁷² They were then placed into a cold cell in the same pyjamas, and without blankets or bedding where they were kept for a week, before being given prison dress and placed in single cells.

XY has a second sister in Muş prison, serving a two year and nine month sentence for 'aiding and abetting the PKK'. XY told the mission that this sister has suffered similar treatment. A recent example given was a cell search conducted by the soldiers on 5 December 2008. Female prisoners were made to strip naked and assemble in the exercise yard in full view of the governor and the male prison officers. They were threatened with disciplinary measures if they did not cooperate. XY told

170 FFM interview with Fahrettin Keskin, TAYAD (Association for Solidarity with Prisoners' Families), Istanbul, 16 December 2008.

171 FFM interview with representatives of TUAD-DER, Diyarbakır, 19 December 2008.

172 The gendarmerie forms part of the Turkish military, which is all male, so this threat would have had a certain connotation.

the mission that she cooperated as she feared violence. The search lasted four hours, during which time the women were left in the yard.

These accounts of violence, intimidation and harassment against female prisoners are extremely worrying, as is Eren Keskin's assertion that casual beatings, withholding of food and water and stripping are still common occurrences. The mission did not have the opportunity to speak to officials or prison guards on these concerns. However, the mission agrees wholeheartedly with Eren Keskin that better transparency in the prison system through comprehensive civilian and civil society oversight would help to uncover such abuses where they occur, as well as reduce their likelihood.

VIII. CHILDREN IN THE TURKISH PRISON SYSTEM

The KHRP's recent trial observation report on the trial of a children's choir on terrorism charges illustrated the attitude of the Turkish state and criminal justice system to international standards when it comes to the treatment of juveniles, particularly the readiness with which they are tried before adult courts, or for crimes carrying heavy sentences.¹⁷³ As the report pointed out, Turkey is very far behind in its reporting duties to the UN Committee on the Rights of the Child, failing to submit either its 2002 or 2007 report. The Committee's last feedback on a Turkish report on Children's rights is from 2001, and raises concerns such as the trying of children as young as 14 in adult courts, and ill-treatment of children in pre-trial detention.¹⁷⁴

The trial observation report pointed out that these failures to protect the rights of children, particularly those in custody, persist. The arrest and trial of children is particularly common in south-east Turkey, due to civil unrest and the imposition of 'high security zones' in the context of the ongoing conflict between state security forces and the PKK. Both arrests and detentions have exposed children to the risk of ill-treatment and violence.¹⁷⁵

Such arrests and prosecutions in the southeast are usually due to protest activities by children such as stone throwing, chanting slogans and waving flags and banners associated with the PKK. While in Ankara, the mission was informed by representatives of the Mazlum-Der human rights organisation of several recent incidents resulting in the arrest and trial of children. These included riots in March 2008

173 *A Children's Choir Face Terrorism Charges: Juveniles in the Turkish Justice System*, KHRP trial observation report, London, September 2008.

174 Committee on the Rights of the Child, *Report on the Twenty-Seventh Session (Geneva, 21 May – 8 June 2001)*, pp. 18-31. Available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/5b1df9e703b19060c1256adb0036f084/\\$FILE/G0143817.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/5b1df9e703b19060c1256adb0036f084/$FILE/G0143817.pdf)

175 *A Children's Choir Face Terrorism Charges: Juveniles in the Turkish Justice System*, KHRP trial observation report, London, September 2008, p 29.

across south-east Turkey during the Newroz festival,¹⁷⁶ and more recently during protests in Van and Diyarbakır during the visit by Prime Minister Recep Tayyip Erdoğan in November 2008. The latter protests involved stone throwing by children aged between 13 and 17, which resulted in approximately 400 juvenile arrests (of which 200 resulted in imprisonment on remand, with close to 100 held on remand in Van). Reports on 17 February 2009 stated that over 100 children were detained following protests across the south-east on 15 February, the tenth anniversary of Abdullah Öcalan's arrest.¹⁷⁷

Emre Yurtalan, a human rights lawyer and the General Secretary of Mazlum-Der told the mission that such large scale arrests following protests are illustrative of a growing tendency since 2006¹⁷⁸ to detain minors and charge them for serious terror-related crimes. The authorities, he said, argue that the children are used as instigators by adults in the protests seeking to start violence, and therefore tend to target stone throwing young boys. The charges, he said, can range from 'stone throwing', 'resisting arrest' and 'breaking the law on demonstrations' to 'praising terrorism' or 'membership of a terrorist organisation'.¹⁷⁹ Under Turkish anti-terrorism legislation, acts as simple as flag waving and chanting can be prosecuted as terrorist propaganda, an offence that is punishable with up to five years in jail.¹⁸⁰

Mr Yurtalan's colleagues in the Diyarbakır branch of Mazlum-Der gave a similar account, telling the mission that there is an increasing tendency to seek high sentences against juveniles and impose them cumulatively.¹⁸¹ Ercan Esgin, Vice Chair, told the mission that one of his clients was given a seven-year sentence for protest-related activities during a demonstration, committed when he was 16 years of age. Mr Esgin gave the mission some further examples of recent arrests of juveniles and their ill-treatment in the southeast. He told the mission of the arrest of 12 boys aged 12 and over following a protest in Cizre on 15 February, the anniversary of Abdullah Öcalan's arrest. The children were remanded in Cizre prison in March 2008, where on a night in late March they were taken from their holding area, stripped

176 FFM interview with Mazlum-Der Ankara, 17 December 2008. Such unrest is an annual occurrence. Following this 2008 period of Newroz violence a particularly graphic video emerged of a police officer breaking the arm of a restrained young boy in the town of Colemerg, see 'KHRP Condemns ongoing violence against civilians in Turkey and Syria since Newroz', KHRP press release, 2 April 2009, at <http://www.khrp.org/content/view/364/337/> (last accessed 19 February 2009). The video is still available online at <http://www.policebrutality.info/2008/12/police-brutality-broke-arm-on-15-years.html> (last accessed 19 February 2009).

177 'Rights Activists React as Children Crowd Prisons', website of pro-Kurdish news agency Bianet at <http://www.bianet.org/bianet/yazdir/112634>, 17 February 2009.

178 The hardening of attitudes since 2006, he said, was linked to a reduction in confidence in the possibility of EU membership and therefore a reduction in desire to 'be on good behaviour'.

179 FFM interview with representatives of Mazlum-Der Ankara, 17 December 2008.

180 Article 7, Law on the Fight Against Terrorism, as amended by Law No. 5532 on 29 June 2006.

181 Interview with representatives of Mazlum-Der, Diyarbakır branch, 19 December 2008.

to their underwear and left in the exercise yard for three hours in temperatures of minus ten degrees Celsius.¹⁸²

Again, the mission was unable to sound out Turkish officials or give them the opportunity to address claims that children are routinely facing trial on very serious charges for acts such as chanting slogans and stone throwing, which at worst could be deemed public order offences, and certainly not acts of terrorism. However Minister of Justice Mehmet Ali Şahin was reported in February 2009 to have revealed in response to an information request by DTP MP Selahattin Demirtaş that 724 children had been tried under anti-terror legislation in 2006 and 2007. In the same period, it was reported, 835 children were tried under the penal code for crimes such as 'organising a crime' and 'membership of an armed organisation', the latter charge deemed applicable to children simply attending a protest.¹⁸³ The mission finds these claims to be of enormous concern and consistent with KHRP reports earlier in 2008. International human rights standards expressly distinguish children from adults in the criminal justice system due to their particular vulnerability to hardship and ill-treatment in prison and during trial. The mission would urge the Turkish authorities to end the application of excessive terrorism charges to children involved in demonstrations, and to bring its juvenile criminal justice system into line with international standards such as the UNCRC and the UN Standard Minimum Rules for the Administration of Juvenile Justice.

182 This account was based on a statement taken from six of the children by a Mazlum-Der lawyer in June 2008.

183 'Rights Activists React as Children Crowd Prisons', website of pro-Kurdish news agency Bianet at <http://www.bianet.org/bianet/yazdir/112634>, 17 February 2009.

IX. İMRALI AND THE CPT: AN UPDATE ON THE CONDITIONS OF DETENTION OF ABDULLAH ÖCALAN

Abdullah Öcalan is the founder of the PKK, which has been engaged in armed conflict with the Turkish security forces since the early 1980s. In February 1999 he was kidnapped by Turkish commandos in Kenya and brought to Turkey for trial, where he was sentenced to death in June 1999. In 2002, following the abolition by Turkey of the death penalty, his sentence was commuted to 'aggravated life imprisonment'. Since his capture he has been held in solitary confinement as the sole inmate of İmralı Island prison in the Sea of Marmara, off the İstanbul coast.

A case is currently pending before the ECtHR which brings together four KHRP-assisted applications relating to Turkey's treatment of Öcalan, alleging violations of Articles 3 (Prohibition of torture), 5 (Right to liberty and security), 6 (Right to a fair trial), 7 (No punishment without law), 8 (Right to respect for private and family life), 13 (Right to an effective remedy) and 14 (Prohibition of discrimination) of the ECHR.¹⁸⁴ The ECtHR has previously ruled that Öcalan's trial was unfair. Violations of his right to a fair trial include inadequate time and facilities allowed for the preparation of the defence, restrictions on legal assistance and the fact that he did not have access to the 17,000-page case file until two weeks before the trial began. However, a review by Turkey's 14th Assize Court subsequently concluded that further investigations or hearings were unnecessary, asserting that any potential findings would not alter the conviction and the outcome of the case. This review was deemed to be sufficient by a subsequent ruling by the Council of Europe Committee of Ministers, a finding that KHRP strongly contests. With regard to the conditions of Öcalan's detention, issues highlighted in KHRP's arguments before the ECtHR include his social isolation; inadequate access to family, lawyers and reading materials; deprivation of television and telephone communications; severe censorship of his correspondence; and exceptionally harsh limitations on the time that he is allowed to spend outside his cell.

The regime under which Öcalan is held is unique in Turkey, since he is held not only in permanent solitary confinement, but as the sole inmate on an isolated island. The CPT has made several visits to İmralı since March 1999¹⁸⁵, following from which it

184 The relevant application numbers are 24069/03, 197/04, 6201/06 and 10464/07.

185 The most recent visit was in May 2007 and the resulting report, CPT/Inf (2008) 13, came out in March 2008. The CPT had already carried out three visits to İmralı: in March 1999, September 2001 and February 2003.

has been very critical of his conditions of detention, particularly in relation to his lack of contact with other persons¹⁸⁶, disruptions and limitations to family and lawyers' visits, the withholding of access to the outside world via telephone, and concerns with regard to access to news, physical exercise and medical care. The CPT's overarching criticism of Öcalan's detention in İmralı has been his isolation from the outside world and from general human contact. As the CPT remarked in its 2004 report, 'the issue of paramount importance to the CPT is finding means of ending Abdullah Öcalan's isolation, which has now lasted for more than four years.'¹⁸⁷ At the time of writing, the tenth anniversary of Öcalan's arrest has passed, meaning he has now been in solitary confinement for just over a decade.

The CPT's most recent visit to İmralı in May 2007 resulted in a March 2008 report extremely critical of the ongoing isolation and general conditions of detention faced by Öcalan, and the failure of the Turkish authorities to address many of its recommendations from previous visits. The mission sought to receive updates from Öcalan's legal representatives on some reported moves by the Turkish authorities to improve his conditions of detention according to recommendations set out in the CPT's March report. In this section we will outline some of the main areas of concern raised by the CPT's March 2008 report, and include any updates on the situation reported to the mission by Öcalan's legal representatives in December 2008.

1. Material Conditions

Following its 2007 visit, the CPT reported that Öcalan's material conditions of detention had 'changed very little, if at all' by comparison with its previous visit.¹⁸⁸ It described his living space as follows:

The prisoner had a cell of satisfactory size (approximately 13m²), equipped with a bed (and bedding), a small shelf, a table and two chairs. A partially partitioned sanitary annex (shower, toilet and sink) completed the cell area, all of it clean and well kept. There was adequate access to natural light and adequate artificial lighting. The cell was ventilated by opening the window - which the prisoner did himself - and the cell also had an air conditioning system.

A slightly larger adjoining room was used for lawyers' visits. Family members' visits, for their part, took place with a separating panel and telephones: the prisoner was seated in the lawyers' visiting room and the family in an adjoining room. Lastly, the prisoner had a small exercise yard (approximately 45 m²), which was completely bare and to which he had access for one hour a

186 Since 1999 the CPT has consistently recommended the transfer of the prisoners to İmralı in order to place Öcalan in a setting where he has a basic degree of human contact.

187 See CPT/Inf (2004) 2, paragraph 4, as cited in CPT/Inf (2008) 13 paragraph 8.

188 CPT/Inf (2008) 13, paragraph 11.

day (divided into two 30-minute periods, one in the morning and the other in the afternoon). Apart from his hour of daily exercise, the prisoner remained alone, confined to his cell (and therefore without free access to the adjoining room).¹⁸⁹

The report further stated that Öcalan was in possession of three books from the prison library, and was given newspapers, though only days or weeks following their publication, along with a radio, tuned to only one state channel. It is extremely critical of Turkey's failure to improve Öcalan's daily regime in order to alleviate the harmful effects of his solitary detention and isolation from human contact:

he was still not allowed to move freely between his cell and the adjoining room during the day, had no access - not even occasionally - to a larger exercise area with basic facilities, had no other activities and had no television set (either rented or purchased). Furthermore, the interaction between the prisoner and custodial staff was rather limited, as the staff were only allowed to speak to him for strictly functional reasons.¹⁹⁰

The report recommended that the prisoner be allowed free movement between his cell and the adjoining room, occasional access to a larger, better equipped exercise area, and that he be provided a television.¹⁹¹ The mission was informed by Cihan Aydın of the Diyarbakır Bar Association Prison Commission that these relatively simple changes to Öcalan's material conditions have not yet been put in train, and that there is a reluctance to do so. They argued that there was a preference on the part of the authorities to be seen to be acting on long-term recommendations such as building facilities at İmralı for new prisoners. This activity, they argue, gives off the cosmetic appearance of action on the CPT's recommendations, without having to engage with the simple recommendations that would have an immediate beneficial effect on the prisoner's conditions of detention in the short term.¹⁹² The Turkish reply to the 2008 report¹⁹³ states that Öcalan's material conditions are in conformity with international law and cites a European Court of Human Rights judgment of 12 May 2005 which found that the general conditions at İmralı prison had not thus far reached the minimum level of severity required to constitute inhuman or degrading treatment under Article 3 of the European Convention on Human Rights, which covers torture and inhuman or degrading treatment or punishment.¹⁹⁴ The

189 *Ibid.*

190 *Ibid.*, paragraph 13.

191 CPT/Inf (2008) 13, paragraph 33.

192 FFM interview with Diyarbakır Bar Association, Diyarbakır, December 2008. The question of moving prisoners to İmralı will be dealt with in more detail below.

193 CPT/Inf (2008) 14. *Response of the Turkish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Turkey from 19 to 22 May 2007.*

194 *Ibid.*, p 5.

Turkish reply further argues that to provide Öcalan with further exercise space or a television would amount to treating him with privilege 'distinguishing him from other dangerous prisoners of the same status.'¹⁹⁵ This argument, however, does not take into account the particular circumstances of his incarceration, and that he is in effect distinguished from other prisoners of his status by these circumstances.

2. Visits from Family and Lawyers

In terms of access to the outside world, Öcalan faces extremely tight limitations on family visits and legal consultations, no access to telephone calls and regular censorship of his correspondence. As the CPT report states, İmralı prison regulations allow for visits for a maximum of one hour on Wednesdays between 9am and 4pm through a 'separating panel' for spouses, children, parents, brothers, sisters or guardians. He is permitted a 'table visit' with parents, spouses, children or grandchildren. The CPT points out that table visits in Öcalan's case are not possible, since none of his relations fall into the required category, meaning the visits he does receive are via a separating pane. This state of affairs continues, the CPT states, despite its 2003 recommendation that he be allowed full table visits.¹⁹⁶ The report also pointed out that over the past years access to the island has been very restricted for families and lawyers, officials owing this to weather conditions and breakdowns of the ferry vessel. It welcomed an increase in the frequency of visits in May and June 2007 and called for this trend to continue.¹⁹⁷ The mission was informed by Öcalan's İstanbul-based lawyers, however, that Öcalan has only had access to five or six family visits from his brother and sister over the course of 2008, suggesting that his family continues to face serious obstacles in visiting him.¹⁹⁸ The Turkish response to the 2008 CPT report insists that visits are adequately frequent, citing a figure of 127 visits received by Öcalan from his family from the time of his incarceration up to 30 September 2007.¹⁹⁹ However, this figure, if accurate, is still considerably below the prisoner's entitlement of one visit per week.

195 *Ibid.*, p 6.

196 CPT/Inf (2008) 13, paragraph 16.

197 *Ibid.*, paragraph 15.

198 FFM interview with Ömer Güneş, İrfan Dündar and Emran Emekçi of Asrın Law Office, İstanbul, 15 December 2008. Indeed, the recently published report by the Haldane Society, based on a fact-finding mission in February 2008, reported that up to the time of its visit an effective suspension of family visits was in place, with Mehmet Öcalan having last seen his brother Abdullah in July 2007. See Bowring, Bill; Hobson, John; Punto, Ville; Rought-Brooks, Hannah: *Conditions of Detention in Turkey: Blocking Admission to the EU*, Haldane Society of Socialist Lawyers, London, February 2009, p 34. Though it seems there have been a few visits since February 2008, the frequency of visits is far from satisfactory. It is also worth noting that the restrictions on the use of Kurdish during visits noted in previous sections are being applied to Öcalan's family visits, causing practical difficulties to his sister, who does not speak much Turkish.

199 CPT/Inf (2008) 14, p 7.

3. Access to Adequate Legal Representation

The 2008 report also raised the CPT's concern that since the introduction of new legislation in July 2005 an official from the Bursa court had been 'systematically' present during interviews between Öcalan and his legal representatives.²⁰⁰ This is potentially a serious contravention of the prisoner's rights to lawyer-client privilege. As the CPT put it:

The CPT consider that the confidentiality of contacts between a prisoner and his lawyers is a fundamental safeguard against ill-treatment and that, consequently, such contacts should be subject only to scrutiny *ex post facto*, leading if necessary to prohibitive measures if the deontological and ethical rules applicable to lawyers have not been observed.²⁰¹

On 15 December 2008 Öcalan's lawyers told the mission that this situation was ongoing and indeed that meetings with lawyers were being not only observed by a prosecutor's official and prison guards, but that they were also regularly tape recorded, and copies made of documentation exchanged.²⁰²

The Turkish government insists that the monitoring is for security reasons, in order to prevent transmission by Öcalan via his lawyers of information to the PKK, and that it is acting in a manner consistent with other states, such as Spain and Germany.²⁰³ In a ruling in an earlier KHRP-assisted case in 2005, the Grand Chamber of the ECtHR noted that there are indeed circumstances in which restrictions can legitimately be imposed on an accused's access to a lawyer if good cause exists. However, the Grand Chamber ruled that in the circumstances under consideration, in which the applicant and his lawyers had been unable to communicate out of the hearing of the authorities at any stage, the rights of the defence were infringed.²⁰⁴ Interference in the confidentiality of Öcalan's communications with his lawyers is also amongst the issues raised in the KHRP-assisted case currently pending before the ECtHR, along with other concerns about restrictions on the Applicant's access to legal counsel.

Mehmet Emin Aktar, Chair of the Diyarbakır Bar Association, told the mission that another major restriction facing Öcalan's legal representatives is the common opening of obstructive malpractice cases against them, on accusations of conduct-

200 CPT/Inf (2008) 13, paragraph 19. The law in question is Article 59 (4) of Law No. 5275.

201 CPT/Inf (2008) 13, paragraph 20.

202 FFM interview with Asrın Law Office, İstanbul, 15 December 2008.

203 CPT/Inf (2008) 14, p 1. This is a common response in the document to the CPT's criticisms of Öcalan's confinement, restrictions placed on his lawyers and the denial of the use of a telephone or television.

204 ECtHR Grand Chamber Judgment in *Öcalan v. Turkey* (Application no. 46221/99), 12 May 2005.

ing ‘secret communications’ with Öcalan, praising him or supporting him.²⁰⁵ New provisions introduced in 2005 under Articles 151 and related provisions in Articles 220, 257 and 314 of the Criminal Procedural Code provide for the suspension of a lawyer for a year, with up to two six month extensions, on the commencement of proceedings against him for various forms of misconduct, including praising, aiding or abetting a criminal organisation.²⁰⁶ The recent report by the Haldane Society describes these provisions and their effect in some detail, characterising them as ‘draconian’. It points out that they have been used to obstruct lawyers in the conduct of their duties, since filing a case against a lawyer ‘is a very easy process and [does] not depend on a case having been determined against a lawyer’. Thus, lawyers can face suspension on the foot of spurious cases filed against them.²⁰⁷

The Haldane Society report states that since 2005 when the provisions were introduced, 12 lawyers have been subjected to this process and have been suspended from practice for periods of one to two years. It argues that these cases were taken for the sole purpose of obstructing Öcalan’s legal representatives in their duties:

Not one of the cases which were filed has been brought to trial. In fact in none of the cases was there any serious intention to secure a conviction. The aim was to prevent these lawyers from representing Öcalan, and this was achieved as a result of the cases having been filed.²⁰⁸

Lawyers both at Asrın Law Office and in the Diyarbakır Bar Association explained to the mission that such attempts to obstruct Öcalan’s legal representatives explain why he has such a large legal team. Mehmet Emin Aktar explained that over 100 lawyers have power of attorney for Öcalan, though only eight or so actively represent him at any one time. The large number of advocates ensures that suspended lawyers can immediately be replaced.²⁰⁹

The mission finds it of enormous concern that Öcalan’s right to effective legal representation and legal privilege is being obstructed by various administrative and legal processes. Whatever the nature of Öcalan’s alleged offences, he is nonetheless entitled, as is any prisoner, to effective and unimpeded legal representation. The KHRP has widely documented the routine misuse by Turkish prosecutors of provisions within the Criminal Code to take politically-motivated and malicious cases against

205 FFM interview with Diyarbakır Bar Association representatives, 19 December 2008. Many of Öcalan’s lawyers are from Diyarbakır and would be members of this Bar Association.

206 See Bowring, Bill; Hobson, John; Punto, Ville; Rought-Brooks, Hannah: *Conditions of Detention in Turkey: Blocking Admission to the EU*, Haldane Society of Socialist Lawyers, London, February 2009, pp 37-41. The report gives the example of one of Öcalan’s lawyers, Özgür Erol, who was accused of praising a terrorist organisation for referring to his client as ‘Mr Öcalan’ instead of ‘Öcalan’. He was suspended from practice (cf p 39).

207 Bowring, Bill; Hobson, John; Punto, Ville; Rought-Brooks, Hannah, fn. 203 above, p 38.

208 Bowring, Bill; Hobson, John; Punto, Ville; Rought-Brooks, Hannah, fn. 203 above, p 40.

209 FFM interview with Diyarbakır Bar Association representatives, 19 December 2008.

writers, lawyers, publishers, politicians and public figures in order to obstruct or silence them.²¹⁰ It is unfortunate that the provisions for suspending lawyers seem to be used in a similar way.

4. Health Matters

The March 2008 CPT report detailed some serious problems with Öcalan's health in solitary confinement. In addition to underlining the ongoing failure of Turkey to address serious concerns highlighted by the mission in 2001 regarding the lack of coordination between care-givers and the pathogenic effect of obligatory daily medical checkups²¹¹, the report stated that it found Öcalan to be suffering 'a distinct deterioration of his mental state since 2001 and 2003'.²¹² It goes on to state that, 'This deterioration is connected with a situation of chronic stress and prolonged social and emotional isolation, coupled with a feeling of abandonment and disappointment'.²¹³ In this connection the report recommends that an end be put to Öcalan's isolation on İmralı:

The reversal of the process now underway can only be durably achieved through a fundamental change in the prisoner's human environment and the ending of his social and emotional isolation. In particular, he should be placed under a detention regime in which he has regular and sustained contact with other persons with whom he can communicate and share recreational and social activities.²¹⁴

Later, at the report's conclusion, the CPT use stronger language:

31. Abdullah Öcalan has now been imprisoned, as the sole inmate of the High-Security Closed Prison of İmralı - an island which is difficult to reach - for almost eight and a half years. Although the situation of indisputable isolation to which the prisoner has been subjected since 16 February 1999 has had adverse effects over the years, the CPT's previous visits had not revealed significant harmful consequences for his physical and psychological condition. This assessment must now be revised, in the light of the evolution of Abdullah Öcalan's physical and mental condition.

210 See, for example, *Persecuting Publishers, Stifling Debate: Freedom of Expression in Turkey*, KHRP, London, may 2008. Indeed, during the mission's interview with Eren Keskin on 15 December 2008 in İstanbul, Ms Keskin informed us that there are 21 cases currently against her on freedom of expression-related charges.

211 CPT/Inf (2008) 13, paragraph 26.

212 *Ibid.*, paragraph 28.

213 *Ibid.*

214 *Ibid.*

32. The Turkish authorities are now at a crossroads: either they make no changes in the prisoner's situation (which is the course they have deliberately and knowingly chosen since 1999, with the consequences described above), or they take the decision to review Abdullah Öcalan's situation, allowing him, in particular, the possibility of maintaining basic social and emotional ties...

[...]

33. The CPT is firmly convinced that, whatever the circumstances, there can be no justification for keeping a prisoner in such conditions of isolation for eight and a half years. **It calls upon the Turkish authorities to completely review the situation of Abdullah Öcalan, with a view to integrating him into a setting where contacts with other inmates and a wider range of activities are possible.**²¹⁵

5. Possible Moves Towards Ending Isolation

On 4 July 2008 the Turkish Justice Ministry made a commitment to the European Court of Human Rights to bring more prisoners to İmralı. However, further details remain unclear. Reports in *Hürriyet*, Turkish daily, in November 2008 revealed that Justice Minister Mehmet Ali Şahin announced that a new prison, suitable for five or six inmates, would be built in İmralı, while *Cumhuriyet*, Turkish daily, quoted him as saying that no other prisoner would be sent to the same ward as Öcalan.²¹⁶ Later, in December 2008 *Hürriyet* reported that though construction had begun on a new facility on the island, a decision as to send prisoners there or not had yet to be made.²¹⁷

The mission's meetings with Asrın Law Office in İstanbul and with the Diyarbakır Bar Association uncovered a great degree of scepticism about Turkey's reported moves to build facilities for the transfer of prisoners to İmralı. The scepticism of Cihan Aydın of the Diyarbakır Bar has already been noted above. He told the mission that details of these changes are currently vague, though he has heard speculation that the authorities plan to send prisoners with convictions related to Islamic fundamentalist activity.²¹⁸

İrfan Dündar of Asrın Law Office told the mission that, though construction has begun on a new building next to where Öcalan is being held, it is as yet unclear what

215 CPT/Inf (2008) 13, paragraphs 31, 32, 33. Emphasis from the original document.

216 TRT Turkish press review, 22 November 2008 at <http://www.trt.com.tr/international/newsDetail.aspx?HaberKodu=1612d0cd-4e13-49a1-b527-a6c2d5ea183c> (last accessed 21 February 2009).

217 'Turkey to decide in 2009 on ending PKK leader's solitary confinement', *Hürriyet*, 15 December 2008 at <http://www.hurriyet.com.tr/english/domestic/10572240.asp> (last accessed 21 February 2009). Justice Minister Mehmet Ali Şahin is quoted as having said: 'We expect to increase the number of detainees to this prison but a final decision has not yet been taken.'

218 FFM interview with Diyarbakır Bar Association, Diyarbakır, December 2008.

category of prisoner the authorities intend to transfer, or whether or not prisoners transferred there will have any contact with Öcalan.²¹⁹ They expressed a suspicion that the new building is being erected ostensibly for the transfer of prisoners as per CPT recommendations, but that there is no intention of changing the solitary confinement regime or allowing Öcalan human contact with these prisoners. They fear it is nothing more than a move to stave off further CPT criticism and a possible European Court judgment.²²⁰ Until they receive an indication that such changes to İmralı will result in a meaningful change to Öcalan's solitary confinement regime, they are therefore inclined to oppose them.

The mission did not have the opportunity to speak to the Turkish directorate of prisons about the possible transfer of prisoners to İmralı and the possible effects that this might have on Öcalan's isolation. It is certainly the case, however, that unless additions to İmralı's prison population allow a genuine opportunity for Öcalan to socialise then they will not amount to an effective response to the CPT's concerns for his physical and mental well-being. The mission would therefore call on the Turkish authorities to take the necessary steps to put an end to the regime of solitary confinement on İmralı by not only transferring suitable prisoners to the island, but also by ensuring that there is a reasonable degree of social interaction between them and Öcalan.

219 FFM interview with Asrın Law Office, Istanbul, 15 December 2008.

220 The KHRP-assisted case currently pending before the ECtHR, for example, includes complaints relating specifically to Öcalan's solitary confinement.

CONCLUDING OBSERVATIONS

Though it is regrettable that the authors were denied the opportunity to discuss what they heard during their research with Turkish officials, the mission nonetheless highlighted several areas of great concern from the point of view of human rights that need to be urgently addressed within the Turkish prison system:

- Prisons are overcrowded to an unprecedented degree, with more than half of prisoners on remand awaiting trial. This is a serious problem leading to the worsening of material conditions for all prisoners. The overcrowding problem also suggests serious flaws in the criminal justice system's ability to conduct fair and expeditious trials, rendering criminal proceedings in themselves punitive. This situation arguably places Turkey in violation of Article 5 of the ECHR.
- Serious measures are needed to improve prisoners' access to medical care, particularly for seriously ill prisoners. This concern was chief amongst those raised by Turkey's leading human rights organisations and echoes recent CPT concerns.
- Standards as regards the treatment of prisoners' families are low, or at the very least unevenly applied, with abusive, disrespectful and undignified treatment not uncommon, particularly in the case of Kurdish families.
- Though the mission was given no hard evidence that the more extreme forms of torture common in the past decades persist within the prison system, the mission is satisfied that casual violence and beatings still abound. Of particular concern were claims that 'welcome' beatings and transfer beatings remain routine and largely go unpunished. Emblematic of these claims was the highly-publicised death in October 2008 of Engin Çeber, the circumstances of which, according to his lawyers, were far from isolated or unusual in the Turkish penal system.
- Standards for the medical examination of prisoners and other lawfully detained persons remain well below the internationally required level, with an ongoing failure on the part of the authorities to effectively and consistently implement reforms in this area. Connected to this, medical examinations relating to allegations of torture remain within the control of the state, meaning that such allegations continue to lack the independent and impartial investigation they deserve.

- The Turkish authorities have yet to fully implement Circular 45/1 and CPT recommendations on communal activity in F-type and similar high security prisons with cell-based accommodation. The failure to develop communal and social arrangements to a degree that meets international standards in F-type and similar prisons is damaging to the well-being of prisoners, and continues to leave the Turkish authorities open to accusations of operating, in effect, a punitive small group isolation regime in these prisons.
- Many prisoners in Turkey find themselves subject to arbitrary or unfair disciplinary proceedings, with no meaningful access to appeal. Disciplinary punishments such as refusal of visiting rights and solitary confinement, though officially limited to a number of weeks in the interest of prisoners' well being, are routinely applied concurrently over months, and signed off without proper review by execution judges. These problems have been described as 'systematic' in nature by the European Court of Human Rights and were a common theme during the mission's investigations.
- The rights of prisoners to communicate amongst themselves and family in a language of their choice are routinely denied, despite the lack of a lawful basis to do so. This has a direct effect on some prisoners' ability to communicate to members of their family who do not speak Turkish.
- Though there have been reports of an initiative to grant prisoners the right to speak to their families over the phone in Kurdish and other non-Turkish languages, it is not yet clear whether this initiative will have any meaningful scope or effect, especially given the current restrictions on the rights of prisoners to communicate in such languages amongst themselves and during family visits without any lawful basis for this.
- Despite the absence of recent reports of rape suffered by female prisoners, it remains the case that female prisoners, particularly political prisoners, face various forms of routine ill-treatment, including casual violence, stripping and verbal abuse.
- Recent years have seen an increase in the numbers of children detained and charged for terror-related offences, particularly following demonstrations in the Kurdish regions. Many such children are tried as adults and remain extremely vulnerable to ill-treatment in detention.
- The most recent CPT report on the detention conditions of Abdullah Öcalan stated in no uncertain terms that his decade of solitary confinement has resulted in serious effects on his mental state, and that he should immediately be introduced into a prison setting where he can have basic human contact. From the mission's interviews with his lawyers, it remains to be seen whether recent moves by the authorities to build a new installation on İmralı will result in the transfer of prisoners to the island, or if such a transfer would

result in any material changes to his conditions of detention. In addition to this, Öcalan's family continues to face enormous difficulty in visiting him on a regular basis, while his legal team face ongoing violations of legal privilege, and obstructive malpractice suits.

A common thread linked all the concerns raised during the course of the mission's investigation: a continuing lack of transparency, accountability and independent oversight within the penal system. Turkish prisons continue to operate without fully effective legal control. State-endorsed monitoring boards, execution judges, and human rights boards lack true independence and the system remains completely cut off from any meaningful form of civilian or civil society oversight, leading to the continuation of institutional abuses and impunity. Until meaningful, functionally independent prison oversight mechanisms are put in place in Turkey, in line with the standards set out in OPCAT and with full engagement with civil society, international standards will remain unfulfilled, domestic legislative reforms for the advancement of prisoners' human rights will remain unimplemented, and human rights violations and allegations thereof will continue.

RECOMMENDATIONS

This mission urges the Republic of Turkey to:

- Ratify the Optional Protocol to the Convention against Torture (OPCAT) and immediately begin the development of transparent and functionally independent domestic national preventative mechanisms, including a prison Ombudsman, with full engagement with civil society.
- As part of the above, enact legislation and institute procedures to provide for the possibility of human rights NGOs and other civil society groups, both foreign and domestic, to gain access to prisons for oversight and monitoring purposes.
- Introduce further training for the judiciary, prosecutors, state officials and members of prison monitoring and human rights boards regarding international human rights standards in order to ensure that their duties are performed on an impartial and independent basis, in keeping with the principles established in the jurisprudence of the ECtHR. Turkey should seriously consider inviting civil society groups to participate in this process.
- In response to the European Court of Human Rights' recommendation in *Gülmez v. Turkey*, undertake measures to ensure the rights of prisoners to a fair hearing where prison disciplinary punishments are concerned, in line with Article 6 of the ECHR and Articles 57, paragraph 2(b) and 59(c) of the European Prison Rules.
- Put an end to the practice of applying consecutive disciplinary punishments on prisoners in such a way as to violate prisoners' Article 8 and Article 3 rights under the ECHR, as well as the European Prison Rules.
- End all ill-treatment and torture in detention, including the practice of 'welcome beatings', violent treatment during transfer and sexual intimidation, and end the impunity of those responsible for it.
- Implement procedures for the medical examination of prisoners, and of victims of alleged torture and ill-treatment in detention, in line with the standards set out in the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*. Independent medical examinations should be made available to detainees alleging ill-treatment, and resulting reports should be ad-

missible in any investigation. This should include particularly clear provisions and procedures for access to medical attention and reliable medical evidence in the case of gender-based violence and sexual torture. The authors would, in this connection, like to reiterate KHRP's 2007 recommendations on this subject.²²¹

- Introduce a meaningful system of out-of-unit communal and social activity for prisoners held in high-security cell-based accommodation such as F-type prisons, in line with CPT recommendations, in order to end the potentially harmful effects of small-group isolation. This measure should also be applied to prisoners currently in solitary confinement on sentences of 'aggravated life imprisonment'.
- With a view to the above, fully and comprehensively implement the Ministry of Justice's January 2007 circular numbered 45/1.
- Move to address the growing problem of overcrowding in the prison system. This should be done not simply through the building of more penal facilities, but through efforts to speed up the trial process in order to reduce the number of pre-trial detainees in the prison system. The government should also explore the wider use of non-custodial sentences, such as community service, and the wider granting of bail.
- Conduct a full-scale review of the prison healthcare system, in line with the recommendations of the CPT and leading human rights groups in Turkey.
- Ensure that suitable amnesty provisions are in place for the emergency or palliative treatment of seriously ill prisoners, regardless of the nature of their conviction.
- Issue a circular to prison governors, prosecutors and execution judges, underlining not only prisoners' rights to freely communicate in a language of their choice, but the positive duty of prison authorities to respect this right in all but the most extreme of circumstances, as provided for by Articles 8, 10 and 14 of the ECHR.
- Ensure that prison staff are suitably trained to treat visiting families with dignity and respect, regardless of background, or the nature of their relatives' conviction.
- Facilitate matters, in as much as it is possible to do so through scheduling, transport provision, and dignified searching, so that a minimum level of hardship is faced by families visiting prisoners. In this connection, also consider, particularly in the context of prison overcrowding and low prisoner

221 Cf. Yildiz and Piggott, fn. 14 above, p 159.

stipends, the relaxation of the ban on all clothing and food gifts to prisoners from families.

- Bring its legislation into line with international standards for children's rights, including those laid down in the Convention on the Rights of the Child, the UN Rules for the Protection of Juveniles Deprived of their Liberty, and the UN Standard Minimum Rules for the Administration of Juvenile Justice.
- End the practice of prosecuting minors on terror charges for the chanting of slogans, stone throwing and flag waving during protests.
- Immediately act to end the solitary confinement regime of Abdullah Öcalan through his introduction into a setting where he has regular human contact and the opportunity to socialise, in line with the recommendations of the CPT.
- Further, ensure that Öcalan has adequate access to family visits, and to unimpeded, privileged legal counsel.

This mission urges the European Union to:

- Continue to closely monitor human rights standards in Turkey's prisons, and ensure that Turkey remains committed to bringing its standards of transparency and accountability into line with OPCAT and the Copenhagen Criteria. Human rights issues should be kept at the heart of the accession process, with full implementation being the required standard, and not simply cosmetic measures which fail to address fundamental concerns.
- Closely observe prosecutions in Turkey involving children and in this regard remind Turkey of its obligation, as a signatory to the CRC, to secure the best interests of each child and to ensure that measures taken in relation to children accused of breaking the law are proportional to the gravity of the offence.
- Support Turkey through the provision of expert and best practice human rights training for judges, prosecutors, doctors, guards and others working in the Turkish penal system.
- Use its good offices to persuade Turkey to urgently address the recent concerns of the CPT regarding small group isolation, and particularly, the continuing solitary confinement of Abdullah Öcalan.

APPENDIX – NUMBERS OF PEOPLE DETAINED IN THE TURKISH PRISON SYSTEM FROM 1970 TO 2008²²²

Years	Convicted			Detained			Total
	Non-Political	Terror	Total	Non-Political	Terror	Total	
1970	30,119	-	30,119	26,392	-	26,392	56,511
1971	33,416	-	33,416	28,047	-	28,047	63,458
1972	36,140	-	36,140	28,749	-	28,749	64,889
1973	33,722	-	33,722	27,246	-	27,246	60,968
1974	5,442	-	5,442	19,418	-	19,418	24,860
1975	14,276	-	14,276	23,340	-	23,340	37,616
1976	19,881	-	19,881	24,450	-	24,450	44,331
1977	22,632	-	22,632	27,752	-	27,752	50,384
1978	25,512	-	25,512	29,430	-	29,430	54,642
1979	22,417	-	22,417	30,236	-	30,236	52,653
1980	31,241	-	31,241	38,931	-	38,931	70,172
1981	42,446	-	42,446	37,340	-	37,340	79,786
1982	44,650	-	44,650	33,551	-	33,551	78,201
1983	45,144	-	45,144	31,114	-	31,114	76,258
1984	44,208	2,162	46,370	26,100	594	26,694	73,064
1985	42,693	2,695	45,388	25,050	792	25,842	71,230
1986	29,157	1,629	30,786	20,942	422	21,364	52,150
1987	29,134	2,181	31,315	18,705	779	19,484	50,799
1988	30,982	2,096	33,078	16,895	1,697	18,592	51,670
1989	27,600	1,807	29,407	15,941	1,756	17,597	47,104
1990	27,731	1,642	29,373	14,488	1,745	16,233	45,606
1991	10,652	395	11,047	14,760	1,044	15,804	26,851
1992	12,301	522	12,823	15,597	3,062	18,659	31,482
1993	14,300	847	15,147	14,681	4,977	19,658	34,805
1994	15,787	1,094	16,881	15,638	6,412	22,050	38,931
1995	20,371	1,637	22,008	17,058	7,025	24,083	46,091
1996	24,651	2,328	26,979	17,697	6,207	23,904	50,883
1997	32,155	4,179	36,334	19,346	4,926	24,272	60,606
1998	31,647	4,239	35,886	19,670	4,835	24,505	60,391
1999	37,986	6,145	44,131	19,953	3,497	23,450	67,581
2000	20,378	4,467	24,855	20,467	4,190	24,657	49,512
2001	22,425	5,116	27,541	24,886	3,182	28,068	55,609
2002	25,514	5,123	30,637	25,928	2,622	28,550	59,187
2003	28,554	4,161	32,715	29,605	1,976	31,581	64,296
2004	23,840	2,170	26,010	30,302	1,618	31,920	57,930
2005	22,765	2,093	24,858	29,475	1,537	31,012	55,870
2006	24,220	2,116	26,336	42,222	1,719	44,141	70,477
2007	34,852	2,756	37,608	47,091	2,102	53,229	90,837
2008 (01.12.08)	41,527	2,511	44,038	56,274	2,984	59,258	103,296

222 These figures were published by the Ministry of Justice General Directorate for Judicial Record Statistics and were supplied to mission members by representatives of Mazlum-Der in Ankara on 17 December 2008.

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