

LLM IN INTERNATIONAL HUMAN RIGHTS LAW

DISSERTATION ESSAY

Supervisor: Prof. Nigel S. Rodley

The Subject:

“The Legal and Practical Comparison of Turkish Prison System with the International Prison Standards with Special Reference to the Terror Prisoners in Turkey”

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SUMMARY

The incidents in prisons have dominated the agenda of Turkish governments for the last few years. All the parties and the independent bodies make reference to the prison problems. There is no doubt about the existence of problem. The matter is its definition. This study examines the legal and practical problematic areas of Turkish prison system by making special reference to the newly established single and three persons units based F type prisons for terror and organized crime prisoners.

There are 558 prisons in Turkey, including 516 closed, 37 open, 1 child prison, 3 reformatories and 1 women and children prison and detention house. The number of remand and convicted prisoners were reduced from 72.546 thousand to 59.901 after No. 4616 Amnesty Law on 21 December 2000.¹The official web page of the Ministry of Justice mentions 16 different types prisons.² The models always changed but the problems did not end.

The prisoners are classified under three main categories as ordinary, terror and organized crime (mafia) criminals.³ This study makes special reference to the terror prisoners because of the new prisons system, which was introduced as a solution. The number of terror prisoners is 5.237.⁴ Whether all of them are really terrorist or not is not the subject of this study. The term terror is used with reference to the Turkish Anti-Terror Law. It defines the terror prisoners as those who are untried or convicted for the ideological crimes against the public order, democratic regime, indivisibility of state with its nation.⁵ Those prisoners introduce themselves as “political prisoners”.

The international human rights law does not consist of specific rules about the details of prison conditions.⁶ The most relevant articles are the prohibition of torture, cruel, inhuman and degrading treatment and punishment and the treatment with respect for the inherent dignity of the human person. The study use the UN Standard Minimum Rules for the Treatment of Prisoners⁷

¹ The numbers are for the dates 10 December 2000 and 10 July 2001.

² The prison models are A, A1, A2, A3, B, C, E, K1, K2, Special Type, 350 prisoners special type, 500 prisoners special type, F, women and children, children and reformatories. *Turkish Ministry of Justice website*, <<http://www.adalet.gov.tr/cte/cezaevleri.htm>>, accessed 30 August 2001.

³ *Ibid.* <[http://www.adalet.gov.tr/cte/istatistik/suc_turu\(grup\).htm](http://www.adalet.gov.tr/cte/istatistik/suc_turu(grup).htm)>, accessed 30 August 2001.

⁴ Zaman, 19.08.2001.

⁵ Article 1 of the Law defines the terror. Article 2 states that anyone who aims to achieve the “terror” acts is terrorist whether he or she is member of an organization or not. The Article 3 defines the terror crimes of Turkish Penal Code. The law does not differentiate the sympathizers who may write an article and the armed guerrillas. They are imprisoned in the same rooms.

⁶ N S Rodley, *The Treatment of Prisoners under International Law* (Oxford, Clarendon, 1986), p.303.

⁷ Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

(hereafter SMR), European Prison Rules⁸ (hereafter EPR) and the judgements of European Court and the Commission of Human Rights (hereafter the Court and the Commission respectively) as basic international documents. Although it is not legally binding, the SMR presents a detailed universal model for better prison conditions. The EPR may be accepted as the regional version of SMR with some changes.

The study consists of three chapters. The first chapter compares national prison rules with the international standards. The purpose is to find out the legal deficiencies of Turkish prison laws.

The second chapter examines the practical situation in Turkish prisons. This part questions the relation between the prison laws and prison practices to find out the sources of problems whether the legal deficiencies or the arbitrary practices.

The last chapter analysis the newly established F type prisons. Under the information provided in the former chapters, it tries to find out to what extent the new prisons may present a solution. The whole study is briefly about the comparison of the prison rules and the practices in Turkey.

⁸ Recommendation No. R (87) 3 of the Committee of Ministers to the Member States on the European Prison Rules (Adopted on 12 February 1987).

ÖZET

1990lı yıllarda cezaevlerindeki olaylar Türkiye'nin önemli bir gündem maddesi oldu. Bu yüksek lisans tezinin amacı genelde terör, Türkiye özelinde F tipi cezaevleri örneğinde uluslararası cezaevi kuralları ve standartları ile Türkiye'deki kuralları ve uygulamaları karşılaştırmaktır.

Türkiye'deki cezaevi sistemi, bu konudaki mevzuat incelendikten sonra uluslararası mevzuat ile arasındaki farklar belirlenmiştir. Böylece mevzuat değişikliklerine ilişkin tespitler yapılmıştır.

Türkiyede 516 kapalı, 37 açık, 1 çocuk, 1 kadın ve 3 ıslahevi olmak üzere toplam 558 cezaevi vardır. Adalet Bakanlığı verilerine göre Türkiye'de çoğu kapalı olmak üzere 16 farklı tipte cezaevi vardır. Cezaevi tiplerindeki artış sorunlarda bir azalma meydana getirmemiştir.

Buna karşılık mahkumlar adli, terör ve organize suçlar olmak üzere temelde üç grupta sınıflandırılıyor. Bu çalışmada özellikle terör mahkumları için yeni inşa edilen F tipi cezaevleri incelenmiştir. Terör mahkumlarının sayısı 5.237'dir.

Çalışma üç ana bölümden oluşmuştur. Birinci bölümde cezaevlerine ilişkin ulusal mevzuatın uluslararası mevzuat ve standartlarla karşılaştırılması yapılmıştır. Buradaki amaç ulusal mevzuatın uluslararası standartlara uygun olup olmadığını tespit etmektir.

İkinci bölüm Türkiye'deki cezaevlerindeki mevcut sorunları incelemektedir. Bu bölümde cezaevlerine ilişkin mevcut ulusal mevzuatın ne derece uygulandığı araştırılmıştır. Mevzuatta eksiklikler olmasının yanı sıra var olan mevzuatın uygulanmaması veya keyfi uygulamalar nedeniyle cezaevleri arasında farklılıklar olması ciddi bir sorun oluşturmaktadır. İkinci bölümün amacı mevcut sorunların ne kadarının mevzuat eksikliğinden, ne kadarının mevzuatın uygulanmamasından kaynaklandığını ortaya çıkarmaktır.

Son bölümde yeni kurulan F tipi cezaevleri incelenmiş ve mevcut sorunlara ne ölçüde çözüm olabileceği tartışılmıştır.

Sonuç itibariyle özetlemek gerekirse;

- a. Türkiye'deki cezaevi mevzuatı uluslararası standartların gerisindedir ve iyileştirilmesi gerekmektedir.
- b. Cezaevleri arasında idareden kaynaklanan keyfi uygulamalar mevcut olup bunlar mahkumlar tarafından çok yakından takip edilmekte ve huzursuzluklara neden olmaktadır.
- c. Tutuklu ve hükümlüler çoğu yerde aynı koşullarda tutulmaktadır. Benzer şekilde özellikle terör suçlarında eli silahlı terörist ile belki aldığı tehditler sonucunda yardım yataklık yapmış olanlar ayırım yapılmadan aynı koşuğa tutulmaktadır.
- d. Cezaevi idarecilerine özel eğitimler verilmelidir. Bazı cezaevlerinde mahkumların idarecilerden çok daha iyi eğitim düzeyine sahip oldukları, bunun da

idare ile mahkumlar arasında sađlıklı bir iletiřime engel olduđu ve olası bir ıslahı engellediđi grlmřtr.

e. Birok lkede cezaevine girenlere Mahkum El Kitabı verilmekte, kurallara uymaları halinde greceli olarak řartları iyileřtirilmekte, aynı řekilde kuralları ihlal edenlerin řartları ktleřtirilmektedir.

f. F tipi cezaevleri bařlangıtaki sorunlara rađmen zellikle terr sulularına ynelik olarak kođuř sistemine alternatif olarak inřa edilmiřtir.

INTRODUCTION

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I. COMPARISON OF THE NATIONAL PRISON LAWS WITH THE INTERNATIONAL RULES

It is claimed that not only international rules but also national laws and regulations are not properly applied in Turkish prisons.¹⁷ The correct answer may be a good starting point for the solution. This chapter examines whether the national prison rules need some amendments or not.

i. The Legal Documents and Prison Administration

The main legal documents about prison management are the Law on the Administration of Prisons and Detention Houses (1930), the Law on the Execution of Sentences (1965), The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences (1967) and In-Service Regulation of Prisons and Detention Houses (1967). However most of the administrative practices are based on Ministry of Justice circulars and protocols signed between prison authorities and prisoners.

One of the basic problems of the Turkish prison system is the absence of a single law, regulating the rights and duties of prisoners. The Law on the Administration of Prisons and Detention Houses was adopted in 1930. It consists of 10 articles, of which Articles 1, 3, 4, 6 and 7 were annulled. Of the remaining Articles, Article 2 states that the nourishment and communication of prisoners and discipline punishments are arranged by regulations. Article 5 says that the Ministry of Justice is the competent body to decide the transfer of prisoners from one to another prison. Article 8 is about the use of weapon by prison wards. Finally Articles 9 and 10 are about the implementation of this law.

Most of the arrangements about the rights and duties of prisoners are made by bylaws, regulations, circulars, protocols and sometimes by written or oral orders of the Minister of

Justice. This is procedurally easier than passing laws. Different governments had different attitudes to terror prisoners depending on the ideological thoughts of political parties. The political approach to imprisonment policies prevented the establishment of national standards. Now there are many legal and illegal documents and practices applied differently depending on the approach of the Minister or prison governor.

A modern prison law consistent with the international standards is the best means to stop the arbitrary actions. The Government in its reply to CPT in 1997 stated that they are working on a new draft law on prison administration which will arrange the discipline rules as well as the training and education programs offered to inmates and prison personnel.¹⁸ No prison law has been adopted by the Parliament since that time.

The prisons are governed by the General Directorate of Prisons and Detention Houses of the Ministry of Justice. Article 11 of the Law Amending the Bylaw About the Organisation and Duties of the Ministry of Justice empowers the General Directorate to manage the prison houses including the dressing, accommodation, nourishment, education, treatment and transfer of prisoners. The other duties mentioned by law are to make contacts for the employment of the released prisoners, to make researches and then present law proposals to the Ministry of Justice.

Although legally the Ministry of Justice is responsible from the prisons, Ministry of Internal Affairs and Ministry of Health also have a considerable power on it. A protocol was signed among these three ministries on January 6, 2000. The Parliament is often excluded and the rights and duties of prisoner are regulated by Ministerial protocols instead of laws.¹⁹

¹⁷ Ö. Ekşi, "The Prison Dilemma of State," *MazlumDer website*, <www.mazlumder.org.tr/makale/makale12.htm>, accessed 7 June 2001. MazlumDer is the abbreviation of a national NGO whose full name is Organization of Human Rights & Solidarity for Oppressed People.

¹⁸ "Interim report of the Turkish Government in response 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 5 to 17 October 1997" *CPT website*, <<http://www.cpt.coe.int/en/reports/inf9903en.htm>>, accessed 13 June 2001.

¹⁹ Ekşi, *supra*, n. 7.

iii. Non-discrimination Principle

The basic principle of all human rights treaties is the prohibition of discrimination. The international human rights treaties²⁰ and prison rules²¹ prohibit any kind of discrimination based on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, birth, economic or other status. Article 4 of SMR prohibits the discrimination for “all categories of prisoners, criminal or civil, remand or convicted, including prisoners subject to security measures or corrective measures ordered by the judge.”

Similarly, the Article 10 of Turkish Constitution prohibits any kind of discrimination based on language, race, colour, sex, political opinion, philosophical belief, religion and sect and any other consideration. Article 48 the of The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences states that the prison officers are under obligation to treat all remand and convicted prisoners equally. Unlike the constitution and international legal documents, the law does not mention specific grounds. It only refers to the equality of men and women in treatment.²²

Article 16 of Anti-Terror Law defines the imprisonment conditions of terror prisoners. Before the amendment, it prohibited the open visits and any relationship or communication of the convicts with one another. The Article was amended later in a way to provide the participation to purposeful activities. The prisoners are permitted to make open visits if they did not have any disciplinary punishment or condemnation.

²⁰ Article 2 of Universal Declaration of Human Rights, Article 2 of International Covenant on Civil and Political Rights, Article 5 of International Convention on the Elimination of All Forms of Racial Discrimination and Article 14 of European Convention on Human Rights.

²¹ Article 6 of SMR, *supra*, n.7, Article 2 of EPR, *supra*, n. 8, and Principle 5 of Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (hereafter Body of Principles) U.N. Doc. A/43/49 (1988).

²² Article 114 of the Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences (hereafter the Regulation on the Execution of Sentences) (The Official Gazette No. 12662, 1.8.1962).

iv. Prison Staff

The law enforcement officials including prison staff should respect and protect human dignity and maintain and uphold the human rights of all persons.²³ It requires a careful selection of prison personnel for a good management. The international documents mention integrity, humanity, professional capacity and personal suitability for the work as the necessary conditions of prison personnel.²⁴ The prison personnel should be taught and continuously reminded that they are carrying out an important social service.²⁵ They should be given necessary education and training before and after entering on duty.²⁶

The prison governor must be adequately qualified for his task by character, administrative ability, suitable training and experience.²⁷ There should be “a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.”²⁸ The EPR adds the physical education and sports instructors.²⁹

According to the Article 10 of the Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences, the number of prison posts depends on the number of prisoners and importance and the characteristics of prisons. The list consists of the prison governors, accountants, prison guards, officials, agriculture and construction engineers, craftsmen, religious personnel, psychologist, sociologist, psychiatrist, doctor, pharmacist, health official and some other servicemen like driver, cook, electrician, laundryman, central heating personnel. It does not specify any number for any categories. The prison governor works in accordance with the legal rules and orders from the competent bodies. He is responsible to his

²³ Article 2 of the Code of Conduct for the Law Enforcement Officials, U.N. Doc. A/34/46 (1979).

²⁴ Article 46(1) of SMR, *supra*, n.7, and Article 54(1) of EPR, *supra*, n. 8.

²⁵ Article 46(2) of SMR, *supra*, n.7,

²⁶ Articles 47(2) and (3) of SMR, *supra*, n.7, and Article 52 of EPR, *supra*, n. 8.

²⁷ Article 50 (1) of SMR, *supra*, n.7, and Article 58 (1) of EPR, *supra*, n. 8.

²⁸ Article 49(1) of SMR, *supra*, n.7.

²⁹ Article 57(1) of EPR, *supra*, n. 8.

superiors.³⁰ His duty includes the treatment and education of prisoners and the inspection at least once in every two weeks.³¹ The prison personnel must behave seriously and honestly to prisoners.³² The regulation does not mention any specific standard for the prison staff.

v. Admission: Information About the Rights and Duties

The international prison rules state that every prisoner should be provided with written information about the rules including the rights, duties, disciplinary requirements and complaint mechanisms on admission.³³

Article 1 of the Regulation about the Amendments of Some Articles of The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences states that the prison governor should orally and in a written way inform the prisoners about the treatment, education, disciplinary rules, the right to complain and its enjoyment, the necessary information to cope with the prison life and the rights and duties on admission.³⁴

vii. Classification and Accommodation

The purpose of classification is to prevent the negative influence of some prisoners over others and to apply a better treatment.³⁵ The prisoners are classified according to their judicial and legal situation like remand or convicted prisoner, first offender or habitual offender, short sentence or long sentence, the need for special treatment and medical needs, sex, age and criminal record.³⁶

The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences categorizes the prisoners according to repetition of crime, mental state of prisoner,

³⁰ Article 11 of the Regulation on the Execution of Sentences, *supra*, n. 14.

³¹ *Ibid.* Articles 14 and 16.

³² *Ibid.* Article 47.

³³ Article 35 (1,2) of SMR, *supra*, n.7, Article 41 of EPR, *supra*, n. 8 and Article 16 of the Body of Principles, *supra*, n.13.

³⁴ The Regulation about the Amendments of Some Articles of The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences (The Official Gazette, 6 January 1990, No. 20394).

³⁵ Article 67 of SMR, *supra*, n.7.

³⁶ Article 8 of SMR, *supra*, n.7, and Article 11 of EPR, *supra*, n. 8.

political prisoners and anarchy and terror prisoners.³⁷ Article 13 of the Law on the Execution of Sentences and Article 124 of The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences say that if it is not possible to keep the remand prisoners separate from the convicted prisoners, their communication and connection is never permitted. Article 107 of The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences says that those who committed ideological crimes accommodated in different rooms. The leaders are separated from others. Their education and training activities are not permitted.

viii. Treatment and Education

a. Treatment

The purpose of treatment is to prevent the exclusion of prisoner from the community, to encourage their self-respect and to develop their sense of responsibilities.³⁸ The restriction of liberty is enough as a punishment. The imprisonment system should minimize its detrimental effects. The treatment should prepare the prisoners to normal life by providing opportunities for them to develop certain skills.³⁹ All appropriate and available measures are to be taken to make the prisoner feel himself or herself as part of society.

Article 68 of EPR stipulates the examination of the personality of each prisoner after admission. The treatment program is prepared in accordance with the length of imprisonment and individual needs, capacities and dispositions of prisoner. Therefore, the flexible treatment programs are preferred and applied instead of a fixed system.

Article 110 of the Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences defines the purpose of treatment and training works as to make prisoner

³⁷ Articles 78 and 107(d) of the Regulation on the Execution of Sentences, *supra*, n. 14.

³⁸ Articles 65 and 66 of SMR, *supra*, n.7, and Article 70 of EPR, *supra*, n. 8.

respectful to the laws, to develop his/her responsibilities towards his/her family and community and to adapt him to the normal life. The treatment should also improve the prisoners in a way respectful to Atatürk revolutions and principles, respectful to the national, moral, spiritual and cultural values of Turkish nation, loving his family, people and country, knowing his/her responsibilities for the territorial integrity and indivisibility of the country and people, knowing the responsibilities towards Turkish Republic, making such feelings as attitudes, having a free and scientific thought etc.

b. Education

The right to education is a fundamental right accepted by the Article 26 of the Universal Declaration of Human Rights and Articles 13 and 14 of the Convention on the Economic, Social and Cultural Rights. The Basic Principles for the Treatment of Prisoners defines the purpose of education as the full development of human personality. The Principle 6 says that all prisoners have the right to take part in cultural activities and education. Moreover Resolution 1990/20 of the UN Economic and Social Council recommend the member states to develop educational policies for the prisoners. Article 77 of EPR defines the purpose of education as “the improvement of the prospects for successful social resettlement, the morale and attitudes of prisoners and their self-respect. The cultural and ethnic needs are to be taken into consideration while planning and applying programs.

According to Article 183 of the Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences, the purpose of education is to teach the reading and writing, to raise the prisoners’ knowledge, to strengthen their love to country and people, to make them adopt the principles of Atatürk, to remove the anarchical and terrorist tendencies and finally to provide their spiritual improvement. It is an obligation for the teacher to teach the reading and writing for those who do not know. If the prisoner is incapable, then the prison governor should

³⁹ Articles 65 and 66 of EPR, *supra*, n. 8.

take the necessary measures.⁴⁰ All prisoners must attend to the prison's school, except those whose level is higher than the school. The law permits the private courses and programs in cooperation with NGOs.⁴¹

The prison administration may organize conferences. However, the subject of conferences must be consistent with the prisoners' moral, intellectual, professional and cultural development. The subjects mentioned by regulation are mostly related to the patriotism and history of Turkish state.⁴² The texts of conferences are to be kept in library and a copy is to be sent to the Ministry of Justice.

c. Library

The international prison rules says that the prisoners should be encouraged to make full use of library, which should include "both recreational and instructional books."⁴³ The books in the libraries of Turkish prisons must suggest the patriotism, introduce the Atatürk revolutions and principles, Turkish history, culture and literature and provide their spiritual development.⁴⁴ The books either are sent by the Ministry of Justice or provided by the Public Prosecutor's Office. The permission of prison administration is required for any other kind of acquisition, if there is no court decision or ban against the book.⁴⁵ The donated books are first examined by the prison governor and then by the Public Prosecutor for their consistency with the above-mentioned criteria.

⁴⁰ Articles 31 and 184 of the Regulation on the Execution of Sentences, *supra*, n. 14.

⁴¹ *Ibid.* Article 186.

⁴² *Ibid.* Article 194.

⁴³ Article 40 of SMR, *supra*, n.7, and Article 82 of EPR, *supra*, n. 8.

⁴⁴ Article 189 of the Regulation on the Execution of Sentences, *supra*, n. 14.

⁴⁵ Article 11 of the Regulation about the Amendments of Some Articles of The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences, *supra*, n. 26.

d. Prison Work

The prison work is a means to prepare prisoners to the normal life by increasing the prisoner's ability to earn an honest living after release.⁴⁶ Article 34 of the Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences makes it obligatory for the prison administrators to provide vocational training for the long term convicted prisoners. Article 112 says that the prisoner is given a work that will cover his/her needs in normal life. Article 17 of The Law on the Execution of Sentences states that the remand and convicted prisoners are employed in their prisons.

ix. Contact with the Outside World

The communication of prisoners with the outside world –either correspondence or visits- is subject to “necessary supervision”.⁴⁷ Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter Body of Principles) states that the restrictions on communication must be reasonable and specified by law and lawful regulations.

In Turkish system, the time and conditions of visits are defined by regulations. A prisoner may receive visits only from his wife/husband, children, grandchildren, mother, father, grandmother, grandfather, brothers, paternal and maternal uncles and aunts, father-in-law, mother-in-law, trustee, agent, solicitor, children of his brother or sister, brother-in-law, sister-in-law, husband's sister, husband of one's wife's sister, daughter-in-law and son-in-law.⁴⁸ Unlike the SMR, the reputable friends are not allowed to visit. The wives or husbands and the children can pay open visits to their relatives in prison once in every month. After the amendment, the prisoners remanded in custody or sentenced for terrorist offences are also entitled to open visits. The visits

⁴⁶ Articles 71 of SMR, *supra*, n.7, and EPR, *supra*, n. 8.

⁴⁷ Article 37 of SMR, *supra*, n.7, and Article 43 of EPR, *supra*, n. 8.

other than visiting dates depend on the permission of the public prosecutor. The meeting with lawyer is to be made in a place free from the hearing of prison guards.⁴⁹

The incoming and outgoing letters of prisoners are examined by the prison administration.⁵⁰ The petitions to state bodies are not subject to examination. The letters are put in mailboxes as unclosed. The prison administration closes and sends those letters if there is no inconvenience.⁵¹ Similarly, the incoming letters are opened and examined by the prison administration. If they do not find any inconvenience, the letters are delivered to the owners. If there is inconvenience, the Disciplinary Board meets and darkens the relevant parts of letter in a way that cannot be read. Then it may either be posted or delivered to owner. If all parts of letter is accepted as inconvenient, it is destroyed and the owner is informed.⁵²

The Regulation about the Right to Telephone Calls with the Relatives Outside the Prison for Remand and Convicted Prisoners is a new one.⁵³ The prisoner is allowed to make call with his wife or her husband, his/her children, grandchildren, mother, father, grandmother, grandfather, brother and sister, uncle, aunt, father-in-law, mother-in-law, children of brother and sister, brother-in-law, sister-in-law, husband's sister, husband of wife's sister, son-in-law and daughter-in-law. The duration of call is limited to 10 minutes at least in a week. The prisoner should inform the prison administration about the person with whom he/she wants to make a telephone call. The prison administration may make a search to check the truth of information about relatives. If it is done, the prisoner pays expenses. The prisoner is not allowed to make telephone calls with those whose names and numbers are not given to prison administration in advance. At the beginning of conversation, the prisoner should repeat his/her name and ask the other side to

⁴⁸ Article 4 of the Regulation about the Amendments of Some Articles of The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences, *supra*, n. 26.

⁴⁹ Article 155 of the Regulation on the Execution of Sentences, *supra*, n. 14.

⁵⁰ *Ibid.* Article 144.

⁵¹ *Ibid.* Article 145.

⁵² *Ibid.* Article 147.

⁵³ The Regulation about the Telephone Calls of Remand and Convicted Prisoners in the Prisons and Detention Houses with the Relatives Outside, (The Official Gazette, 23 June 2001).

do same. The incoming calls are not permitted. The prisoners who had disciplinary punishment – except warnings- is not permitted to make telephone calls.

x. Food and Health

The international documents stipulate the qualitatively and quantitatively well prepared and served food service.⁵⁴ Moreover, the EPR mentions the religious and cultural requirements. Article 136 of The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences does not mention any standard.

There must be at least one qualified medical officer⁵⁵ who should have some knowledge of psychiatry⁵⁶ in every prison. The international prison rules mention the availability of the services of a qualified dental officer. The medical officer should see all sick prisoners and those who report illness or injury. The physical and mental health of prisoners should be cared. With regard to frequency of medical service, the SMR say daily while the EPR states that consistent with hospital standards.⁵⁷

The Regulation on Execution of Sentences states that the prison doctor must examine and cure all prisoners who complain about an illness. The duty of social care personnel including psychologist is to examine the criminals and to improve their psychological conditions.⁵⁸ The medical officer should visit all sections of prison at least once in two weeks and report to the director about food, sanitary facilities, health and physical treatment.⁵⁹ The medical officer should examine all prisoners at least once in every three weeks.⁶⁰

⁵⁴ Article 20 of SMR, *supra*, n.7, and Article 25 of EPR, *supra*, n. 8.

⁵⁵ Article 26 of EPR, *supra*, n. 8.

⁵⁶ Article 22 of SMR, *supra*, n.7.

⁵⁷ Article 25 of SMR, *supra*, n.7, and Article 30 of EPR, *supra*, n. 8.

⁵⁸ Article 37/A of the Regulation on the Execution of Sentences, *supra*, n. 14.

⁵⁹ *Ibid.* Article 38.

⁶⁰ *Ibid.* Article 228.

The international prison rules offer the organization of programs of physical education, sports and other recreational activities. At least one hour of walking or suitable exercise is suggested for the prisoners who are not employed.⁶¹

xi. Disciplinary Punishment and Ill-treatment

Article 10 of the International Covenant on Civil and Political Rights states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. All forms of ill-treatment, including torture, cruel, inhuman or degrading treatment and punishment, are prohibited by different international conventions.⁶² The prohibition of torture is absolute and a non-derogable right. Nothing can justify the infliction of torture.⁶³ The prison staff can use force and weapons only when it is necessary and to the extent required for the performance of their duty.⁶⁴

The conduct constituting a disciplinary offence, the type, duration and imposing authority of disciplinary punishment in prisons should be determined by law or by regulation of the competent authority.⁶⁵ Corporal punishment, punishment by placing in a dark cell and all cruel, inhuman or degrading punishments are prohibited punishments for disciplinary offences.⁶⁶ The Principle 7 of the Basic Principles for the Treatment of Prisoners recommends the abolition or the restriction of the use of solitary confinement as a punishment. The SMR and EPR prohibit the employment in prison service as a disciplinary punishment.⁶⁷

Article 17 of Turkish Constitution states that “no one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity”.

⁶¹ Article 21 of SMR, *supra*, n.7, and Article 84 and 86 of EPR, *supra*, n. 8.

⁶² Article 5 of Universal Declaration of Human Rights, Article 7 of International Covenant on Civil and Political Rights, Article 3 of European Convention on Human Rights.

⁶³ Article 2(2) of Convention against Torture, Article 4(2) of ICCPR

⁶⁴ Article 3 of the Code of Conduct for Law Enforcement Officials, *supra*, n. 15.

⁶⁵ Article 29 of SMR, *supra*, n.7, and Article 35 of EPR, *supra*, n. 8.

⁶⁶ Article 31 of SMR, *supra*, n.7. and Article 37 of EPR, *supra*, n. 8.

Article 6 of the Regulation about the Amendments of Some Articles of The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences states that the cruel, inhuman and degrading treatments cannot be applied as disciplinary sanctions. The circular of 9 July 1996 clearly states that no prisoner shall be subjected to any form of ill-treatment or degrading treatment either inside or outside prison.

Whether or not any kind of ill-treatment is prohibited by Article 3 of the ECHR depends on the objective nature of the treatment, its effects on the persons subjected to it and the purpose of authority which resorted to measure.⁶⁸ The Court and Commission stipulate existence of a minimum level of severity to examine a case within the scope of Article 3 of the European Convention on Human Rights (hereafter ECHR). The determination of the level of suffering depends on the duration of treatment, its physical or mental effects and the sex, age, state of health of the victim.⁶⁹

While examining the prison conditions, the Commission considered several factors. In the *Greek* case, the it considered the overcrowding, prolonged solitary confinement, confinement within the cell with no or very little purposeful activity and poor medical and sanitary facilities together with the duration of such treatment.⁷⁰

Humiliation and the debasement are two relevant concepts in examining the prison conditions. The treatment is accepted as degrading if there is an intention to humiliate⁷¹ and if it grossly humiliates the victim before the others or drives him to act against his will or conscience.⁷² The Commission defines the degrading treatment as an action that “lowers (the victim) in rank,

⁶⁷ Article 28 of SMR, *supra*, n.7. and Article 34 of EPR, *supra*, n. 8. Article 8(3) of ICCPR also prohibits the forced and compulsory labour.

⁶⁸ *Raninen v Finland*, judgment of 16 December 1997, Reports 1997-VIII, para. 52.

⁶⁹ *Ireland v. the U.K.*, Series A No. 25. Judgment of 18 January 1978, para 162.

⁷⁰ *Rodley*, *supra*, n. 6, p.307.

⁷¹ In *Abdulaziz, Cabales and Balkandali v. the U.K.* case, the Court stated that there is no intention to humiliate the victim. So the treatment cannot be accepted as degrading. *Series A, No. 94 (1985)* para. 91.

⁷² *The Greek* case, Comm Rep, 5 Nov. 1969, (1969), 12 ECHRYb, p. 186.

position, reputation or character, whether in his own eyes or in the eyes of other people”⁷³ with the condition of reaching a certain level of severity.

The Court states that the victim’s treatment as an object by the authorities constitutes an assault on his dignity and physical integrity, which are under the protection of Article 3 of the ECHR.⁷⁴

The Court accepts that the assessment depends on “the nature and context of the punishment itself and the manner and method of its execution.”⁷⁵ Publicity of the punishment is a relevant but not necessary condition of degrading treatment. The victim may be humiliated in his own eyes, not necessarily in the eyes of others.⁷⁶

The humiliation and debasement must reach a particular level of severity to be accepted as degrading,⁷⁷ depending on the circumstances of the case, “in particular, on the nature and context of the punishment itself and the manner and method of its execution.”⁷⁸

The European Commission on Human Rights examined an application about the close body search. The applicant stated that the naked search and recta examination constituted an inhuman and degrading treatment, contrary to the Article 3 of the Convention. The Commission declared it inadmissible on the grounds that it is a long term procedure, done at the presence of officers only and involved no actual contact except in case of the prisoner’s resistance. The search was done by a metal detector and in case of a suspicion; the prison doctor did the rectum examination. The Government defended the application for the security reasons due to special circumstances prevailing in the prison. The Commission defined the presence of a senior officer and the use of a mirror to avoid physical contact as the factors reducing the level of

⁷³ *East African Asians v. the U.K.*, Comm Rep, 14 Dec 1973, CM DH 77, para. 189.

⁷⁴ *Tyrer v. the U.K.*, judgement of 25 April 1978, Series A No. 26, para. 33.

⁷⁵ *Ibid.* para. 30.

⁷⁶ *Ibid.* para. 32.

⁷⁷ *Campbell & Cosans v. the U.K.*, judgement of 25 February 1982, Series A, No.48, para. 28

⁷⁸ *Tyrer v. the U.K.*, *supra*, n. 64, para. 30.

humiliation.⁷⁹ In a similar case, the applicant complained about the strip and close body searches including the rectum before and after visits and before being transferred to a new wing. The respondent government defended the application due to security reasons. At that time, there were threats to prison guards by IRA and even some of them were murdered. The search is done at the presence of a senior prison officer with metal detector and mirror. No other prisoner is allowed. If the prisoner is suspected of concealing an article in his rectum, then the prison doctor examines him. The Commission concluded that the authorities took the necessary measures to provide the minimum level of humiliation.⁸⁰

The prisoners usually complain about the handcuffs during the transfers or medical treatment. The international documents do not prohibit the use of handcuffs except as a punishment. However their use must be decided by law or regulation. The handcuffs can only be used when it is necessary like as a precaution against escape during the transfer, on medical grounds or to protect the prisoner from self-injury, injury to others or to prevent the serious damage to property.⁸¹

xii. Complaint Procedure and Monitoring

a. Complaint Procedure

The right to effective remedy is recognised by Article 2 of ICCPR and Article 13 of ECHR. Every prisoner; remand or convicted, and his counsel has the right to make a request or complaint regarding his treatment.⁸² The prisoners have right to make requests or complaints to the prison governor or the authorised officer, to the inspectors of prison during inspection, to the central prison administration, the judicial authority and other proper authorities through approved

⁷⁹ *McFeeley et al. v. United Kingdom*, European Commission on Human Rights Decisions and Reports, (1980), vol. 20, pp. 44-102.

⁸⁰ *Mc Feeley v. the U.K.*, *Digest of Strasbourg Case Law*, Vol. 1, pp.165-166.

⁸¹ Articles 33-34 of SMR and Articles 39-40 of EPR, *supra*, n. 8

⁸² Principle 33 of Body of Principles, *supra*, n.13.

channels. The prison authority is under obligation to deal with the complaint and reply to the author without undue delay.⁸³

Article 106 of the Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences says that the remand and convicted prisoners can make their requests and complaints to prison governor or the prison officer authorised by governor, the Public Prosecution Office and to the Ministry of Justice at any time. The complaints or request to official institutions are sent within a closed envelope.

b. Inspection

The Principle 29 of the Body of Principles, Article 55 of SMR and Article 4 of EPR refer to the regular inspection of penal institutions and services by qualified and experienced inspectors appointed by and responsible to a competent authority distinct from the prison administration. The purpose is to monitor the application of existing laws and regulations in consistency with the objectives of prison services. Articles 11 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates the impartial investigation of allegations of torture or inhuman treatment, by competent authorities.

Article 16 of The Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences makes the prison governor responsible for at least weekly supervision. The prison governor checks whether the management and the works in prison are consistent with the laws.

The parliament has passed a law on 14 June 2001, establishing the monitoring councils for punishment enforcement institutions and detention houses.⁸⁴ Each monitoring council shall consist of minimum five and maximum seven members including the chairman. The purpose is

⁸³ Article 36 of SMR, *supra*, n.7, and Article 42 of EPR, *supra*, n. 8.

to monitor the prisons and detention houses in accordance with the national and international legal documents. If there are more than one punishment enforcement institutions and detention houses in a jurisdictional area of a judicial committee, then monitoring councils in a corresponding number may be created. The law defines the qualifications of members of monitoring councils and working procedures. The councils have power to monitor the physical conditions and imprisonment practices –excluding the external security, which is provided by gendarmerie-, to notify the competent authorities and draw up quarterly reports.

⁸⁴ The Law No.4681 on Punishment Enforcement Institutions and Detention Houses Monitoring Council (21 June 2001).

II. THE PRISON PRACTICES IN TURKEY IN COMPARISON WITH NATIONAL LAWS AND INTERNATIONAL STANDARDS

The previous chapter compared the national prison rules with the international standards. The national prison laws need some amendments for the interests of prisoners. However it seems that the source of the most of prison problems is the arbitrary practices contrary to the national rules. This chapter examines the prison practices in Turkey.

The prisoners are deprived of their liberty for a specific period as a punishment of their criminal action. Therefore they deserve and are subjected to a special regime. However this never means that the prisoners do not have human dignity and deserve extra punishment. The principle is that all persons deprived of their liberty should be treated in a humane manner and with respect for the inherent dignity of the human person.⁸⁵

i. The Purpose of Imprisonment

The imprisonment has four major purposes. These are to punish people for the crimes they have committed, to deter individuals who are in prison from committing further crimes after they are released, to reform or rehabilitate criminals and finally to keep them away from the society because their crimes present a grave threat to public safety.⁸⁶

The UN system accepts the legal, social, economic and geographical conditions of different countries. It is stated at the Preliminary Observations that the SMR are the minimum conditions of imprisonment. The application may show differences depending on the place and time. However there must be “a constant endeavour to overcome the practical difficulties in the way of their application”.⁸⁷ The UN Principles are guiding rules. The individual countries should prepare

⁸⁵ Principle 1 of the Body of Principles, *supra*, n.13.

⁸⁶ S. Bryans and R. Jones ed., *Prisons and the Prisoners: an introduction to the work of Her Majesty's Prison Service* (London, The Stationery Office, 2001) p.3.

⁸⁷ Article 2 of SMR, *supra*, n.7.

better systems depending on their conditions. The international rules are held to draw a bottom line.

The EPR defines the purpose of imprisonment and the treatment as “to sustain their (prisoners’) health and self-respect and, so far as the length of sentence permits, to develop their sense of responsibility and encourage those attitudes and skills that will assist them to return to society with the best chance of leading law-abiding and self-supporting lives after their release.”⁸⁸ It also states that “the treatment of prisoners should emphasize not their exclusion from the community but their continuing part in it.”⁸⁹

ii. State Approach to the Prisoners

a. Definition of Problem

There is not a healthy relation between the Government and non-governmental organisations.⁹⁰ This leads to the absence of consensus about the definition and even sometimes the existence of problem. The national NGOs claim that there are serious violations in Turkish prisons. The reports of intergovernmental bodies and international NGOs also mention certain problems and violations in Turkish prisons and detention houses.⁹¹ The major problem of the Turkish prison system is the definition of problem. The Government and the state authorities usually deny the existence of any violation in prisons. Turkish Parliamentary Human Rights Inquiry Commission is the only official body that accepted and reported the human rights violations in prisons. Although the Commission reports do not mention any prison without problem, some Public

⁸⁸ Article 3 of EPR, *supra*, n. 8.

⁸⁹ Article 70(1) of EPR, *supra*, n. 8.

⁹⁰ There is not a single NGO in Turkey, which deals only with the prison problems. The human rights NGOs are busy with many other rights, in addition to prisoners. In the United Kingdom, for example, the handbook for prisoners (The Prisoners’ Information Book For Male Prisoners and Young Offenders” has been jointly produced by a state organ; the Prison Service and by a charitable organization; the Prison Reform Trust.

⁹¹ It should be added here that the approach of international organizations is less severe and constructive than the national NGOs.

Prosecutors or Prison Governors claim that there is no violation.⁹² This may partially result from the lack of information about the international prison standards. However there is an approach among the state officials that the best approach for the state interest is to deny the problem, instead of defining and solving it.

There is no agreement over the minimum prison standards. The prison authorities define the certain activities of prisoners as terrorist activities while the prisoners insisting that they are cultural and sport activities. The line is not clear. Therefore a prison guard may describe reading books and newspapers as terrorist activity, even if there is no ban.⁹³

For some of the prison governors and gendarmerie commanders, the problem to get the control is the sensitivity of and pressure from Turkish Parliament, national and international NGOs and European countries. A security officer stated to Parliamentary Commission that if we do not fear that we will be brought to account, we could solve the problem in a day.⁹⁴

The Parliamentary Human Rights Commission defines the problem in prisons as the misuse of authority rather than the lack of authority, which results from the absence of a modern prison law.⁹⁵ The tension in prisons usually result from the arbitrary actions of prison staff.

b. The Approach that “Prisoners Do Not Deserve Good Behaviour”

There is an idea among the public opinion that even food is much for the terror prisoners. Many people are not interested in the sources of crimes. They think that if you are in prison, it is because you are not a good citizen and you did something wrong.

⁹² *Soruşturma, Kovuşturma Yargılama Ceza ve İnfazi Batman Raporu 1998 ve 2000 (Turkish Parliamentary Human Rights Inquiry Commission’s Batman Report on Prisons and Police Detention 1998-2000)* (Ankara:TBMM Basımevi, 2000), p.4.

⁹³ 26 Eylül 1999 Ulucanlar Cezaevi Raporu (Turkish Parliamentary Human Rights Inquiry Commission’s Ankara Ulucanlar Detention House Report) (Ankara:TBMM Basımevi, 2000), p. 108-109.

⁹⁴ *Ibid.* p.122.

⁹⁵ *Ibid.* p.116.

The deprivation of liberty is a punishment in itself.⁹⁶ Alexander Paterson says, “Men come to prison as a punishment, not for punishment”.⁹⁷ The conditions of imprisonment should not aggravate the suffering as an extra punishment except the disciplinary punishments. The terror prisoners believe that the state officials do not accept them as human being and think that even bread and water is much for them.⁹⁸

MazlumDer claims that the approach of prison management changes depending on the type of crime. Therefore the prisoners are terrorists, thieves or murderers rather than only prisoners.⁹⁹ The state approach should be based on the rights and duties of prisoners. It should be made free from either state or group control. The rights are not to be sacrificed due to security concerns.

c. State Control Over Prisoner

With regard to the terror prisoners, the state’s major concern is the security, which subordinates the rights approach. The NGOs state that the purpose behind the F type prisons project is not “public order” but “security of state.”¹⁰⁰ The Ministry of Justice’s allegations for the lack of control over prisoners covertly refer to a competition between the state and the terrorist groups for the control of prisoner. While the dormitory system is preferable for the latter, the former developed the F type prisons as a “solution”.

According to the Turkish Parliamentary Human Rights Inquiry Commission, state control has different meanings. It means to make regular searches and to prevent the movements among the rooms, the control of terrorist organizations over remand prisoners and the education and training

⁹⁶ Article 64 of EPR, *supra*, n. 8.

⁹⁷ Bryans and Jones, *supra*, n. 78, p.7.

⁹⁸ *Soruşturma, Kovuşturma Yargılama Ceza ve İnfazı Erzurum Raporu 1998 ve 2000 (Turkish Parliamentary Human Rights Inquiry Commission’s Erzurum Report on Prisons and Police Detention 1998-2000)* (Ankara:TBMM Basımevi, 2000), 1998 Yılı Tutanakları, p.17.

⁹⁹ Ekşi, *supra*, n. 7.

¹⁰⁰ A. Demirci and H. Üçpınar, “F Tipi Cezaevlerinin Ceza İnfazı Hukuku Açısından Değerlendirilmesi” *İzmir Bar Association website*, <www.izmirbarosu.org.tr/mevzuatbankasi/ftipi_cezaevleri.htm>, accessed 10 June 2001.

activities of prisoners. However it is also understood as controlling the thoughts and ideas of prisoners, which is not acceptable.¹⁰¹

The absence of healthy communication prevents a consensus over the problem. The security of state is not to be in conflict with the rights of prisoners or the vice versa. It is the duty of prisoner authority to keep a balance between them.

ii. Control of Terrorist Groups over Prisoners

Before the transfers to F type prisons, there was a serious group control over the terror prisoners. In all terror prisons, there is a prison leader. He or she is appointed by the central committee of organisation and coordinates all daily activities of the member prisoners. The leaders appoint the room representatives.¹⁰² This is a kind of organisational control over the prisoners. The Istanbul Bayrampasa Prison was the centre of an illegal revolutionary leftist organisation. The demonstrations start with the order from the leaders in Bayrampasa and can only be finished if the demonstrators, for example hunger strikers, receive faxes from the leaders there.¹⁰³

The representatives of terror prisoners have some requests that intervenes the privacy of normal prisoners. They demanded that the room representatives had to accompany the other prisoners in their meetings with lawyers and family members during visits. If the prison governor wants to meet a prisoner for training activities or any other thing, he or she is not permitted by the room leader except if accompanied by another prisoner appointed by the him or her.¹⁰⁴ The terror organisation sometimes does not permit the remand prisoners to go to trial, although there is high probability of acquittal.¹⁰⁵ They want to visit other rooms as a cultural or sporting activity.¹⁰⁶

Before the transfers to F type prisons, the male prisoners were even visiting the dormitories of

¹⁰¹ TBMM Ulucanlar Report, *supra*, n. 85, p.107.

¹⁰² TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.3.

¹⁰³ TBMM Ulucanlar Report, *supra*, n. 85, p.86.

¹⁰⁴ *Ibid.* p.25.

¹⁰⁵ *Ibid.* p.100.

¹⁰⁶ Erzurum Report, *supra*, n. 90, p.8.

women prisoners. According to terror prisoners, these requests are their rights obtained after some demonstrations and hunger strikes.¹⁰⁷ Sometimes the prisoners may refuse to see the doctor unless accompanied by another prisoner. A Prison Governor questioned the role of accompanying prisoner during the medical treatment due to group pressure.¹⁰⁸ The representatives, on the other hand, go to family visits and meet their lawyers alone.

Although the terror prisoners deny the control over prisoners and assert that everybody is free, the practice is not like that. A terror prisoner who was also room leader stated to the members of Turkish Parliamentary Human Rights Inquiry Commission that those who make confession and leave the terror organisation couldn't be human. According to him, nobody can leave without state pressure. If someone leaves the terror organisation, it is not because of his or her free consent.¹⁰⁹ This is the approach of terror organisations to the prisoners who want to leave them. Some of the repentant prisoners stated that they receive threats from the organisation.¹¹⁰ Until the transfers to new type prisons, this system has covertly been accepted by the prison authorities. For example, the public prosecutors listen to the representatives of prisoners in prison governor's office instead of visiting their rooms.¹¹¹

There is a danger of execution for the prisoners who resist to obey the group's rules or want to leave the organisation. A terror prisoner was found dead in his dormitory. The prison administration accused his roommates of executing him. The prisoners insisted that he committed suicide. One of the prisoners said that they could not stop him to suicide.¹¹² This explanation does not seem convincing because there are more than 30 prisoners in the dormitory. I personally

¹⁰⁷ TBMM Ulucanlar Report, *supra*, n. 85, p.25.

¹⁰⁸ *Ibid.* p.42.

¹⁰⁹ TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.15.

¹¹⁰ *Soruşturma, Kovuşturma Yargılama Ceza ve İnfazı Elazığ Raporu 1998 ve 2000 (Turkish Parliamentary Human Rights Inquiry Commission's Elazığ Report on Prisons and Police Detention 1998-2000)* (Ankara:TBMM Basımevi, 2000), 1998 Yılı Tutanakları, p.103.

¹¹¹ TBMM Batman Report, *supra*, n. 84, p.23.

¹¹² TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, pp.13, 16.

listened to the three prisoners in Kocaeli F type prison who explained the details of ill-treatment they were subjected by other prisoners because of their decisions to leave the organisation.

v. Absence of Standard in Prison Administration

The absence of a single prison law or regulation gives rise to absence of standard applications. The terror prisoners claim that most of the rights, including getting books, newspapers and food from outside, weekly visits and all day airing were acquired at the end of demonstrations of prisoners. The prisoners used means like hunger strikes or obstructing counting to get rights.¹¹³

The established practice to solve a problem in a prison is to make bargain with the prison authorities. Both, the terror prisoners¹¹⁴ and the prison and state officials¹¹⁵ accept the existence of an agreement in 1995, which was written as 25 articles. Due to pressure from public opinion and political parties, the problems were solved or in fact postponed by protocols between terror prisoners and prison authorities, instead of preparing a modern prison law.¹¹⁶ The state authorities later denied the binding effect of these protocols by defining them as a “paper drawn up and signed by prisoners and the private individuals who intervened in the situation.”¹¹⁷

A prisoner complained that every prison is governed by a different law.¹¹⁸ Another prisoner alleged that he has witnessed 21 different types of administration during his 21-year imprisonment.¹¹⁹ The prisoners usually complain that why certain rights are permitted in other prisons but not in their prison. For example, the typewriter is permitted in Batman¹²⁰ and

¹¹³ TBMM Ulucanlar Report, *supra*, n. 85, p.7, 24, TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.12, TBMM Elazığ Report, *supra*, n. 102, s.46, Erzurum Report, *supra*, n. 90, s.8.

¹¹⁴ TBMM Ulucanlar Report, *supra*, n. 85, p.27.

¹¹⁵ *Ibid.* p.36, 108.

¹¹⁶ “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 (CPT) from 19 to 23 August 1996” *CPT website*, <<http://www.cpt.coe.int/en/reports/inf2001-01en.htm#Report>>, para. 9, accessed 13 June 2001. TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.1.

¹¹⁷ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para. 8.

¹¹⁸ TBMM Erzurum Report, *supra*, n. 90, p.1998 Yılı Tutanakları, 11 and TBMM Batman Report, *supra*, n. 84, pp.5, 19.

¹¹⁹ TBMM Ulucanlar Report, *supra*, n. 85, p.92.

¹²⁰ TBMM Batman Report, *supra*, n. 84, p.5

Erzurum¹²¹ E Type Prisons. However it is not permitted in Urfa Prison.¹²² When a new prison governor is appointed, he finds an established system and usually is not able to change it. For example, the prisoners were using not their garden but another one as yard in Ankara Ulucanlar Prison. Although it is contrary to the laws, the new prison governor could not cancel the application.¹²³

The prison administration may restrict the enjoyment of certain rights as a punishment. It may be ban of visitor or ban of transfer to court, depending on the prison governor.¹²⁴ If a prisoner throws a glass to another, the solution may be to collect all glasses or collect all colognes if a prisoner drinks it.¹²⁵

The main reason of the lack of standard is the political interventions to the prison system. A Minister of Justice sends a regulation that the dormitory doors will be open. The next Minister says that the doors will be kept closed. Having birds in prisons were free during a former Minister of Justice but it was forbidden by the new Minister.¹²⁶ As long as the prisons are not freed from the political pressure, similar problems will continue.¹²⁷

vi. Prison Staff

There is a close interaction between the staff and prisoners. Therefore their relations should be constructive rather than confrontational. This depends on the education and appropriate interpersonal communication skills of prison staff.¹²⁸ There must be a proper training before the duty and it must continue during the office term, especially if they are dealing with the terror and

¹²¹ In Erzurum E Type Prison, the prisoners want to buy an electronic typewriter. TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, pp.49, 85.

¹²² *Soruşturma, Kovuşturma Yargılama Ceza ve İnfazi Şanlıurfa Raporu 1998 ve 2000 (Turkish Parliamentary Human Rights Inquiry Commission's Şanlıurfa Report on Prisons and Police Detention 1998-2000)* (Ankara:TBMM Basımevi, 2000), 1998 Yılı Tutanakları, p.22

¹²³ TBMM Ulucanlar Report, *supra*, n. 85, p. 5.

¹²⁴ *Ibid.* p.117.

¹²⁵ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, pp.23-24.

¹²⁶ TBMM Batman Report, *supra*, n. 84., s.11.

¹²⁷ TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.4.

¹²⁸ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para. 26

mafia prisoners. The prison staff must have a clear handbook about national and international prison standards.

As it is admitted by a prison governor, the main problem is the lack of experienced and qualified prison personnel, rather than physical conditions.¹²⁹ The prison guards have a one-week training program and then start working.¹³⁰ All the prison staff; prison governor, guards, doctor, teacher, and psychologist etc.- should have a special training. The prison bureaucracy should have a degree of work experience of prison administration. Most of the terror prisoners are better educated than the prison staff. It was a problem to find a capable governor for the Istanbul Bayrampasa Prison.¹³¹

The Turkish Government acknowledges the difficulty of recruiting staff to work in prisons. The insufficiency of available resources was given as an excuse for the insufficiency of quality and training of staff.¹³² Most of the prison staff is little trained, poorly paid and have little respect. They are working under stressful conditions. With little respect outside, they may see themselves as the masters of prisons, instead of civil servants. The prison posts are not attractive. Therefore those who do not find job in another institution work in prisons.¹³³ Moreover, if they find a better job, they leave. All these negative factors create a “them and us” approach between prison staff and prisoners. It may obstruct the educational activities.

The external security of prisons is carried out by gendarmerie. Most of the ill-treatment allegations are related to gendarmerie during the transfers and searches. They are not under the command of Prison Governor or the Ministry of Justice. There may be an indirect or direct power

¹²⁹ *Soruşturma, Kovuşturma Yargılama Ceza ve İnfazi Erzincan Raporu 1998 ve 2000 (Turkish Parliamentary Human Rights Inquiry Commission's Erzincan Report on Prisons and Police Detention 1998-2000)* (Ankara:TBMM Basımevi, 2000), 1998 Yılı Tutanakları, p.5.

¹³⁰ TBMM Ulucanlar Report, *supra*, n. 85, p. 89.

¹³¹ *Ibid.* p.88.

¹³² “Responses of the Turkish authorities 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 16 to 24 July 2000” *CPT website*, <<http://www.cpt.coe.int/en/reports/inf2000-19en.htm#Response>>, accessed 13 June 2001.

¹³³ TBMM Erzincan Report, *supra*, n. 121, 1998 Yılı Tutanakları, p.5.

struggle between the Prison Governor and Gendarmerie Commander. It affects the treatment of prisoners or visitors.

vii. Non-discrimination Principle

The type of crime should not affect the treatment or prison staff's approach. The Article 4 of SMR clearly prohibits any kind of discrimination between the different categories of prisoners. There is not a serious discrimination in Turkish prisons. Different regimes are applied to terror and ordinary criminal prisoners due to security reasons. However the terror prisoners are seen as the enemies of state who deserve the worst behaviours. The ideological differences sometimes affect the prison staff's approach to the prisoner.

The terror prisoners had some privileges when compared with the ordinary criminals. Before the transfers to F type prisons, they were freely visiting all dormitories. In some prisons, the room searches could not have been carried out for years. They got additional privileges after hunger strikes. The ordinary criminal prisoners believe that the "terrorists" have better opportunities than them.¹³⁴

In some prisons, there are allegations of discrimination against the prisoners of other provinces. A prisoner claimed that this is the case in Elazig and Ordu prisons.¹³⁵

vi. Admission: Information About Rights and Duties

The prison authorities claim that the officer on duty informs the prisoners orally about the establishment's internal regulations on their arrival at the prison. The Government alleges that rights and duties are instructed by the prison staff. The Ministry of Justice officials said to CPT delegation about a brochure entitled "Guidelines for Convicted and Remand Prisoners" which

¹³⁴ TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.38.

¹³⁵ TBMM Elazığ Report, *supra*, n. 102, 2000 Yılı Tutanakları, p.52, 57.

contains comprehensive information on the general rules to be followed by prisoners, prisoners' rights, duties and rewards, disciplinary sanctions and procedure, etc.¹³⁶

However, the inmates claim that they received very little or no information on the arrival.¹³⁷ The prisoners learn the rules, their rights and duties from other prisoners who came before. Human Rights Association –a national NGO- claims that no legal document is given to prisoners on admission.¹³⁸

The first impression of prisoner may affect the prisoner's response to treatment activities. In many prisons, a welcome beating is applied instead of instructions. It is examined under the title of ill-treatment.

vii. Classification and Accommodation

Unlike many modern prison systems, the national law does not make a good categorisation of prisoners. Moreover the existing criteria are sometimes not applied for accommodation. Those who are first time imprisoned or imprisoned due to a simple crime are accommodated with those who have criminal habits. Those who took part in an armed conflict against the soldiers are accommodated with the sympathizers of the same terror groups. The untried prisoners are not separated from the convicted prisoners.¹³⁹ The juveniles are sometimes accommodated in the same dormitory with adults.¹⁴⁰ The absence of serious and careful classification and accommodation prevents the individual treatment and leaves the prisoner at the hands of old prisoners. In the dormitory system, the prisoner is under the influence of other prisoners and dormitory leaders.

¹³⁶ "Interim report of the Turkish Government to CPT", (5-17 October 1997), *supra*, n. 10.

¹³⁷ "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 (CPT) from 5 to 17 October 1997" *CPT website*, <<http://www.cpt.coe.int/en/reports/inf9902en.htm>>, accessed 13 June 2001, para 169.

¹³⁸ "Human Rights Association F Type Prison Report to CPT" *Human Rights Association website*, <www.ihd.org.tr>, accessed 22 July 2001.

¹³⁹ TBMM Elazığ Report, *supra*, n. 102, p.3. This is the case in many other prisons.

¹⁴⁰ TBMM Batman Report, *supra*, n. 84, p.6.

When a terror prisoner first comes to prison, he or she is usually asked which room he or she wants to go. There are only three alternatives: the rooms of ordinary criminals, terror criminals or confessed and repentant prisoners. The first alternative is unacceptable to a terror prisoner. He may be there because of writing an article criticizing official state ideology or distributing a leaflet or participating a demonstration. How can he or she stay with the murderers, rapists or thieves? The last alternative is not attractive because it usually means to deny all your ideology. Moreover it may be dangerous due to threats from terror groups. As the best of the worst, the only option seems to go to terror rooms. There is an established system in those rooms and new prisoners have no choice other than obeying rules. Thus, an opponent to the official state ideology may easily become a real terrorist in prisons. If the prison authority separates them, then the prisoners make hunger strike to go to the rooms of same prisoners.¹⁴¹

The same is true for the ordinary criminal prisoners. The rooms consist of murderers, rapist, thieves etc. There is not a well-established categorisation depending on the characteristics of crimes. When the first offender is put into the same room with the habitual offender, it becomes a kind of master-apprentice relation. The latter is taught about the tricks of crime. The system is not based on questioning yourself for a better life.

Contrary to the national and international standards, the terror and ordinary crime prisoners may sometimes stay in the same room, which causes certain problems between the two types of prisoners.¹⁴² Although the law and regulation clearly states that the connection and communication of remand and convicted prisoners are to be cut, they are accommodated in the same dormitories.

¹⁴¹ TBMM Elazığ Report, *supra*, n. 102, 1998 Yılı Tutanakları, p.99.

¹⁴² *Soruşturma, Kovuşturma Yargılama Ceza ve İnfazi Tunceli Raporu 1998 ve 2000 (Turkish Parliamentary Human Rights Inquiry Commission's Tunceli Report on Prisons and Police Detention 1998-2000)* (Ankara:TBMM Basımevi, 2000), 2000 Yılı Tutanakları, p.11, TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.31, TBMM Erzincan Report, *supra*, n. 121, 1998 Yılı Tutanakları, p.2.

The shared accommodation may be preferred if there are advantages.¹⁴³ The windows should be large enough that the prisoners can read or work by natural light. However, the rooms were very crowded before the year 2001 amnesty. For example, 30 prisoners were staying in a dormitory in which there were only 23 beds in Elazığ E Type prison.¹⁴⁴ The total capacity of Batman E Type prison is 350. When the Turkish Parliamentary Human Rights Commission visited it, 474 prisoners were staying there.¹⁴⁵

viii. Treatment and Education

The prison society is similar to other types of social organisations. It has its own language, leaders, laws, rites and rituals.¹⁴⁶ If the prisoners are not provided well-organised education and training activities, they develop their own way of daily life, in which power subordinates the law.

Most of the ordinary crime prisoners are poorly educated. The prison education may cause them to feel more confident about their future and stronger to cope with the difficulties of life when they are released. The vocational programs provide them a profession to earn their future.

a. Individual Treatment

The international rules recommend the careful examination of every prisoner and the individual treatment. In Turkish system, the prisoner is accepted as an ordinary member of prison society instead of an independent human being. His personal characteristics usually do not mean anything. The prisoner is the object of a competition between state and terror organizations. The dormitory system does not let the individual treatment of terror prisoners.

¹⁴³ Article 9 of SMR, *supra*, n.7. and Article 14 of EPR, *supra*, n. 8

¹⁴⁴ TBMM Elazığ Report, *supra*, n. 102, 2000 Yılı Tutanakları, p.53.

¹⁴⁵ TBMM Batman Report, *supra*, n. 84, p.6.

¹⁴⁶ J. J. Dilulio, *Governing Prison: A Comparative Study of Correctional Management* (Free Press, 1987) p. 16.

b. Earned Privileges System

In the modern prison systems, the privileges are earned or lost by prisoners through good behaviour and performance. The system encourages the responsible behaviour and progress. It is up to the prisoner to make his or her life better depending on objective criteria. The British Prison system lists five key earnable privileges. These are access to private cash above a set minimum, extra or improved visits, eligibility to participate in enhanced earning schemes, earned community visits and gradual introduction of in-cell television.¹⁴⁷ There is a basic level, which is the minimum level of facilities every prisoner is entitled by law. In Turkish system, the privileges are not clearly defined and usually depend on subjective criteria.

c. Education

The prison administrations introduce various programs like reading-writing courses, primary, secondary schooling and higher education through correspondence, workshop activities, professional skill courses, religion, as well as social, cultural and sports activities. In some prisons, the inmates are offered vocational training (i.e. tailoring, photography, maintenance and construction works, ship modelling, copper works, handicrafts) as well as training courses and individual handicrafts.¹⁴⁸ However the basic education activity for every prison is the reading-writing courses.

There is no standard of education programs. Many prisons do not have a permanent or even sometimes temporary teacher. The teacher is coming from a local school in some prisons.¹⁴⁹ For example, there was no teacher in Batman E Type Prison in 1998. Two years later, still there was no teacher in 2000.¹⁵⁰

¹⁴⁷ *Prisoners' Information Book for Male Prisoners and Young Offenders*, published by Prison Reform Trust and HM Prison Service (1999, London), p. 103.

¹⁴⁸ "Interim report of the Turkish Government to CPT", (5-17 October 1997), *supra*, n. 10.

¹⁴⁹ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.3.

¹⁵⁰ TBMM Batman Report, *supra*, n. 84, p.7.

The procedural difficulties make it almost impossible to organise any conference except those about the patriotism and the harmful effects on smoking, alcohol and drugs. The prison governors do not feel free to organise any activity due to fear of doing against the official ideology. It may be dangerous to make many organisations. Therefore the best and the safest thing is to do the least.

d. Library and Reading Materials

The books, newspapers and periodicals are the best friends of prisoners. As it is acknowledged by a prisoner, it may not be boring to stay in room with the books and newspapers.¹⁵¹ Terror prisoners often use the libraries.¹⁵² The prison libraries are neither rich nor include the books about different thoughts.¹⁵³ Therefore in some prisons, the prisoners do not use the library.¹⁵⁴

The use of library may depend on the prison governor's permission¹⁵⁵, which leads to different practices in different prisons. A Prison Governor states that the prisoners can get any book if it is not banned.¹⁵⁶ However the prisoners complained that the legal publications are sometimes not permitted by prison administration or if they are seized in searches, they are not given back.¹⁵⁷ A new prison governor may stop or obstruct the periodicals as it was in Burdur Prison.¹⁵⁸

e. Prison Work

Many prisoners have been unemployed prior to their prison sentence. Most of them have poor education, limited skills and work records. They should be occupied with purposeful activities. Keeping them busy with vocational activities is not only for the interest of prisoner but also

¹⁵¹ TBMM Ulucanlar Report, *supra*, n. 85, p.26.

¹⁵² TBMM Elazığ Report, *supra*, n. 102, 2000 Yılı Tutanakları, p.60.

¹⁵³ TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.21-22.

¹⁵⁴ TBMM Tunceli Report, *supra*, n. 134, 2000 Yılı Tutanakları, p.14.

¹⁵⁵ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.27.

¹⁵⁶ TBMM Batman Report, *supra*, n. 84, p.5

¹⁵⁷ TBMM Batman Report, *supra*, n. 84, s.19., TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.85, TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.22, TBMM Elazığ Report, *supra*, n. 102, 1998 Yılı Tutanakları, p.102.

¹⁵⁸ TBMM Ulucanlar Report, *supra*, n. 85, p.25.

related to the security of prison. Unemployed ex-offenders are more likely to re-offend than ex-prisoners who get a job after release.¹⁵⁹ However there are very limited work facilities in Turkish prisons.

The prison activities should have a meaningful purpose rather than just consuming time. The most common purposeful activity in Turkish prisons is hand made wooden and bead products, which have problems in marketing and selling.¹⁶⁰ The prison governor should take permission from the Ministry of Justice to exhibit the prisoners' hand made products.¹⁶¹

There are iron, carpenter, binding, shoes and carpet workshops and bakery in some prisons. Some prison governors open the central heating installation courses.¹⁶²

There is no forced labour generally. However the young prisoners are sometimes forced to clean administrative rooms. If they refuse, they are punished.¹⁶³

f. Sport and Exercise

There is either no or limited sport facilities in prisons. The sport activities are carried out in the yards of dormitories. The yards are small when compared with the room population. Therefore practically it is not possible for all prisoners to make sport at the same time. In some prisons, the football playing areas are used by soldiers, not by prisoners.¹⁶⁴

¹⁵⁹ Bryans and Jones, *supra*, n. 78, p.240.

¹⁶⁰ TBMM Batman Report, *supra*, n. 84, p.16.

¹⁶¹ TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.16.

¹⁶² TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.4

¹⁶³ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.43, TBMM Elazığ Report, *supra*, n. 102, 1998 Yılı Tutanakları, p.69. TBMM Erzincan Report, *supra*, n. 121, 1998 Yılı Tutanakları, p.123.

¹⁶⁴ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.38.

ix. Contact with the Outside World

The contact with the outside world is the part of treatment. The maintenance of relations with family members, friends and community reduces the harmful effects of imprisonment.¹⁶⁵ It makes easy the prisoner's reintegration to the society. This is for the interest of not only prisoners or their families but also for the prison administration. Therefore the visits must be sufficiently frequent and of reasonable length.

The regulation mentions many relatives for visits. There are no restrictions on the number of visitors.¹⁶⁶ However, there are problems in the visits of family members whose surnames are different.¹⁶⁷ There is a practical problem due to polygamy, which is common in the eastern and southeastern Turkey. The prison administration requests an official document from the chief of village as a confirmation of kinship. However this certificate is not accepted by the gendarmerie at the door and they request another certificate from the public prosecutor.¹⁶⁸

There is no standard for the visit times.¹⁶⁹ The prison administration may sometimes restrict the right to visit or right to send and receive letters as a punishment.¹⁷⁰

The Anti-Terror Law prohibits open visit for terror prisoners. In practice, however, prisoners remanded in custody or sentenced for offences under Law No 3713 have been given the right to one open visit a month from their spouses and children only.

The visitors wait hours at the door.¹⁷¹ They are sometimes disturbed by the gendarmerie¹⁷² and prison guards by saying that why are you coming to the visits of terrorists.¹⁷³ Some families

¹⁶⁵ Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials (Geneva, Office of High Commissioner for Human Rights, 2000), p.78.

¹⁶⁶ "Interim report of the Turkish Government to CPT", (5-17 October 1997), *supra*, n. 10.

¹⁶⁷ TBMM Batman Report, *supra*, n. 84, p.10, 14, TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.27, TBMM Erzincan Report, *supra*, n. 121, 1998 Yılı Tutanakları, p.42.

¹⁶⁸ TBMM Batman Report, *supra*, n. 84, p.28, TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.24.

¹⁶⁹ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.21

¹⁷⁰ *Ibid.* p. 31. In Erzincan Prison a prisoner who tried to escape was banned to receive visits (TBMM Erzincan Report, *supra*, n. 121, 1998 Yılı Tutanakları, p.18).

¹⁷¹ Erzurum Report, *supra*, n. 90, p. 35.

could not visit their prisoners due to fear of being labelled as terrorist.¹⁷⁴ The visitors are not criminals. Therefore they should be greeted with courtesy and civility by staff.

The visiting areas are neither sufficient nor comfortable. Usually the visitor and the prisoner are shouting to hear each other. The noisy environment prevents a healthy communication.¹⁷⁵ The CPT recommended the provision of satisfactory seats for both prisoners and visitors.¹⁷⁶ The circular dated 3 November 1997 recommended the renovation and expansion of visitation sections of the prisons. The Government says that the necessary steps are being taken but it is difficult to remove this problem due to overcrowding of visitors.¹⁷⁷ On the other hand, mafia prisoners in Istanbul Bayrampasa Prison accept their visitors in Prison Governor's room.¹⁷⁸

Before the last amendment, the telephone calls were not easily permitted. The prisoner should apply to prison governor and the request must be approved by prison prosecutor.¹⁷⁹ However some mafia and terror prisoners had mobile phones.¹⁸⁰ A new regulation was accepted on 23 June 2001 that permits the telephone calls but it includes many formalities, which are open to arbitrary violations.

All incoming and outgoing letters are opened and read by prison staff. It may be necessary to control the communication of dangerous terror prisoners. However it is unnecessary for most of the ordinary prisoners. Except a small group of high security risk prisoners there is little need for any reading or censoring of mail.¹⁸¹

¹⁷² TBMM Tunceli Report, *supra*, n. 134, pp. 6, 14 and Erzurum Report, *supra*, n. 90, p.14.

¹⁷³ TBMM Batman Report, *supra*, n. 84, p.23, TBMM Erzurum Report, *supra*, n. 90, 2000 Yılı Tutanakları, p.90, TBMM Elazığ Report, *supra*, n. 102, 1998 Yılı Tutanakları, p.101.

¹⁷⁴ TBMM Elazığ Report, *supra*, n. 102, p.23.

¹⁷⁵ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları,, p.21.

¹⁷⁶ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para, 45.

¹⁷⁷ "Interim report of the Turkish Government to CPT", (5-17 October 1997), *supra*, n. 10.

¹⁷⁸ TBMM Ulucanlar Report, *supra*, n. 85, pp. 81, 85. A mafia prisoner killed the leader of rival group in the room of prison governor in Istanbul Bayrampasa prison.

¹⁷⁹ TBMM Erzincan Report, *supra*, n. 121, 1998 Yılı Tutanakları, p.4.

¹⁸⁰ TBMM Ulucanlar Report, *supra*, n. 85, p. 81.

¹⁸¹ Human Rights and Prisons, *supra*, n. 157, p.81.

x. Food and Health

The prison foods are neither qualitatively nor quantitatively enough. There are many complaints about the food.¹⁸² The foods brought by visitors are permitted in some prisons. However if the brought materials can be found at prison canteen, they are not allowed.¹⁸³ In the 2000 year budgeted, the amount of money allocated for the nourishment of a prisoner was only 30 US Dollar for a month. The CPT delegation's visit to prison kitchens revealed the fact that "no account was being taken of standard nutritional requirements, either in quantity or quality, when preparing the menu."¹⁸⁴

With regard to the health, Government claims that there is a doctor on duty in each prison between 9 am and 5.30 pm, with two doctors on duty in crowded prisons. Prison officers who have first aid training are on duty at night and weekends, which may be good to prevent keeping doctors busy unnecessarily.¹⁸⁵ However, there is no permanent doctor in most of the prisons. In some cities, there are not enough specialist doctors even in state hospitals.¹⁸⁶

The Human Rights Association Report states that only 158 of 558 prisons have medical personnel.¹⁸⁷ Although the Urfa Prison has two positions, there is no doctor actually.¹⁸⁸ The correspondence with the Ministry of Justice has lasted for three years with no result. Similarly there was no prison doctor in Batman E Type Prison in 1998. The delegates of Human Rights Inquiry Commission visited the same prison two years later to check the improvement. Still there was no doctor.¹⁸⁹

¹⁸² TBMM Batman Report, *supra*, n. 84,p.10, TBMM Şanlıurfa Report, *supra*, n. 114, s.9.

¹⁸³ TBMM Tunceli Report, *supra*, n. 134, 2000 Yılı Tutanakları, p.14. p.5., TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.22, 49.

¹⁸⁴ CPT Report to the Turkish Government, (5-17 October 1997), *supra*, n. 129, para. 108.

¹⁸⁵ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108.

¹⁸⁶ TBMM Tunceli Report, *supra*, n. 134, 2000 Yılı Tutanakları, p.8

¹⁸⁷ HRA F Type Prison Report to CPT, *supra*, n. 130.

¹⁸⁸ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.1.

¹⁸⁹ TBMM Batman Report, *supra*, n. 84, pp.6, 8

The national NGOs claim that it is a state policy not to pay much attention to health services in prisons.¹⁹⁰ There are complaints about the transfers to the hospitals. The transfers may sometimes not be done due to absence of gendarmerie personnel or vehicle¹⁹¹ or due to “security” reasons.¹⁹² Except the emergency cases, the request to consult the doctor is approved by prison governor. The CPT report defines this procedure as “time consuming and medically inappropriate.”¹⁹³

The CPT delegation found the health service in a newly established model prison unsatisfactory in practically all respects – staff, documentation and availability of medicine, equipment, etc.¹⁹⁴ They criticized the absence of qualified nursing staff. The doctors are usually assisted by prison officers who had received no training for such tasks.¹⁹⁵ If the sick prisoner cannot afford to pay, availability of medicine becomes a real problem. The patient should apply to prison governor for the necessary funds that takes long time. After CPT visits and reports, the Government appointed second doctors to the visited prisons.¹⁹⁶ However this is not the case for many other prisons.

Another problem with the health system is that the medical personnel are the officials of Ministry of Justice rather than the Ministry of Health. The national NGOs usually question their professional independence.

xi. Disciplinary Punishment and Ill-treatment

The ill treatment allegations are not common in prisons. Most of the complaints are related to the gendarmerie during the transfers. The terror prisoners usually complain about the ideological

¹⁹⁰ Demirci and Üçpınar, *supra*, n. 92.

¹⁹¹ TBMM Ulucanlar Report, *supra*, n. 85, p. 38.

¹⁹² TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.29.

¹⁹³ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para. 40.

¹⁹⁴ *Ibid.* para. 37.

¹⁹⁵ *Ibid.* para. 39.

¹⁹⁶ “Interim report of the Turkish Government to CPT”, (5-17 October 1997), *supra*, n. 10.

tendencies of certain prison guards.¹⁹⁷ The main purpose of ill treatment within the prison is the disobedience.¹⁹⁸

a. Ill-treatment on arrival

During its visit to Eskisehir Special Type Prison, the CPT delegation received a considerable number of allegations that prisoners had been beaten and humiliated on arrival at the establishment. They did not see any sign on the prisoner due to long time. However the volume and consistency of the allegations lent them considerable credibility.¹⁹⁹ The members of Turkish Parliamentary Human Rights Commission also received similar complaints from different prisoners that they were beaten by prison governor and prison guards on admission.²⁰⁰

The terror prisoners claim that they are threatened and forced to make confession and leave the organisation on admission.²⁰¹ They allege that prison guard asks the crime on the arrival. If the prisoner replies as “political”, the prison guard says that the politics is in Ankara, the capital; so you are terrorist and then beat them.²⁰² Sometimes the moustaches and beards of terror prisoners were cut on admission.²⁰³

Ill-treatment on admission may change depending on the attitude of prison governors.²⁰⁴ The Governors should give clear message to all of their subordinates that the ill-treatment of prisoners is not acceptable and will be dealt with severely. The Government stated in his

¹⁹⁷ TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.11, TBMM Erzurum Report, *supra*, n. 90, 2000 Yılı Tutanakları, p. 87, TBMM Elazığ Report, *supra*, n. 102, 1998 Yılı Tutanakları, p.101.

¹⁹⁸ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para 22.

¹⁹⁹ *Ibid.* para 22.

²⁰⁰ TBMM Batman Report, *supra*, n. 84, p.13. TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.19, TBMM Elazığ Report, *supra*, n. 102, 1998 Yılı Tutanakları, p.62.

²⁰¹ TBMM Erzurum Report, *supra*, n. 90, 2000 Yılı Tutanakları, p.19.

²⁰² TBMM Tunceli Report, *supra*, n. 134, 1998 Yılı Tutanakları, p.14.p.8.

²⁰³ TBMM Erzurum Report, *supra*, n. 90, 1998 Yılı Tutanakları, p.19.

²⁰⁴ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para, 23.

response to CPT that the necessary attention is taken to prevent the ill-treatment against the arrived prisoners.²⁰⁵

b. Ill-treatment during body and room searches

The prisoners have many complaints about the naked searches on admission. The gendarmerie commander claims that they do not make quite naked searches. However the prisoners claim the opposite.²⁰⁶

The gendarmerie takes part in the room searches in prisons.²⁰⁷ The prisoners claim that soldiers damage their personal belongings during searches.²⁰⁸ There are different search practices not only between the terror and ordinary prisoners but also among the different terror groups like Kurdish Workers Party (PKK) and Revolutionary People's Liberation Party/Front (DHKP/C). The PKK prisoners complain about the type of search.²⁰⁹ For example, they claim that the foods like rice and lentil are mixed during searches.²¹⁰ The most dangerous illegal group is the DHKP/C. The prison guards are threatened and frightened by DHKP/C prisoners.²¹¹ They either did not permit counting or attacked and disturbed prison guards during searches.²¹² A gendarmerie commander stated that no search has been done for 6 or 7 years in these terror rooms.²¹³ Similarly a public prosecutor admitted that the prison administration was unable to make searches in DHKP/C rooms.²¹⁴ The prison governor may request the prisoner to let the search.²¹⁵

²⁰⁵ *Ibid.*

²⁰⁶ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, 7, 19, 23, 55 TBMM Elazığ Report, *supra*, n. 102, 1998 Yılı Tutanakları, p.62, 98

²⁰⁷ TBMM Batman Report, *supra*, n. 84, s.5, TBMM Ulucanlar Report, *supra*, n. 85, p.26.

²⁰⁸ TBMM Elazığ Report, *supra*, n. 102, p.15, TBMM Tunceli Report, *supra*, n. 134, p.6 and TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.10.

²⁰⁹ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.15

²¹⁰ TBMM Elazığ Report, *supra*, n. 102, 1998 Yılı Tutanakları, p.102.

²¹¹ TBMM Ulucanlar Report, *supra*, n. 85, p.80.

²¹² *Ibid.* p.38.

²¹³ *Ibid.* p. 49.

²¹⁴ *Ibid.* p.36.

²¹⁵ *Ibid.* p.101.

The prisoners also complained about beating by prisons staff.²¹⁶ The complaints about corporal punishment are comparatively common in juveniles.²¹⁷ In some cases, if the prisoner's defendant is a relative of prison guard, the prisoner is subjected to an extra ill-treatment.²¹⁸ The abundance of complaints about searches refers at least to the ignorance of respect for the prisoners' dignity during searches.

c. Ill-treatment by gendarmerie during transfers

The most of the ill-treatment allegations are related to the gendarmerie in the course of transfers.²¹⁹ The problem was highlighted in various CPT reports. The paragraph 7 of the Circular of 3 November 1997 says that measures shall be taken to prevent prisoners being subjected to mistreatment or insulting behaviour both within the prison and during transfers outside the institution, in co-ordination with the Provincial Gendarmerie Headquarters. Although the laws definitely prohibit ill-treatment, the allegations do not end.

The prisoners are transferred to courts or hospitals as handcuffed and usually not opened during the treatment. This procedure is standard, independent from the prisoner's risk of danger. The prisoners accept it as degrading treatment and may sometimes refuse to go to hospital or court.

Government denies the ill-treatment allegations during the transfers. In its response to CPT reports, it is alleged that they are remand prisoners who "insult and swear at security officers or behave in a disruptive manner during transfers."²²⁰

²¹⁶ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.15, Elaig 2000tut, p.46.

²¹⁷ TBMM Elazığ Report, *supra*, n. 102, 2000 Yılı Tutanakları, p.46.

²¹⁸ TBMM Batman Report, *supra*, n. 84, p. 16.

²¹⁹ "Turkey: Government Seeks to Quash Scrutiny of Prisons Transfer Prisons Activist Jailed", *Human Rights Watch website*, <<http://www.hrw.org/press/2001/01/turkey0109.htm>>, accessed 22 June 2001. The prison reports of Turkish Parliamentary Human Rights Commission have many examples about the ill-treatment allegations during the transfers.

²²⁰ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108.

d. Segregation

Normally the segregation units are used for disciplinary sanction or for those who wish - or who it is considered need to be - separated from other prisoners. International standards and CPT reports say that the prisoners given the disciplinary sanction of solitary confinement must be allowed at least one hour of outdoor exercise every day.²²¹ There are many allegations and complaints about the ill treatment in cells and solitary confinement²²² If there is an inspection, there may be some improvements. For example, the Prison Administration has withdrawn the windowless cells in the segregation unit of Eskişehir Prison after the CPT report.²²³

Article 15 of The Law on the Execution of Sentences says that the period of confinement cannot be more than 15 days. However, in most of the disciplinary sanctions, the punishment of isolation had been imposed for the maximum period authorised, which is 15 days.²²⁴ There are some allegations for longer isolations. The Turkish Parliamentary Human Rights Commission visited a prisoner in his cell, who claimed that he has been staying there for 34 months²²⁵ and another one for 6 years.²²⁶

The physical situation of cells is not consistent with national and international standards in many prisons. The Circular of 3 November 1997 provides that "in all penal institutions, the disciplinary cells located in the basement level shall be demolished and replaced by a sufficient number of disciplinary rooms of 9-10 m² at the ground level, featuring a 100 x 75 centimetres window, a shower and toilet and an exercise yard at least as wide as the room itself. The prisoners were deprived of outdoors exercises and reading material. The Turkish authorities replied to CPT that

²²¹ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108. para.49.

²²² TBMM Erzurum Report, *supra*, n. 90, 2000 Yılı Tutanakları, p. 14

²²³ Response of the Turkish Government to the CPT Report (19-23 August 1996), *supra*, n. 214.

²²⁴ CPT Report to the Turkish Government, (5-17 October 1997), *supra*, n. 129, para, 122.

²²⁵ TBMM Elazığ Report, *supra*, n. 102, 2000 Yılı Tutanakları, p.47.

²²⁶ TBMM Elazığ Report, *supra*, n. 102, p.27.

it is not possible to provide the outdoor activities to the prisoners placed in disciplinary because of the provisions of Turkish legislation and the material structure of the cells.²²⁷

The prisoners should be informed in writing of their right to appeal against disciplinary sanctions imposed on them. There must be a register book. The government stated in its reply to CPT that the prisoners who are at disciplinary cells are offered 1.5 hours of outdoor exercise daily, in accordance with the circular dated 3 November 1997.²²⁸

xii. Complaint Procedure and Monitoring

The essence of complaint procedure and monitoring is the trust to state that any complaint or request will be considered objectively and fairly. Moreover, the prisoners should feel free from the fear of reprisal if he or she complains.

a. Complaint Procedure

The Chief Public Prosecutor opens the boxes and sends letters directly and unopened to the Ministry of Justice. The complaint letters are assessed by a Complaints Board Unit set up in the Ministry's General Directorate of Prisons and Detention Houses, composed of a judge, a prison governor and two civil servants. However, the system does not work properly. Most of the prisoners believe that complaints involving the criticism of prison staff or administration are not delivered and give rise to reprisals.²²⁹

In its following visits, many prisoners said to CPT delegation that they did not have regular access to the boxes and they had little faith in the complaint system. Moreover, they claimed that letters containing complaints were not forwarded by the prison administration and feared that

²²⁷ CPT Report to the Turkish Government, (5-17 October 1997), *supra*, n. 129, para. 160

²²⁸ "Interim report of the Turkish Government to CPT", (5-17 October 1997), *supra*, n. 10.

²²⁹ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, TBMM Elazığ Report, *supra*, n. 102, p.47, TBMM Şanlıurfa Report, *supra*, n. 114, p.9, *Soruşturma, Kovuşturma Yargılama Ceza ve İnfazi Elazığ Çocuk İslahevi Raporu 1998 ve 2000 (Turkish Parliamentary Human Rights Inquiry Commission's Elazığ Reformatory for Juveniles Report (1998-2000))* (Ankara:TBMM Basımevi, 2000), p.10, TBMM Batman Report, *supra*, n. 84, p.13.

complaints could result in some form of punishment of the prisoner concerned. The CPT requested the strengthening of the prisoners' faith in the effectiveness of the system.²³⁰

The requests or complaints to the central prison administration are confidential and cannot be subjected to censorship. The prisoners do not have any problem in complaining about food, health problems, accommodation etc. The boxes are for the complaints about the prison staff. The Ministry of Justice introduced a locked complaint boxes designed to allow prisoners to communicate directly and on a confidential basis with the Ministry in 1996. In 1997, the public prosecutors opened the complaint boxes, because of a decision of that time Minister of Justice. Now prison guards open them.²³¹ Although the law says that the prisoners can anytime make complaints to prison governors, public prosecutors or the Ministry, there are arbitrary practices.

The Government in its reply to CPT stated that the right to complaint is a constitutional right guaranteed by other laws as well. The Government stated that the complaint boxes are easily accessible to all inmates and they are opened not by the prison administration but by the public prosecutor. The complaints are directly sent to the Ministry of Justice. All the convicts can file complaints directly to the prison governor, prison prosecutor, public prosecutor, Minister of Justice, Prime Minister, President, Chairman of the Human Rights Commission of the Parliament and even to the European Court of Human Rights.²³²

The statistics given to the CPT delegation proves that the system does not work properly. In its response to CPT report, the Turkish Government claimed that most of the letters received in 1996 "do not contain practical complaints calling for measures to deal with prison conditions, but are of a general nature and relate the prisoners' personal thoughts, their family problems and the persons or circumstances that caused them to be imprisoned."²³³ Absence of serious complaints

²³⁰ CPT Report to the Turkish Government, (5-17 October 1997), *supra*, n. 129, paras. 165-166.

²³¹ TBMM Erzincan Report, *supra*, n. 121, 2000 Yılı Tutanakları, p.17.

²³² "Interim report of the Turkish Government to CPT", (5-17 October 1997), *supra*, n. 10.

²³³ Response of the Turkish Government to the CPT Report (19-23 August 1996), *supra*, n. 214.

does not mean the absence of ill-treatment or complaints but the lack of confidence to the system. In Batman E Type Prison, the prisoners complained that the public prosecutor never visited dormitories while the public prosecutor claimed that he monitored the prison and did not receive any complaint.²³⁴ The reports of Parliamentary Human Rights Commission are the indicator of the fact that if prisoners trust the monitoring body, they explain all complaints and ill-treatment allegations. Otherwise they prefer to be silent due to fear of extra punishment and ill-treatment.²³⁵

If the complaint mechanism does not work, the prisoners find different ways to solve their problems. The most effective means is the hunger strikes. It is sometimes applied by prisoners to stop the ill-treatment in prisons²³⁶ or to get certain rights.²³⁷

b. Monitoring

Confidential access to the independent inspection body is the foundation of an effective monitoring system. Moreover, the members of inspection bodies should have the necessary qualifications and are to be independent from the Ministry of Justice and prison authority. Otherwise the prisoners usually have no faith in the complaints system because of long-term negative experiences.

The inspection system should include not only the state bodies but also non-governmental organisations or independent prison boards. They should have power to make announced and unannounced visits to prisons and report their findings. The complaints must be followed by regular visits by independent bodies. The prisons either may be opened to the free access of the

²³⁴ TBMM Batman Report, *supra*, n. 84, pp. 8, 23.

²³⁵ TBMM Batman Report, *supra*, n. 84, p.10, Elazığ Reformatory for Juveniles Report, *supra*, n. 221, p.25, The Report on Istanbul Bakırköy Prison for Women and Juveniles (Bakırköy Kadın ve Çocuk Tutukevi Raporu 1998 ve 2000) (Ankara:TBMM Basımevi, 2000), p.16.

²³⁶ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para, 14.

non-governmental organisations or there may be a body like boards of visitors acting as a watchdog to make sure the prison is being run properly and that the prisoners are being treated fairly. The CPT recommended the regular visits of such independent bodies.

Such systems would contribute to give confidence to inmates that there are mechanisms to complain the ill-treatment. It is also an indirect threat to the prison authorities that arbitrarily apply ill-treatment. The prisoners usually do not want to speak to the monitoring delegates due to fear of reprisals.²³⁸ This is not an illusionary but experienced fear. For example, after the Turkish Parliamentary Human Rights Commission's 1998 visit to Batman Prison, those who complained about prison administration were expelled to other prisons.²³⁹ Another prisoner was punished of not being sent to open prison, although he deserved.²⁴⁰ Two years later, the prisoners of Ulucanlar Detention House explained the same fears to the members of Parliamentary Commission.²⁴¹

The monitoring visits make some improvements for the prisoners. The prison administration takes some measures before their visits.²⁴² The prisoners said to members of Turkish Parliamentary Human Rights Commission that they guessed the visit of a delegation due to some measures taken before it.

There is no end of monitoring. Therefore the prison governors should have necessary qualifications to solve the problems at the prison level.

²³⁷ TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.28.

²³⁸ TBMM Elazığ Report, *supra*, n. 102, 1998 Yılı Tutanakları, p.61, 71, TBMM Erzincan Report, *supra*, n. 121, 1998 Yılı Tutanakları, p.50.

²³⁹ TBMM Batman Report, *supra*, n. 84, p.13.

²⁴⁰ TBMM Erzincan Report, *supra*, n. 121, 2000 Yılı Tutanakları, p.35-36.

²⁴¹ TBMM Ulucanlar Report, *supra*, n. 85, p.119.

²⁴² TBMM Tunceli Report, *supra*, n. 134, 200 Yılı Tutanakları, p.8, TBMM Şanlıurfa Report, *supra*, n. 114, 1998 Yılı Tutanakları, p.20, TBMM Elazığ Report, *supra*, n. 102, 1998 Yılı Tutanakları, p.66, TBMM Erzincan Report, *supra*, n. 121, 1998 Yılı Tutanakları, p.123.

III. TERROR PRISONERS AND F TYPE PRISONS

In every prison system, there is a small number of prisoners who present real threat to public order. The terror is the most dangerous form of crimes. As it is mentioned before, the Turkish Anti-Terror Law defines terror crimes as the ideological crimes against the public order, democratic regime and indivisibility of state with its nation. A person who criticised the official state policies may be dangerous even if it does not approve violence. A murderer, on the other hand, is not accepted dangerous.²⁴³ Therefore in Turkish imprisonment system, the dangerous prisoner means the terror prisoner as it is defined by law.

The dangerous prisoners may have little or no privileges or may be treated differently than the other categories. However the application of maximum security does not mean minimum treatment. The staff should have extra qualifications and ability to use inter-personal skills to develop positive relationships with prisoners.

A stable prison system has three pillars; security, control and justice. The security means the prevention of escapes. Control is the prevention of disorder in prison. The justice means the treatment of prisoners with humanity and fairness and to prepare them for their return to the community in a better position. There must be a balance between them. If, for example, there are much security measures at the expense of justice or the control is neglected for more justice, the balance is disturbed.

i. Why F Type Prisons?

Article 16 of Anti-Terror Law regulates the accommodation of terror and organized crime prisoners in a single or three persons-cells. Although the law was passed in 1991, it was not applied until 2000. The Turkish Government planned to build F type prisons in 1996²⁴⁴ as a

²⁴³ Demirci and Üçpınar, *supra*, n. 92.

²⁴⁴ Response of the Turkish Government to the CPT Report (19-23 August 1996), *supra*, n. 214.

solution to the prison problems.²⁴⁵ The decision was based on the a CPT report which criticized the ward system as unsatisfactory and giving rise to the inner solidarity of terrorist or non-terrorist criminal organizations. It recommended individual rooms or smaller wards with the condition of purposeful activities outside the living units.²⁴⁶

The Ministry of Justice constructed 11 F Type prisons at Ankara, Bolu, Edirne, İzmir, Kocaeli and Tekirdağ. Each prison consists of 103 three-person units and 50 single units. The total capacity is 386. The three-persons rooms have two floors, each measuring 25 square meters. The single rooms are 10 square meters. The prisoners in single or triple rooms can come together in 42 to 50 square meters gardens for fresh air. The F type prisons have a 240 square meters multipurpose hall, a 1.100 square meters football area, a 100 square meter library and finally 8 vocational training areas totally 862 square meters.²⁴⁷

The basic reason behind the construction of new type prisons is to get the control over terror prisoners. In the dormitory system, the state was unable to control the rooms. The terror prisoners establish committees and organise the daily activities of their fellow prisoners. They were refusing any educational or vocational training activities provided by prison administration, objecting to searches, counts and controls, demanding the application of protocol rules rather than prison laws, threatening prison officers, forcing the other prisoners to hire the lawyers approved by terror organisation, punishing those who wish to leave and not letting them “have outdoor exercise, keeping them standing, confining them to bed, preventing them from seeing their families, preventing them from appearing in court, impeding their correspondence, preventing them from having free access to a doctor, extorting money from their families, threatening to kill them and strangling them or stabbing them to death.”²⁴⁸

²⁴⁵ *Radikal* (5.10.1999)

²⁴⁶ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para. 16-17.

²⁴⁷ *The Ministry of Justice website*, <http://www.adalet.gov.tr/cte/cezaevleri/ftipi_ozellik.htm>, accessed 30 August 2001.

²⁴⁸ Response of the Turkish Government to the CPT Report (19-23 August 1996), *supra*, n. 214.

The Ministry of Justice lists the prison problems as “joint uprisings, taking staff as hostages, forcing others to go on hunger strike, setting things on fire, digging tunnels to escape, blackmailing, violence within organizations, cases of injuries and killings.”²⁴⁹ The Ministry of Justice officials believe that leaving the ward system will allow the prison administration to establish control over the terror and mafia prisoner. It will hopefully finish the law of jungle in prisons.

The claim that the terror prisons are controlled by prisoners is not totally nonsense. The prison guards were patrolling only the corridors. They were unable to enter into wards. Most of the daily activities and discipline are organised by prisoners themselves.²⁵⁰ In some prisons, the prison administration was unable to search the rooms.²⁵¹ The control may reach to the extent of "sentencing" and "executing" fellow prisoners suspected of being spies or informers.²⁵² For example, the Ankara Ulucanlar Detention House is not a prison but a place only for remand prisoners. The sick terror prisoners who were sent to Ankara for medical treatment refused to go back to their own prisons. The prison administration was unable to send them back.²⁵³ When the prison prosecutor complained the situation to the Ministry of Justice, he was said that the prisoners could not be forcibly sent back. If they want to stay, they can stay.²⁵⁴ Thus the Ulucanlar Detention House became the headquarters of terror prisoners.

The CPT report criticised the demand of prisoners in Eskisehir Special Type Prison to be transferred to Bayrampaşa and Ümraniye, instead of Gebze Prison.²⁵⁵ Although the Gebze Prison is just few kilometres away from Istanbul, the prisoners insisted on being transferred to Bayrampaşa and Ümraniye prisons in Istanbul, which were under the control of terror groups.

²⁴⁹ *Ministry of Justice website, supra*, n. 239.

²⁵⁰ “Small Group Isolation in Turkish Prisons: An Avoidable Disaster” *Human Rights Watch website*, <www.hrw.org/reports/2000/turkey>, accessed on 22 June 2001.

²⁵¹ TBMM Ulucanlar Report, *supra*, n. 85, p.36

²⁵² *Human Rights Watch website*, *supra*, n. 242.

²⁵³ TBMM Ulucanlar Report, *supra*, n. 85, p.36.

²⁵⁴ *Ibid.* p.36.

²⁵⁵ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para.9.

The lack of state control and problems led to interventions which ended with death of three prisoners in Buca Prison in Izmir in September 1995, four prisoners in Ümraniye Prison in Istanbul in January 1996, ten prisoners in Diyarbakır Prison in September 1996, ten prisoners in Ankara Ulucanlar Closed Prison in September 1999.²⁵⁶ On December 19, 2000, the Turkish security forces carried out a military operation to transfer more than a thousand prisoners from traditional wards holding sixty or more prisoners to the new F-type high security prisons based on single-person or three-person units. Prisoners resisted the transfer; at least in part because they feared that an isolation regime would be imposed on them, and would make them more vulnerable to ill-treatment. Thirty prisoners and two gendarmes were killed in the operation and many injured.

The CPT recommends that if the intervention is unavoidable, it should be done in the presence of an authority, which is fully independent of both the Gendarmerie and the prison.²⁵⁷ The Government claimed in its response that the recommendation does not conform to the national legislation. It is not applicable in accordance with the article 8/d of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.²⁵⁸ The Article 8(d) says that in seeking the information, the Committee shall have regard to applicable rules of national law and professional ethics.

ii. The Discussion with Public Opinion

The legal background of F type prisons is Anti-Terror Law. It was passed by Parliament in 1991. There has been no public discussion on the imposition of law's articles about the type of imprisonment. When the construction of F type prisons started, the tension increased. The prisoners and their relatives strictly opposed to the new system. The state, on the other hand, did not need to discuss the new model with NGOs and the relatives of prisoners.

²⁵⁶ *Human Rights Watch website*, supra, n. 242.

²⁵⁷ CPT Report to the Turkish Government, (5-17 October 1997), supra, n. 129, para, 87.

The lack of information about the physical conditions and the management system of F type prisons increased the tension to the highest level before the transfer of prisoners. The demonstrations of NGOs and the relatives of prisoners were not permitted and harshly suppressed by police and they were charged with conducting an illegal demonstration.²⁵⁹

There are not good relations between the state bodies and the NGOs. They are on the two extreme sides of the F type prison discussion. The former defended them as the only solution for the state control while the latter defined it as coffin. The tension and hostile relations between state and NGOs prevented a healthy discussion of new prison system. State on one side claims that F types are the only solution and the Turkish NGOs on the other side have an absolute opposition to the new system. The mutual rigid approaches prevent a possible cooperation. The NGO representatives are invited to visit Ankara Sincan F Type prison. However it was at the completion stage of construction.

The NGO reactions to F type prisons are based on doubts and expectations about the management. The past prison experiences support their fear. The joint report of NGOs after their first visit to Ankara Sincan F type prison criticized the place of psychologist's room. It is in the administrative building. According to NGO representatives, this means the psychologist will not be functional. They also stated that the football playing area is close to the exit, which means prisoners will not be permitted use it.²⁶⁰ The extreme approaches of some Turkish NGOs are almost not different from the terror prisoners. They see the state as murderer.²⁶¹ Although the Ministry of Justice stated that the Article 16 Anti-Terror Law would be amended to let the purposeful activities, the Turkish NGOs believe that the physical structure of F type prisons will

²⁵⁸ "Interim report of the Turkish Government to CPT", (5-17 October 1997), *supra*, n. 10.

²⁵⁹ "Turkey: Draft Prison Laws Need Wider Debate" *Human Rights Watch website*, <<http://www.hrw.org/background/eca/turkey102300-bck.htm>>, accessed on 22 June 2001.

²⁶⁰ "National NGOs Joint Report about Sincan F Type Prison" *STDK website*, <http://stdk.anatoli.com/hucre/sincan_rapor.htm>, accessed on 14 June 2001.

²⁶¹ HRA F Type Prison Report to CPT, *supra*, n. 130.

not permit these activities.²⁶² Turkish Medical Association defined these prisons as cell type that is harmful to mental and physical health, contrary to the traditions and socio-cultural structure of Turkish society. They are medically harmful to human health. Therefore they cannot be accepted and all the construction activities must be stopped.²⁶³ From the very beginning, the Turkish Writers Union asserted that the purposeful activity areas of F-type prisons are only for show.²⁶⁴ MazlumDer is the only NGO that criticized this common negative approach.²⁶⁵ MazlumDer representatives stated that the dormitory system hinders the use of individual rights and freedoms.²⁶⁶

Unlike the many national NGOs, the international organisations criticized the ward system. The principle concerns of international NGOs or intergovernmental organizations are the application of educational and recreational activities and prevention of solitary confinement. They never advised the abolishment of F-type prisons like national NGOs.

The Human Rights Watch stated that the ward system is not a good model to protect the rights of prisoners. The access to basic needs in ward system depends physical strength and the ability to pay a bribe.²⁶⁷ It does not oppose to the use of cells and even believes that cells can provide protection for prisoners who might be particularly vulnerable to violence by other inmates. Human Rights Watch concentrated on the prison management rather than physical conditions. Therefore it proposed the application of purposeful activities and the prevention of isolation.²⁶⁸

Another factor prevented the healthy discussion was the official broadcasting policy. During the operations to transfer terror prisoners to new prisons, the Higher Council for Radios and TVs

²⁶² Demirci and Üçpınar, *supra*, n. 92.

²⁶³ “Turkish Medical Association F Type Prisons Report”, *Türk Tabipleri Birliği website*, <www.ttb.org.tr/rapor/f_tipi.html>, accessed on 4 June 2001.

²⁶⁴ “Turkish Writers Union F Type Prisons Report”, *Türkiye Yazarlar Sendikası website*, <www.penceredergisi.com/onceki_sayi/24_s12_tsy.htm>, accessed on 4 June 2001.

²⁶⁵ Ekşi, *supra*, n. 7.

²⁶⁶ *Ibid.*

²⁶⁷ *Human Rights Watch website*, *supra*, n. 242.

²⁶⁸ *Ibid.*

warned the media on the reports about F-type prisons. It is indirectly stated that the demonstrations are organized by terror organizations to show their strength and the state's weakness.²⁶⁹ The next day of this decision, İstanbul State Security Court put a ban on the publication or broadcast of news or visual scripts on the death fast and F Type Prisons "that would be regarded as the statements and propaganda of the illegal organizations".²⁷⁰

iii. Fear of Ill-treatment and Solitary Confinement

The opposition to F type prisons have two basic reasons: fear of ill-treatment and isolation. The prisoners claim that the risk of ill-treatment is higher in the single or three persons based units. On the other hand, the Ministry of Justice officials believe that it is the personnel of terror prisoners who is under the risk of inhuman treatment and not the inmates. The staff is verbally abused, threatened and physically attacked continuously. The F type prisons will prevent such assaults.²⁷¹

The small group isolation is defined as a regime whereby prisoners remain in their cells, shared with from two to five other inmates, for lengthy periods of time with no other human contact and little or no possibility for activities, proper exercise, or educational programs.²⁷² The prisoner is housed alone and has almost no or limited outside contact. Before the amendment, the Article 16 of Anti-Terror Law made the isolation automatic for terror prisoners. It should be on an individual basis rather than automatic for a group of prisoners.

The Court's general approach is that the solitary confinement is undesirable. However whether it is inhuman or not depends on the special conditions of case. Several factors are taken into consideration like the stringency of the measure, its duration, the objective pursued and its effects

²⁶⁹ "File on Prisons January 2001 Special Report 1", *Human Rights Foundation website*, <www.tihv.org.tr/repspec/fileonprison/fileonprison.doc>, accessed on 5 June 2001.

²⁷⁰ *Ibid.*

²⁷¹ "Interim report of the Turkish Government to CPT", (5-17 October 1997), *supra*, n. 10.

²⁷² *Human Rights Watch website*, *supra*, n. 242.

on the person concerned. It checks the balance between the security requirements and the basic individual rights.

A prisoner applied to the European Court of Human Rights defining his less than one-month isolation in a cell as inhuman and degrading treatment, contrary to the Article 3 of Convention. The Commission examined the strictness, duration and purpose of solitary confinement. It rejected the application on the ground that the isolation has not constituted inhuman or degrading treatment because of not causing the applicant “great physical or mental suffering with the aim of breaking down his resistance and extracting confessions from him.”²⁷³

The Commission has also considered several applications with regard to dangerous prisoners. In a case, the applicants complained “that they were subjected deliberately and without any possible justification, to exceptional conditions of detention which caused them considerable physical and psychological suffering”. They alleged the violation of Article 3 of the Convention. The Commission declared the application inadmissible on the ground that the applicants were dangerous. They used firearms at the time of their arrest.²⁷⁴

During their detention, the applicants Ensslin, Baader and Raspe were excluded from the social activities of prison and not permitted for contact with other prisoners. They were sometimes deprived of all contacts with each other and with the outside world. The restrictions were partially expanded later. After a kidnapping and murder event in Germany, there was again suppression of all contacts with each other and with their lawyers. Radio and televisions were removed from their rooms. The Commission argued that an absolute sensory isolation associated with complete social isolation destroy human personality and therefore constitute an inhuman treatment. However it claimed that the applicants had been deprived of all contacts “only on five occasion” since their admission to prison. Other times they were able to receive visits from their

²⁷³ *Bonzi v. Switzerland*, Application No. 7854/77 Dec. of 12 July 1978, D.R No.12, p.185.

families and lawyers. They are allowed to keep the written materials and pictures in their rooms. The Commission stated that two persons confined on opposite sides of the central corridor could talk to each other by raising their voices. They had the use of radio and television. They were able to take daily walks in the open air. The Commission accepted in this case that the applicants were subjected to a degree of social isolation. However it made reference to the temporary character of isolation and stated that there is not a real solitary confinement in this case. The applications were declared inadmissible.²⁷⁵

Similarly the applicants were not allowed any contacts with each other or with the outside world in *Krocher and Moller v. Switzerland*, including no television and radio during the first month of their detention. The Commission accepted the existence of isolation for this period but did not find the violation of Article 3 of the ECHR. Judges Tenekides, Melchior, Sampaio and Weitzel criticised this approach. They claimed that if isolation is prohibited, its application for a certain period and then gradual relaxation does not prevent the violation.²⁷⁶ Temporary isolation and solitary confinement of prisoners due to disciplinary or security reasons are not accepted as violation of Article 3 of the Convention.²⁷⁷

iv. Purposeful activities

The CPT does not oppose the intention of Turkish authorities to reduce the size of living units due to problems caused by large dormitory accommodation. The concern is the existence of purposeful activities. The prisoner should be able to spend a reasonable part of time outside the living unit.²⁷⁸ It recommended to Turkish authorities to take steps “to ensure that all prisoners,

²⁷⁴ *Baader, Meins, Meinhof and Grundmann v. Federal Republic of Germany*, judgement of 8 July 1978, D.R. 14, p.64.

²⁷⁵ *Ensslin, Baader and Raspe v FRG*, European Commission on Human Rights Decisions and Reports, (1979), vol. 14, pp. 109-110.

²⁷⁶ *Krocher and Moller v. Switzerland*, European Commission on Human Rights Decisions and Reports, (1982, vol. 26, p.24.

²⁷⁷ *X. v. Switzerland*, European Commission on Human Rights Decisions and Reports, (1978), no. 11, pp. 216-220. (216-218 E, 219-220 F) Application No.7754/77 D.R.11, p.216.

²⁷⁸ Responses of the Turkish Government to CPT (16-24 July 2001), *supra*, n. 124.

including those on remand, are able to spend a reasonable part of the day (eight hours or more) outside their cells/living units, engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).”²⁷⁹ The CPT delegation after visiting three prisons stated that the vast majority of prisoners are not offered any form of organised and purposeful activity.²⁸⁰

There are limited facilities for purposeful activities in Turkish prisons. Neither the physical conditions nor the personnel are sufficient. The prisoners use small yards when compared with the room population. The main activities are watching television and idling around an exercise yard, which is no substitute for a regime.²⁸¹ There is no teacher in many prisons. The psychologist may be accepted as a luxury.

The Article 16 of Anti-Terror Law was amended in a way to permit the purposeful activities of terror prisoners. Now, there is no legal obstacle but still many doubts about the use of purposeful activity areas. The recreation, library, and workshop facilities are located on the administration floor of the F type prisons. They are limited in capacity. The use of these areas is not a right but an exception depends on the individual situation of prisoner.

The terror prisoners refuse the training programmes offered by prison administration. They wish to plan all their daily activities by themselves and want the prison authorities to provide the necessary equipment, which is not acceptable to state.

²⁷⁹ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para, 17.

²⁸⁰ CPT Report to the Turkish Government, (5-17 October 1997), *supra*, n. 129, paras. 100, 113, 118.

²⁸¹ CPT Report to Turkish Government, (19-23 August 1996), *supra*, n. 108, para, 34.

CONCLUSION

All human rights treaties make reference to the respect for the inherent dignity of the human being. Everybody is entitled to certain minimum rights just because of being born as a human. These rights are absolute and non-derogable.

There is no doubt that most of the prisoners are criminals. They are in prison because they break the laws which are vital to the public order. They deserve imprisonment as a punishment and deterrence factor. The state's duty is to keep them away from the society and contribute to their rehabilitation. Any imprisonment policy should protect the interests of society, state and the prisoners. There must be a balance among them. If one is disturbed for the interest of another, then the problems start. There are certain minimum standards for their treatment. These standards are the basics and are to be common to all documents almost whether national, regional or international.

There have been concrete problems in Turkish prisons for many years. The fundamental problem is the absence of a single prison law. Although it is a human rights subject, the prison conditions are determined by regulations. The public opinion is not sensitive about the rights of prisoners. The general approach is that the prisoners are criminals. Therefore they do not deserve good treatment. The problems for a prisoner start with the admission. The prisoner is provided almost no or limited information about his or her rights and duties. Depending on the type of prison, the probability of beating is high in admission. The lack of good categorisation diminishes the effect of education and training programs. The ill-treatment is not common in prisons. However especially the terror prisoners have serious complaints about the humiliation and degrading treatment of prison wardens. The complaint and monitoring system does not work effectively. The prisoners do not trust to state bodies.

The absence of a single prison law turned the prisons into a jungle where the money and power dominates. The political approach of Governments contributed to this process. Contrary to the modern imprisonment policies, the prisoners were making protocols with the prison authorities and acquiring some privileges. The terror organisations got a serious control over the prisoners. The state lost the control and then decided to get it back by constructing F type prisons. This time it went to another extreme: to ignore the public opinion, national and international NGOs and the rights of prisoners.

The problem in the state's approach is to deny the problem instead of acknowledging them and trying to find solution in cooperation with national and international NGOs. State authorities probably think that the best approach for the national interests of the state is to deny the problems. However this does not remove the problems.

Another problem is the misuse of authority in addition to the lack of authority. The prison authorities are to be in an endeavour to apply the international prison standards. However they even sometimes ignore the national prison rules. At the end, the prisoners face different applications at different prisons or in the same prison depending on the prison governors. The training and education of prison staff is not sufficient to cope with the prison problems. Moreover most of the prison posts are vacant.

The governors have almost limited authority in their prisons. They are the civil servants of the Ministry of Justice. Sometimes they may stay between the prisoners and the Ministry. There are always risks for organising independent activities. Therefore the best thing for most of the prison governors is to apply the directives of the Ministry only. There is also an authority problem between the prison governors and the gendarmerie commanders in

There are not good relations between the state and national NGOs. The state bodies see the national NGOs as the civil extensions of terror groups. With regard to the F type prisons, the

state is at one extreme and the terror groups are at another. The Government amended the Anti-Terror Law in a way permitting the purposeful activities of terror prisoners. Most of the hunger-striking prisoners are released and given to their families. However the hunger strikes still continue out of prisons giving rise to new deaths.

As it is accepted by the CPT, international NGOs and MazlumDer, the dormitory system have serious inconveniences. The absolute opposition to the F type prisons due to physical structure does not have reasonable grounds. The real problem is the application of purposeful activities and fear of solitary confinement and ill-treatment. In fact, the risk of ill-treatment is not high as it is claimed by prisoners. The reason is that both the national and international NGOs are very sensitive on this subject. It is quite easy for a prisoner to complain about ill-treatment through his solicitors or visitors. Because they are staying in single or three person units, the prison authorities cannot have an explanation for ill-treatment.

The Ministry of Justice applied 16 different prison models. It seems that the problem is more than the physical conditions. State approaches to the prisons from the security perspective. It is a matter of control rather than rights for the state. It seems that the problems will not end as long as the political interventions continue, independent monitoring is not applied properly, the staff-prisoner relations are not turned to cooperation rather than confrontation.

BIBLIOGRAPHY

i. NATIONAL LEGAL DOCUMENTS

i. Laws

- Law No.1721 About the Administration of Prisons and Detention Houses, (14.06.1930)
- Law No.2992 Amending the Bylaw About the Organisation and Duties of the Ministry of Justice (29.03.1984)
- Law No.647 on the Execution of Sentences (13.07.1965)
- Law No.4681 on Punishment Enforcement Institutions and Detention Houses Monitoring Council (14.6.2001)
- Law No. 4301 on the Establishment and Administration of Prison Workshops (6.8.1997)
- Law No. 4422 on the Struggle Against the Criminal Organizations (30.7.1999)
- Law No. 3713, Anti-Terror Law (12.4.1991)
- Law No. 2559 on the Power and Duties of Police (4.7.1934)
- Law No. 765 Turkish Penal Code (1.3.1926)

ii. Regulations

- Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentence (1.8.1962).
- The Regulation about the Amendments of Some Articles of Regulation on Administration of Penal Institutions and Detention Houses and Execution of Sentences (6.1.1990).
- The Regulation about the Telephone Calls of Remand and Convicted Prisoners in the Prisons and Detention Houses with the Relatives Outside (23.7.2001)
- Regulation on Dress of Prisons and Detention Houses Staff (18.2.1998)
- Regulation on the Nutrition of Convicts, Remand Prisoners and Prison Staff (22.7.1998).
- Circular of Ministry of Justice -dated 3 November 1997

II.UN DOCUMENTS

- Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (hereafter Body of Principles) U.N. Doc. A/43/49 (1988).
- Code of Conduct for the Law Enforcement Officials, U.N. Doc. A/34/46 (1979).
- Basic Principles for the Treatment of Prisoners, U.N. Doc. A/45/49 (1990).

- Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, U.N. Doc. A/RES/38/118 (1982)
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).
- Resolution 1990/20 of the UN Economic and Social Council
- Recommendations on the Selection and Training for Personnel for Penal and Correctional Institutions (1995)
- Activities of the Committee against Torture pursuant to article 20 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Turkey. 15/11/93. A/48/44/Add.1.
- Report of the Special Rapporteur on torture: Visit to Turkey E/CN.4/1999/61/Add.1

III. COUNCIL OF EUROPE DOCUMENTS

i. European Court and Commission of Human Rights Judgements

- *Raninen v Finland*, judgment of 16 December 1997, Reports 1997-VIII.
- *Ensslin, Baader and Raspe v. F.R.G.*, ECHR Dec. D&R, 1979, v.14.
- *Baader, Meins, Meinhof and Grundmann v. F.R.G.*, judgement of 8 July 1978, D.R. 14
- *East African Asians v. the U.K.*, Comm Rep, 14 Dec 1973, CM DH 77.
- *The Greek case*, Comm Rep, 5 Nov. 1969, (1969), 12 ECHRYb.
- *Ireland v. the U.K.*, Series A No. 25. Judgment of 18 January 1978.
- *Abdulaziz, Cabales and Balkandali v. the U.K.*, Series A, No. 94 (1985).
- *Tyrer v. the U.K.*, judgement of 25 April 1978, Series A No. 26.
- *Bonzi v. Switzerland*, Application No. 7854/77 Dec. of 12 July 1978, D.R No.12, p.185.
- *Mc Feeley v. the U.K.*, Digest of Strasbourg Case Law, Vol. 1, pp.165-166.
- *Campbell & Cosans v. the U.K.*, judgement of 25 February 1982, Series A, No.48.
- *Krocher and Moller v. Switzerland*, D.R., 1982, v.26.

ii. Parliamentary Assembly

- Recommendation (971) 1983 of the Parliamentary Assembly of the Council of Europe on protection of detainees from torture and from cruel, inhuman or degrading treatment or punishment
- Resolution (985) 1992 on the situation of human rights in Turkey
- Recommendation (1257) 1995 on the conditions of detention in Council of Europe member states

iv. Committee of Ministers

- Resolution 73 (5) of the Committee of Ministers of the Council of Europe on Standard Minimum Rules for the Treatment of Prisoners
- Recommendation No. R (82) 17 of the Committee of Ministers of the Council of Europe on concerning the custody and treatment of the dangerous prisoners
- Resolution (75) 25 of the Committee of Ministers of the Council of Europe on prison labor
- Resolution (62)2 of the Committee of Ministers of the Council of Europe on electoral, civil and social rights of prisoners
- Recommendation No. R (82)16 of the Committee of Ministers of the Council of Europe to member states on prison leave
- Recommendation No. R (84)11 of the Committee of Ministers of the Council of Europe to member states on information about the convention on the Transfer of Sentenced Prisoners
- Resolution (78) 41 of the Committee of Ministers of the Council of Europe on the teaching of human rights
- Resolution (99) 22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation
- Committee of Ministers' Recommendation R (98) 7 to member States, adopted on 8 April 1998
- Resolution (98) 7 of the Committee of Ministers of the Council of Europe [concerning the ethical and organizational aspects of health care in prison](#)

III.CPT REPORTS

- “Public statement on Turkey” (Adopted on 15 December 1992) *CPT website*, <<http://www.cpt.coe.int/en/other/inf9301en.htm>>, accessed 13 June 2001.
- “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 (CPT) from 19 to 23 August 1996” *CPT website*, <<http://www.cpt.coe.int/en/reports/inf2001-01en.htm#Report>>, accessed 13 June 2001.
- “Response of the Turkish Government to the CPT's report” (30 September 1997) *CPT website*, <<http://www.cpt.coe.int/en/reports/inf2001-01en.htm#Response>>, accessed 13 June 2001.
- “Public Statement on Turkey” (issued on 6 December 1996) *CPT website*, <<http://www.cpt.coe.int/en/other/inf9634en.htm>>, accessed 13 June 2001.
- “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 (CPT) from 5 to 17 October 1997” *CPT website*, <<http://www.cpt.coe.int/en/reports/inf9902en.htm>>, accessed 13 June 2001.
- “Interim report of the Turkish Government in response 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 5 to 17 October 1997” *CPT website*, <<http://www.cpt.coe.int/en/reports/inf9903en.htm>>, accessed 13 June 2001.

- “Follow-up report of the Turkish Government in response 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 5 to 17 October 1997” *CPT website*, <<http://www.cpt.coe.int/en/reports/inf9918en.htm>>, accessed 13 June 2001.
- “Council of Europe Anti-Torture Committee: Recent visits to police establishments in Turkey and to the island of Imrali” *CPT website*, <<http://www.cpt.coe.int/en/press/19990504en.htm>>, accessed 13 June 2001.
- “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 (CPT) from 27 February to 3 March 1999” *CPT website*, <<http://www.cpt.coe.int/en/reports/inf2000-17en.htm>>, accessed 13 June 2001.
- “Responses of the Turkish authorities 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 27 February to 3 March 1999” *CPT website*, <<http://www.cpt.coe.int/en/reports/inf2000-18en.htm>>, accessed 13 June 2001.
- “Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey from 16 to 24 July 2000 and Response of the Turkish authorities” *CPT website*, <<http://www.cpt.coe.int/en/reports/inf2000-19en.htm#Statement>>, accessed 13 June 2001.
- “Responses of the Turkish authorities 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 16 to 24 July 2000” *CPT website*, <<http://www.cpt.coe.int/en/reports/inf2000-19en.htm#Response>>, accessed 13 June 2001.
- “Hunger strikes and prison interventions in Turkey: Publication of observations by Council of Europe Anti-Torture Committee delegation” *CPT website*, <<http://www.cpt.coe.int/en/press/20010316en.htm>>, accessed 13 June 2001.

IV. REPORTS OF HUMAN RIGHTS INQUIRY COMMISSION OF TURKISH GRAND NATIONAL ASSEMBLY

- **The Report on Istanbul Bakırköy Prison for Women and Juveniles** - Bakırköy Kadın ve Çocuk Tutukevi Raporu 1998 ve 2000 (Ankara:TBMM Basımevi, 2000)
- **Istanbul Report on Prisons and Police Detention** - Soruşturma ve Kovuşturma İstanbul Raporu 2000 (Ankara:TBMM Basımevi, 2000)
- **Şanlıurfa Report on Prisons and Police Detention** - Soruşturma, Kovuşturma Yargılama Ceza ve İnfazi Şanlıurfa Raporu 1998 ve 2000 (Ankara:TBMM Basımevi, 2000)
- **Erzincan Report on Prisons and Police Detention** - Soruşturma, Kovuşturma Yargılama Ceza ve İnfazi Erzincan Raporu 1998 ve 2000 (Ankara:TBMM Basımevi, 2000)

- **Erzurum Report on Prisons and Police Detention** - Soruřturma, Kovuřturma Yargılama Ceza ve İnfazi Erzurum Raporu 1998 ve 2000 (Ankara:TBMM Basımevi, 2000)
- **Tunceli Report on Prisons and Police Detention** - Soruřturma, Kovuřturma Yargılama Ceza ve İnfazi Tunceli Raporu 1998 ve 2000 (Ankara:TBMM Basımevi, 2000)
- **Elazıg Report on Prisons and Police Detention** - Soruřturma, Kovuřturma Yargılama Ceza ve İnfazi Elazıg Raporu 1998 ve 2000 (Ankara:TBMM Basımevi, 2000)
- **Elazıg Reformatory for Juveniles-** Elazıg Çocuk İshalevi Raporu 1998 ve 2000 (Ankara:TBMM Basımevi, 2000)
- **Batman Report on Prisons and Police Detention** - Soruřturma, Kovuřturma Yargılama Ceza ve İnfazi Batman Raporu 1998 ve 2000 (Ankara:TBMM Basımevi, 2000)
- **Ankara Ulucanlar Detention House Report** - 26 Eylül 1999 Ulucanlar Cezaevi Raporu (Ankara:TBMM Basımevi, 2000)

V. NGO REPORTS

i. National NGOs

- “Ankara Bar Association Report on Sincan F Type Prisons” *Ankara Barosu website*, <www.ankarabarusu.org/ftipi.htm>, accessed on
- “Edirne F Type Prison Report”, *Edirne Medical Association website*, <www.edirnetabip.org.tr/ftipicezaeviraporu.htm>, accessed 10 June 2001.
- “File on Prisons January 2001 Special Report 1”, *Human Rights Foundation website*, <www.tihv.org.tr/repsec/fileonprison/fileonprison.doc>, accessed on 5 June 2001.
- Demirci and H. Üçpınar, “F Tipi Cezaevlerinin Ceza İnfazı Hukuku Açısından Deęerlendirilmesi” *İzmir Barosu website*, <www.izmirbarosu.org.tr/mevzuatbankasi/ftipi_cezaevleri.htm>, accessed 10 June 2001.
- Human Rights Association, “F Type Prison Report to CPT”, HRA website, <www.ihd.org.tr> accessed on 10 June 2001.
- “National NGOs Joint Report about Sincan F Type Prison” *STDK website*, <http://stdk.anatoli.com/hucre/sincan_rapor.htm>, accessed on 14 June 2001.
- “Turkish Medical Association F Type Prisons Report”, *Turk Tabipleri Birlięi website*, <www.ttb.org.tr/rapor/f_tipi.html>, accessed on 4 June 2001.
- “Turkish Writers Union F Type Prisons Report”, *Turkiye Yazarlar Sendikası website*, <www.penceredergisi.com/onceki_sayi/24_s12_tsy.htm>, accessed on 4 June 2001.
- Ö. Ekři, “The Prisons Problem in Turkey: High Security Cells or F Type Prisons” *MazlumDer website*, <www.mazlumder.org.tr/makale/makale12.htm>, accessed on 7 June 2001.
- Ö. Ekři, “The Prison Dilemma of State” *MazlumDer website*, <www.mazlumder.org.tr/makale/makale12.htm>, accessed on 7 June 2001.
- MazlumDer Istanbul Branch, “F Type Prison Report” *MazlumDer İstanbul website* <www.mazlumder.org/rapor/raporftipi.htm>, accessed on 7 June 2001.

ii. International NGOs

- Penal Reform International, "Making Standards Work - An International Handbook on Good Prison Practice," The Hague, March 1995
- Amnesty International "Turkey F Type Prisons: Isolation and Allegations of Torture and Ill-Treatment" *Amnesty International website*, <web.amnesty.org/ai.nsf.Index/EUR>, accessed on 22 June 2001.
- HRW Report on Red Onion State Prison, *HRW website* <www.hrw.org/reports/1999/redonion/Rospfin.htm>, accessed on 22 June 2001.
- Human Rights Watch Reports on Turkey, *HRW website*,
 - "Small Group Isolation in Turkish Prisons: An Avoidable Disaster" <www.hrw.org/reports/2000/turkey>, accessed on 22 June 2001.
 - "Turkey: Draft Prison Laws Need Wider Debate" <www.hrw.org/backgrounder/eca/turkey102300-bck.htm>, accessed on 22 June 2001.
 - "Turkey: Guarantee Humane Prison Conditions Monitoring Urged for Prison Reform" <<http://www.hrw.org/press/2000/12/turky1208.htm>>, accessed on 22 June 2001.
 - "Turkey: Violent Assault on Prison Hunger Strikers" <<http://www.hrw.org/press/2000/12/Turkeyprisonsdec19.htm>>, accessed on 22 June 2001.
 - "Turkey: Government Seeks to Quash Scrutiny of Prisons Transfer Prisons Activist Jailed" <<http://www.hrw.org/press/2001/01/turkey0109.htm>>, accessed on 22 June 2001.
 - "Turkey: Action Urged on Hunger Strike First Hunger Striker Dies While Government Stands Idle" <<http://www.hrw.org/press/2001/03/turkey0322.htm>>, accessed on 22 June 2001.
 - "Turkey: Isolation of Prisoners Condemned Allegations of deliberate killing, torture and rape by gendarmes" <<http://www.hrw.org/press/2001/04/turkey-0405.htm>>, accessed on 22 June 2001.
 - "Isolation in Turkish Prisons Continues Justice Ministry Fails to Implement New Amendment" <<http://www.hrw.org/press/2001/04/turkey-0405.htm>>, accessed on 22 June 2001.

VI. BOOKS & ARTICLES

- Backett, S., McNeill, J., and Yellowlees, A., *Imprisonment today : current issues in the prison debate* (Basingstoke : Macmillan, 1988)
- Brydensholt, H.H. [et al.], *Prison management* (Strasbourg : Council of Europe, 1983)
- Bryans, S. & Jones, R., (ed.), *Prisons and the Prisoners: an introduction to the work of Her Majesty's Prison Service* (London: The Stationery Office, 2001)
- Coyle, A. *The Prisons We Deserve* (Harper Collins, 1994)
- Dilulio, *Governing Prison: A Comparative Study of Correctional Management* (Free Press, 1987)
- Harris, D.J., O'Boyle, M. and Warbrick, C., *Law of the European Convention on Human Rights* (London, Butterworths, 1995).
- Hawkins, G., *The prison : policy and practice* (Chicago : University of Chicago, 1976)
- Lebling & Price, *The Prison Officer*, (Aylesbury, Prison Service Journal, 2001)
- Leech, M., *The prisoners' handbook 1995* (Oxford : Oxford University Press, 1995)
- Leech, Mark and CHENEY, Deborah., *The Prisons Handbook 2001* (Waterside Press, 2001)
- Plotnikoff, J., revised and edited by Nancy Loucks, *Prison rules : a working guide* (London : Prison Reform Trust, 1993)
- Reynaud, A., ***Human Rights in Prisons*** (Council of Europe Press, 1994).
- Rodley, S. N., *The Treatment of Prisoners under International Law* (Oxford, Clarendon, 1986).
- Treverton-Jones, G., *Imprisonment : the legal status and rights of prisoners* (London : Sweet and Maxwell, 1988)
- Wilson, D. & Reuss, A., *Prison(er) Education: stories of change and transformation* (Winchester : Waterside Press, 2000)

Table of Contents

SUMMARY	3
INTRODUCTION.....	7
I. COMPARISON OF THE NATIONAL PRISON LAWS WITH THE INTERNATIONAL RULES	9
i. The Legal Documents and Prison Administration	9
iii. Non-discrimination Principle	11
iv. Prison Staff.....	12
v. Admission: Information About the Rights and Duties.....	13
vii. Classification and Accommodation	13
viii. Treatment and Education	14
a. Treatment	14
b. Education.....	15
c. Library.....	16
d. Prison Work.....	17
ix. Contact with the Outside World.....	17
x. Food and Health	19
xi. Disciplinary Punishment and Ill-treatment	20
xii. Complaint Procedure and Monitoring.....	23
a. Complaint Procedure.....	23
b. Inspection	24
II. THE PRISON PRACTICES IN TURKEY IN COMPARISON WITH NATIONAL LAWS AND INTERNATIONAL STANDARDS.....	26
i. The Purpose of Imprisonment.....	26
ii. State Approach to the Prisoners	27
a. Definition of Problem.....	27
b. The Approach that “Prisoners Do Not Deserve Good Behaviour”	28
c. State Control Over Prisoner	29
ii. Control of Terrorist Groups over Prisoners.....	30
v. Absence of Standard in Prison Administration.....	32
vi. Prison Staff.....	33
vii. Non-discrimination Principle	35
vi. Admission: Information About Rights and Duties.....	35
vii. Classification and Accommodation	36
viii. Treatment and Education	38
a. Individual Treatment	38
b. Earned Privileges System.....	39
c. Education.....	39
d. Library and Reading Materials.....	40
e. Prison Work.....	40
f. Sport and Exercise.....	41
ix. Contact with the Outside World.....	42
x. Food and Health	44
xi. Disciplinary Punishment and Ill-treatment	45
a. Ill-treatment on arrival	46
b. Ill-treatment during body and room searches.....	47
c. Ill-treatment by gendarmerie during transfers.....	48
d. Segregation.....	49

xii. Complaint Procedure and Monitoring.....	50
a. Complaint Procedure.....	50
b. Monitoring.....	52
III. TERROR PRISONERS AND F TYPE PRISONS	54
i. Why F Type Prisons?	54
ii. The Discussion with Public Opinion.....	57
iii. Fear of Ill-treatment and Solitary Confinement	60
iv. Purposeful activities	62
CONCLUSION	64
I. NATIONAL LEGAL DOCUMENTS	67
i. Laws	67
ii. Regulations.....	67
II. UN DOCUMENTS	67
III. COUNCIL OF EUROPE DOCUMENTS.....	68
i. European Court and Commission of Human Rights Judgements.....	68
ii. Parliamentary Assembly	68
iv. Committee of Ministers.....	69
III. CPT REPORTS	69
IV. REPORTS OF HUMAN RIGHTS INQUIRY COMMISSION OF TURKISH GRAND NATIOANAL ASSEMBLY	70
V. NGO REPORTS.....	71
i. National NGOs.....	71
ii. International NGOs	72
VI. BOOKS & ARTICLES	73