UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/20/Add.8
22 July 2002

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1993

Addendum

TURKEY*

[28 November 2001]

* The initial report submitted by the Government of Turkey is contained in document CAT/C/17/Add.6; for its consideration by the Committee, see document CAT/C/SR.61 and 62, and Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 44 (A/56/44), paragraphs 87-117.

Appendices II to X to the present report can be consulted in the files of the secretariat.

GE.02-43568 (E) 150103

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Introduction

1. Turkey signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention") on 25 January 1988. It became a party to the Convention following the enactment of Law No. 3441 by the Turkish Parliament on 21 April 1988. Turkey's instrument of ratification was deposited on 2 August 1988. In accordance with article 27 (2), the Convention entered into force for the territory of the Republic of Turkey on 1 September 1988.

2. Upon its ratification of the Convention, Turkey recognized, through a written declaration as foreseen in article 21 (1), the competence of the Committee against Torture (hereinafter referred to as "the Committee") to receive and consider communications to the effect that it is not fulfilling its obligations under the Convention from States parties as foreseen in article 21 (1) and from or on behalf of individuals subject to its jurisdiction as foreseen under article 22 (1).

3. Article 90 of the Turkish Constitution, entitled "Ratification of International Treaties", states that "international agreements duly put into effect carry the force of law". Thus, agreements adopted by the Turkish Parliament by a law of ratification directly become a part of domestic legislation. As such, the Convention has become part of Turkish domestic law and its provisions have priority over other domestic laws, since the same article of the Constitution stipulates that, as contrary to domestic laws, "no appeal to the Constitutional Court can be made with regard to these agreements on the ground that they are unconstitutional". In accordance with article 90 of the Constitution, the provisions of the Convention may be directly invoked before Turkish courts.

4. In conformity with the provisions of article 19 (1) of the Convention, Turkey submitted its initial report (hereinafter referred to as "the initial report"), contained in document CAT/C/7/Add.6, to the Committee against Torture on 24 April 1990. The initial report submitted by Turkey, which was considered by the Committee on the occasion of its 61st and 62nd meetings, on 14 November 1990, contained extensive information related to the Turkish legal system and administrative structures with respect to the implementation of the Convention.

5. The present report covers the period from 24 April 1990 to 31 August 2001, and includes the second, third and fourth periodic reports of Turkey in consolidated form. It is intended to serve as supplement to the initial report.

6. This report aims at providing the Committee with additional information on the provisions of the Turkish legal structure, as well as relevant new measures taken and progress made by Turkey in the implementation of Part I of the Convention. The observations and recommendations made by the Committee on the occasion of the discussion of the initial report of Turkey have also been taken into account in its preparation.

7. A number of significant developments in the legislative and administrative fields have occurred in Turkey with respect to the implementation of the provisions of the Convention. This report also aims at bringing these developments to the Committee's attention.

I. INFORMATION OF A GENERAL NATURE

A. General legal framework

8. Apart from the Turkish Penal Code (Law No. 765) and the Code of Criminal Procedure (Law No. 1412), all Turkish Constitutions which came into force after the proclamation of the Republic on 29 October 1923 have banned torture and ill-treatment. In this framework, article 74 of the 1924 Constitution and article 14 of the 1961 Constitution stipulated that nobody could be subjected to torture or ill-treatment and that there could be no penalty that violated human dignity. The current Constitution, which was adopted by a referendum on 7 November 1982, also contains a similar provision in its article 17 (3), which reads as follows: "No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalty or treatment incompatible with human dignity."

9. The principle of respect for human rights is mentioned in article 2 of the Constitution as one of the fundamental characteristics of the Republic of Turkey, which is a democratic, secular and social State governed by the rule of law. Article 10, which bears the title "Equality before the law", provides that all individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. The same article also stipulates that no privilege shall be granted to any individual, family, group or class and that State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

10. The rights and duties of individuals are outlined in articles 17-40 of the second chapter of the Constitution, which has the same heading.

11. Article 19 of the Constitution, entitled "Personal liberty and security", clearly defines the conditions in which individuals concerning whom there are strong indications of having committed an offence can be arrested by decision of a judge. This article provides for the following:

(a) Notification to individuals arrested or detained of the grounds for their arrest or detention and the charges against them;

(b) Notification of the situation of the persons arrested or detained to their next of kin, except in cases where imperatives pertaining to the risks of revealing the scope and subject of the investigation compel otherwise;

(c) The right of detained or arrested persons to request to be tried within a reasonable time or to be released during investigation or prosecution;

(d) The right of persons deprived of their liberty to apply to the appropriate judicial authority for speedy conclusion of proceedings regarding their situation and for their release if the restriction placed upon them is not lawful.

12. The principles relating to offences and penalties are formulated in article 38 of the Constitution. According to this article:

(a) Penalties and security measures in lieu of penalties shall be prescribed only by law;

(b) No one shall be held guilty until proven guilty in a court of law;

(c) No one shall be compelled to make a statement that would incriminate himself or his legal next of kin, or to present such incriminating evidence;

(d) Criminal responsibility shall be personal;

(e) The administration shall not impose any sanction resulting in restriction of personal liberty.

13. The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs and administrative authorities and other agencies and individuals. Laws shall not be in conflict with the Constitution (art. 11). In order to substantiate this principle, a Constitutional Court was established which took a primus inter pares place among the higher courts of the judiciary (art. 146). The Constitutional Court examines the constitutionality, in respect of both form and substance, of laws, decrees having force of law and the rules of procedure of the Grand National Assembly (art. 148). The President of the Republic, the parliamentary groups of the party in power and of the main opposition party and a minimum of one fifth of the total number of members of the Grand National Assembly (110 members) have the right to apply for annulment action to the Constitutional Court, based on the assertion of the unconstitutionality of laws in form and in substance, of decrees having force of law, of rules of procedure of the Grand National Assembly or of specific articles or provisions thereof (art. 150). Furthermore, if a court which is trying a case finds that the law or the decree having force of law which is to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on this issue (art. 152).

14. According to the Constitution, judicial power is exercised by independent courts on behalf of the Turkish nation (art. 9). The principles regarding independence of the courts and security of tenure of judges and public prosecutors are defined in the third part of the Constitution, entitled “Judicial Power” (arts. 138-160). Accordingly, no organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, or send them circulars, make recommendations or suggestions. Also, no question can be asked, debates held or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial. Legislative and executive organs and the administration are obliged to comply with court decisions (art. 138).

15. Ordinary, administrative and military justice are organized separately in the Turkish legal system. In the light of article 142 of the Constitution, the organization, functions and jurisdictions of the courts and their functioning and trial procedures are regulated by law. Accordingly, in the Turkish legal system:

(a) The courts of justice consist of:

(i) General first instance courts:

- Criminal courts, namely magistrate courts, general criminal courts and felony courts;

- Civil courts, namely civil courts of peace, general civil courts and commercial courts;

(ii) Specialized first instance courts:

- State security courts;

- Juvenile courts;

- Land registration courts;

- Labour courts;

- Intellectual property courts;

(iii) The High Court of Appeals, which is the highest instance for reviewing decisions and judgements issued by courts of justice (art. 154 of the Constitution);

(b) The administrative court system is composed of:

(i) Administrative courts;

(ii) Tax courts;

(iii) Regional administrative courts;

(iv) The Council of State, which is the highest instance for reviewing decisions and judgements issued by administrative courts (art. 155 of the Constitution);

(c) Military justice is exercised by military courts and military disciplinary courts. These courts have jurisdiction to try military personnel for military offences, for offences committed by them against other military personnel or in military places, or for offences connected with military service and duties. Military courts also have jurisdiction to try non-military persons for military offences specified in the special law, and for offences committed while performing their duties specified by law, or against military personnel in military places specified by law (art. 145 of the Constitution). The Military High Court of Appeals is the highest instance for reviewing decisions and judgements issued by military courts (art. 157 of the Constitution).

16. In accordance with article 143 of the Constitution, State security courts are specialized courts of first instance established to deal with offences against the indivisible integrity of the State, the free democratic order, or against the Republic whose characteristics are defined in the Constitution, and offences directly involving the internal and external security of the State. The High Court of Appeals is the competent authority to examine appeals against the verdicts of the State security courts. Provisions relating to the functioning, duties and jurisdiction and trial procedures of the State security courts are prescribed by Law No. 2845 on the Establishment and Prosecution Procedures of State Security Courts, adopted on 16 June 1983.

17. By Law No. 4388, which was adopted by Parliament on 18 June 1999 and came into force following its publication in the Official Gazette on the same day, article 143 of the Constitution was amended to remove military judges from the State security courts. Parallel amendments to Law No. 2845 were made by Law No. 4390, which was adopted by Parliament on 22 June 1999 and came into force on the same day. Accordingly, all members of the State security courts are now appointed from among civilian judges.

B. Relevant international instruments to which Turkey is a party

18. Turkey, a founding member of the United Nations, was one of the first countries to adopt the Universal Declaration of Human Rights, by Decree No. 9119 of the Council of Ministers, dated 6 April 1949. Turkey, which is also a founding member of the Council of Europe, ratified the European Convention on Human Rights by Law No. 6366, dated 10 March 1954.

19. On 28 January 1987, Turkey recognized the competence of the European Commission on Human Rights to receive petitions from any person, non-governmental organization or group of individuals. On 22 January 1990, Turkey made a declaration recognizing as compulsory, ipso facto and without special agreement, the jurisdiction of the European Court of Human Rights in all matters concerning the interpretation and the application of the European Convention on Human Rights which relate to the exercise of jurisdiction performed within the boundaries of the national territory of the Republic of Turkey. Turkey signed the Protocol No. 9 to the European Convention on Human Rights, which prescribes the right of individual petition to the European Court of Human Rights, on 6 November 1990. Turkey ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment by Law No. 3411, dated 25 February 1988.

20. Turkey continues its close cooperation with the monitoring mechanisms of the United Nations and the Council of Europe on torture and ill-treatment. In this context, Sir Nigel Rodley, Special Rapporteur on torture of the United Nations Commission on Human Rights, visited Turkey at the invitation of the Turkish Government from 9 to 19 November 1998 and held extensive discussions with official authorities and representatives of non-governmental organizations. The Special Rapporteur's report concerning this visit, which was submitted to the fifty-fifth session of the Commission on Human Rights in March 1999, is contained in document E/CN.4/1999/61/Add.1. The Turkish authorities attach utmost importance to maintaining close cooperation with the Special Rapporteur.

21. In the period covered by this report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) realized 13 ad hoc or periodic visits to Turkey. On 24 August 2001, the Turkish Government authorized the publication of all previously unpublished visit reports of the CPT through a letter to the President of the Committee, a copy of which is in appendix X. The reports of the CPT are examined with utmost care by the relevant Turkish authorities, and the requisite investigations are conducted and necessary measures taken with regard to the observations and recommendations therein. The Turkish authorities are fully committed to extending the close collaboration that has been maintained with the CPT since its foundation. Indeed, the continuity and regularity of Turkey's relations with the CPT under the terms of the European Convention for the Prevention of Torture, and the high level at which they are maintained, indicate the importance attached by the Government of Turkey to the spirit of constructive cooperation with the Committee.

II. ADDITIONAL INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATED TO THE IMPLEMENTATION OF PART I OF THE CONVENTION

Article 2

22. Parallel to article 17 (3) of the Constitution which forbids torture and ill-treatment, the text of which has been presented in paragraph 8 above, crimes against the physical and psychological security and integrity of the individual are defined and subjected to punishment in the relevant articles of the Penal Code. These articles and the penalties regarding torture and ill-treatment stipulated therein are outlined in paragraphs 57-62 below.

23. In the period covered by this report, perhaps the most significant development with regard to the implementation of the provisions of article 2 (1) of the Convention has been the enactment of Law No. 3842 on Amending some Provisions of the Code of Criminal Procedure and the Law on the Establishment and Prosecution Procedures of State Security Courts and on Abolishing some Provisions of the Law on Police Duties and Powers and the Law on Combating Terrorism. Law No. 3842 was approved by Parliament on 18 November 1992 and entered into force following its publication in the Official Gazette on 1 December 1992.

24. Law No. 3842 constitutes an important milestone in the reform efforts under way in Turkey in the field of human rights. This law not only entails strengthened measures with respect to the prevention of ill-treatment and torture, but also introduces important amendments with respect to the right of defence, equality of the sexes, and the rights of minors and the disabled. As such, it truly has the character of a reform law.

25. The principal changes brought by Law No. 3842 to the Code of Criminal Procedure are outlined in paragraphs 26-41 below.

26. A new article 135 (a) has been added to the Code of Criminal Procedure. This article proscribes prohibited methods of interrogation that invalidate the will of the person, such as torture, ill-treatment, using force or violence or giving drugs forcibly. The article prohibits extraction of testimonies through unlawful promises. The last section of the article establishes that testimonies extracted through such prohibited methods shall not be taken into account as evidence, even with the consent of the testifying person. The text of this article is as follows:

> "The statements of the defendant and the testifying person must reflect his own free will. Physical or emotional interventions such as ill-treatment, torture, forceful administration of medicine, tiring or deception to hinder such a reflection, or the use of physical force or violence or devices which distort the will are prohibited.
>
> "No illegal advantage can be promised.
>
> "Even if there is consent, testimonies extracted by use of the above-mentioned prohibited methods cannot be considered as evidence."

(In the first section of the article, "such as" has been used to indicate that the methods mentioned in the said article are listed as examples. Methods of a similar nature that are not mentioned in the article are also prohibited. These provisions prevail for all suspects, regardless of the nature of the crime, including for persons detained on suspicion of having committed offences falling under the jurisdiction of the State security courts.)

27. With Law No. 3842, article 128 of the Code of Criminal Procedure has been amended to shorten detention periods to European standards. Thus, the maximum period of police custody for ordinary individual crimes has been determined as 24 hours. The maximum period of custody for ordinary collective crimes (crimes committed by three or more persons) has been reduced from 15 days to 4 days. This is the maximum limit accepted by the European Court of Human Rights. The period of custody may be extended to four days only upon the written approval of the public prosecutor. This period may be doubled to eight days, under exceptional circumstances, upon the request of the public prosecutor and with the approval of the judge. The detainee must be brought before the judge within four days at the latest. Also, while formerly the Code of Criminal Procedure listed some "objective reasons" such as the nature of the crime and the situation of the suspect for extending the period of custody, the new law limits such reasons to the difficulty in collecting evidence, the multiple number of suspects and other reasons of a similar nature. It will be acknowledged that the difficulty in collecting evidence or the multiple number of suspects are objective criteria which render the interrogation more difficult. According to Law No. 3842, the period of custody for offences which fall within the jurisdiction of the State security courts will not exceed 48 hours for individual offences and 15 days for collective offences. These periods may be doubled in the areas in which a state of emergency exists. The relevant part of amended article 128 of the Code of Criminal Procedure reads as follows:

> "If an apprehended person is not released, he must be brought before a judge within 24 hours. This period does not include the time necessary to physically bring him before the judge nearest to the place of apprehension. If the detainee so wishes, a defence lawyer may also be present at the interrogation.

> "In cases of collective crimes committed by three or more persons, the prosecutor may give a written order for the prolongation of this period to a maximum of four days. If the investigation cannot be concluded within these four days, due to the specificities of the case or difficulties in the collection of evidence, or the existence of many suspects, this period may be extended to eight days at most, by a decision of the relevant judge, acting upon a written request of the prosecutor."

28. Another major modification introduced by Law No. 3842 concerns the right of habeas corpus. The amended version of article 128 of the Code of Criminal Procedure provides that when the prosecutor applies for a prolongation of detention, the suspect, his defendant or legal representative, his spouse or his first- or second-degree relatives may apply to the judge for his immediate release. The judge is to act within 24 hours of the application.

29. Article 135 of the Code of Criminal Procedure, dealing with the taking of testimonies by police officers and by public prosecutors and the examination of testimonies by judges has been modified by Law No. 3842 to provide stronger protection for the rights of suspects. The right to remain silent of the suspect is now clearly established in this article, not only at the hearing before the judge but also during the first interrogation at the police station. The detainee must be informed of his right not to give testimony before interrogation takes place. Also, when the police detain a person, they must inform him of the crime with which he is charged, and that he has the right to a lawyer. This article also states that testimony which is given under custody at the police station should be registered, the names and titles of the persons present be indicated and signed by the detainee or his lawyer. The relevant part of article 135 is provided below:

> "The identity and personal status of the testifying or interrogated person is registered. The charges are related to the person, who is also reminded of his rights related to having a defence lawyer present and to notify his relatives about his custody, refraining from responding to the charges being made, as well as of his right to request the collection of concrete evidence to be relieved from doubt, to be given the opportunity to eliminate the suspicion cast over him, and the right to be able to submit facts which are in favour of the defence. A detailed record of the interrogation or testimony, indicating the place and the date, as well as the names and capacities of the persons present, must be made. This record must also bear the signatures of the defendant or person under custody as well as that of his lawyer and, if such is the case, the reasons why they have not signed the record."

30. The articles of Law No. 3842 which have the character of real reform relate to the right of defence. The amendments brought to the Code of Criminal Procedure in this context aim, on the one hand, to enable suspects to benefit from the services of a lawyer even at the very initial stage of interrogation and, therefore, to secure the right of defence, and, on the other, to protect detainees fully against torture and ill-treatment.

31. In this framework, article 136 of the Code of Criminal Procedure, related to the selection of a defence lawyer, has been amended to enable a detained person or suspect to benefit from the right to have access to a lawyer at any stage of the investigation, including custody, and to have

him present during interrogation by the police. Formerly, the bar would appoint a lawyer only at the trial phase. With the new law, all persons detained on suspicion of having committed ordinary individual or collective crimes are entitled to a lawyer from the moment they are taken into custody. Article 136 is provided below:

> "Any defendant or person under custody may benefit from the assistance of one or more lawyers of his or his legal representative's choice, at any stage or level of the investigation.
>
> "During interrogation by the police, only one lawyer may be present to follow the proceedings. The number of such lawyers may be increased to a maximum of three during interrogation by the public prosecutor.
>
> "At any stage of the investigation, the defence lawyer has the unrestricted and unhindered right to meet with the defendant or person under custody, take his testimony, accompany him during the interrogations and provide him with legal assistance."

32. The amended version of article 138 provides that if the person in custody or the defendant does not have the means to hire a lawyer, the bar will appoint one for him upon request. A mere declaration is sufficient for this purpose. The appointment of such a lawyer will not depend on any request in cases where the detainee or defendant is without a lawyer and is under 18, or deaf or mute, or handicapped to such a degree that he cannot defend himself. Formerly, the appointment of a defence lawyer for such persons was left to the discretion of the court. However, the new law states that in such cases, the appointment of a defence lawyer is mandatory.

33. Article 143 of the Code of Criminal Procedure has been modified to state the following:

> "The defence lawyer has the right to examine the whole case file and is entitled to have copies of any document therein without fees. In the event that this right may jeopardize the preliminary investigation, it may be restricted during the preliminary investigation by order of the judge who can act only upon the receipt of a request from the prosecutor. Such a restriction cannot be exercised for such documents as interrogation records, expert reports and to further records related to other judicial procedures during which the person under custody or the defendant are authorized to be present."

34. Amended article 144 of the Code of Criminal Procedure now provides that the person under custody or the defendant may meet with his lawyer at any time, without the power of attorney being sought and in confidential surroundings. Correspondence between these persons and their lawyers cannot be interfered with.

35. With an amendment to article 146 of the Code of Criminal Procedure, the bar associations will assign a lawyer for the defence of the defendant if the defendant does not have the financial means to hire one. The lawyer's fees will be met from a fund which will be vested

with the Union of Bar Associations and allocated by the Ministry of Finance. If the final verdict of the court finds the defendant guilty, the Union of Bar Associations may have the right to ask for the return of the court and defence fees from the defendant.

36. There were extensive complaints in the past that suspects could be kept in detention for a long time because of the slow operation of the courts. This could result in cases in which the suspect would be acquitted after being kept in detention for a long time or sentenced to a term which is shorter than the period of time he spent in detention. In order to prevent such situations, Law No. 3842 fixes the maximum periods of arrest for both the initial and final investigations, thereby eliminating any possibility of unduly prolonged arrest. Accordingly, on the condition that the defendant can prove his identity and residence, the court cannot arrest the defendant for crimes that require imprisonment for six months or less. For crimes that require a punishment restricting freedoms for up to seven years, the defendant will be released if his trial has not been concluded in two years, this period to include the initial investigation period of six months. For crimes that require punishments restricting freedom for more than seven years, the defendant will be released on bail as set by the judge if the trial has not been concluded in two years.

37. According to amendments to article 106 of the Code of Criminal Procedure, only the judge has the power to order the arrest of a defendant. The defendant, if present, will be heard before this order is handed down. If the defendant so wishes, his lawyer may be present during the hearing without the power of attorney being sought, and the defence lawyer as well as the public prosecutor will be heard before the decision is pronounced. If the accused is not present, the decision will be reached based on the documents before the court. The arrest warrant must state, as explicitly as possible, the identity of the defendant, the act ascribed to him, the time and place that the act occurred, the articles of the law at issue in the crime and the grounds for the arrest.

38. With an amendment to article 108 of the Code of Criminal Procedure, a defendant for whose arrest a warrant has been issued in absentia will immediately (within 24 hours at the latest) be brought before a judge and interrogated so that a decision can be taken on whether to continue the detention.

39. Another criticism in the past was that people in custody were redetained shortly after their release so that their detention period could start anew. In order to prevent this, the new law establishes that “released persons cannot be redetained on the same charge without new evidence and without the decision of the public prosecutor”.

40. As per an amendment to article 23 of the Code of Criminal Procedure, the intervening parties in the case are also entitled to raise a motion for the disqualification of the judge, in addition to the public prosecutor and the defendant.

41. In addition to its above-mentioned provisions strengthening the rights of suspects and detainees, Law No. 3842 also contains important provisions on human rights. In this respect, the law amends the provisions of the Code of Criminal Procedure which are contrary to the equality of the sexes. Formerly, the Code of Criminal Procedure established that if the suspect was a wife, the husband could be present as adviser. Furthermore, only the husband had the right to resort to law. By changing the wording from “if the suspect is a wife, the husband” to “the

spouse of the suspect", the new law affirms the equality of the sexes. Moreover, in the new law, the maximum age for defining a minor has been raised from 15 to 18. In this sense, when considered together with the courts' mandatory appointment of a lawyer for persons under the age of 18, mentioned in paragraph 32 above, Law No. 3842 also introduces important modifications with respect to minors.

42. The number of crimes under the jurisdiction of the State security courts has been reduced by an amendment brought by Law No. 3842 to article 9 of Law No. 2845 on the Establishment and Prosecution Procedures of State security courts. With these modifications, the area of jurisdiction of the State security courts has been restricted to offences committed against the State, terrorist crimes, illicit traffic of weapons and drugs, and crimes which cause or contribute to the continuation of the state of emergency. Accordingly, the State security courts will no longer have jurisdiction over cases which involve violations of the Law on Demonstrations and Rallies, the Law on Strikes and Lockouts and the Law on Associations.

43. A further significant step with regard to the implementation of article 2 (1) of the Convention was achieved with the adoption by Parliament of Law No. 4229 on Amending the Code of Criminal Procedure, Law No. 2845 and Law No.3842 on 6 March 1997. This law came into effect on 12 March 1997, following its publication in the Official Gazette. The principal elements of Law No. 4229 are outlined in paragraphs 44-47 below.

44. Law No. 4229 provides a considerable reduction in the periods of custody of persons detained for both individual and collective crimes falling under the jurisdiction of the State security courts. The maximum period of custody for individual crimes has been shortened to 48 hours, even if these crimes have been committed under emergency conditions. Previously, under Law No. 3842, the maximum period of custody for individual crimes within the scope of the State security courts committed under emergency conditions was 96 hours. As for collective crimes falling under the jurisdiction of the State security courts, the period of custody has been arranged in a similar way as in collective ordinary crimes. Accordingly, it has been divided into three consecutive phases, which are 48 hours, two days and three days/six days (depending on whether the crime has been committed under regular conditions or under the state of emergency). The second and third phases have been arranged as first and second "extensions", starting respectively with the order of the public prosecutor and the decision of the competent judge. Formerly, these periods could extend to 15 and 30 consecutive days, depending respectively on whether the crime had been committed under regular conditions or under the state of emergency. Furthermore, the second extension of the period of custody for ordinary collective crimes, mentioned in paragraph 27 above, has been shortened by Law No. 4229 from four days to three days. Accordingly, the maximum period of custody for ordinary collective crimes has been shortened to seven days, irrespective of whether the crime has been committed under regular or emergency conditions. A chart containing a comparative synopsis of detention periods in Turkey in light of the above is provided in appendix I.

45. Law No. 4229 provides for suspects' next of kin to be notified of their detention in all circumstances without exception. It also entitles the suspect and his lawyer, legal representative, spouse or blood relatives of the first or second degree to make an application to the competent judge to object to the person's being taken into custody, as well as against the order given by the prosecutor for the extension of the period of custody. The competent judge is to deliver a

decision on the issue in no more than 24 hours. If this application is upheld by the relevant judge, the person in custody is to be released immediately. Formerly, under Law No. 3842, offences falling under the jurisdiction of the State security courts constituted an exception to the exercise of this right. The new law removes this exception and extends the habeas corpus safeguard both to individual and collective offences falling under the jurisdiction of the State security courts.

46. The right to have access to defence counsel has been extended by Law No. 4229 to those who are in custody on suspicion of having committed crimes falling under the jurisdiction of the State security courts. Accordingly, access to defence counsel is possible after the expiry of 48 hours if the suspicion relates to individual crimes, and four days if the suspicion relates to collective crimes.

47. With Law No. 4229, the maximum periods for detention on remand, mentioned in paragraph 36 above, have been extended to the crimes falling under the jurisdiction of the State security courts, which were excluded previously. Article 110 of the Code of Penal Procedure as amended by Law No. 3842 has been made applicable to all types of crimes with the new law. Accordingly:

(a) A person whose detention is decided by a competent judge may not be kept in detention for more than six months, which is the stage of preliminary investigation;

(b) If the person stands trial, the period of detention may not exceed two years, including the period spent at the previous stage, i.e. the stage of preliminary investigation;

(c) In cases where sentences of up to seven years' imprisonment or more are required due to the gravity of the crimes, the period of detention may exceed the above limits by a decision of a judge, whereby the state of evidence so far collected, the conduct of the defendant and the reasons for keeping the defendant under detention shall be considered.

48. Turkish legislation is in full conformity with article 2 (2) of the Convention. In this respect, the state of emergency is a situation which has been prescribed in articles 119-121 of the Constitution. According to article 120, in the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months. Article 121 stipulates that Parliament may extend this period for a maximum of four months only each time at the request of the Council of Ministers. Article 15 of the Constitution provides for a partial or entire suspension of fundamental rights and freedoms in times of martial law or a state of emergency. However, the said article also stipulates that any suspension of the exercise of fundamental rights and freedoms must not violate obligations under international law, and that even under such circumstances, the individual's right to life, and the integrity of his or her material and spiritual entity shall be inviolable except where death occurs through lawful acts of warfare and execution of death sentences. It follows that penalties in Turkish laws regarding torture and ill-treatment are also applicable in a state of emergency or under martial law.

49. With respect to article 2 (3) of the Convention, it must be stated that in the Turkish legal system, excessive deeds of public officials are considered operational defects for which the State is directly responsible. In this context, article 137 of the Constitution stipulates that if a person employed in public services, irrespective of his position or status, finds an order given by his superiors to be contrary to the provisions of by-laws, regulations, laws or the Constitution, he shall not carry it out. The said article also states that the person who executes such an order shall not evade responsibility. Articles 11 and 13 of Law No. 657 on Civil Servants, adopted on 23 July 1965, state respectively that "An order which in itself constitutes an offence shall under no circumstances be executed; the person who executes such an order shall not evade responsibility" and that "People who are unjustly treated by public officials can bring a lawsuit directly to the public institution concerned which, in turn, has a right of recourse to the incriminated official".

Article 3

50. Visits and residence of foreigners in Turkey are regulated by Law No. 5683 on the Residence and Travel of Foreigners, dated 15 July 1950. In order to streamline legal and administrative procedures with regard to refugees and asylum-seekers, the Regulation on the Procedures and Principles Related to Population Movements and Aliens Arriving in Turkey Either As Individuals or in Groups Wishing To Seek Asylum Either From Turkey or Requesting Residence Permission In Order to Seek Asylum From Another Country was issued by the Turkish authorities in 1994. The principles related to the residence of all foreigners, including political refugees, and the guidelines to be abided by them are found in the said Law and pertinent Regulation. According to the Law and Regulation, the deportation of foreigners from Turkey is carried out by the Ministry of the Interior.

51. Turkey is a party to the 1951 Geneva Convention relating to the Status of Refugees, which carries the force of law in Turkey. Article 42 of the Convention provides signatory States with the option of adhering to the Convention with a geographical preference. In the light of this option, Turkey has acceded to the Convention with a declaration of geographical preference. In this respect, Turkey's obligations are restricted to accepting persons originating from Europe who fulfil the refugee criteria. The main reason for this preference is Turkey's geographic location. In fact, the "safe third country" concept adopted by the European Union in the 1990s has made the geographical preference of Turkey all the more important.

52. Nevertheless, this limited recognition does not hinder Turkey from extending assistance to people from other countries who are seeking temporary asylum or shelter. Indeed, the Turkish authorities are making every effort to fulfil their moral commitments to "temporary asylum-seekers". In this respect, despite the fact that Turkey is a party to the Geneva Convention with a geographical preference, asylum-seekers from Turkey's eastern neighbours are being admitted on humanitarian grounds and solutions to their problems are being sought in cooperation with the United Nations High Commissioner for Refugees. The exclusive Regulation mentioned in paragraph 50 above aims to facilitate relevant procedures in this context.

53. Turkey's geographical reservation to the Geneva Convention is not a non-commitment on the principle of non-refoulement. According to articles 32 and 33 of the said Convention, a refugee can be expelled only on grounds of national security or public order, and refugees cannot be "returned" to a country where their life and freedom would be at risk. The Regulation mentioned in paragraph 50 above also contains this provision.

54. The principles and procedure regarding extradition requests of foreign States are found in article 9 of the Penal Code. Turkish citizens cannot be extradited. Extradition of a foreigner to a foreign State for political, military or related offences is not accepted. If a foreign State requests extradition, the criminal court of first instance in the area in which the requested person resides in Turkey has to determine the citizenship of the person and the nature of the criminal act. If the court determines that the person in question is not a Turkish citizen and that the criminal act committed by him is not of a political, military or related nature, the local judge may issue a warrant of arrest. The issue of dual criminality and all other related questions at stake are decided by administrative authorities. The Ministry of Justice prepares the decision to be adopted by the Council of Ministers, which has the final say in deciding whether or not to grant extradition.

55. Turkey is a party to the 1957 European Convention on Extradition. Article 3 (2) of the Convention stipulates that "Extradition shall not be granted if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons". This clause, which bears the force of law in Turkey, is duly observed in answering extradition requests.

Article 4

56. The provisions of article 4 of the Convention are enshrined in Turkish legislation. The offences defined therein correspond to the definition in article 1 of the Convention.

57. The Turkish Penal Code contains specific provisions regarding penalties to be given to public officials for offences referred to in the Convention. In this respect, article 243 (related to obtaining confessions by torture or inhuman treatment) and article 245 (concerning ill-treatment inflicted by law-enforcement officials) of the Penal Code categorically ban torture and ill-treatment and foresee heavy penalties against public officials who perpetrate such misdeeds. The said articles are provided below:

Article 243

> "A public officer or a civil servant who tortures or treats a person in a cruel, inhuman or degrading way in order to make him confess his offence, or to prevent a victim, a plaintiff, an intervener in a lawsuit or a witness from indicating the incident or from lodging a complaint or reporting an offence, or for the reason that a person complained, notified or testified about a crime, or for any other reason, shall be punished by heavy imprisonment for up to eight years and shall be disqualified from the civil service either temporarily or for life.

"If the tortured person dies as a result of being tortured, the perpetrator shall be punished according to the provisions of article 452 (concerning homicide). If this torture has caused the victim permanent loss of any organ of the body or any other permanent disability, the perpetrator shall be punished in accordance with the provisions of article 456."

(The first paragraph of article 243 of the Penal Code was amended by Law No. 4449, adopted by Parliament on 26 August 1999. By this amendment, the maximum sentence of imprisonment prescribed in the article was increased from five years to eight years. More importantly, this amendment broadened the definition of torture and inhuman or degrading treatment and brought it into line with United Nations and European conventions. The former version of the article made it a criminal offence only to torture the "accused" in order to obtain a confession.)

Article 245

"Those persons authorized to use force and all police officers who, while performing their duties or executing their superiors' orders, threaten to ill-treat or to cause bodily injury to a person or who actually beat or wound a person in circumstances other than those prescribed by laws and regulations, shall be punished by imprisonment for three months to five years and shall be temporarily disqualified from the civil service. Where the offence committed is more serious than the offences defined herein, the punishments for such offences shall be increased by one third to one half."

(By Law No. 4449, the upper limit prescribed in the first sentence of the article was increased from three years to five years.)

58. Law No. 4449 also amended article 354 of the Penal Code to increase sentences for medical personnel who draft false reports to conceal evidence of torture or ill-treatment. A new paragraph 4 has been added to article 354, making it an offence to draw up and use false reports, i.e. reports which do not give a true account of the facts and are drawn up in order to conceal or remove evidence of a crime, acts of torture or other cruel and inhuman acts. Accordingly, article 354 now reads as follows:

"A physician, pharmacist, medical officer or other medical personnel who submits, without any consideration, a false document to be relied upon by government officials, shall be punished by imprisonment from six months to two years and by a heavy fine from one hundred million to three hundred million Liras. Whoever knowingly uses such false documents shall be imposed to the same punishment.

"If a sane person is committed to a hospital for mental diseases or kept there by force or any other grave injury results therefrom on account of such a false document, the perpetrator shall be imprisoned from two years to four years.

"If the offence prescribed in paragraph 1 is committed in consideration for some money or other benefit given to, promised or provided for oneself or for another person, the perpetrator shall be imprisoned from three years to five years. If the document has caused an injury as referred to in paragraph 2, the perpetrator shall be imposed to imprisonment from four years to six years.

"If such a false document was prepared to conceal an offence, or to make the evidence of torture, cruel or inhuman treatment disappear, imprisonment to be imposed shall be from four years to eight years.

"A heavy fine that is prescribed in paragraph 1 shall be applied twice in cases falling within the ambit of paragraphs 2 and 3, and three times in cases of paragraph 4, in addition to the foregoing punishments.

"Even a person giving money, providing or promising a benefit for the preparing of such a false document shall be imprisoned for one year to three years and the money or the other goods thus given or received shall be confiscated."

59. In addition to the above-mentioned specific provisions, the Penal Code also contains general legal provisions that prohibit action or conduct causing bodily harm. According to the Penal Code, corporal actions and conducts causing bodily pain without the intention of killing or mental disorder are crimes which require prison sentences from six months to ten years and fines depending on the incident and the loss incurred (arts. 456-460).

60. To cause bodily pain is punished in article 456 of the Penal Code. According to the said article, whoever causes bodily pain or injures the health or causes mental disorder of another without the intention of killing is a criminal who has committed battery. The more severe types of this crime are enumerated in the second and third paragraphs of article 456 as well as in article 457.

61. According to the Penal Code, "battery" has three alternative components: bodily pain, injury to health and mental disorder. The crime of battery requires imprisonment for six months to one year (art. 456 (1)). Where battery causes permanent weakness to either a person's senses or limbs, or permanent difficulty in talking, or a permanent scar in the face, or a bodily or mental sickness continuing for 20 or more days, or non-attendance at his usual occupation for the same period, or subjects one's life to danger, or causes premature delivery by a pregnant woman, the offender shall be imprisoned for two to five years (art. 456 (2)). Where battery causes the victim to suffer a mental or bodily sickness which is definitely or probably incurable, or the loss of a hand or foot, or of the ability to talk, or sterility, or incapacity of a limb, or permanent alteration of the face, or miscarriage of a child, the offender shall be punished by heavy imprisonment for five to ten years (art. 456 (3)). If the offence is committed by use of a hidden or manifest weapon, the punishment shall be increased by one third to one half (art. 457).

62. The Penal Code also provides that a public officer who, by misuse of his authority, and in violation of laws and regulations, takes an arbitrary action regarding a person or a public officer or orders or causes others to order such an action, shall be punished by imprisonment for six months to three years (art. 228 (1)). A public officer who, in the performance of his duty, treats another person with undue severity and causes that person to disobey the provisions of laws or regulations shall receive the same sentence (art. 228 (2)).

Article 5

63. Article 3 of the Penal Code states as follows: "Whoever commits a crime in Turkey shall be punished in accordance with Turkish law, and a Turk, even if sentenced in a foreign country for the commission of a crime, shall be retried in Turkey. A foreigner who has been sentenced in a foreign country for a crime shall be tried in Turkey upon the request of the Minister of Justice". In the application of this article, the general principles of law, including that of non bis in idem are duly taken heed of.

64. The rules regarding the punishment of a crime committed by a Turkish citizen in foreign countries are found in article 5 of the Penal Code. According to the said article, if the crime is a felony (not a misdemeanour) which does not fall into the scope of article 4 (felonies against the security of the Turkish Government), if the felony committed entails a punishment restricting liberty for a minimum period of three years in Turkish law and if the accused is in Turkey, he will be punished in accordance with Turkish laws. If the felony committed entails a punishment restricting liberty for a minimum authorized period of less than three years, the initiation of prosecution may be upon the complaint of the injured party or the foreign Government.

65. The rules regarding the punishment of a crime committed by a foreigner in foreign countries are found in article 6 of the Penal Code:

(a) The crime is a felony falling outside the scope of article 4 and the felony is against Turkey or a Turk; if the felony committed entails a punishment restricting liberty for a minimum authorized period of one year in Turkish law, if the accused is in Turkey and if the Minister of Justice or the injured party requests the initiation of prosecution, the accused will be punished in accordance with Turkish laws;

(b) The felony is committed by a foreigner against another foreigner; if the act, according to Turkish law, entails a punishment restricting liberty for a minimum authorized period of not less than three years, if no extradition treaty exists or the extradition of the perpetrator is rejected either by the Government of the State in whose territory the felony was committed or by the State of which the offender is a citizen, and if the Minister of Justice requests the initiation of prosecution, the accused will be punished in accordance with Turkish laws.

66. The jurisdiction of Turkish courts is specified in articles 8, 9, 10 and 11 of the Code of Criminal Procedure:

(a) The trial of a criminal action shall be held in the place where the offence was committed (art. 8);

(b) If the place where the offence was committed is unknown, the court of the place where the accused is apprehended, or, if he is not apprehended, the court of his place of residence shall have jurisdiction (art. 8);

(c) If it is still impossible to determine which is the competent court, then the court exercising the first procedural step in the criminal proceeding shall have jurisdiction (art. 9);

(d) Jurisdiction over offences committed outside Turkey but which should be prosecuted in Turkey, according to the relevant articles of the Penal Code, is determined according to article 9. In this case, the court of the place where the accused is apprehended, or, if he is not apprehended, the court of his place of residence, or, if he is not resident in Turkey, the court of his last place of residence shall have jurisdiction (art. 10);

(e) If an offence is committed on a maritime vessel or aircraft bearing the Turkish flag on the high seas, or in the air, or in a foreign port or foreign territorial waters, the court where the action is brought is the court of the port of first arrival in Turkey after the offence has been committed, or the court of the place where it is registered (art. 11).

Article 6

67. Article 19 (3) of the Constitution, mentioned in paragraph 11 above, stipulates that individuals concerning whom there are strong indications of having committed an offence can be arrested by decision of a judge, solely for the purposes of preventing escape or preventing the destruction or alteration of evidence. Similar other circumstances that necessitate detention and are prescribed by law may also lead to their arrest.

68. In parallel with this constitutional clause, the conditions requiring the arrest of an individual are specified in article 104 of the Code of Criminal Procedure; the suspect is arrested if the crime he committed falls within the jurisdiction of Turkish courts.

69. On the other hand, in accordance with the bilateral or multilateral conventions on extradition to which Turkey is a party, a person to be extradited can be provisionally arrested by a court (article 16 (4) of the European Convention on Extradition foresees that provisional arrest shall be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition. It shall not, in any event, exceed 40 days from the date of such arrest). If an extradition request is accepted, the local judge may issue a warrant of arrest against the requested person (Penal Code, art. 9).

70. Turkey became a party to the Vienna Convention on Consular Relations of 24 April 1963 with the enactment of Law No. 1901 on 20 May 1971. Article 36 of the said Convention formulates the principles on the contacts of sentenced or arrested foreigners with their consulates. In accordance with paragraph 1 (b) of article 36, all foreigners arrested or convicted in Turkey are duly registered and their consulates are permitted to contact them, unless the foreigners in question demand otherwise.

Article 7

71. The Penal Code and the Code of Criminal Procedure formulate a system of how the Turkish courts would handle crimes falling under their jurisdiction. If a person who has committed an offence referred to in article 7 (1) of the Convention and whose extradition is requested in relation to this offence is not extradited, he will be prosecuted in Turkey. However, if a foreigner commits the offence foreseen in article 7 (1) against another foreigner in a foreign country, he can be prosecuted in Turkey only when the Minister of Justice so requests and the offence entails a punishment restricting liberty for a minimum authorized period of not less than three years according to Turkish law.

72. Those against whom an investigation has been launched on account of having committed the offences referred to in article 4 of the Convention shall be subject to the ordinary criminal trial procedures.

Article 8

73. In addition to the European Convention on Extradition, Turkey has concluded bilateral extradition agreements with a number of countries. However, in the Turkish legal system, extradition may be carried out even if there is no bilateral extradition agreement with the State requesting the extradition. In the absence of an international instrument, the principle of reciprocity may be applied.

74. In Turkish law, the offences referred to in article 4 of the Convention fall into the category where extradition is possible. Extradition is carried out in accordance with article 9 of the Penal Code. The principles guiding extradition procedures have been outlined in paragraph 54 above.

75. Since Turkey permits extradition even without a bilateral extradition agreement, article 8 (2) of the Convention is fulfilled in practice.

Article 9

76. Turkey is part of a wide network of mutual legal assistance in criminal matters. In addition to its ratification of the 1959 European Convention on Mutual Assistance in Criminal Matters, Turkey has also concluded bilateral legal assistance agreements with a number of countries. Moreover, demands for judicial assistance are generally fulfilled, in compliance with the principle of reciprocity, even in the non-existence of a legally binding document.

Article 10

77. The Turkish authorities believe that it will be possible to remedy the isolated defects which generally arise from the practices of public officials performing their duties at critical points by intensifying human rights training for personnel at all levels.

78. To coordinate efforts and activities in the field of human rights education and information, the National Committee for the United Nations Decade for Human Rights Education was established by the Human Rights High Council in 1998 to function as an advisory body during the Decade. The Committee consists of 15 members, including one representative each from the Prime Ministry and from the Ministries of Justice, Interior, Foreign Affairs, National Education, Health and Culture, representatives of four non-governmental organizations active in the field of human rights, as well as four academicians known for their work in human rights. The Committee has prepared the Human Rights Education Programme of Turkey (1998-2007) by taking into consideration the relevant guidelines and principles set forth in the United Nations Action Plan on Human Rights Education. The National Programme was adopted by the High Council in July 1999 and forwarded by the Prime Ministry to all relevant authorities for implementation. The Programme envisages intensified human rights education, especially for civil servants employed in the field of law enforcement.

79. The National Committee is tasked with monitoring the implementation of the National Programme and cooperating with governmental and non-governmental organizations and the media to increase public awareness on human rights education. The National Committee has identified the following principal target groups in the context of the National Programme:

- Teachers who teach courses on human rights in schools;

- Law enforcement officers (judges, public prosecutors, penitentiary personnel, police, gendarmerie and other public officers);

- Members of the mass media;

- Members of non-governmental organizations which carry out activities related to human rights;

- Social workers and personnel at community centres who provide education in human rights for families living in economically and socially underprivileged sections of cities.

80. In line with the Human Rights Education Programme of Turkey, all official institutions directly concerned with human rights practices have intensified training programmes related to human rights which they are implementing as part of their respective in-service training curricula.

81. In this respect, training courses covering human rights have become mandatory for candidate judges and public prosecutors during their two-year probationary period at the Training Centre for Judges and Public Prosecutors. The Ministry of Justice has included human rights in the in-service training provided for judges and public prosecutors who enter the profession after they successfully complete their probationary period. Judges and public prosecutors are receiving human rights courses in cooperation with the Council of Europe and other international organizations. Also, bilateral programmes have been initiated with a number of countries with a view to the training of judges and prosecutors in the field of human rights.

82. In addition to the inclusion of human rights courses in training curricula, the Ministry of Justice is also organizing periodic in-service seminars for members of the judiciary at various levels, where participants are informed about Turkey's obligations under the Convention and other relevant United Nations Conventions, documents of the Organization for Security and Cooperation in Europe (OSCE), the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the effects of these instruments in Turkish domestic law and rulings of the European Court of Human Rights with respect to Turkey. In the course of these seminars, judges and prosecutors are informed in particular about how the provisions of the Convention can be raised by defendants and included ipso facto in court decisions as they have become part of Turkish national legislation.

83. Human rights education is also being provided to prison superintendents, as well as physicians, psychologists, social workers and teachers employed in penal institutions. Candidate prison guards and security officers of penal institutions also receive training for a period of one year before their permanent appointment covering professional subjects and human rights in accordance with the provisions of the Regulation on Training for Candidate Civil Servants Attached to the Ministry of Justice. Further, the human rights education of prison staff is being supplemented through the distribution of books, handbooks and other relevant documentation prepared by experts and academicians to all penitentiary institutions.

84. The intensification of the education of members of law enforcement agencies is considered to be a particularly useful means for promoting the implementation of human rights and preventing cases of torture and ill-treatment. In this framework, courses on human rights have become mandatory in the curricula of the Police Academy and police colleges since 1991. Textbooks which are used in these courses incorporate the letter and spirit of the relevant United Nations and Council of Europe Conventions as well as other international instruments. Law No. 4652 on the Higher Education of Police, which was prepared in line with the recommendations of the National Committee, was adopted by Parliament on 25 April 2001 and came into effect on 9 May 2001. With this law, the 26 police schools all over Turkey, which formerly trained police officers for nine months, have been converted into two-year vocational schools with an expanded emphasis on human rights education.

85. In the period covered by this report, a number of periodic seminars, conferences and workshops have been held as part of the human rights training work being carried out for staff of the Ministry of the Interior at various levels. These seminars cover topics such as human rights provisions in Turkish domestic law, the duties and responsibilities of senior administrators and law enforcement officers with regard to human rights under the international conventions to which Turkey is a party as well as under domestic legislation, Turkey's human rights obligations under the United Nations, Council of Europe and OSCE conventions and documents, the powers, working methods and procedures of the United Nations Committee against Torture and the European Committee for the Prevention of Torture and rulings of the European Court of Human Rights.

86. The seminars are mainly intended for senior administrators (province and district governors) and senior police and gendarmerie officers, who are jointly responsible for security and law and order in the provinces and districts, and are in practice required to coordinate the

operation of these services. However, it is ensured in practice that activities of this type benefit not only senior staff, but also personnel working in units whose duties bring them into direct contact with the public. Accordingly, within the framework of the Project for the Human Rights Education of the Ministry of the Interior and Its Affiliated Institutions, which was prepared in collaboration with the National Committee, the Ministry of the Interior is planning systematically to provide professional training directly related to human rights, with particular emphasis on modern interrogation methods, to the heads and lower ranking personnel of the Provincial Security Directorates' Law and Order, Mobile Squads, Security, Traffic and Trafficking/Organized Crime Departments and to continue until all personnel have received awareness training.

87. Under the authority of the Gendarmerie Central Command, human rights courses are being provided in gendarmerie schools; 1,768 officers and 25,012 non-commissioned officers (NCOs) have so far attended these courses. Such courses are also being given in provincial gendarmerie units for officers, NCOs and privates.

88. Cooperation with the Council of Europe on police training within the framework of the "Police and Human Rights Programme: Beyond 2000" project is at an advanced stage. A working group has been established with a view to determining the future development of the three projects included in the cooperation between the Council of Europe and Turkey in the field of the human rights education of Turkish law enforcement agencies, namely: the translation and use of police training and awareness-raising material; the training of the trainers for the police and the gendarmerie and the preparation of the new curriculum to be used in the two-year professional police schools, including the "Modular Training Project" and the new two-year curriculum for the training of NCOs which will begin in 2003 for the gendarmerie.

Article 11

89. Instructions, rules and practices related to interrogation and custody/detention procedures and arrangements are continuously being reviewed and updated by the Turkish authorities with a view to preventing cases of torture or ill-treatment by public officers.

90. On 3 December 1997, the Prime Minister issued a circular entitled "Respect for human rights; prevention of torture and ill-treatment", which was transmitted to all law enforcement agencies. The text of this circular is provided in appendix II. The content of this circular was made known to the general public by a press conference organized on 4 December 1997 by the State Minister for Human Rights.

91. This detailed circular places the need to prevent torture and ill-treatment in its legal, philosophical and political context and sets out numerous detailed measures covering a whole range of safeguards against torture and ill-treatment. The circular stipulates that these measures shall be implemented without fail and their implementation shall be monitored by the authorities responsible. The circular also provides for frequent inspections of police and gendarmerie establishments by province and district governors as well as senior police and gendarmerie officers. The circular stresses that the provisions of the Code of Criminal Procedure concerning custody periods and contacts with lawyers and relatives must be complied with in full.

92. Inter alia, the circular also provides that:

(a) Suspects will not be exposed to ill-treatment no matter what their crime; necessary investigations into allegations of torture and ill-treatment will be carried out without delay;

(b) Legal proceedings will be instituted immediately against those officers shown to have been involved in torture and ill-treatment. Proceedings will be completed as soon as possible;

(c) Convicts and detainees will not be exposed to abusive or degrading treatment either in prison or during periods of transfer.

93. Another circular designed to prevent practices inconsistent with human rights was issued by the Prime Minister on 26 February 1998. The text of this circular is in appendix III. The circular introduces new measures to reinforce the influence of public prosecutors vis-à-vis the criminal investigation work of the police. In this context, in addition to the inspection of police detention facilities by public prosecutors, the circular provides, inter alia, for Chief Public Prosecutors' Offices to be consulted when assessment reports are drawn up concerning police officers performing criminal investigations; for public prosecutors to be equipped with facilities enabling them to monitor police and gendarmerie radio transmissions; and for units to be set up in each Chief Public Prosecutor's Office with a view to ensuring permanent liaison and contact with law enforcement agencies and the prompt transmission of instructions.

94. A particularly significant development in the context of article 11 of the Convention is the introduction of the Regulation on Apprehension, Custody and Interrogation, which came into force following its publication in the Official Gazette on 1 October 1998 and has been distributed to all relevant authorities for implementation. The full text of the Regulation is annexed to this report in appendix IV. The points covered in the Prime Minister's circular of 3 December 1997 are dealt with in a broader and more comprehensive manner and in greater detail in the Regulation. In essence, this Regulation aims at precluding the use of torture and ill-treatment and prevention of disappearances by standardization of the procedures on apprehension, custody and interrogation which are used by security forces, including police, gendarmerie, Coast Guard and special security forces. In this sense, the Regulation is aimed at bringing procedures in Turkey into line with the standards of the Convention and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

95. Article 6 of the Regulation provides important safeguards to protect an individual at the time of apprehension. Specifically, it states that during apprehension, the person will be informed of his right to inform his relatives of his apprehension, the reason for apprehension, and the right to remain silent, regardless of the nature of the crime. Furthermore, in accordance with the Regulation, the "Form on the Rights of Suspects and Accused Persons", which aims to inform the apprehended person of his rights, is filled out at the beginning of apprehension or custody and a signed copy is given to the apprehended person. This procedure enables the apprehended person to see, in written form, his rights under custody and is intended to ensure

that law enforcement agencies do not seek to dissuade the detained person from exercising his right of access to a lawyer. The Form on the Rights of Suspects and Accused Persons has been distributed to all related units as an annex to the Regulation. In accordance with the Regulation's stipulations, the use of this form is mandatory.

96. Article 9 of the Regulation requires the next of kin to be informed when a person is apprehended, unless this impairs the outcome of the investigation; it lists the procedural steps enabling the next of kin to be notified without delay. In crimes falling under the jurisdiction of the State security courts, if informing the relatives of the apprehended person harms the ongoing investigation, this must be specified in writing.

97. Under article 10 of the Regulation, if the apprehended person is to be taken into custody or is apprehended by force, it is compulsory for his state of health at the time of apprehension to be determined by a medical examination. A medical report must also be drawn up when a detained person changes location for any reason, when the custody period is extended, when the person is released, when he is brought before a court and when his state of health deteriorates for any reason during custody. As regards offences falling under the jurisdiction of State security courts, provision is made in the said article for the interval between two medical examinations not to exceed four days in the event of the extension of the custody period. Article 10 also ascertains that medical examinations must be conducted in full privacy, with the presence of only the detainee and the physician, unless the outcome of the investigation will be impaired or when this poses a threat to the personal security of either the physician or the detainee or both.

98. Article 13 of the Regulation, which effectively incorporates the provisions of Law No. 4229, explained in paragraphs 43-47 above, provides that "if a person apprehended for crimes committed by one or two persons is not released, he must be arraigned before the competent judge no later than 24 hours, except the necessary time needed for his arraignment before the nearest judge. If the crime falls under the scope of the State security courts, this period is 48 hours".

99. Article 14 provides that "for reasons such as difficulty in gathering evidence or the presence of a large number of defendants and similar reasons, the public prosecutor may prolong this period by a written order for up to four days in cases of collective crimes, including for crimes falling under the scope of the State security courts. In spite of the four-day extension, if the investigation is still not completed, the prosecutor may request the judge to extend the custody period to seven days before the suspect is arraigned before the judge". The article also stipulates that "for crimes committed in emergency regions and falling under the jurisdiction of the State security courts, the seven-day period may be extended to 10 days upon the request of the Public Prosecutor and the decision of the judge".

100. The possibility of prolonging the detention period by way of releasing and recapturing the suspect is eliminated by article 17, which specifies that "a person apprehended and released may not be apprehended and taken under custody again for the same crime, unless there is enough evidence and an order of the public prosecutor related to the crime subject to apprehension".

101. Provision is made in article 20 of the Regulation with a view to guaranteeing that meetings between detained persons and their lawyers take place in the absence of law enforcement officials, as follows: "The apprehended person may meet with his lawyer anytime without the power of attorney being sought and out of the hearing of others."

102. Article 23, entitled "Prohibited methods of interrogation", incorporates the provisions of article 135 (a) of the Code of Criminal Procedure, mentioned in paragraph 26 above. This article reads as follows: "The statements of the suspect must be based on his own free will. Statements obtained through prohibited measures cannot be considered as evidence, even with the consent of the suspect. Therefore, the person under custody: (a) cannot be submitted to physical or emotional interventions which disrupt the free will, such as ill-treatment hampering free will, torture, administering medicine by force, tiring, misleading, use of physical force or violence, application of certain devices; (b) cannot be promised an illegal benefit".

103. In line with the pertinent decisions of the Council of State, articles 8, 18 and 21 of the Regulation on Apprehension, Custody and Interrogation were amended by the publication of the new version in the Official Gazette on 13 August 1999. Accordingly:

(a) Body searches of women before they are transferred to custody facilities shall be carried out by female staff (new art. 8);

(b) Preliminary investigations concerning minors between the ages of 11 and 18 shall be conducted by the public prosecutor himself or by the deputy public prosecutor appointed for the purpose; these minors shall have access to the services of a lawyer from the outset of the custody period, even if they do not request it and even if the offence of which they are suspected falls under the jurisdiction of the State security courts (new art. 18);

(c) Lawyers shall have an unrestricted right of access to the detainee's file as regards the suspect's statements, expert reports and records of the procedures at which the suspect is entitled to be present (new art. 21).

104. A detailed circular issued by the Prime Minister on 25 June 1999 introduced new measures to ensure the effective implementation of the above-mentioned Regulation by all relevant public authorities and also enhanced the control of its implementation. The text of this circular is provided in appendix V. In order to ensure full compliance with the provisions of the Regulation, this circular stipulates that province and district governors, public prosecutors, public inspectors, gendarmerie commanders, police directors and other officials empowered to conduct inspections shall carry out unannounced random inspections in their own statutory areas of responsibility; shall rapidly take the necessary measures to remedy the deficiencies found during these inspections and shall initiate the requisite procedures in respect of officials found to be at fault. The circular stipulates further that the Ministries of Justice and the Interior shall submit in writing to the Human Rights High Council, attached to the Prime Minister's Office, three-monthly evaluation reports based on the information received from their affiliated bodies regarding the application of the Regulation and the findings reached during these random inspections.

105. The Ministries of Justice and the Interior have duly informed all their affiliated bodies of this stipulation and have taken the necessary measures with a view to its implementation. Accordingly, the three-monthly reports on the results of the random inspections carried out by the officials mentioned in the previous paragraph are being regularly submitted to the Human Rights High Council.

106. In this framework, unannounced and unscheduled inspections regarding the application of the Regulation cover in particular the interrogation units, holding cells and similar facilities of police stations throughout the country. The state of equipment, compliance with the Regulation and material conditions of detention units are given special emphasis during these inspections. The shortcomings and defects that are found during these inspections concerning interrogation facilities on detention premises, compliance with instructions, custody registers and forensic medical certificates are included in the reports. After being evaluated by the Ministry of the Interior, the inspection reports are sent directly to the heads of security of the provinces concerned, with a request for the defects to be remedied without delay.

107. In the aftermath of the above-mentioned inspections, criminal and administrative investigations have been opened in respect of a number of police officers of various ranks, regarding practices uncovered by the inspections that may constitute criminal offences.

108. The defect noted in most of the inspection reports is the low standard of detention facilities. Difficulties in this respect stem mainly from the old building structures of police stations, the insufficiency of the present premises and the lack of funds for rebuilding them, as well as the inadequacy of land to construct additional premises. Despite these drawbacks, efforts to raise the standards of detention facilities are continuing. Where premises are rebuilt or new premises constructed, particular attention is paid to standards of detention units. In this context, a project begun in 1997 on standardizing detention facilities is continuing, depending on the availability of financial appropriations for repairs and alterations of such premises.

109. A circular issued by the Interior Minister on 24 July 2001, a copy of which is provided in appendix VI, drew the attention of all relevant authorities to the damage to Turkey's reputation in international public opinion which results from verdicts of the European Court of Human Rights against Turkey and the high amounts of compensation that were paid to applicants. Taking into consideration that these rulings are generally based on erroneous official practices, the circular outlines specific instructions designed to remedy these deficiencies. In this context, the circular underlines the need to observe in full the provisions of the Regulation on Apprehension, Custody and Interrogation, and emphasizes in particular the absolute prohibition of torture or ill-treatment, the need for legal action to be launched immediately and investigations to be concluded without delay with respect to such allegations and the requirement that all persons taken into custody must without exception be entered into the relevant register, which must be kept in a serious and systematic manner. The circular also stipulates that when carrying out their official duties, all personnel without exception must refrain from any actions or interventions which might lead to claims that they exceeded their powers or used force in an unnecessary or disproportionate manner, and stresses that members of the security forces must pay strict attention to the requirement that the judge and public prosecutor must personally see the suspect when making their decisions on prolonging the period of detention.

110. Custody monitoring units were established in 1995 throughout Turkey to respond to the requests of relatives of persons taken into custody. These units are operational in all provincial police directorates and are coordinated by the Directorate General of Security at the national level.

111. In Turkey, the task of providing scientific and technical opinions on subjects related to forensic medicine has been conferred by Law No. 2659 on the Institute of Forensic Medicine to the Institute which is placed under the authority of the Ministry of Justice. In specified provinces, units attached to the Institute accordingly provide forensic medical services in the provincial capitals in which they are located. These services are also provided by those universities that possess a forensic medicine department. However, as these institutions are not structured in such a way as to be able to provide services round the clock throughout the country, a substantial proportion of forensic medical services are provided by establishments attached to the Ministry of Health, in accordance with Law No. 38 on Forensic Medicine and the Law on the Provision of Health Services.

112. In line with efforts to modernize forensic medical services and in accordance with decisions to this effect reached in the Human Rights High Council, the Ministry of Health has developed elaborate standard forensic medical forms (General Forensic Examination Form, Sexual Assault Examination Form For Women and For Men) to be used by all its affiliated bodies throughout the country. These forms are designed to ensure that doctors include an assessment of detained persons' allegations of torture or ill-treatment by law enforcement officers, an account of objective medical findings based on a thorough examination and the doctor's conclusions in the light of those two elements.

113. By a detailed circular dated 20 September 2000 addressed to all provincial health directorates, a copy of which is provided in appendix VII, the Ministry of Health transmitted these forms to all its subordinate bodies and instructed them to ensure that medical examinations of detained persons are conducted in the absence of law enforcement officers and that if there is no forensic doctor in the province, detained persons should be examined every 48 hours by a health centre doctor; it also requested that forensic medical forms should be drawn up in three copies, the first to be kept by the medical establishment, the second to be transmitted to the relevant public prosecutor's office by the medical establishment and the third, sealed and stamped, to be sent to the commanding officer of the relevant law enforcement unit.

114. Measures have been taken with a view to ensuring that the circular is complied with by all doctors called upon to examine persons in the custody of the law enforcement agencies, and that doctors are not subjected to any interference while performing this task. The forms appended to this circular have come into systematic use throughout Turkey and appropriate training programmes have been organized for medical personnel on their proper use.

Reform of the prison system in Turkey

115. Intensive efforts are under way in Turkey to raise the standards of the prison system and bring material conditions of detention in Turkish prisons fully into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules of the Council of Europe.

116. Accommodation units in Turkish prisons have been traditionally structured as large multi-occupancy wards which contain all or most of the facilities used by prisoners on a daily basis; sleeping and living areas, sanitary facilities and adjacent exercise yards. Specifically, the E-type prisons built in the 1970s and 1980s follow this design principle.

117. The ward system, based on large living units, applied in Turkish prisons has had extremely negative consequences, especially as regards the rehabilitation of persons convicted of terrorist offences. In effect, prisons became "indoctrination centres" of various terrorist organizations, where sympathizers were trained and subsequently converted into hard-line militants. It became virtually impossible to ensure proper staff control over the activities of inmates. Further, when various types of disruptive phenomena emerged (concerted disobedience, hunger strikes, hostage-taking, destruction of property, etc.), outside interventions involving the use of considerable physical force - and the attendant risk of heavy casualties - became difficult to avoid.

118. Terrorist organizations set up "central committees" in prisons, planned numerous acts of violence from prisons, sent out their instructions for these operations through couriers and even engaged in military training in their wards. More specifically, in prisons accommodating a majority of terrorist offenders, the leaders of terrorist organizations ruling the wards exhorted their followers to refuse the educational activities provided by the prison administration; prevent work in the workshops and vocational training facilities; obstruct regular and medical checks, counts and controls, and visits by family, relatives and lawyers; reject prison rules; stir up riots; vandalize buildings and equipment; hold hunger strikes or "death fasts" and, on occasion, even physically assault, take hostage or issue death threats against prison officers. Inmates who refused to abide by the orders of terrorist groups or who attempted to leave the wards ruled by them were branded as traitors and subjected to punishments such as refusing to let 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 and, on occasion, even injuring or executing them.

119. It follows that in the prisons where prisoners were held together in large wards, this practice hindered and made it practically impossible to carry out the main goal of the penitentiary system, that is, the rehabilitation of persons who committed illegal acts; terrorist organizations began to run the prisons and as a result, the authority and control of the prisons' administrations were seriously weakened.

120. As prisons have become more overcrowded and prison disturbances more frequent in recent years, the shortcomings of the ward system have become even more acute. Consequently, the need for a comprehensive reform of the prison system has become more pressing.

121. In this context, the Turkish authorities have initiated two principal projects. The first project involves the conversion of existing wards in all E-type and special type prisons throughout Turkey into smaller accommodation units. The process of conversion to room-system establishments has been completed in 14 prisons and work to this effect is currently ongoing in 61 prisons.

122. The second project involves the construction of a new "generation" of prisons, known as the F-type prisons. The F-type prisons are designed to restore order and security in prisons; to provide inmates with modern treatment methods; to decrease to a minimum the security and discipline problems arising from crowded dormitories; to prevent the negative psychological effects of crowded dormitories on inmates and to provide inmates with more private living areas as well as a more favourable environment to participate in social, cultural and sports activities.

123. These establishments are based on a system of small living units for one to three prisoners and are designed primarily for prisoners accused or convicted of offences related to terrorism or organized crime. In terms of both physical structure and management system, F-type prisons possess the equipment and facilities needed for remand and sentenced prisoners to spend a reasonable part of the day engaged in purposeful activities outside their living units without endangering the security of the prison, and they comprise all the elements required to fulfil the purpose of sentence enforcement. In this sense, the new prisons, 11 of which are currently under construction in various provinces all over Turkey, are fully compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules of the Council of Europe.

124. Improving material conditions in prisons and building new prisons based on small living units for dangerous criminals and terrorist offenders requires a substantial financial outlay. Law No. 4301 on the Establishment and Administration of Prison Workshops, adopted by Parliament on 6 August 1997, has contributed to solving the financial difficulties. This law provides for 25 per cent of all fees levied by courts and notaries to be allocated to prisons. In this respect, to the extent permitted by Turkey's limited resources, every effort is being made to remove the disadvantages created by the dormitory system and improve the material conditions of detention in prisons.

125. The necessary administrative measures are being taken on a sustained basis in order to reduce tension in prisons and improve relations between prison staff and prisoners. As mentioned in paragraph 83 above, prison superintendents and their deputies attend courses at the Ministry of Justice at specified times each year, where they receive human rights training. Prison superintendents regularly inform their subordinates about human rights. Prison staff also receive in-service training in this field.

126. The Protocol on the Effective Operation of Administration, External Protection and Health Care Services in Penal Institutions and Detention Centres, signed between the Ministry of Justice, the Ministry of the Interior and the Ministry of Health, came into force on 17 January 2001. This protocol contains detailed provisions regarding the admittance, treatment, medical examination and transfers of prisoners in accordance with relevant legislation.

127. Utmost care is taken to ensure that newly arrived prisoners and those placed in the segregation units of prisons are not subjected to ill-treatment. On arrival, each prisoner is accordingly given a copy of a handbook setting out the prison rules and prisoners' rights.

128. Pending the entry into service of prisons based on small living units, violence between prisoners is being dealt with by every available means. The arrangements made for this purpose involve ensuring that prisoners hostile to each other are not placed in the same dormitory or are transferred to other prisons where necessary, and that those who have committed offences which arouse indignation in society are accommodated in separate areas.

129. Allegations that remand and sentenced prisoners are ill-treated by law enforcement officers are duly investigated by the public prosecutors. In this respect, undesirable incidents have occasionally occurred between prisoners and officers in cases where prisoners behaved in a disruptive manner during transfers or during interventions in prisons by security forces to end large-scale disturbances. Incidents of this kind are the subject of inquiries under the relevant provisions of the Turkish Penal Code with respect to both the prisoners' behaviour and the officers' misuse of authority.

130. Further, in order to be able to more effectively suppress disturbances in prisons such as hunger strikes, taking of hostages, arson, sabotage, tunnelling, riots and rebellions without loss of life, the Ministry of Justice and the Ministry of the Interior are working on setting up well-trained emergency intervention teams.

131. In the context of legislative steps towards the reform of the prison system, the Turkish Parliament has adopted, in a short space of time, a number of priority laws drafted by the Ministry of Justice designed to complement the above-mentioned administrative measures. Information on these new laws is provided in paragraphs 132-134 below.

132. Law No. 4666, which was adopted by Parliament on 1 May 2001 and came into effect on 5 May 2001, amended article 16 of Law No. 3713 on Combating Terrorism adopted in 1991. The new law removes the former prohibition on open visits for inmates accused or convicted of offences covered by Law No. 3713 (prisoners are entitled to receive open visits from their families on religious and national holidays under conditions prescribed by the Ministry of Justice). Accordingly, such prisoners may now be visited by their spouses and children once a month. In addition, Law No. 4666 lifts the restriction for prisoners on remand or sentenced for terrorist offences to spend a reasonable part of the day outside their living units in the common areas of the institutions where they are held together with their fellow inmates: it provides for such prisoners to participate in social, cultural, sport and rehabilitation activities; take part in courses designed to improve professional skills in prison workshops and make use of prison libraries for educational purposes. The Minister of Justice issued a detailed circular to all public prosecutors' offices on 7 May 2001 with regard to the modalities for the implementation of Law No. 4666.

133. Law No. 4675 on the Establishment of Supervisory Judges was adopted by Parliament on 16 May 2001 and came into effect on 23 May 2001. This law stipulates that prisoners' complaints with regard to admittance to the penitentiary institutions, accommodation, food, heating, hygiene, health care, work and communication with the outside; and the execution of sentences, the authorization to be transferred to an open penitentiary, decisions on transfers and release and disciplinary precautions and measures are to be examined by supervisory judges who

will take decisions on these issues, which may be appealed by inmates. Complaints may also be submitted by the spouses, lawyers or legal representatives of inmates. With this law, judicial supervision of all practices and activities in prisons with a view to securing proper management of these institutions has been further strengthened.

134. With the adoption by Parliament on 14 June 2001 of Law No. 4681 on the Establishment of Prison Monitoring Boards, which came into force on 21 June 2001, provision has been made for the creation of monitoring boards for prisons which will be composed of five to seven independent non-governmental members. This law is primarily aimed at remedying malfunctions and deficiencies in prison practices through the direct monitoring of prisons by representatives of the general public. The law stipulates that members of the public can apply directly for election to the monitoring boards. Under the law, members of the boards will be elected by the judicial committees in whose judicial district there is a prison, thereby ensuring their independence and impartiality. The board members will serve for four years. The monitoring boards, 140 of which are planned to be established in various provinces in the short term, will be authorized to observe and examine the practices and activities related to the execution and rehabilitation process in prisons and request information from the administrators and employees of the penitentiaries in this regard; interview prisoners to determine their complaints; inform the competent authorities of the shortcomings detected in health and living conditions, internal security and transfers; submit three-monthly reports based on the observations and information related to prisons to the Ministry of Justice, supervisory judges, public prosecutors and, where necessary, to the Human Rights Inquiry Commission of the Grand National Assembly.

135. The three priority laws outlined above are intended to further improve the detention conditions in Turkish prisons. They constitute part of an extensive package of legislation that will culminate in the adoption of a new Code of Penal Execution at the final stage. This package also includes the draft Law on Training Centres for Prison Staff, the draft Law on Expenses of Prison Staff and the draft Law on Social Security Provisions for Working Inmates, all of which are on the Parliament's agenda. The draft Code of Penal Execution is currently being prepared by an expert commission in the Ministry of Justice.

136. As a further step in the process of reform of the prison system, article 155 of the By-law on the Administration of Penal Institutions and Detention Centres and the Execution of Sentences was amended to enable inmates to make telephone calls to their relatives once a week; details to this effect are arranged in a Regulation which was published in the Official Gazette on 23 June 2001.

137. The Turkish authorities are fully committed to take forward this comprehensive reform process aimed at bringing the Turkish prison system into line with the highest international standards, and attach utmost importance to continuing their close cooperation and dialogue with the competent international institutions in this context.

Article 12

138. Article 153 of the Code of Criminal Procedure stipulates that as soon as the public prosecutor is informed of the occurrence of a crime, he is required to make the necessary investigation for the purpose of deciding whether there is any necessity for the filing of a public prosecution. Accordingly, in case a person forwards a warning or complaint to a public prosecutor on the occurrence of torture or ill-treatment, the public prosecutor is obliged to launch an investigation. Public prosecutors must, ex officio, start an investigation upon receipt of any information about torture or ill-treatment, regardless of whether there is a complaint. If the investigation leads to a legal proceeding, the victim of torture can participate in the case as an intervener.

139. According to article 235 of the Penal Code, a public officer who, while performing his duty, learns of the occurrence of an offence related to his duty which requires initiation ex officio of a legal proceeding, he must report it to the relevant authority. Moreover, a public officer who abuses his office in any manner other than that prescribed in the Code shall be punished by imprisonment for up to three years (article 240 of the Penal Code).

140. From 1994 to 2000, 6,416 trials were initiated in criminal courts against members of the security forces for alleged violations of articles 243 and 245 of the Penal Code pertinent to torture and ill-treatment; 5,435 of these trials were concluded in this period. The statistics appended to this report (appendix VIII) on officials in respect of whom trials have been initiated under articles 243 and 245 of the Penal Code indicate, on a yearly basis, the type of sanctions imposed on the concerned officials.

141. In order to facilitate the initiation of investigations and the prosecution of public officials, Law No. 4483 on the Accountability of Civil Servants and Other Public Employees was adopted by Parliament on 2 December 1999. Upon approval by the President and publication in the Official Gazette, it entered into force on 4 December 1999. The full text of the law is provided in appendix IX . The law replaced the previous "Temporary Law on the Prosecution of Civil Servants" dating from 1913, which fell short of meeting contemporary requirements.

142. Law No. 4483 establishes the necessary procedures for initiating and conducting investigations with respect to alleged offences committed by civil servants and other public officials in the performance of their duty without impairing public administration and in a simple, efficient and prompt manner. In this sense, the law is designed to sanction the use of torture and ill-treatment or abuse of power and prevent impunity.

143. The new law clarifies many issues concerning the trial of public officials, determines the bodies authorized to allow an investigation and specifies the authorities entitled to carry out preliminary examinations and preparatory investigations.

144. An important feature of Law No. 4483 is that it sets a "time limit" for the conclusion of cases. According to the law, the procedure for the prosecution of civil servants is as follows: upon receiving any information or complaint about civil servants and other public employees that falls within the scope of this law, public prosecutors shall forward the complaint to the government office to which the civil servant who is the subject of the complaint is attached and

request permission to initiate an investigation. After conducting a preliminary examination, the relevant government body shall reach the decision on the permission to initiate an investigation within at most 30 days, including the period of preliminary examination. When necessary, this period may be extended once and for no longer than 15 days. The government body shall inform the public prosecutor, the civil servant or other public employee under examination and the person who filed the complaint of its decision on whether or not to grant permission for an investigation. The civil servant or other public employee who is under examination may appeal a decision to grant permission for an investigation; the public prosecutor or the person who filed the complaint may appeal a decision not to grant permission for an investigation. The time limit for appeal is 10 days following the notification of the decision of the authorized body. Appeals shall be considered by the Council of State or the regional administrative courts in the jurisdiction of the government body. Appeals shall be considered on a priority basis and shall be finalized within at most three months; decisions are final.

145. It follows that the maximum time limit for the final ruling for the case to be brought before a court is 4½ months. No such time limit was prescribed in the former law. As such, Law No. 4483 aims at preventing impunity for civil servants due to statute of limitations and renders them accountable before courts for all offences.

Article 13

146. In accordance with article 74 of the Constitution, entitled "Right of petition", Turkish citizens have the right to apply in writing to the competent authorities and to the Grand National Assembly of Turkey with regard to requests and complaints concerning themselves or the public. That article also stipulates that the result of the application shall be made known to the petitioner in writing.

147. How the right of petition is to be used is determined in Law No. 3071 of 1 January 1984, entitled "The Use of the Right of Petition". According to this law, the result of the process initiated upon a request or complaint of a Turkish citizen concerning himself or the public shall be made known to him within two months (art. 7). The law also regulates the right of petition to the Grand National Assembly.

148. Reporting of crimes is regulated in article 151 of the Code of Criminal Procedure. According to this article, crimes may be reported orally or in writing to public prosecutors, police officials or judges of minor courts. Such reports may also be made to the legal authorities through senior administrative officials of towns and districts. As soon as they are informed of the occurrence of a crime, public prosecutors are required to make the necessary investigation in order to decide whether there is any necessity for the filing of a public prosecution (article 153 of the Code of Criminal Procedure).

149. If the petitioner is, at the same time, the aggrieved, he may, within 15 days after notice, object to the chief justice of the nearest court which sees the aggravated felony cases and with which the public prosecutor is connected (art. 165). If the court is convinced that the petition is well founded and rightful, it orders the opening of a public prosecution. The public prosecutor executes this decision (art. 168). Any person who is injured by the offence may, at any phase of the investigation, intervene in the public prosecution (art. 365).

150. Perjury and false swearing is sanctioned in article 286 and the following articles of the Penal Code. Whoever has caused a person to act as a witness, expert witness or interpreter in order to have him commit perjury, through giving money or providing or promising a benefit or through inciting or threatening or through using fraud, ruse or influence, shall be punished by heavy imprisonment for one month to one year (art. 291).

151. In accordance with article 22 (1) of the Convention, Turkish citizens who claim to be victims of a violation by Turkey of the provisions of the Convention are entitled to send communications to the Committee against Torture. Turkish citizens may also make individual applications to the European Court of Human Rights to the effect that Turkey has violated its obligations under the Convention on the Protection of Human Rights and Fundamental Freedoms.

152. In addition to the above-mentioned international mechanisms, the domestic institutional framework in Turkey with respect to the protection and promotion of human rights has been progressively strengthened in the period covered by this report.

153. The Human Rights Inquiry Commission of the Turkish Grand National Assembly was established by Law No. 3686 on 5 December 1990 in order to protect and promote human rights in Turkey in accordance with contemporary universal values. Among the various tasks assigned to the Commission by Law No. 3686, the following should be emphasized:

(a) To follow developments related to human rights in international forums;

(b) To determine the changes which have to be made in order to ensure the conformity of the Constitution and national legislation with the international conventions on human rights to which Turkey is a party and propose legislative amendments to this effect;

(c) To submit, upon request or on its own initiative, opinions and proposals concerning topics on the agenda of other specialized commissions of the Turkish Grand National Assembly which fall within its area of competence;

(d) To examine the extent to which human rights practices in Turkey comply with the requirements of the Constitution, national legislation and international conventions to which Turkey is a party and, to that end, to carry out research and propose improvements and remedies;

(e) To examine applications relating to alleged violations of human rights and to forward these to the relevant authorities when it deems necessary;

(f) To examine, where necessary, violations of human rights occurring in other countries and to bring these violations to the attention of the parliamentarians of the country concerned, either directly or through existing interparliamentary forums.

154. The Commission consists of 25 members. The Chairman and members of the Commission are elected by the National Assembly from among its members. Political party groups and independents are represented in the Commission according to the ratio of their seats -

with the exception of vacant seats - to the total number of seats in Parliament. Two elections are held during one legislative period to determine the members of the Commission. The duration of assignment for those elected during the first round is two years, and the duration of assignment for those elected during the second round is three years. The expenses of the Commission are met from the general budget of the National Assembly.

155. The Human Rights Inquiry Commission possesses extensive powers of investigation. In the performance of its duties, it is empowered to request information from ministries and other government departments, local authorities, universities and other public institutions as well as private establishments; and conduct enquiries on their premises and invite the representatives of these bodies to appear before it and provide information. If it deems necessary, the Commission may also refer to the knowledge of experts whom it selects and may conduct its work outside Ankara. The Commission may conduct its activities through the establishment of subcommissions.

156. The Commission submits an annual report as well as ad hoc reports which it prepares concerning the discharge of its duties and issues within its mandate to the Presidency of the National Assembly. Upon the agreement of the Consultative Council, these reports may be included in the agenda of the National Assembly to be discussed. The Commission's reports are also submitted to the Prime Ministry and the related ministries. If the Commission deems it necessary, the reports may be transmitted by the Presidency of the Turkish Grand National Assembly to the authority concerned with a request for the specific deficiencies pointed to therein to be remedied. The Commission may also refer a specific case considered by it to the judiciary with a request for the initiation of the prosecution of officials who are alleged to be at fault.

157. The Commission can receive individual applications directly. There is no specific condition as to the filing of complaints. Any citizen may submit a petition to the Commission with regard to alleged infractions by official authorities in the area of human rights. All applicants are informed within three months at the latest of the results of the inquiries undertaken with respect to their applications.

158. Over 5,000 applications pertaining to various matters (among them applications about missing persons; allegations of torture or ill-treatment; complaints relating to conditions in prisons; complaints on employment, retirement, immigration, property and judicial matters; requests for material compensation, etc.) have been made to the Human Rights Inquiry Commission since 1 March 1991, when it became operational. These applications are highly useful for determining the issues where citizens' complaints are concentrated, as well as reflecting the areas of public administration which are in most urgent need of reform.

159. A certain number of the incoming applications necessitate the immediate intervention of the Commission. In particular, applications concerning allegations of torture or ill-treatment reported to have been perpetrated by the security forces are immediately acted upon through the Ministry of the Interior, the Directorate General of Security and the related provincial public prosecutors and authorities. The matter may also be handled by an ad hoc subcommission

established for this purpose. In the context of applications concerning torture or ill-treatment, the Commission aims principally at bringing the allegations therein to the attention of the public prosecutors and related official authorities and to request that an appropriate investigation be initiated concerning those claims.

160. In addition to the above-mentioned parliamentary commission, a wide array of institutions with competence for human rights that are attached to the Government have been established in Turkey. In this respect, a Minister of State in each Government since 1991 has been entrusted with special responsibility for human rights.

161. The status of internal organizational structures within the Government concerning the protection of human rights has been further upgraded and strengthened by Law No. 4643, which was approved by Parliament on 12 April 2001 and entered into force on 21 April 2001. This law established the Human Rights High Council, which had previously functioned since 1997 as the Human Rights Coordinating High Committee. Human rights work within the Government is spearheaded by the High Council, chaired by the Minister of State responsible for human rights. The Undersecretaries of the Prime Ministry and of the Ministries of Justice, the Interior, Foreign Affairs, National Education, Health and Labour are members of the High Council. The High Council, with a view to increasing its productivity, may invite high-level officials of other public institutions or representatives of non-governmental organizations which carry out activities in the field of human rights, as well as academicians who specialize in human rights, to participate in its meetings, which are held once a month.

162. The Human Rights High Council is entrusted with making recommendations to the relevant ministries and public institutions and proposing draft legislation in the context of the protection and promotion of human rights. The High Council also investigates allegations of human rights violations in Turkey, the results of which are made public periodically. The High Council may also receive individual complaints on human rights and forward them to the related authorities for action. The High Council, which has formed several subcommittees to maximize its efficiency, has to date taken a large number of legal and administrative decisions and has seen to the implementation of some of them, while setting a timetable for preparatory work on the remaining ones.

163. By Law No. 4643, a Human Rights Department affiliated to the Office of the Prime Minister, which is entrusted with coordinating the work of various government agencies in the field of human rights, has also been created. The Human Rights Department functions as the secretariat of the High Council. The staff of the Department is composed of personnel appointed by the Ministries represented in the High Council. The principal functions of the Human Rights Department are as follows:

(a) Coordination between human rights units of relevant public institutions;

(b) Ensuring compliance with provisions regarding the protection and promotion of human rights in relevant legislation;

(c) Coordination of work towards aligning Turkey's human rights legislation with international instruments to which Turkey is a party and making proposals to this effect;

(d) Coordination of in-service training in the field of human rights for members of relevant official bodies;

(e) Investigation of complaints and allegations regarding violations of human rights and coordination of measures to be taken for remedying them.

164. With the said law, a Human Rights Advisory Council has been set up within the Prime Ministry, which will serve as a link between government bodies and non-governmental organizations on human rights issues and provide advice to relevant institutions on domestic and international matters with respect to human rights. The Advisory Council will be composed of representatives of public institutions and non-governmental bodies; it will make recommendations and present reports on the protection and promotion of human rights.

165. Law No. 4643 also provides for the establishment of human rights inquiry delegations, composed of representatives of official and non-governmental bodies, which will investigate allegations regarding human rights violations locally and report their findings to the relevant authorities.

166. By a government regulation dated 2 November 2000, Human Rights Councils have been established in all provinces and districts throughout Turkey. These councils, which have begun to function immediately, are entrusted with investigating complaints and allegations regarding human rights abuses, transmitting their findings to the relevant authorities and providing information to local communities about human rights. Representatives of local municipalities, universities, bar associations, medical chambers, trade and industry chambers, non-governmental organizations and media institutions as well as government officials are represented on the councils.

167. To further augment the domestic institutional framework regarding human rights protection, the draft law on the creation of the institution of "Public Inspector", which will function as an Ombudsman, has been presented to Parliament and is currently on the agenda of the Justice Commission. The mandate of this institution, which is intended to be consistent with universal norms and compatible with conditions prevalent in Turkey, will be to protect and uphold the rights of individuals against infractions by official bodies.

Article 14

168. A basic tenet of the Turkish legal system is that the State is directly responsible for excessive deeds or offences committed by public officials. Consequently, requests for compensation for damages incurred from such acts are directed to the State.

169. In this respect, article 40 of the Constitution reads as follows:

> "Everyone whose Constitutional rights and freedoms have been violated has the right to request prompt access to the competent authorities. Damages incurred by any person through unlawful treatment by holders of public office shall be compensated for by the State. The State reserves the right of recourse to the official responsible."

170. Article 125 of the Constitution, entitled "Recourse to Judicial Review", stipulates that recourse to judicial review shall be available against all actions and acts of the administration. This article also states that the Administration is liable to compensate for damages resulting from its actions and acts.

171. Article 129 of the Constitution provides that actions for damages arising from faults committed by civil servants and other public employees in the exercise of their duties shall be brought against the Administration.

172. Article 13 of Law No. 657 on Civil Servants stipulates that in case a loss occurs because of an unlawful act of a public official, the State shall be directly responsible and a case for compensation shall be opened in an administrative court. Article 467 of the Turkish Penal Code enables persons who have been subjected to ill-treatment causing losses and damage to file lawsuits for indemnity.

173. In the light of the above-mentioned constitutional and legal provisions, Law No. 466 on Indemnifying People who are Unlawfully Arrested or Detained was adopted on 7 May 1964. According to this law, the following persons are entitled to receive compensation from the State:

(a) Those who have been unlawfully detained or arrested or whose detention period has been unlawfully prolonged;

(b) Those who have not been immediately informed of the grounds for their arrest or detention and the charges against them;

(c) Those who have not been brought before a judge after being arrested or detained within the time limit laid down by statute for that purpose;

(d) Those who have been deprived of their liberty without a court order after the statutory time limit for being brought before a judge has expired;

(e) Those whose next of kin have not been immediately informed of their arrest or detention;

(f) Those who, after being arrested or detained in accordance with the law, are not subsequently committed for trial, or are acquitted or discharged after standing trial;

(g) Those who have been sentenced to a period of imprisonment shorter than the period for which they were detained or have been ordered to pay a pecuniary penalty only.

174. Article 2 of Law No. 466 stipulates that any person who has sustained damage for the reasons set out in article 1 may lodge a claim for damages with the Heavy Penal (Felony) Court having jurisdiction in respect of his place of residence within three months of the date on which the decision concerning the allegations which form the basis of his claim becomes final.

Article 15

175. "Testimony freely given" is a general principle of law in the Turkish legal system; the right to remain silent is enshrined in article 38 of the Constitution, which states that "No one shall be compelled to make a statement that would incriminate himself or his legal next of kin, or to present such incriminating evidence." The purpose indicated in the explanation of this paragraph includes the prevention of torture or cruel, inhuman or degrading treatment of detainees and prisoners.

176. The right to remain silent is also embodied in the Code of Criminal Procedure. As mentioned in paragraph 29 above, article 135 of the Code of Criminal Procedure stipulates that before interrogation takes place, the accused must be informed of the nature of the charges against him and asked if he wishes to answer these charges. Article 135 (a), referred to in paragraph 26 above, states that testimonies extracted through torture or ill-treatment shall not be taken into account as evidence in criminal proceedings, even with the consent of the testifying person.

177. Article 254 of the Code of Criminal Procedure states that evidence gathered illegally as a result of intentional acts of investigation by prosecuting organs cannot constitute a basis for the verdict. This article further reinforces the principle that any evidence, including testimony and statements obtained under any form of duress, cannot be taken into account by the courts.

Article 16

178. Under Turkish law, all acts causing bodily pain and mental anguish necessitate punishment. The specific provisions in Turkish law relevant to the implementation of article 16 of the Convention are found in articles 243-251 of the Turkish Penal Code. With the exception of articles 243 and 245, the texts of which are in paragraph 57 above, the said articles are provided below:

"Article 246

> "If a person's property or real estate is purchased by force, or seized or sold dependent upon an invalid claim, or if the owner's property rights are violated in absence of public purpose and without paying its price in advance by government officials, the property shall be returned to the owner and, where the property no longer exists, the offender shall be compelled to pay its value, shall be punished by imprisonment for not less than three months and not more than two years and shall be temporarily disqualified from the civil service.

"Article 247

"If any public officer or any other person or his employee undertaking the collection of public revenue collects lawful taxes or fees or duties in excess of the amount specified by laws and regulations, that public officer or other persons shall be imprisoned for six months to three years and those employees shall be imprisoned for not more than six months. The excess amount collected shall be returned and the offender shall be ordered to pay twice this amount as a fine.

"Article 248

"If a public officer, in addition to the fine prescribed by law, takes money or any other item as a punishment, or collects a fine which he is lawfully assigned to collect in excess of the lawful amount, the additional sum he has thus taken shall be returned to its owner and twice this amount shall be taken from him as a fine and he shall be punished by imprisonment for six months to three years.

"Article 249

"If any public officer or any other person uses unpaid persons in any kind of work other than in public services specified by laws or regulations or deemed necessary by the public, wages, according to local rates for persons thus used, shall be collected from the offender and given to these persons and the offender shall be punished for a period of six months to three years depending upon the gravity of the offence. Where the offender is a public officer, he shall be temporarily disqualified from the civil service.

"Article 250

"Officials whose duty it is to serve notifications or warrants, soldiers, gendarmes, military or civil officers who quarter at the houses of individuals without their consent or who take food or fodder without paying for it shall be ordered to reimburse the equivalent of what they have received and shall be imprisoned for not more than one month. If soldiers or gendarmes act as a group and commit the offences defined in the foregoing paragraph, the cost of the items taken shall be collected from their commanding officer and they shall be punished by imprisonment for six months to three years. If force or violence is used during the commission of this offence, the punishment shall be increased by one third.

"Article 251

"If a public officer commits a felony against a person during the performance of his duty, the punishment prescribed by law for that felony shall be increased by one third to one half, where not so provided by law".

List of appendices

I. A comparative synopsis of detention periods in Turkey.

II. Prime Minister's Circular dated 3 December 1997.

III. Prime Minister's Circular dated 26 February 1998.

IV. Regulation on Apprehension, Custody and Interrogation.

V. Prime Minister's Circular dated 25 June 1999.

VI. Interior Minister's Circular dated 24 July 2001.

VII. Health Ministry Circular dated 20 September 2000.

VIII. Statistical data pertinent to the application of articles 243 and 245 of the Turkish Penal Code.

IX. Law on the Accountability of Civil Servants and Other Public Employees.

X. Letter dated 24 August 2001 to the President of the European Committee for the Prevention of Torture.

Appendix I

A comparative synopsis of detention in Turkey

A. Previous legislation

	Individual crimes within scope of general courts	Collective crimes within scope of general courts	Individual crimes within scope of State security courts	Collective crimes within scope of State security courts
Under regular conditions	24 hrs* Counsel	24 hrs* + 3 days - PD* + 4 days - JD Counsel	48 hrs	15 days
Under emergency conditions	24 hrs*	24 hrs* + 3 days - PD* + 4 days - JD Counsel	96 hrs	30 days

B. Law No. 4229

	Individual crimes within scope of general courts	Collective crimes within scope of general courts	Individual crimes within scope of State security courts	Collective crimes within scope of State security courts
Under regular conditions	24 hrs* Counsel	24 hrs* + 3 days - PD* + 3 days - JD Counsel	48 hrs* Arrest or release after 48 hrs If arrested counsel	48 hrs* + 2 days - PD* + 3 days - JD After 4 days counsel
Under emergency conditions	24 hrs* Counsel	24 hrs* + 3 days - PD* + 3 days - JD Counsel	48 hrs* Arrest or release after 48 hrs If arrested counsel	48 hrs* + 2 days - PD* + 6 days - JD After 4 days counsel

Note: All periods indicate maximum periods.

* The right to make an application against the act of putting the suspect under custody, as well as against the decision of the prosecutor to extend the period of detention (habeas corpus).

PD - Prosecutor's Decision to extend the period of detention.
JD - Judge's Decision to extend the period of detention.
Counsel - Right to access to a counsel.
