

TAIEX PEER REVIEW MISSION TO TURKEY

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REPORT OF Dr J J McMANUS

ON

PENITENTIARIES

Introduction

In the two years since the last peer review visit to Turkey the most significant development in relation to Prisons has been the continued, relentless rise in the prison population. In these two years alone, it has risen by 20% and has now reached 120,812, more than double what it was in 2005. The prison authorities had set out an ambitious plan to close the old, small prisons distributed around the country and build new, state of the art buildings to provide decent living conditions and challenging regimes for prisoners. That would have been a challenge enough on its own, but the pressure of numbers has been such that the new buildings are often overcrowded immediately they have opened. This results in enormous pressure on staff and other resources and seriously limits the possibility of using the new builds to implement an innovative vision of imprisonment. It has also caused the retention of some of the small old prisons, well beyond their useful life and offering conditions which everyone recognises are not acceptable today.

A major factor continuing to contribute to over-population in prisons is the length of time it can take to complete a trial and impose a sentence in criminal cases. Some 47% of the prison population is not finally sentenced – either convicted and awaiting sentence or awaiting trial. A new law has been passed limiting the period which can be spent in custody before the imposition of final sentence (to a maximum of ten years in very serious cases and five in others). It is difficult to see how it can take as long as ten years to complete the sentencing process and one can only conclude that there needs to be a fundamental review of the operation of the criminal judiciary and courts to bring this period down closer to the European average. This process should examine not only resources allocated to the criminal justice process but also practices in relation to ordering pre-trial custody and procedures for regular reviews of decisions to remand in custody. It is fundamentally important to tackle prison crowding from the demand side as well as the supply side. Many countries have experienced the futility of trying to build their way out of overcrowding – the more prisons that are built the more people are sent to them.

Despite this depressing start to my report, I also have many positive developments on which to comment. Throughout the mission we met people at all levels of the system who are clearly very dedicated to improvements in criminal justice. We noted changes in law and practice which bring Turkey closer to the practice of the rest of the Council of Europe and we witnessed the effectiveness of several programmes funded by IGOs and charities which are achieving great successes in the country.

With only four days at our disposal we decided to concentrate mainly on three important parts of the prison system: Accountability and transparency; Medical Services; Children in Prison. In the process of meeting with people and visiting prisons we also noticed some other relatively small matters which deserve mention. A major issue, however, is the apparent lack of a general principle governing the restrictions which can legitimately be imposed on

persons deprived of their liberty for whatever reason. Turkey has now adopted a statement of the purpose of imprisonment, which highlights the focus on rehabilitation and preparing the prisoner for return to the community. But nowhere does it appear to have a statement limiting what can be done in punishment. It should be recalled that, in each of the statements of rights in the Articles of the European Convention which allows the right to be limited, the Convention stresses the need for **legitimacy, proportionality, accountability, necessity and non-discrimination** in the decision making process. It would be extremely useful in focussing minds in Turkey – of legislators, prison practitioners and the various watchdogs – if they could agree on a statement guaranteeing each of these principles is respected when the rights of a person in custody are curtailed. One small example might make the point. We heard that boys in the Juvenile wing of Bursa E Type closed prison were routinely subjected to compulsory hair cuts on arrival. Staff insisted this was only for those with long hair, but this does not affect the principles. When we apply the Convention tests to this practice we conclude that it is of doubtful legality (seemingly it was introduced by a memo from the Centre), it is not proportionate to any threat long hair might pose, there is no accountability for the decision, with contemporary shampoos there is no necessity for hair cutting and the practice discriminates against young people. In other words it fails each of the tests and should be stopped immediately. More importantly, these tests should be applied to all the restrictions imposed on rights as guaranteed by the Convention *irrespective of what past practice and even current legislation might say*. Only by doing this can the Turkish system move forward.

Accordingly, my first recommendations is;

The Turkish Authorities should adopt a general statement of principles underlying restrictions which can be imposed on prisoners' rights. The statement should incorporate the five principles of the European Convention of Human Rights and should be used to assess the acceptability of each restriction of rights in the law and in individual applications of the law.

Probation

We also had the opportunity of looking briefly at the **Probation System**, which was introduced under the 2005 law. In 2010 it dealt with an astonishing 104,622 people nationwide, many of whom would have otherwise gone to prison. The single biggest client group (52,280) is drug abusers, who must undertake a course and remain drug free for a full year before the order is discharged. The Service also provides supervision as an alternative to prosecution in minor cases, as part of judicial control for people who would otherwise be in pre-trial custody, for those undergoing suspended or postponed sentences and for those on conditional release. It also attempts to do some work with victims of crime to assist them to come to terms with what has happened to them. One of the marks of the Service's success is precisely the range of uses made of it by the judicial system, but it could also be a threat to the viability of the Service.

There are some 1300 staff employed by the Service, with some in each district of the country. For some reason each office is headed by a prosecutor and run by a branch director and there is also considerable involvement by judges. Among the professional staff there are psychologists, teachers, social workers and sociologists, many of whom have been trained under an OSCE programme which concentrated on training trainers and continues involvement with the development of the programme. It gave the impression of being a highly professional service and is making an enormous impact on keeping the prison population from absolutely phenomenal growth.

One matter of concern arose for me. The Service provides Social Investigation Reports at the request of judges. Unlike the practice in most countries, these reports are presented to the court before a verdict in the case is reached, thus potentially compromising the presumption of innocence. There is, of course, no problem with such reports being presented after conviction, as an aid to sentencing (indeed, it might even be a good idea to make them compulsory in cases where imprisonment or probation is being considered). They should, however, have no part to play in the determination of guilt or innocence. It is particularly surprising given the number of legally qualified people involved with the system that this practice has been allowed to develop. I would **recommend that this practice should be stopped as soon as possible and Social Investigation Reports should be submitted only after a verdict has been reached.**

I would also **suggest** that the Probation Service should be organised by professional social care providers rather than by judges and prosecutors. I shall be making the same suggestion in relation to the professionalization of the prison administration. When either body requires legal advice it should obtain this from its own staff. Maintaining oversight by judges and prosecutors demeans the status of the system administrators and the systems themselves. It also imposes an unnecessary level of administration and from bodies which have no professional understanding of the roles which these bodies perform. Incidentally this may free up judges to perform functions in courts and reduce the time taken for criminal courts to reach final verdicts!

The Prison System

(a) Medical Matters

Organisational Issues

The provision of medical services in Turkish prisons has been the subject of adverse comment by the CPT on several occasions. One of the responses of the State has been a recent decision to transfer the responsibility for delivering individual health care services from the Ministry of Justice to the Ministry of Health, with a view to encouraging “equivalence of care” between the prison and the community. This is a move which is finding increasing support in other European countries.

There are, however, some problems with this approach. Prison medical officers are required to carry out a far wider range of duties than doctors in general practice in the community. In addition to seeing prisoners requesting consultations, the medical staff are also required to carry out routine screening on newly arrived prisoners, to monitor hygiene conditions throughout the prison, to ensure that a balanced and appropriate diet is being provided to all categories of prisoner and that the food is being stored, prepared and served in a manner consistent with health and safety requirements, to visit regularly prisoners undergoing solitary confinement, whether as part of their sentence or as a disciplinary sanction and to ensure that all medications are properly stored and distributed to patients as required. We were informed that responsibilities in these areas fall to the Ministry of Justice and other ministries like the Ministry of Agriculture and Rural Affairs. Nonetheless, it is important that the prison doctor, who is in the establishment every day and is in a position to monitor these areas on a regular basis, has some input into their supervision.

It is also the case that prisoners may present with particular health problems quite different from those in the outside community. Thus we know that rates of mental illness are higher among prison populations, alcohol and drug misuse are more prominent and the likelihood of infectious diseases, especially hepatitis is likely to be higher. When we add to this the possible security implications surrounding the work of the medical staff in prisons, it is clear that the demands on a prison medic are both significantly different and greater than those in the outside world.

The Turkish authorities have recognised this in the provisions which they are making for the numbers of doctors allocated to each prison. Thus we were informed that the ratio of doctors to patients in the outside world is 1: 3,500 while in the prison it is proposed to have a ratio of 1: 1,000. In terms of European standards, this is a very low ratio. The CPT, for example, looks for a full time doctor for each 200 prisoners (though this figure is not reached in many countries). Perhaps a figure somewhere in between these two would be more acceptable. We were informed that the former recruitment problems with doctors have now been overcome (by the simple expedient of doubling their salaries). This is to be greatly welcomed.

The 2009 Protocol governing the transfer of responsibility between the two Ministries covers primarily the provision of doctors' services, though some dental and nursing services have also become the responsibility of the Ministry of Health. It might be more rational to have all medical staff under the same authority.

Some NGOs informed us that there are still problems in ensuring transfer of prisoners to ordinary hospitals when this is necessary for their treatment. The Ministry of Health attempts to minimise the need for such transfers by providing 24 hour polyclinic coverage in prisons and continues to conduct studies to improve services. Ministry of Justice officials did accept that it was sometimes difficult to provide the appropriate escort (which is the responsibility of the gendarmerie), especially to hospitals which do not have secure rooms. Steps are now being taken to ensure that all hospitals regularly used by prisons do have secure rooms available and there are also moves to improve facilities within prisons to enable them to offer

the appropriate treatment to a wider range of illnesses. The development of prison hospitals will also reduce this problem.

Medical Confidentiality and Security

Numerous complaints have been received over the years about medical examinations routinely being conducted in the presence of security staff and of prisoners routinely being handcuffed during medical consultations in outside hospitals. Prisoners continue to inform that security staff remain in the consultation room when the prisoner is being examined by a doctor. This is not acceptable. Not only does it breach the confidentiality requirement in the relationship between prisoner and doctor, but it also reduces the efficacy of the medical examination as a contributor towards the prevention or detection of ill treatment. It is accepted that there will be a few cases where security requirements dictate that an officer should be in the vicinity, but these cases should be a rare exception to the general rule and should only be at the request of the doctor. When it is necessary to have a guard nearby, steps should be taken to ensure that the conversation between the patient and the doctor remains confidential. All non-medical staff involved in such arrangements should be reminded that they are bound by the requirements of medical confidentiality in this setting.

Staff confirmed that it was routine practice to handcuff all prisoners who were being taken out to outside hospitals and for cuffs only to be removed at the request of the treating doctor. The default position should be exactly the opposite of this; cuffs should only be imposed when an individual risk assessment indicates that they are required; cuffs should always be removed when an individual is being treated, unless the doctor requests otherwise. This problem should be reduced when each hospital used by the prisons has an appropriately secure treatment area. **In the meantime, however, staff should be instructed to review the practice of routine handcuffing.**

Forensic Medical Services

We heard from NGOs that there can be particular problems in obtaining forensic medical reports for court and other purposes because the only recognised provider of such reports is located in Istanbul. They requested in particular that reports from University Forensic Units should also be recognised by the legal system. Ministry of Health officials informed us of recent training courses which they had run in order to give as many doctors as possible some knowledge and understanding of forensic issues and a basic ability to recognise causes of injuries. It is particularly to be welcomed that some 3,500 doctors in Turkey have been trained under the Istanbul Protocol. However, if courts and judges continue to recognise only reports from a single source, it will not necessarily reduce impunity. **It is recommended that the Authorities should move towards a system where individual practitioners are recognised for the purposes of providing forensic medical reports which are acceptable for all legal purposes.**

(b) Children in Prison

Turkey has some 2,500 children in prison, with a “child” defined as a person between the ages of 12 and 18. This is an enormous number by international standards. Serious consideration should be given to reviewing the whole system so that imprisonment for children becomes a very rare occurrence.

Of this 2,500, only some 300 are convicted and finally sentenced prisoners, mainly sentenced to two years and over. Those sentenced to less than two years are generally placed on probation or kept in juvenile educational centres. However, return to prison is a possible disciplinary punishment for those in educational houses who commit serious disciplinary offences in the correctional house. This leaves some 2,200 children on remand or awaiting final sentence. Remand periods in one of the establishments visited (Maltepe Juvenile Prison) ranged from two months to two years, with alleged offences like murder, drugs and extortion commanding the longer periods. Of course it happens that some children become adults during these lengthy periods and are then transferred to adult facilities. This does not alter the fact that they have spent a considerable part of their childhood in a prison.

There is not a closed correctional centre for juveniles in each part of the country, though there are plans to build a further five such establishments. Where there are no such establishments, the child will be sent to a wing of an adult closed establishment. As far as possible such children are kept apart from adult prisoners, but there are regular opportunities for contacts, such as when accessing medical services and at visits and exercise. There is a particular problem with female children since there are rarely enough of them to fill one block. An imaginative solution had been reached in one prison visited, where two Roma girls were accommodated with adult female members of their own families who were also on remand.

When accommodated in ordinary adult prisons, children are subject to the same regime as the adults. This regime is very restricted for remand prisoners and basically involves entertaining themselves in the yard of their cell for most of the day. In the Bursa E-Type facility some efforts were being made to provide structured activities for the boys, with classes being offered four times a week for 90 minutes per time, a football or basketball game once a week and a cinema showing once or twice a week. The boys reckoned this gave them a total of about ten hours out of dormitory organised activity each week. For the rest of the time, they organise their own activities. The dedicated establishments for children had a much better and fuller regime – at least the one we saw in Maltepe, which is one of four establishments selected for a pilot study which has brought extra resources for education, sports activities and offending behaviour courses. Here the boys all underwent an assessment programme which provides an individual risk and needs profile and allows plans to be prepared for each inmate. All of the boys here were pre-trial, but this did not seem to prevent their participation in the assessment programme, with only 15 boys having refused to take part since the start of the programme. (Risk and needs assessments require the subject to provide information about offending history as well as other social and educational factors. Seeking such information before a person has been convicted is a delicate process and I would want assurances that the information generated in this process is not shared with trial courts unless and until a conviction is recorded against the boy.)

One of the breakthroughs in Maltepe is situating a member of the security staff inside each living unit when the boys are locked up. In the unit we entered, the guard was sitting at the table in the prisoners' common room talking to a group of the prisoners. He informed us that this was now normal practice and his job is just to be there and talk normally to the residents. I have never seen this anywhere else in Turkey – at best, security staff enter the units to conduct a numbers check three times per day and have little, if any, normal conversation with prisoners. In addition to this, there was a constructive educational programme running in the establishment, with 131 of the total population of 338 taking an active part in it. There were also courses in Anger Management, Personal Development, Addictions, Reproductive Health and Self Assertiveness. Training was available in ceramics, computers, painting, hairdressing, English and chess, and a social and cultural programme covered sports, movies and preparation for feasts. In all, it was a veritable hive of activity compared with the situation where children have only a small part of an adult establishment. It remains the case that these children spend lengthy periods in prison awaiting trial and sentence, but the experience here is considerably less negative than in Bursa.

Contact with the outside world is usually allowed for all children (there may be exceptions when the prosecutor wants to keep a child incommunicado while pursuing enquiries, but these did seem to be rare.) Access to telephone was only allowed when the prisoner could produce a telephone bill bearing the number he wished to phone – presumably to ensure that this number was prepared to accept telephone calls from the prisoner. There are easier ways of checking this without introducing the delay and bureaucracy this involves (e.g. by staff phoning the number first and checking with whoever answers). More difficult to understand, however, is the practice in relation to visits, which is the one adopted in all prisons in Turkey. This allows each prisoner a weekly visit of one hour with close family or approved friends. One such visit each month is held in open conditions, with visitors and prisoners sitting around a table having a normal conversation. For the other three weeks of the month all visits are closed – i.e. prisoners and visitors are separated by a Perspex screen and either talk through a telephone or shout at each other in order to be heard over the inevitable din which results from all visitors and prisoners doing the same thing. We witnessed this process with the children receiving visits in Bursa. It was humiliating for prisoners and visitors. No chairs were provided on either side of the screen, so everyone stood. Each group had very limited space and it was totally impossible to have a private conversation. Mothers and fathers, very often with a young sibling of the prisoner, attempted to communicate with their son, but most words must have been lost in the cacophony. And no emotions were possible.

This is precisely the kind of situation in which the PLANN test should be used. There are, of course, situations in which it is necessary to impose closed visits on individual prisoners – where intelligence tells us that an open visit is likely to be used for the introduction of contraband or to carry out an attack on a visitor (or prisoner) or to be abused in some other way. But the restrictions must be lawful, necessary, proportionate, accountable and non-discriminatory. The fact that one visit per month can be safely held in open conditions would provide prima facie evidence that these tests are not being met, with the result that unnecessary restrictions are being imposed on the rights of both prisoners and visitors. This

practice is set out in the law; the law should be changed. In the meantime, steps should be taken at Bursa to ensure a minimum respect for the rights of visitors and prisoners undergoing closed visits: they should be provided with seating, in soundproofed cubicles and with an efficient system for ensuring both sides can hear and be heard without having to shout.

Conclusion

The most important change needed is a fundamental review of the practice of imprisoning so many children pending trial and for such long periods. In many European countries this age group is subject to special juvenile procedures which attempt to deal with criminal allegations much more speedily than with adults. In the rare cases where pre-trial detention is absolutely required, facilities are often run by the Ministry of Education or Social Care, with only highly exceptional cases ending up in prison. If imprisonment is indicated, it is crucial that a full regime of activities is offered to prisoners. The CPT asks for a minimum of 8 hours constructive activity out of cell for adult prisoners; for children the standard must be even higher. Education and sports should constitute the major parts of such activities and the programme being developed in Maltepe is a good model to follow everywhere. Equally, there should be no other restrictions on the rights of the child than are necessary for the maintenance of good order and discipline and the administration of justice. Thus, compulsory haircuts, restrictions on telephones and the imposition of closed visits should have no place in the regime.

(c) Adult Imprisonment

Accountability

Prison is inherently a closed world and positive steps are required to ensure proper accountability and transparency in relation to the myriad of decisions which have to be taken which fundamentally affect the quality of life of people committed to prison. In its acceptance of the Convention for Prevention of Torture, Inhuman and Degrading Treatment or Punishment of the Council of Europe, and in its move towards full membership of the United Nations Optional Protocol on Torture, Turkey has shown itself willing to open up its prisons to international inspection. OPCAT also requires member states to establish National Preventative Mechanisms to ensure accountability at a local level and Turkey has commenced the process of creating NPMs.

There are several bodies currently involved in maintaining oversight over prisons. Thus the prosecutors retain some of their historical functions of providing general oversight of prison conditions, though their role has diminished considerably in recent times. Nonetheless, the prosecutor often appears as the real head of the prison, with the governor apparently junior to him. Prosecutors spoken with explained that their job was to ensure that the law was applied in the prison and to carry out sentence calculation and prepare parole cases. In most countries these duties are the responsibility of the professional prison governor, supported as necessary by headquarters colleagues and, of course, appropriate training. If they cannot be trusted to know and apply the law in their establishments, they are in the wrong job! Prosecutors have

lost some of their function to the Enforcement Judges and all of the prosecutors we spoke with indicated that they would be quite happy to lose their other functions in the prisons. This may be a good time to take this step and increase the professionalism of the governors.

The Enforcement Judges are a new creation and there appeared to be considerable misunderstanding about their role in prisons – not only among prisoners (many of whom had never heard of them), but also among prison staff and even prosecutors. It appears that their main function is to act as an appeal court against disciplinary decisions made by disciplinary commissions within the prisons. Each judge has responsibility for several prisons, but most exercise their role without actually visiting the prison. On occasions prisoners are brought to them in the courthouse for hearings, but most of their work is conducted on paper. This is fine if prisoners are highly literate or have a lawyer acting for them, but the lack of a presence in the prison means that many prisoners do not know their function and cannot effectively contact them. It also limits the development of the judges' understanding of the nature of the environment in which their judgments have to operate.

Prison Monitoring Boards have also been established with a view to involving lay people in the supervision of prisons. Appointed by a local judge and the chief prosecutor of the district in which they will operate, these volunteers have the right to visit each of their prisons and to talk to prisoners in private. We met with one board, each member of which was a professional –doctors, pharmacist, lawyer, social services manager – and they informed us that most boards were similarly constituted. This board, of five members, was responsible for seven prisons in total and carried out the visits in their spare time. They had had only basic training on appointment, currently had no office or secretarial support and relied on the prisons to provide transport for them. Accordingly all visits were effectively notified in advance. They rely on prisoners' lawyers to inform the prisoners about their role – there is no information sheet given to prisoners about them - but prisoners can and do approach them when they are in a prison and raise issues with them. When the Board wishes to suggest some change in practice, it goes first to the prison governor, then to the prosecutor and ultimately to the Ministry of Justice. The board with whom we spoke said it usually received a positive response to recommendations, pointing out its role in increasing the number of phones available to prisoners as one example of a change they had achieved. At the very least they would be given a full explanation of why a change could not be accepted. Thus, for example, the pressure of numbers required overcrowding and limited the amount of time prisoners could spend in association in F Type prisons. This board had had no contact with the enforcement judge in its prisons but did have contact with the prosecutor. It is required to make a quarterly report to the Ministry on its work and the Ministry produces an annual report summarising the work of all Boards in the country. We asked about the possibility of a local report being published on the prisons for which this board is responsible, but they said this was specifically forbidden. There are no regular meetings among boards to share experiences and knowledge. The commitment and dedication of the members we met were manifest, but the task they have taken on is an enormous one. Ideally there should be a monitoring board for each individual prison; members should be drawn from a wider social background; full training should be given on appointment, with follow-up training organised by the boards themselves, acting through a regional or national association of boards; they should have the right and the resources to carry out unannounced visits; prisoners should routinely be informed of the role and powers of the boards; and each board should produce an annual report for local dissemination (it being understood that due regard would be given to security and privacy issues in deciding on the content of the report).

Prisoners, like all other citizens, have full access to the Parliamentary Human Rights Inquiry Committee. This committee received some 550 complaints from, or on behalf of, prisoners in 2009-10, some three or four of which alleged ill treatment. The majority of complaints were about requests for transfers closer to home being refused (usually due to overcrowding), lack of association time in F Type prisons (where prisoners think they are entitled to ten hours association per week as opposed to the legal provision of "up to ten hours") and health care. The Committee informed us that it had good contacts with the Ministry of Justice and can quickly achieve change in those complaints which it upholds. It had been instrumental in introducing single rooms for children to sleep in in juvenile establishments as a response to allegations of sexual harassment, had investigated an allegation of ill-treatment and concluded that prison staff rather than police had been responsible for it, resulting in the dismissal and now prosecution of the staff involved and had brought about various changes in military detention. It considers that there are too few staff in prisons to ensure proper treatment of all prisoners and, of course, that there is a great need for new prison buildings to hold the existing population. It is also aware that many of the complaints it receives are politically motivated and does its best to answer these independently.