



GUIDING QUESTIONS AND INDICATORS

REGARDING THE EFFICIENT
INVESTIGATION AND
PROSECUTION OF
ILL-TREATMENT AGAINST
JUVENILE PRISONERS
DURING THE PENALTY
EXECUTION PROCESS

GUIDING QUESTIONS AND INDICATORS
REGARDING THE EFFICIENT INVESTIGATION AND PROSECUTION OF ILL-TREATMENT
AGAINST JUVENILE PRISONERS DURING THE PENALTY EXECUTION PROCESS

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Contents

INTRODUCTION	5
MANUAL	8
How can you benefit from this research?	8
How can you access the references?	9
Abbreviations	10
I. PART	
GUIDING QUESTIONS AND INDICATORS ACCORDING TO THE EVIDENCE	13
1 EVIDENCE REGARDING INSTITUTION'S PERSONNEL TRAINING AND COMPETENCY	14
2 REPORTS AND RECORDS KEPT WITHIN THE SCOPE OF THE PSYCHOSOCIAL SUPPORT PROVIDED TO CHILDREN	19
3 EVIDENCE REGARDING BODY SEARCH	26
4 EVIDENCE REGARDING AUTHORITY TO USE FORCE	34
5 EVIDENCE REGARDING DISCIPLINARY PRACTICES	43
6 EVIDENCE THAT CAN BE OBTAIN FROM INTERNAL COMPLAINT MECHANISM	50
7 MEDICAL EVIDENCE	56
8 FINDINGS AND MINUTES OF CRIME SCENE INVESTIGATION	64
9 VIDEO FOOTAGE	71
10 STATEMENT EVIDENCE	80
II. PART	
A CASE REPORT: MONITORING RIGHTS IN CASES RELATED TO CHILDREN A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT	90
INTRODUCTION	91
ABOUT METHOD	94

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AGAINST JUVENILE PRISONERS DURING THE PENALTY EXECUTION PROCESS

1	EVENTS AND FACTS.....	94
2	EVIDENCE AND EVALUATION.....	95
2.1	Statements of the Detainee Children.....	97
2.2	Medical Reports.....	99
2.3	Reports of the Monitoring Boards.....	107
2.4	Video Footage.....	109
2.5	Evidence that can be Obtained from Internal Complaint Mechanism.....	111
3	EVALUATION OF APPLICANTS ' DEMANDS.....	113
3.1	Allegations Not Examined, Justification and Evaluation.....	114
3.1.1	Forced to Standing Roll-Call.....	115
3.1.2	Living Standards of the Penal Institution and Administration's General Practices.....	116
3.2	Allegations, Reasons and Evaluations Examined as Substantially Admissible.....	117
3.2.1	In terms of Intervention and Practice of the Authority to Use Force.....	117
3.2.2	In Terms of Allegations Regarding Being Taken to the Observation Room and After.....	121
3.2.3	In Terms of Strip Search.....	129
3.3	General Review.....	131
	BIBLIOGRAPHY.....	142

Introduction

1 Purpose of the Research



In cases of willful ill-treatment, the breach of Article 3 cannot be remedied only by an award of compensation to the victim. This is so because, if the authorities could confine their reaction to incidents of willful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice.¹



One of the important consequences of the cases related to torture and ill-treatment is the concept of “impunity”. In both the European Court of Human Rights (ECHR) and the Turkish Constitutional Court (AYM) decisions on the violation of torture and ill-treatment prohibition, the issues of “impunity” and lack of effective investigation causing impunity are frequently emphasized. As well as the willpower to combat torture and ill-treatment, due diligence, sufficient knowledge, and skills of those who are involved in the investigation processes have an important effect to ensure efficient investigation. The decisions show us that the failure to conduct certain processes on time, failure to set forth the claims in a concrete way, and loss of the evidence not collected promptly has a significant impact on the results. The individuals from different disciplines who take role in the judicial process and not fulfill the obligations required by their professional ethics^{2,3,4,5} and even committing acts that can be deemed as a duty offense have a role in the continuation of the impunity policy.

This research aims to create a guiding question list to support the roles of professionals from different disciplines working in this field for monitoring, investigation, prosecution, and defense regarding the inquiry of claims on ill-treatment and torture to the children deprived of liberty in prisons and penal institutions.

GUIDING QUESTIONS AND INDICATORS REGARDING THE EFFICIENT INVESTIGATION AND PROSECUTION OF ILL-TREATMENT AGAINST JUVENILE PRISONERS DURING THE PENALTY EXECUTION PROCESS

The idea of this research has emerged from the decision of F.E. and Others on 23.01.2019 with the 2014/15586 individual application number which was ruled by the Turkish Constitutional Court. The case concerns the claims by a group of children from Ankara Sincan Children and Youth Closed Penal Execution Institution regarding the events that occurred on 01.01.2014. Children claim that the execution and protection officers "systematically violated the ill-treatment prohibition by acting against human dignity". According to the Court, the necessary investigation has not been conducted regarding the claims of late medical examination, the presence of the officers in the examinations, and the continuance of the ill-treatment after the examination. Thus, the court ruled that Article 17, paragraph 3 of the Constitution was procedurally violated. The Constitutional Court ruled in respect of substance that the evidence was not enough on whether the limits of the use of force were exceeded. The incidents subject to this case were also reflected in the reports of the monitoring boards, non-governmental organizations, and the media.

The Court's declared procedural violation of rights but it found no violation regarding the substantial aspect, and the evidence based⁶ in the ruling showed the importance of collecting evidence in allegations of torture and ill-treatment and this gave rise to the idea that such research should be conducted. Since this is such a difficult matter to prove in practice, consideration of the statements and findings as evidence in the reports of the monitoring institutions has shown that several institutions and disciplines have a vital role in ensuring effective investigation and establishing justice.

The reports of the Parliamentary Human Rights Inquiry Committee and Human Rights Institution of Turkey (HRIT), the Prosecutor's decision of non-prosecution regarding the allegations against the officers, and differences between domestic court decisions and expert evidence; show us that the evidence to be collected and the criteria and/or indicators to evaluate the adequacy of that evidence are needed in the investigation of torture and ill-treatment allegations. This publish is an endeavor to answer the question of "Is it possible to prepare a research that will answer such necessity?"

2 Why haven't we covered certain issues?

The research mainly focuses on the evidence to be collected in the inquiry and investigation of torture and ill-treatment allegations and does not define torture and ill-treatment. The research also does not include procedural information regarding the evidence. Undoubtedly, there are many valuable publications regarding both matters. This research aims to ensure that practitioners, who are assumed to have sufficient knowledge regarding the substantive and procedural law, have a means of testing the adequacy of the evidence.

Likewise, the penal system and the operation of the penal institutions are also excluded from the scope of this research. Although lack of publications regarding juvenile penal institutions has been thought of and there are many deficiencies in the penal system that may lead to consequences considered as torture and ill-treatment. These matters also have not been included due to the concern that the focus of the research may lose its meaning.

3 Our method

As in this case research, the claims are often regarding “the use of force” exercised by the officers during the investigations of torture and ill-treatment allegations in juvenile penal institutions.

We started the research with the authority to use force and determination of useful evidence to prove the allegations related to this authority. We identify the international standards and key points of the ECHR, Constitutional Court, and Supreme Court decisions where it is related to each process and evidence. Through the drafting stage, we asked for the opinions of a group that includes forensic experts, judges, prosecutors, lawyers, psychologists, doctors, social workers, child, and adolescent psychiatrists, academicians, and representatives of non-governmental organizations.

While determining the precedents, we prioritized the cases involving children. However, since there were no judgments on certain issues, we also referred to the decisions involving adults where it is applicable for the torture and ill-treatment allegations related to juveniles.

In conclusion, we hope that this research would be beneficial for the experts of including but not limited to investigators, prosecutors, or any other defense authorities, monitoring institutions, and non-governmental organizations who are working on torture and ill-treatment.

Manual

How can you benefit from this research?

This publication consists of two parts. The first part includes the guiding questions that could be a guideline for your work on allegations of torture and ill-treatment incidents in penitentiary institutions. In the second part, there is a case review prepared by drawing upon the guiding questions.

Part I

In this part, composing a guide on what to search and how to approach has been tried for the monitoring boards, who will examine the claims and investigation, prosecution and defense authorities, and non-governmental organizations who monitoring the judicial processes. Concrete assessment and determination of the path to be followed or the missing points is possible by checking the criteria to be considered on the allegations and the evidence, the evidence to be collected, and the guiding questions.

Sections

The first part of this report consists of ten chapters. The first six chapters are related to the functioning of the institution where one should take into consideration for investigating the allegations of torture and ill-treatment: Evidence on the training and qualifications of the employees of the institution, reports, and records created within the scope of psycho-social support, evidence of body search, evidence on the use of force, evidence regarding the practices of disciplinary measures, evidence that can be obtained from the internal complaint mechanism. In these sections, the areas where evidence can be found regarding each transaction are aimed to be determined.

The following four chapters deal with the direct evidence such as medical evidence, crime scene investigation findings and reports, camera recordings, and declaration evidence.

In each chapter, the occurrence of events is examined, and the pieces of evidence, legal processes, and procedures are evaluated within the scope of the State's positive and negative obligations.

Titles

Each section includes **7 titles**.

International standards. Firstly, a list of the relevant provisions of the international rules that can be used during the cases is given.

Explanation. Afterward, by using the rules of domestic law we tried to address the relevance of the subject matter with the investigation of torture and ill-treatment allegations.

The general information that must be learned. This title shows the issues that need to be informed before examining the subject matter of the case. Gaining prior knowledge on these issues, allows you to have an idea regarding which evidence you seek for, how you request it, and how you can use it. In this regard, this review is very important and should not be omitted. As an example, if you don't have enough knowledge and if you don't obtain enough information regarding how the torture method applied and its impacts, you may overlook numerous pieces of evidence and respectively from what to look at during the examination or which video footage to request of the places/floors torture.

Guiding questions. It consists of the basic evidence that will prove the claim regarding the substantial event and the questions that must be answered by the evidence. This title is the one that you benefit from to question the adequacy of the collected evidence. It includes separate question lists for each piece of evidence that must be requested. By using this list, you may evaluate the adequacy of the evidence, as well as determine the points to be considered while collecting evidence and constitute a solid request.

Supporting evidence. It indicates the other evidence that you may benefit from when the evidence on guiding questions is not sufficient or you need further support for disclosure of an evidence.

Indicators. This title includes the basic elements you need to check to see if the matter in the subject complies with the law. It is prepared to support establishing a presumption per the law.

Footnotes. In this section, you can find the relevant legislation and case law that are the source of the guiding questions. These will both help to understand the guiding questions and provide a reference whilst demanding for collection of evidence. The footnotes also include non-binding reports and such like documents. These also include examples deemed from real life to make the subject clearer and in order to be suggestive.

Part II

This part has been prepared to both verify the guiding questions and to set an example for those who will work on monitoring. In this part, the torture and ill-treatment allegations of how and by which evidence was used as a basis during the judgment of the Turkish Constitutional Court have been analyzed. This analysis was carried out by using the guiding questions of Part 1.

How can you access the references?

Many precedents, reports, etc. have been used as a source while conducting this research. Albeit all these resources are included in the footnotes which will be useful for monitoring, investigation, prosecution, and defense activities; to ensure readers easily can access them and support their work, they are all included also in the www.humanistgrup.org/izleme webpage created within the scope of this research.

Abbreviations

Bangkok Rules	The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
CAT	UN Committee Against Torture
CCPR	UN Covenant on Civil and Political Rights
CD	Court of Cassation Criminal Chamber
CGK	Court of Cassation Assembly of Criminal Chambers
CGTIHK	Law on Execution of Penalties and Security Measures (5275)
CGTIHY	Regulation on the Management of Penal Institutions and the Execution of Penalty and Security Measures – Official Newspaper 29.03.2020 – 31083
CISST	Civil Society in the Penal System Association
CMC	Child Monitoring Centers
CMK	Turkish Criminal Procedure Code (5271)
Constitutional Court	The Constitutional Court of the Republic of Turkey
Convention Against Torture	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	United Nations Committee on the Rights of the Child
ECHR	European Court of Human Rights
European Prison Rules	Rec (2006)2 on Prison Rules
FIR	Forensic Interview Room
GNAT	Great National Assembly of Turkey
GSMY	Regulation on Observation and Classification Centers and Evaluation of Convicts
Guidelines of European Committee on Crime Problems	European Committee on Crime Problems, Guidelines Regarding Recruitment, Selection, Education, Training and Professional Development of Prison and Probation Staff CM (2019)111
Havana Rules	Rules for the Protection of Juveniles Deprived of their Liberty
HRIT	Human Rights Institution of Turkey

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HRSC	Human Rights Survey Commission
IHK	Law on Execution Judge (4675)
Istanbul Protocol	The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Mandela Rules	Standard Minimum Rules for the Treatment of Prisoners
OEF	Open Education Faculty
PRI	Penal Reform International
Recommendation on Juvenile Offenders	European Rules for Juvenile Offenders Recommendation CM/Rec (2008) 11
UNCRC	UN Convention on the Rights of the Child
WMA	World Medical Association
WPL	Witness Protection Law (5726)

GUIDING QUESTIONS AND INDICATORS
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Footnotes

¹ See **GÄFGEN v. Germany**, (No. 22978/05 01.06.2010 para.119)

² “38. Lawyer shall not handle a matter which is beyond his/her time and abilities.” (**Turkish Bar Associations, the Attorney’s Code of Ethics**); See **CCBE Code of Conduct for European Lawyers** Article 1.1-G, “Principle (g) – the lawyer’s professional competence: It is self-evident that the lawyer cannot effectively advise or represent the client unless the lawyer has the appropriate professional education and training. Recently, post-qualification training (continuing professional development) has gained increasing emphasis as a response to rapid rates of change in law and practice and the technological and economic environment. Professional rules often stress that a lawyer must not take on a case which he or she is not competent to deal with.”

³ “See **UN Principles on the Role of Prosecutors Havana Rules**; “15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights, and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offenses. 19. In countries where prosecutors are vested with discretionary functions as to the decision whether to prosecute a juvenile, special consideration shall be given to the nature and gravity of the offense, protection of society, and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutor action against juveniles only to the extent strictly necessary.”; See **Supreme Court Public Prosecutors Ethical Conduct Principles**, “4.9 They ensure the safety and rights of victims, witnesses and vulnerable groups in need of protection” and “4.13 They collect all the evidence, examine and evaluate to determine if the evidence has been obtained in accordance with the law regardless of whether it is for or against the suspect.”

⁴ “See **The Bangalore Principles of Judicial Conduct** “Value 6: Competence and Diligence Principle: Competence and diligence are prerequisites to the due performance of the judicial office. Application: 6.3 A judge shall take reasonable steps to maintain and enhance the judge’s knowledge, skills, and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges. 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.”

⁵ **Medical Code of Ethics**, “Prohibition to Aid Torture: Article 34- The doctor, cannot participate in and cannot help to torture and similar practices, and cannot prepare false reports with his/her medical knowledge and skills. The doctor who encounters allegations of torture shall use his professional knowledge and skills to reveal the truth.”

⁶ See **Constitutional Court, F.E. and Others** (No. 2014/15586, 23.01.2019) in paragraph 93 of the decision, the court stated “the reports of the interviews with the applicants’ lawyers, their statements to the law enforcement and/or to the prosecutor, Turkey Human Rights Council Report” are considered in ruling. Also, the GNAT Human Rights Commission Report used it as evidence in the decision.

Concerning the Effective Investigation and Prosecution of
Maltreatment of Juvenile Prisoners in the Penal Execution Process

CONTROL QUESTIONS AND INDICATORS



I. PART

GUIDING
QUESTIONS AND
INDICATORS
ACCORDING TO
THE EVIDENCE

EVIDENCE REGARDING INSTITUTION'S PERSONNEL TRAINING AND COMPETENCY



INTERNATIONAL STANDARDS

UNITED NATIONS

- UNCRC Art. 3
- Havana Rules, Rule 51, 81-87
- Beijing Rules, Rule 1.1-1.3
- Mandela Rules, Rule 52, 74-77, 79, 82
- CRC General Comment (2007)10 Art. 40, 85, 89

EUROPEAN COUNCIL

- European Prison Rules 8, 54.3, 66, 69.3, 72, 75-78, 81-84
- Recommendation on Juvenile Offenders Art. 18, 38, 41.2, 88.3, 89.1, 89.4, 90.3, 90.4, 127-129
- CPT 24. General Report, para. 120, 121
- Guidelines of European Committee on Crime Problems, CM (2019)111-add.
- Council of Europe Code of Ethics for Prison Staff, CM/Rec (2012) 5

Explanation

In the institutions, where the children are deprived of their liberty, assigning competent and qualified officers, and supporting them with training during their profession serves to prevent cases of torture and ill-treatment¹. Detecting the preventive measures; which have not been fulfilled, leads to uncover the violations of the rights. Therefore, examining whether the necessary interventions were made by the experts² is important when assessing the conditions that caused the crises and events of disorder in penal institutions, the interventions made to these crises and events of disorder, and the proportionality of the interventions. The lack of required training to ensure sufficient expertise for the officers³ would cause a discussion of the administration's responsibility during the admission and the service time.

Officers working with the children deprived of their liberty shall receive additional training.⁴ This training should be given with a child-oriented perspective and they should include topics such as the psychological development of children and communication methods with children. In any case, the officers working with juveniles must behave according to the best interests of the child to ensure the well-performing of the institutions.

Consequently, assigning officers, who are not suitable to work with children results in violation of the state's positive obligation due to the officer's lack of knowledge and competency⁵. To fulfill this obligation, investigating the failure's relevance with the event subject to the complaint is necessary. While investigating practices that are considered as torture and ill-treatment, the preventive actions and events leading to violation of rights must be evaluated.

Points to be Informed in General for the Demands Regarding the Institution's Personnel Training and Competencies

In order to evaluate the evidences, it is necessary to have knowledge on the following matters;

- ➔ Duties of the officers who are in interaction with children.⁶
- ➔ Competency and skill requirements of the duty.
- ➔ How is the competency of the officers evaluated?
- ➔ How and how often the skills that the officer should have been audited?
- ➔ How the records regarding the evaluation and inspection are kept?
- ➔ The disciplinary investigations that were conducted/completed against the officer.⁷

Guiding Questions

This list contains the evidence that should be gathered and the minimum information/characteristic you should seek for in each piece of evidence.

- ↘ Request the evidence related to the training of the officers who are involved in the incident complained of.
 - Is there a training curriculum provided for the officers?
 - Is this curriculum:
 - Include content based on human and children's rights? Does the training cover specific groups (LGBTQ+, Disabled Rights, Women's Rights, etc.)?
 - Contain intervention methods per the law during moments of crisis?
 - Contain information such as adolescents, development characteristics, communication skills, and method of psychosocial support?
 - Have you examined the training that the officers completed successfully?
 - Is the training compatible with the duties of the officers who completed it?
 - Has theoretical and practical training been given?
 - Are the officers being trained at regular intervals?
 - Are the competencies of the officers being tested at regular intervals?
- ↘ Request the personnel policy of the institution.⁸
 - Does the personnel policy include regulation on the officers' competence?
 - Are the institutional policies includes regulations concerning the situations that require immediate intervention?
 - Have the officers been trained on practices in particular situations?
 - Have the officers been assigned per the training they received?
- ↘ Request the records and registry files regarding the administrative and criminal responsibilities of the officers.⁹
 - Is there any record on the registration file of the officers regarding any disciplinary investigations/penalties initiated against them?
 - Have the assignment of the officers after the disciplinary investigations/penalties caused any violation of rights?
 - Is it possible to establish a connection between the violation and the disciplinary investigation/penalty?
 - Does the disciplinary investigation/penalty cause any obstacle to work with children?
 - Is there a court order that prevents officers from working with children?

Supporting Evidence

that can be Used Regarding Institution's Personnel Training and Competencies:

In addition to the documents, records, and reports, decisions regarding the training and competence of the institution personnel, you can support your claim and test the accuracy of the evidence obtained with the following evidence:

- ▶ Evidence regarding the internal complaint mechanism¹⁰
- ▶ Psychosocial service works¹¹

Indicators

The following situations indicate that the administration does not fulfill its obligations in employing adequate expertise in institutions where children are located:

- ▶ Lack of institution's special method to follow in the selection of the personnel who will work with children.
- ▶ Lack of periodic personnel training program while starting and during the profession.
- ▶ Lack of sufficient content in the personnel training program to gain pedagogical formation and develop skills on issues such as intervention to the crisis.
- ▶ Failure to keep complaints and regular registry files about the personnel.
- ▶ Assignment of the personnel who have disciplinary punishment records or are under investigation or prosecution to the units where children are located.

Footnote

- ¹ See **Davydov and Others v. Ukraine** (No. 17674/02 and 39081/02, 1 July 2010 para. 268-269) The case where the convicts were tortured and ill-treated during the search and other exercises of searches and the court ruled that the law enforcement officers must be competent, and this competence should include training to prevent torture and ill-treatment; Additionally, see **GNAT Examination Report of Juvenile and Youth Closed Penitentiary Institutions and Education Houses** (5 November 2009) p. 26, para. 13. The determination by GNAT on the necessity to increase the number of qualified social service experts to work with children and to hire contracted personnel if the personnel numbers are insufficient to train social service experts.
- ² See **HRIT, Sincan Prison Survey Report** (10.07.2014) p. 60. The examination regarding the crisis intervention must be conducted by the experts in education and rehabilitation as required by their expertise; See **Andronicou and Constantinou v Cyprus** (No. 86/1996/705/897, 9.10.1997, para 234.). The court ruled that appropriate planning must be prepared by the authorities to ensure the operation is conducted by police officers who properly trained and minimize the risk.
- ³ See **Gjini v. Serbia** (No.1128/16, 15.01.2019 para. 47-50 and 84-88) for ECHR decision on inter-prisoners violence. The court ruled in violation of Article 3 due to State's failure in accordance with the CPT examination that prison staff should be trained to prevent and detect violence among prisoners.; See **CPT/Inf (2020) 24** para. 40. The CPT's recommendation that the staff should be trained on institution guidelines.; Additionally, see **CPT/Inf (2020) 22** para.123. The recommendation on training medical personnel regarding the mental problems prisoners may experience.
- ⁴ See **Havana Rules** Art. 85; See **Rec(2008)11** Art. 18; See **CPT/Inf (2015) 6** para.71. The recommendation that the personnel working with children should be trained by the psychosocial service and they should be educators and motivating people.; See **CPT/Inf (2015) 6** para. 103,104. The CPT has welcomed officers' training of Turkey within the scope of the pre-service training. In this context, the Administration stated that special training was given to the officers to work with children. The CPT also wanted to examine the training contents provided during the service.
- ⁵ See **CPT/Inf (2015) 6** para.71. The recommendation that the personnel assigned to work with children in institutions should be carefully selected.; See **Boumar v. Belgium** (No. 9106/80, 29.02.1988, para. 52). The ECHR ruled that the absence of trained personnel is violation since the juvenile penal institutions are education and training-based.
- ⁶ See **(Guimon v. France** No. 48798/14, 11.04.2019 para. 37-52.) for the decision of the Article 8 violation where ECHR considered the State's defense appropriate that the expert personnel should have been arranged for the prisoners who were sent late.
- ⁷ See **Gorovenky and Bugara v. Ukraine** (No. 36146/05 and 42418/05, 12.01.2012 para. 38-40). In its decision on police practices, the ECHR considered that the failure to assess their personality and not to examine their disciplinary backgrounds together with the training provided in the assignment and selection of law enforcement officers is a violation of the State's positive obligation.
- ⁸ See **European Prison Rules** Art. 52.2; See **Makaratzis v. Greece** (No: 50385/99, 20.12.2004 para.68-70.) A decision on the use of weapons by the police. ECHR ruled that law enforcement officers should act in accordance with the chain of command, and they should have training on the chain of command and receive appropriate training on weapons and vehicles they are authorized to use.
- ⁹ See **Cirino and Renne v. Italy** (No. 2539/13 and 4705/13, 26.10.2017, para.113, 114). The ECHR did not consider that it is sufficient to order disciplinary punishment against the execution and protection officers in the events where prisoners were subjected to torture and ill-treatment following a fight between the officers and the prisoners. The court ruled that Article 3 is violated due to officers' actions resulted in impunity.
- ¹⁰ Also documents on the grievance mechanism can be important means of proof to prove matters regarding disciplinary practices. To manage this, using mechanisms effectively lawyers is important for the ones deprived of their liberty, their relatives, and.
- ¹¹ By checking the psychosocial service records it is possible to see whether the psychosocial service conducts training activities for the personnel of the institution and the scope, frequency, and adequacy of these training.

REPORTS AND RECORDS KEPT WITHIN THE SCOPE OF THE PSYCHOSOCIAL SUPPORT PROVIDED TO CHILDREN



INTERNATIONAL STANDARDS

UNITED NATIONS

UNCRC Art. 39

Havana Rules, Rule 27, 81, 85

Beijing Rules, Rule 13/5, 26

Nelson Mandela Rules, Rule 49

CRC: General Comment (2007)10 Art. 10, 40, General Comment (2016)24 Art. 95

EUROPEAN COUNCIL

European Prison Rules, Art. 35, 47, 89, 103

Recommendation on Juvenile Offenders, Art. 5, 48.2, 62.6, 74.2, 129.3

CPT 24. General Report, para. 114, 115, 116

Explanation

Conducting a comprehensive and in-depth psychological evaluation¹ in the institutions where children are deprived of their liberty is necessary because the children should benefit from adequate physical and mental health care services². Continuation of education; access to leisure, sports, and cultural activities; access to adequate medical care, and mental health care services are fundamental rights of the children. These services have an important role in protecting children from torture and ill-treatment. Due to this feature, psychosocial services' adequacy is placed among the practices that should be addressed in torture and ill-treatment cases.

An evaluation and classification should be conducted at the time of admission to the institution³. This evaluation should be done by observation and classification centers⁴ and an Observation and Classification Form⁵ should be issued for each child.⁶ In these centers, "managers who have knowledge and experience in the field of criminology, penology, behavioral sciences, justice psychology or criminal law and expert officers such as; psychiatrists, doctor, forensic experts, psychologists, pedagogues, child development experts, social workers, psychological counselors, counselor experts and teachers, and other institution officers" should be present. Following the separation of the children to the institutions, individualized improvement programs should be prepared by the institutional education and psychosocial services.⁷ Following the child's admission to the institution, an individualized recovery plan should be prepared and implemented, without waiting for the convict's application.⁸ In terms of the legality of restricting the children's freedom, to benefit from individualized improvement programs in their institutions is an important criterion.⁹ In addition to the practices within the institution, referral of convicts who need psychiatric assistance to the institution doctor when necessary is also conducted within the scope of psycho-social assistance programs.¹⁰

Considering whether the children can benefit from psychosocial services or not is important in the cases of torture and ill-treatment, especially when the crisis arises due to child-related reasons. If the child has been subjected to the use of force due to his/her behavior, it should be investigated whether the observation and classification center and the psychosocial service fulfill their functions as necessary.

In addition to the preparation of appropriate programs to detect and eliminate the individual factors that may cause crisis, the preparation of appropriate intervention programs for situations such as crises and suicide are also among the duties of the psycho-social service.¹¹ Practices related to this duty can be proven through risk assessment reports¹² and records related to improvement programs, as stipulated by the regulation.¹³ To keep the reports and records complete and to prove that these practices are properly conducted is the responsibility of the administration. However, it should be noted that the parties may complain and appeal against the Administration and Observation Board decisions in accordance with the relevant Regulation.¹⁴ The rehabilitation program prepared with this regard should be examined by the children deprived of liberty and their parents, and if this program is not suitable or sufficient, to resort the appeal or complain mechanism should not be forgotten.

It should be noted that not considering the psychological and social needs of the children¹⁵ and not providing services in accordance with the needs¹⁶ might result in a violation of ill-treatment prohibition.¹⁷ In this regard, the records kept by psychosocial institution's service¹⁸ are one of the strongest pieces of evidence while investigating the claims of ill-treatment.

Besides, psychosocial service workers' opinions should be taken. These opinions should be followed before applying pressure such as using the authority to use force and ruling on disciplinary measures and sanctions on children.¹⁹ Therefore, psychosocial service records²⁰ are an important piece of evidence for the claims of torture and ill-treatment. The fact that these records are not kept respectively would shift the burden of proof.

On the other hand, the institution's psychosocial service personnel are not in charge and authorized for the mental health examination to determine whether the child has been subjected to ill-treatment and torture. This personnel is not objective and independent due to their direct duties and responsibilities on the functioning of the administration as a part of the "Management and Observation Board"²¹ and the "Disciplinary Board"²². The examination related to the allegations of torture and ill-treatment should be conducted by referring the child to the authorized health institutions functioning outside the penal institution with the decisions of investigation/prosecution authorities. An opposite practice will cause a violation of rights because it will mean the collection of evidence by the administration.²³

Points to be Informed in General for the Demands Regarding the Psychosocial Service Records

In order to evaluate the evidences, it is necessary to have knowledge on the following matters;

- ➔ The impacts of the closed institutions and their practices over child psychology.
- ➔ The psychosocial services that are provided in the institutions.
- ➔ The method of the services provided within the scope of psychosocial service records.
- ➔ Procedures related to children's mental health assessments and reporting.

Guiding Questions

This list contains the evidence that should be gathered and the minimum information/characteristic you should seek for in each piece of evidence.

- ➔ Request the **documents** related to psychosocial programs conducted in the institution:
 - Does the institution provide psychosocial service?
 - What is the expertise of the people assigned to this service?
 - How many children do each psychosocial service personnel need to take care of?
 - Does rehabilitation program exist during admission to the institution?²⁴
 - Are there valid and reliable psychosocial programs in the institution that can be benefited by every child?
- ➔ Request **records and reports** that are kept within the scope of psychosocial service at the institutions.
 - Has a psychosocial assessment been carried out during admission to the institution?

- Has the placement done in accordance with the psychosocial assessment?
 - Are the programs to be implemented has been chosen by considering the physical and mental health services, the educational activities, and the psychosocial assessment? Has the child been able to access these services?
 - Has the psychological condition (mental health) of the child been monitored regularly²⁵?
 - Are the records prepared carefully and detailed?
 - Are the records include complaints regarding torture and ill-treatment?²⁶
 - Is there any evidence in the records that children should be referred to receive comprehensive psychological treatment? If yes, have the children been referred to the relevant institutions, and have the recommendations related to the treatment of the child been followed?²⁷
 - Are the requests and complaints reported to the psychosocial service by the child communicated to the relevant authorities?
- ↘ Examine the **decisions** made by the disciplinary boards of penitentiary institutions.²⁸
- ↘ If there are admissions to the administration by the child²⁹ or complaints have been told to the family by the child,³⁰ request these.
- ↘ Request the records regarding the behavior of the children in the institutions and family information records on their psychosocial status.³¹
- Have the behaviors requiring disciplinary measures and sanctions within the institution been notified to the child's' family?
 - Is there information in the individual records and disciplinary board decisions regarding that the families were informed and included in the improvement activities?
- ↘ Request the reports regarding the psychosocial evaluation of the children during the investigation/prosecution phase.
- Have you surveyed the mental health examination following torture and ill-treatment allegations?
 - Have you compared the psychosocial/psychiatric evaluations in the reports of the investigation/prosecution phase with the evaluations of the psychosocial service experts in the institutions?
 - Have the child's psychosocial evaluations and needs, especially the child's social examination and forensic examination, been considered during the investigation/prosecution phase?

Supporting Evidence that can be Used Regarding Psychosocial Service Records

In addition to the documents, records, and reports, decisions regarding the psychosocial service records, you can support your claim and test the accuracy of the evidence obtained with the following evidence:

- ▶ Reports of the monitoring institutions^{32,33}
- ▶ Medical Evidence (Especially the report of the mental health examination)

Indicators

Following points are the indicators that the children are not receiving appropriate psychosocial support at the institution:

- ▶ Lack of psychosocial service within the institution.
- ▶ Personnel with insufficient expertise and lack of numbers in the psychosocial service.
- ▶ Lack of valid and reliable psychosocial programs that can be used by institutional psychosocial service personnel.
- ▶ Lack of documents showing that a psychosocial evaluation has been conducted during admission to the institution.
- ▶ Lack of documents in the psychosocial service records regarding the psychosocial support services provided for the child's mental health problems.
- ▶ Unable to prove that the psychosocial service has been provided with the existing documents.
- ▶ Lack of a daily plan or identical plan for each child.

Footnote

- ¹ See **Preminy v. Russia** (No. 44973/04, 10.02.2011 para. 89) ECHR examination on the institution's lack of necessary psychological support regarding violations of the rights.
- ² See **CRC General Comment** (2016)24 Art. 95
- ³ **CGTİHK** Art. 13.
- ⁴ **CGTİHK** Art. 23.
- ⁵ Also, The Ministry of Justice General Directorate of Prisons and Detention Houses Inspection Board supervises these procedures: "It has been observed that the observation and classification form required by the psychosocial assistance service does not exist in the convict/detainee files numbered _____. According to regulation 24/3, the specified form should be issued by the psychosocial assistance service," <https://teftis.adalet.gov.tr/Resimler/SayfaDokuman/1213201941601PM-cik.pdf> p.10 (Date of Access: 26.11.2020)
- ⁶ The working principles and procedures of these centers are regulated in the Monitoring and Classification Centers Regulation.
- ⁷ **CGTİHK** Art. 73.
- ⁸ See **Observation and Classification Centers Regulation** Official Newspaper 29.12.2020 – 31349.
- ⁹ See **ECHR Bouamar v. Belgium** No. 9106/80, 29.02.1988 para.50, 52
- ¹⁰ See, **GSMY** Art.27
- ¹¹ See, **GSMY** Art.27(2)
- ¹² See, **GSMY** Art.30
- ¹³ See, **GSMY** Art.34
- ¹⁴ See section 6 for examination of Internal Complaint Mechanism
- ¹⁵ See **CPT / Inf (2020) 22**. CPT reported concerns regarding the prisoner who has been in adult prison for already 7 months but still has not seen a psychologist (para. 122) and recommends that the appropriate psychosocial services should be provided in all prisons in Turkey (para. 123).
- ¹⁶ See **Constitutional Court Mete Dursun** (No: 2012/1195, 18.11.2015 para. 98-99). The decision of violation due to non-compliance with the request of the Administration and Observation Board -which includes the psychosocial service specialists- for the applicant to be placed in an institution suitable with his/her health and social needs.
- ¹⁷ See **ECHR, J.M v. France** (No. 71670/14, 05.12.2019 para. 91-94). The decision of violation due to the use of force against the applicant, who showed aggressive behavior and self-injured without considering the state of mind and any intervention to calm down.; See **Constitutional Court Gulsun Karaman and Serif Karaman** (No. 2016/16239, 12.11.2019 para 56-63). The decision on violation of the right to life due to the victim's suicide following the failure on providing necessary psychological treatment even though the victim has applied to the psychosocial service many time.
- ¹⁸ See **Bamouhammad v. Belgium** (No. 47687/13 17.11.2015 para. 145-148-155.) The decision on violation of Article 3 due to the failure of providing necessary psychosocial services to the applicant despite the statements of the institution's psychologists regarding the necessity of receiving regular psychological treatment.; See **Coselav v. Turkey** (No. 1413/07, 09.10.2012 para. 57-70.) The decision on violation of Article 2 see due to the failure to provide necessary psychological treatment despite the prison authorities' awareness of the victim's suicidal tendencies.; See **Guvec v. Turkey** (No. 70337/01 20.01.2009 para. 91-99); The decision on violation of Article 3 due to the failure to provide appropriate psychological treatment to the applicant, who was suicidal within the knowledge of the administration.; Furthermore, see **Preminy v. Russia** (No. 44973/04, 10.02.2011 para. 67-68). The administration claimed that the domestic remedies had not been exhausted by arguing that the applicant had not made any complaints to the institution. However, the European Court of Human Rights dismissed the administration's objection by considering the institutional psychologist's record of the applicant's psychological state because the applicant's mental state was an obstacle to the complaint.
- ¹⁹ See, **Renolde v. France** (No. 5608/05, 16.10.2008 para. 106). The decision on violation of Article 2 due to the order of the heaviest disciplinary punishment without considering the person's mental state and the fact that the events resulted in suicide.; Furthermore, see **Kucheruk v. Ukraine** (No. 2570/04, 06.09.2007 para. 141-146) and **Constitutional Court Nejla Ozer and Muslim Ozer** (No. 2013/3782, 21.4.2016 para. 163-167). The decision of violation due to holding the applicant who had psychological problems in a disciplinary cell with handcuffs and without any psychological evaluation.; See **HRIT, Sincan Prison Survey Report** (10.07.2014) p. 25 Children's narrative regarding the disciplinary sanctions ordered against the children in need of psychological support.

²⁰ The records regarding the operations carried out in the Prisons and Detention Houses are kept within the scope of UYAP "National Judicial Network Project" Penal Execution Institutions Module "developed by the Ministry. Accordingly, all records must be kept in the automation. Therefore, digital records should also be considered while collecting evidence regarding institutional transactions. [https://www.uyap.gov.tr/-Ulusal-Yargi-Agi-Projesinin-Ceza-Infaz-Kurumlari-Modulu--date of access: 27.12.2020](https://www.uyap.gov.tr/-Ulusal-Yargi-Agi-Projesinin-Ceza-Infaz-Kurumlari-Modulu--date%20of%20access%3A%2027.12.2020); the education of the Justice Vocational School students related to the "Penal Execution Institutions Module of the National Judicial Network Project" is conducted within the scope of the programs prepared by OEF. For information about the scope of these training programs, see. NATIONAL JURISDICTION NETWORK PROJECT II - Unit 2 Summary published by OEF- YouTube.

²¹ See CGTIHK Art. 22- (1)

²² See CGTIHY Art. 24- (1)

²³ See **Constitutional Court Cihan Alpyuruk** (No. 2017/37528, 29.9.2020 para. 53-54) The Constitutional Court decided on procedural violation of ill-treatment prohibition guaranteed under the third paragraph of Article 17 of the Constitution due to the evidence collected by the administration following the order of the Prosecutor, instead of the collection by the Prosecutor's Office itself.

²⁴ See GSMY, Section 5

²⁵ See **HRIT, Sincan Prison Survey Report** (10.07.2014) p. 77-78. The determination that psychologists, social workers, and teachers are not staying on guard duty after working hours and recommendation that a psychologist should be present in the institution 24/7.

²⁶ See **Constitutional Court Semra Omak (2)** (No. 2016/78494 12.11.2019 para.70-75). The decision on violation of the right to life due to the failure to provide treatment and prevent suicide even though the psychological problems of the victim are stated in the psychosocial service records.

²⁷ See **Sławomir Musiał v. Poland** (No. 28300/06, 20.01.2009 para. 91-97). The decision on violation of Article 3 due to the prisoner who was diagnosed with epilepsy in childhood and later in prison diagnosed with various mental health problems including schizophrenia has been transferred to the mental health hospital but the appropriate treatment has not been provided because there was not enough space in the hospitals.

²⁸ See section 5, which examines the records of disciplinary measures and sanctions.

²⁹ See **Constitutional Court, Nejla Ozer and Muslim Ozer** (No. 2013/3782, 21.04.2016 para.14) In this case, the admissions submitted to the director of the institution, the victim requested to meet with the psychologist and stated that his/her psychological condition was not healthy. These admissions were taken into consideration by the Constitutional Court.

³⁰ See **Constitutional Court Asiye Ozbudak and Others** No. 2013/8715, 26.02.2015 para. 75-81. The decision of inadmissibility because in the mental and neurological diseases hospital the doctors did not inform the prison despite they knew that the victim told he/she would commit suicide to the relatives.; See **Constitutional Court Nejla Ozer and Muslim Ozer** (No. 2013/3782, 21.04.2016, para. 19) The phone call between victim and family was also taken into consideration by the Constitutional Court in a similar way.

³¹ See **GNAT HRSC Ankara Juvenile and Youth Closed Penal Institution Investigation Report** (2012) p. 3., regarding the contact with the families within the scope of psychosocial services in the institutions.

³² See **CPT/Inf (2013) 27** para. 27-30. In 2012, during Turkey, CPT considered that the psychosocial service works in juvenile prisons are positive. However, following the children's complaints on insufficiency of psychologists' numbers and the long waiting hours for meeting with psychologists, CPT noted that it is necessary to increase the psychologists' number; See **CPT/Inf (2020) 22** para. 104. During the 2017 visit, the CPT noted children were ensured to meet with psychologists at regular intervals.; Similarly, see **GNAT HRSC Istanbul Child Education House and Umraniye E and T Type Closed Penal Institutions Survey Report (2017)** p. 19-20. (The monitoring study was conducted by 2 members of the 7-person board.)

³³ See **GNAT HRSC Izmir Juvenile and Youth Penal Execution Institution Investigation Report (2013)** Opinion of Opposition Annex-1 for the findings within the scope of children's narratives and evaluations of the psychologist.

3

EVIDENCE
REGARDING
BODY SEARCH



INTERNATIONAL STANDARDS

UNITED NATIONS

UNCRC, Art. 37, 39

Convention against Torture, Art. 1, 2, 10, 11

CCPR, Art. 7, 10

Mandela Rules, Art. 50-52, 76

Bangkok Rules, Rule 19-21

Medical Ethics Principles for the Roles of Doctors

Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/31/57, 5 January 2016

EUROPEAN COUNCIL

CPT; 3. General Report [CPT/Inf (93) 12], para. 73 /

9. General Report [CPT/Inf (99) 12], para. 26 / 10. . General Report [CPT/Inf (2000) 13], para. 23

European Prison Rules, Rule, 54.1-54.10

OTHER

World Medical Association, Statement on Body Searches of Prisoners

Explanation

Under the current system, inmates are being subject to a search of their bodies and belongings on admission to the institution or during their stay and various methods are applied during the search. These methods are generally as follows;

- ➔ **Pat down frisk search** - search of the body and clothes while the person is clothed¹
- ➔ **Strip search** - visual inspection of the intimate parts of the body without any physical contact in a way that involves the removal of all clothes.
- ➔ **Body cavity search** - a physical examination of a person's body cavities such as genitals and anal areas²

Such methods, which are considered as an intervention to bodily integrity right³ will cause permanent physical and psychological damages and social stress for the child.⁴ Therefore, turning strip search and body cavity search practices into a routine, under the guise of especially security and order, is a violation of human dignity and the child's absolute physical and psychological immunity right. Both, national and international standards repeatedly emphasize the principles of human dignity and privacy;⁵ and indicate that the searches must be conducted within the framework of the principles of legality, necessity⁶ and proportionality⁷.

Although there is not any provision in CGTIHK, procedures, and principles of the strip search are regulated in detail in Article 34 of The Regulation on the Management of the Penitentiary Institutions and the Execution of Criminal and Security Measures and in Article 5 of The Protocol on the Management of Penitentiary Institutions, External Protection, Dispatch, and Transfer of Detainee and Convicts and Execution of Health Services which is issued by the cooperation of the Ministries of Justice, Interior, and Health.⁸

On the other hand, the ECHR and Constitutional Court do not consider the strip search to be a violation of the ill-treatment prohibition independently.⁹ The approach is that these practices are ensuring the security of the penitentiary institutions and preventing the entrance of the drugs and cutter tools which will cause crime and harm to the convicts and detainees themselves, to the other inmates, and to the officers of the penitentiary institution¹⁰. However, it has been indicated that the procedure and frequency of the strip search might result in a violation of the ill-treatment prohibition.¹¹

Regardless of the reason for the children to be deprived of their liberty, the fact that the children are always in a more sensitive position than the adults and the risk of humiliation and trauma is higher must be considered¹². In this context, searches must be carried out in a separate place and two stages (i.e., firstly from the waist up and then the waist down)¹³, by trained personnel¹⁴ of the same sex¹⁵ and careful on the matters such as avoiding any physical contact¹⁶ that might cause sexual harassment¹⁷ Especially, the principle of "last resort" should be applied for the strip search and the body cavity search, which are among the intrusive searches¹⁸. For accountability, records of searches must be kept and should include the reasons for the search, the identities of the person who conducted it, and the results of the search¹⁹.

The reasons for the searches should be analyzed carefully in an admission regarding the strip search that violated the prohibition of torture. Also, to examine whether these searches are based on individual risk assessments or they constitute routine and disproportionate practices is necessary. Whether the search was constituted humiliating and degrading treatment because of

the procedure, frequency, and practice of the search²⁰ should be emphasized²¹ Moreover, the reasons why this practice is not suitable for the child should be explained in detail.²²

Additionally, searching a child's body despite the lack of conditions, exceeding the authority to use force by the execution and protection officers during the search, and conducting the search contrary to its purpose, similarly, using the degrading treatment and humiliating words²³ against the child during the search may cause the crimes of an illegal search, defamation, threat, intentional injury or torture²⁴ according to the circumstances of the concrete case.²⁵ In such a case, legal control mechanisms must be applied for the unlawfully conducted strip search.

Points to be Informed in General for the Demands Regarding Body Search

In order to evaluate the evidences, it is necessary to have knowledge on the following matters;

- ➔ Legal regulations and procedures regarding the body search practice.
- ➔ Body search methods used in the type of institution subject to the claim.
- ➔ Alternative searching methods such as ultrasound and other scanning devices.
- ➔ The number and qualification of staff present at the institution type subject to the claim (to enable searches to be conducted by a same-sex staff member).
- ➔ Training regarding the method of the search for the personnel²⁶.

Guiding Questions

This list contains the evidence that should be gathered and the minimum information/characteristic you should seek for in each piece of evidence.

- ➔ Under the consideration of victim statements, analyze the following points to see whether a suspicious situation exists during the body search.²⁷
 - Exceeding the use of force limits in a way that causing harm to the child during the body search.²⁸
 - Physical or psychological violence against the child during the search.²⁹
- ➔ Follow the institution **documents** including written rules on body search.
 - Is there a regulation to determine the methods to use in various situations, the procedure to follow, and the sanctions to impose in contrary situations by considering the different forms of body search in the institution?
 - Are the body searches applied in the institution routinely without the necessary conditions?³⁰
- ➔ Request **the body search minutes subject to the complaint**.
 - Is there a minute regarding the search?
 - Are the reasonable and significant indicators that the search based has been stated?

- Has the personnel who conducted the search been identified?
- Has the result of the search been recorded?
- Are searches conducted by staff of the same sex?³¹
- Has the search completed in the shortest period possible?
- When, where, and how did body search take place?
- Which method/methods of body searches have been used?
- If strip search or body cavity search conducted, have the necessary conditions met?
 - Is there any reasonable and serious indication that the child has belongings or items³² that are prohibited to be brought or kept in the institution?³³
 - If there is a claim that the search is conducted with a decision of the institution's highest authority, is there any evidence to prove that?
- In the event of reasonable and serious indicators on something has found in the body cavities of the child;
 - Has the child first been asked to reveal the item or belonging by himself/herself? Has it been told that otherwise force will be used to do that?³⁴
 - Does the rule of "During strip search and body cavity search, firstly from the waist up and then the waist down clothes should be removed, and these clothes should also be searched"³⁵ had been followed?
 - Has the body cavity search been conducted by the prison doctor?³⁶
 - Have the measures been taken to ensure not to embarrass the child and not to violate his/her privacy rights by preventing others to see during the strip search or body cavity search?
 - Has the body been touched during the search?
- ↘ Request the video footage from the area(s) that the body search is conducted.³⁷
- ↘ If there is a claim of resistance to the search; are there any disciplinary and/or criminal investigations against the child? If yes, request the **minutes** of these.³⁸
- ↘ In case the search conducted without the conditions are met and if a complaint has been made to the Execution Judge³⁹ **request** the file.

Supporting Evidence that can be Used Regarding Body Search

In addition to the statements, internal documents of the institution, body search minutes, disciplinary search minutes, and Execution Judge file, you can support your claim and test the accuracy of the evidence obtained with the following evidence:

- ▶ Witness statements (to investigate the claims of whether the strip search and/or body search is a routine practice)
- ▶ Forensic medical/medical reports
- ▶ Training certificates of the personnel
 - Whether a training program exists to specialize the personnel of the institution on body search.
 - If it exists, does the person who searches attend this training program?

Indicators

The following points indicate that the administration does not fulfill its obligations regarding the use of body search authority in the institution.

- ▶ Lack of a written regulation for using the authority of body search.
- ▶ The written regulation is not in compliance with the law.
- ▶ Lack of training for the institution personnel during their admission or profession regarding the use of body search authority.
- ▶ Lack of the record of the body search practice.

Footnote

¹ See **Inci, Z. Ozen** "Türkiye'nin Bir İnsan Onuru Sorunu Olarak Ceza İnfaz Kurumlarında Uygulanan Çıplak Arama Üzerine Bir İnceleme" [A Search on Strip Search in Penitentiary Institutions as a Problem of Human Dignity in Turkey] Vol:11, No:120, 2016, p.53; <https://jurix.com.tr/article/5267> (date of access: 21/10/2020)

² See **Duman, Ezgi**, "Hukuki Çerçeve Hapishanelerde Çıplak Arama" [Strip Search in Penal Institutions in Legal Framework], 2016, p. 132. In practice, during the strip search, a body cavity search may also be conducted. In some cases, the search conducts only as a frisk search, in other cases it conducts out by giving instructions such as "sit and stand up, push, cough" to the inmate.

³ See **Turkish Constitution Art. 17**

⁴ See **CRC, General Comment No 13**, para. 26.

⁵ See **European Prison Rules**, Rule 54.3; See **Bangkok Rules**, Rule 19; See **Nelson Mandela Rules**, Art. 50; See **Regulation**, Art.34/9.

⁶ See **Denmark, CPT / Inf (2019) 35**, para. 101; See **Slovak Republic, CPT / Inf (2019) 20**, para. 92; See **Norway, CPT / Inf (2019) 1**, para. 106. Strip search and body cavity search, as distinct from frisk search, may only be conducted if there is a reasonable and serious indication that an inmate possesses a forbidden item to be brought or kept in the penitentiary institution. Therefore, such searches must be conducted on the ground of individual risk assessment on a case-by-case basis. Thus, during its visits to many countries, the CPT found that strip searches became a routine in penitentiary institutions and recommended that searches should be conducted solely based on individual risk assessment.

⁷ See **Nelson Mandela Rules**, art.50

⁸ See **Inci**, p. 55-56. Regulating the procedures and principles regarding the strip search, which are directly related to the fundamental rights and freedoms, with a Regulation is an intervention to the bodily integrity right and is contrary to the Constitution.

⁹ See **Constitutional Court, F.E. and Others**, (No. 2014/15586, 23.01.2019), para. 139; See **Constitutional Court, Elif Kaya**, (No. 2014/266, 06.04.2017, para. 40); See **Iwańczuk v. Poland**, (No 25196/94, 15.11.2001, para. 59); See **Van der Ven v. Netherland**, (No. 50901/99, 04.02.2003, para. 60).

¹⁰ See **Constitutional Court, Elif Kaya**, (No. 2014/266, 06.04.2017, para. 40).

¹¹ See **Constitutional Court, Elif Kaya**, (No. 2014/266, 06.04.2017, para. 41). "Especially, turning it into a practice that exceeds the purposes of security, keeping order and preventing crime and harming prisoner's human dignity should be taken into consideration."

¹² "See **CPT (2001) 66**, para. 7, 28.09.2001, "Body Searches: The Problems and Guidelines to Solutions".

¹³ See **Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (2016), para. 70 (j); See **CGTIHY**, Art. 34/2 (b).

¹⁴ See **European Prison Rules**, Rule 54.3; See **Nelson Mandela Rules**, Art. 52/2.; See **Bangkok Rules**, Rule 19.

¹⁵ See **Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (2016). Regarding the strip search; it has been noted that, "these practices have a disproportionate impact on women, particularly when conducted by male guards." (para. 23); additionally, see **CPT/Inf (99) 12**, para. 26. CPT, points out that the ones who are deprived of their liberty regardless of their age should be searched by the same-sex personnel only and strip searches should be conducted in a place that cannot be seen by the opposite sex personnel. This principle is especially crucial for children.; See **European Prison Rules**, Rule 54.5; See **Bangkok Rules**, Rule 19; See **Mandela Rules**, Art. 52/1; See **CGTIHY**, Art. 34/3.

¹⁶ See **Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (2016), para. 23.

¹⁷ See **Constitutional Court, Elif Kaya**, (No. 2014/266, 06.04.2017, para. 40); See **Constitutional Court, F.E. and Others**, (No. 2014/15586, 23.01.2019, para. 140).

¹⁸ See **Mandela Rules**, Art. 51; See **Bangkok Rules**, Rule 20; Also, see "Statement on Body Searches of Prisoners" para. 12. **World Medical Association (WMA)**, emphasizes that alternative methods should be developed, and body cavity searches should be used only as a last resort.

¹⁹ See **PRI**, "Balancing Security and Dignity in Prisons", p. 72; See **Mandela Rules**, Art. 51.

²⁰ See "Statement on Body Searches of Prisoners" para. 12. **World Medical Association** emphasizes that the practice of squatting with questionable reliability during strip search is a degrading procedure and must be banned.

²¹ See **Constitutional Court, F.E. and Others**, (No. 2014/15586, 23.01.2019, para. 141.) "Application in the subject is regarding the practice of strip search. However, the procedure, frequency, and whether the methods were in a way to harm human dignity for the strip search have not been stated. Under the consideration that some of the applicants did not complain of the strip search, it has been concluded that the ill-treatment prohibition has not been violated substantially."

²² See **Constitutional Court, Turan Gunana (5)**, No. 2013/5545, 15.12.2015, para. 65. "Applicant claimed that the practice is abstractly against human dignity by giving information on general practices of the penitentiary institution instead of explaining why the search was against human dignity. Additionally, according to the applicant's statements and records kept by officers, even while challenging the strip search, the applicant did not object by explaining why the search is not necessary for him."

²³ See **Iwańczuk v. Poland**, (No. 25196/94, 15.11.2001, para. 59). ECHR decision on verbal harassment by the prison personnel to the applicant.

²⁴ See **Duman, Ezgi**, *ibid* s. 152. "In practice, strip search and body cavity search are not being considered as torture and ill-treatment in many cases; investigations against officers within the scope of misconduct crime regulated in TCK (Turkish Criminal Law) Art.257"; **CGK 2014/269 E. 2017/108 K.**

²⁵ See **Inci, Z. Ozen**, *ibid*, s. 67.

²⁶ See **Mandela Rules**, Rule 52.

²⁷ See **Constitutional Court, Gunal Kursun**, No. 2017/35484, 15.01.2020, para. 67. In practice, investigations against execution officers are being initiated within the scope of misconduct crime. However, in the present case, it must be considered whether the strip search practice constitutes the elements of torture in the form of sexual harassment. The evaluation and requisition initially on: "In the incident subject to application, no information or document stating that the applicant filed a complaint to the Chief Public Prosecutor's Office for the claims of a strip search that could cause ill-treatment and/or that the applicant exhausted the way of appeal before the magistrate's courts against the decision of the prosecutor. Considering the complaints of the applicant, it is seen that there is no reason to accept the existing remedies are not accessible, that there is no possibility of remedy for the complaints, and that there is no ability to provide a solution contrary to the claims thus, there is no need to make an exception to the rule of exhaustion of remedies." is important for protecting rights.

²⁸ See **Constitutional Court, Turan Günana (5)**, (No. 2013/5545, 15.12.2015, para. 88) "According to the applicant's claims and minutes and documents that are kept by execution officers, there is no doubt that force has been used against the applicant. Use of force is an act that involves at least minimal force naturally even in its lightest form. In this context, it is an important deficiency for effective investigation of the torture and ill-treatment claims that the doctor, who made the routine examination of the applicant's- who has been subject to the use force by the officers- while admission to the Institution, did not issue any forensic report and that this situation was never questioned by the investigating authorities."; See **Constitutional Court, Elif Kaya**, (No. 2014/266, 06.04.2017, para. 42.) "Applicant did not present a medical report that shows she has been subject to violence and also did not mention any request regarding this. It is explicit that the applicants' attorney has the chance to request a medical report for proving the violence claim because the applicants' attorney visited the following day after the incident. However, there is no such request made by applicants' attorney."

²⁹ See section 7 regarding medical evidence.

³⁰ "See **Constitutional Court, F.E. and Others**, (No. 2014/15586, 23.01.2019, para. 140) "Especially, in the penitentiary institution, it's transformation into a practice that harms human dignity of the convicts/detainees and exceeds the purposes of security, order, and prevention of crime are the issues to be taken into consideration for the prohibition of ill-treatment.; See **Piechowicz v. Poland**, (No. 20071/07, 17.04.2012.)" The ECHR decision regarding strip searches each time at the entrance and exit of the cell see.

³¹ In its decision of **Valašinas v. Lithuania** (No. 44558/98, 24.07.2001, para. 117), **ECHR** concluded that applicants forced to strip in presence of an opposite-sex officer and strip search by an opposite-sex officer with touching genital organs are against human dignity and violation of Article 3.

³² The belongings and items that can be possessed in institutions are regulated in 17.06.2005 dated and 25848 numbered **Regulation on the Belongings and Items can be Possessed in Penal Institutions**. Additionally, the **Circular on Correction, Transfer Operations and Other Provisions of Penal Institutions 22.01.2007** dated and **45/1** numbered by **Ministry of Justice General Directorate of Prisons and Detention Houses** enumerate the belongings that forbidden to brought to the penitentiary or kept in institutions. (Section 4, Article 2). Some of the belongings and items listed are not only prohibited but also defined as a crime. (Turkish Criminal Law Art. 297/1).

³³ See **Pawel Pawlak v. Poland**, (No. 13421/03, 30.10.2012, para. 141), (Quotation: Duman, Ezgi, *ibid* p. 140). According to the ECHR, "Thoughts about a general risk, an abstract fleeing possibility and the type of crime does not justify the strip search."; For another similar decision, see **Wieser v. Austria**, (No. 2293/03, 22.02.2007); According to 5th **Criminal Chamber of Court of Cassation** "After taken to Istanbul Forensic Institute with the high-security vehicle and under the supervision and completed the reporting process, in the event strip search asked while suspect from Ankara Women Closed Prison came back to the institution, (...) how the condition of reasonable and serious indications that belongings

or items forbidden to be introduced or kept in the institution exist occurs, by considering 46/2 of regulation, (...) and the necessity of strip search whether it is an unjust act for the defendant and whether it is necessary to apply Articles 29 and 129 of TCK on the grounds of the decision” is a reason to reverse the decision. (2012/16248 E., 2014/3268 K., 24.03.2014)

³⁴ See **Constitutional Court, Turan Gunana (5)**, (No. 2013/5545, 15.12.2015, para. 26). In the decision, the applicant who did not accept strip search in the incident says: “I was knocked down by the guardians and they tried to take my clothes off against my will. (...) a guardian closed my mouth and nose and causing me unable to breathe. I had to stay still because head guardians hold my hands and feet by sitting on me. The one that closes my mouth took his hand away after realizing that I can’t breathe.”

³⁵ See **İnci, Z. Özen**, *ibid*, p. 63. The fact that the clothes have not been searched gives rise to the opinion that the purpose of the strip search was to harm human dignity instead of preventing convicts from possessing forbidden belongings.

³⁶ See **European Prison Rules**, According to Rule 54.7, a body cavity search should only be made by a doctor. According to World Medical Association, searches must be conducted by the ones who work in execution systems and has the required training. Other than the exceptional and very special cases, this person should not be a doctor. Because doctors who work in prisons and strip search are having dual loyalty issues. In exceptional cases, the doctor would decide if the medical presence is required for this practice and act accordingly within ethical rules. **WMA “Statement on Body Searches of Prisoners”**; See **Mandela Rules**, Art. 52/2.

³⁷ Usually, searches are conducted in rooms without a camera. However, with the cameras around the area of the room, information such as, entrance-exit moments to the room, duration, how many people, and who entered the room can be obtained. For video footage evidence, see section 9.

³⁸ For disciplinary investigation evidence, see section 5.

³⁹ See **Constitutional Court, Gunal Kursun**, (No. 2017/35484, 15.01.2020, para. 67) “There is no information or document regarding applicant admission to execution judge for the practice he has been exposed to and/or after the decision of execution judge, that he exhausted the objection remedy before the heavy criminal court. According to relevant provisions, while the applicant could complain to competent judicial authorities and claim that he had been subject to ill-treatment due to the place and conditions of the detention and could ask for the correction of these conditions immediately, he did not resort to these means.”

4

EVIDENCE
REGARDING
AUTHORITY TO
USE FORCE



INTERNATIONAL STANDARDS

UNITED NATIONS

UNCRC, Art. 37, 39
Convention Against Torture, Art. 1, 2, 4, 10, 11, 12, 13, 15 and 16
Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
Code of Conduct for Law Enforcement Officials
Mandela Rules, Rule 47-49, 76 and 82
Standard Minimum Rules for the Treatment of Prisoners, Rule 33 and 34
Havana Rules, Rule 55, 63 and 64
Bangkok Rules, Rule 24
CRC; General Comment (2006)18, Art. 11, 18 / General Comment (2011)13, Art. 33

EUROPEAN COUNCIL

European Prison Rules, Art. 64 and 65

Explanation

Use of force is an act that involves at least minimal force naturally even in its lightest form¹. Therefore, the use of force against people deprived of their liberty causes damage to human dignity and unless the actions and attitudes necessarily emerged the need to use force, in principle, there exists a violation of the prohibition of torture.² Due to the presumption of innocence, proof of guilt is essential. However, the supranational law accepts the displacement of the burden of proof principle regarding the persons under the state's custody. In the investigation of torture allegations, ECHR particularly examines the burden of proof as well. It should be noted that when the authorities use excessive amount of force, and, as a result, there occurs a violation of torture and ill-treatment, the burden of proof shifts towards the perpetrators. Also, ECHR stated that; "the accused party is under the burden of refuting the claims made against itself with appropriate and convincing evidence"³. However, it should be noted that allegations of ill-treatment must also be supported by appropriate evidence⁴.

In principle, recourse to instruments of restraint and use of force against the children deprived of their liberty regardless of any purpose is forbidden⁵. However, these methods can be used only as a last resort in exceptional cases subject to the conditions explicitly stated and authorized in the law and legal regulations, and obtaining results should be impossible despite all other control methods are exhausted.⁶ In such cases, these methods should be used only in compulsory situations without humiliating the children or harming their dignity and only for the shortest possible duration.⁷ Moreover, it should be noted that the UN CRC considers the institutions' personnel as a "person who has the care of the child" in article 19 of the Convention and accepts that these people are under the obligation to protect the child from all forms of violence⁸. Again, the Committee describes physical violence broadly and covers all other acts besides physical violence by saying "all forms of violence"⁹.

Restrictive interventions and the use of force, including physical, mechanical, and medical¹⁰ restraints, should be under the control of the close and direct supervision of a specialist in medicine and/or psychology and should never be used as retaliation or punishment¹¹. The authority to use force is essential for protecting officers' and juveniles' right to life and physical integrity in penal institutions. Therefore, medical and other related personnel must be consulted, and the highest authority must be informed¹².

Authority to use of force is regulated with laws and regulations in the national law. According to CGTIHK, practicing the use of force against children is possible to prevent the prisoner from harming him/herself or others or destructing property subject to the doctor's instruction and supervision with medical reasons and insufficiency of the other control methods, by order of the institution's highest authority (Art. 50).

CGTIHY foresees that the force will be used with permission of the highest authority of the institution because of events that disrupt the institutions' security¹³ self-defense, and state of necessity¹⁴. (Art. 10/8) However, the following parts of the article state that using force is possible to eliminate the danger in urgent cases. In such cases, the highest authority must be informed immediately. An emergency plan must be prepared to use force for the situations such as rebellion and Chief Public Prosecutor's Office must approve this plan in order to ensure the use of force is per the law.¹⁵

No special regulation has been found on, who should use, which method and how in similar situations, apart from the relevant provisions of the Law and Regulations¹⁶. Also, there is no rule on the people who have the authority to use force should have expertise.

Another regulation related to the use of force is included in the Child Protection Law. Accordingly, as a rule, chains, handcuffs¹⁷, and similar tools cannot be put on children during dispatch and transportation; however, law enforcement may take the necessary measures to prevent the child from escaping or to prevent the dangers that may arise for the life or physical integrity of the child or others (Art. 18). There is no provision for the measures to take and how to implement them. In order to prevent this situation from causing unfair and arbitrary practices, the method to be used should be interpreted per the purpose of the rule (Art. 4).

For the situations where force is used against children deprived of their liberty, the assessment should focus primarily on the legality and proportionality¹⁸ of the use¹⁹. This assessment also must consider that the subject of the use of force is adolescents who have developmental characteristics such as conflict with the authority²⁰. Therefore, it should be sought first; execution and protection officers must have specific and sufficient expertise in working with children and implementing standards. Secondly, the regulations regarding the functioning of the institution are regulated in a way to ensure intervention to crisis done in accordance with the law.²¹

While considering the claims of torture and ill-treatment, if the use of force is in accordance with the law, it is necessary to investigate whether the officers reacted per the threat to be eliminated, whether the use of force was stopped after the intervention achieved, and whether the person using force is authorized to use force.²² The incident subject to the use of force and the following intervention or all the events until the end of the intervention should be examined one by one, and the actions of everyone involved in these interventions should be evaluated separately. Also, in the case of Keser and Komurcu-Turkey, ECHR preferred the classification of serial events in a similar way.²³ In this context, it should also be examined whether the form of the intervention to eliminate dangerous behavior is necessary, sufficient, and appropriate for human dignity. For example, to neutralize a child who acts in a way that causes harm to him/herself or another person, punching the child instead of using an intervention method by expert personnel will also exceed the authority to use force.

In this context, the officers, who were personally involved with the concrete case and other institution officers in charge, even if they were not involved, should be taken into consideration separately²⁴. The investigation, prosecution, and defense authorities should carefully consider that “The officers, who implicitly consent to torture by seeing that people are tortured but not taking the necessary intervention in this regard, will be deemed to have committed the crime of torture through negligent behavior”²⁵.

Points to be Informed in General for the Demands Regarding the Allegations of Exceeding Authority to Use of Force

In order to evaluate the evidences, it is necessary to have knowledge on the following matters;

- The procedure to be followed for the practice of authority to use force in penitentiary institutions.
- The applicable methods before the practice of using force.
- Restriction and use of force methods in accordance with the law.²⁶
- The necessary training for the staff regarding the practice of authority to use force.²⁷

Guiding Questions

This list contains the evidence that should be gathered and the minimum information/characteristic you should seek for in each piece of evidence.

- Request the documents that regulating authority to use force within the institution.
 - Is it explicit in writing, who has the authority to use force and how?
 - Has this information given to the personnel?
 - Is there a training program to ensure that enforcement and protection officers are adequately trained for intervention to crisis and authority to use force?
 - Are the officers who practice authority to use force trained?
- Request internal correspondence of the institution regarding the use of force subject to the case.
 - Is there an institution's state of emergency plan approved by the chief public prosecutor?
 - Has the permission of the institution's highest authority been obtained?²⁸
 - If it is necessary to use force without permission to eliminate the danger in emergencies, has the situation been immediately communicated to the highest authority of the institution?²⁹
 - Are the administration's orders and instructions in accordance with the law?
 - Have the medical personnel and other personnel been consulted before the practice of using force?³⁰
 - Is there a disciplinary and/or criminal investigation initiated after the intervention against the child?
 - Is there a disciplinary investigation initiated after the intervention against the personnel?
- Request the video footage.³¹
- Answer the following questions by considering all evidence.
 - Is there a situation (resistance/crisis) that requires using of force?³²
 - Does the administration (personnel) have any negligence in the incident that caused the resistance/crisis?

- Was it possible to neutralize the resistance/crisis without practicing the use of force?
 - Are all the non-violence methods and means have been exhausted before using force? After the exhaustion of them, was the practice of use force last resort?
 - Which methods have been used to cease resistance/crisis?
 - Has the emergency plan been followed if it exists?
 - Has necessary care been taken to ensure that children are not humiliated and disgraced during the use of force?³³ What kind of measures has been taken?
 - Has the use of force been ceased as soon as possible?
 - When was the situation requiring the use of force occurred?
 - When was the authority to use force practiced?
 - When was the use of force ceased?
 - Is the duration between those in the shortest possible?
 - After the resistance/cr,isis was neutralized, did the use of force continue?³⁴
 - Have risky tools been used during intervention to resistance/crisis? ³⁵
 - Have necessary precautions been taken during the use of risky tools?
 - Are the enforcement and protection officers have sufficient training regarding the authority of intervention and using force against resistance/crisis?
 - Is there any unauthorized person among those who use the authority to use force or intervene in the incident?
- ➔ Examine **the medical evidence**.³⁶
- Are the medical assistance and support provided immediately to children who injured during the use of force?
 - Are medical injuries caused by use of force documented?
- ➔ Request family information minutes.
- Have relatives of children who injured during the use of force been notified as soon as possible?³⁷
 - When did the use of force occur?
 - When the relatives get informed?
 - Is the duration between is the shortest possible?
- ➔ If there is a claim that physical restraint methods are applied during **dispatch** and transfer, request the statements, video footage, and minutes of dispatch and transfer.
- Has the rule of handcuffs and similar tools prohibition has been followed? ³⁸
 - Is there a case of an emergency such as the risk for the child to escape or danger for the child to physically harm his/her self or others or physical integrity? ³⁹
 - Is the prevention method has been used as a routine practice?⁴⁰
 - What type of method has been used?
 - Have the handcuffs or tying method, which is prohibited by law, been used?

- How this method has been used? (e.g., such as using cuffs for hands and/or feet, rear-cuff, over tight handcuff⁴¹)
- How long had the cuffs been used?
- Had using cuffs been continued after the end of the emergency case?
- Despite which method had been used, was there any purpose of retaliation, punishment⁴², and/or exposure?
- Has the child's physical or mental condition been affected negatively during the use of handcuffs and similar tools?⁴³ If yes, has this situation been detected with a medical report?⁴⁴

Supportive Evidence

Regarding Exceeding Authority to Use Force

In addition to the written internal documents of the institution, video footage, medical evidence, and correspondence with family, you can support your claim and test the accuracy of the evidence obtained with the following evidence:

- ▶ Training certificates of the personnel who intervene in the incident.
- ▶ Witness (Witnesses who can state whether personnel received the sufficient training for authority to use force and other skills they should have: For example, retired personnel or personnel who quit, etc.)

Indicators

The following points indicate that the administration does not fulfill its obligations regarding the use of force in the institution.

- Lack of a written regulation regarding the authority to use force in the institution.
- A written regulation that is not in compliance with the law.
- Institution personnel's lack of training regarding intervention to crisis and authority to use force during admission or the period of their profession.
- Lack of records on the practice of use force.

Footnote

- ¹ See **Constitutional Court, Turan Günana** (5), No. 2013/5545, 15.12.2015, para. 88.
- ² See **Mintas v Turkey**, 23698/07 19.03.2013 para.51“Furthermore, recourse to physical force which has not been made strictly necessary by a person’s conduct is in principle an infringement of the right outlined in Article 3 of the Convention. In this connection, the Court reiterates that the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (**Gomi and Others /Turkey** case, no. 35962/97, Art.71-72, 21 December 2006, **Selmouni/France** case [BD], no. 25803/94, Art.95 and 99.ECHR 1999-V, and **Tekin/Turkey** case, 9 June 1998, Art. 52 and 53. Collection 1998-IV).”; See **Izci v. Turkey**, (No. 42606/05, 23.07.2013, para. 55.); See **Keser and Komurcu** (No. 5981/03, 23.06.2009, para.59); See **Constitutional Court, Cezmi Demir and Others**, (No. 2013/293, 17.07.2014, para. 92.)
- ³ See **ECHR, Mintas v Turkey**, (23698/07 19.03.2013 para.51) “Additionally, Court reminds that the burden of proof for the ones who harmed under control of the official authorities or State officers (i.e. during police or military operations) lies with Defendant Government; thus, the accused party has the burden to refute the claims against them with appropriate and convincing evidence. This applies fortiori to public authorities and officials, since, on the one hand, they are the only one who knows the realization of criminal facts and, on the other hand, they can access information to confirm or refute such claims. (aforementioned, Keser and Komurcu case, Art. 60 Salman /Turkey case [BD], no. 21986/93, Art. 100 ECHR 2000-VII and Ahmet Engin Satir/Turkey case, no. 17879/04, Art. 40 1 December 2009).”; See **Labita v. Italy** [BD], (No 26772/95, 04.04.2000 para. 120); See **Pantea v. Romania**, (No 33343/96, 03.06.2003 para. 180); See **Berktaş v. Turkey**, (No 22493/93, 01.03.2001, para. 62-65); See **HIRT, Sincan Prison Survey Report** (10.07.2014) p.75
- ⁴ See **Constitutional Court, Cezmi Demir and Others**, (No. 2013/293, 17.07.2014, para. 95.) “Claims on ill-treatment must be supported by appropriate evidence. (For a similar ECHR decision see Klaas/Germany, A. No: 15473/89, 22/9/1993, § 30). Reasonable evidence without any doubt is necessary to determine the truth of the claimed events. Evidence of this nature may also consist of sufficiently serious, explicit, and consistent indications or some presumptions that cannot be proven otherwise. (For a similar ECHR decision see Irish/United Kingdom, Appl. No: 5310/71, 18/1/1978, § 161; Labita/Italy, § 121). In this context, the attitudes of the parties should be considered when collecting evidence. (see. Tanlı/Turkey, Appl. No: 26129/95, 10/4/2001, § 109). However, if these suitable conditions are detected, it can be determined the presence of ill-treatment. (Appl. No: 2013/394, 6/3/2014, § 28).”
- ⁵ See **Havana Rules**, Rule 63.
- ⁶ See **Havana Rules, Rule 64; See Regarding European Prison Rules Rec(2006)2**, Art. 64/1.
- ⁷ See **Havana Rules, Rule 64; See Regarding European Prison Rules Rec(2006)2**, Art. 64/2.
- ⁸ See **CRC General Comment No 13** Art. 33
- ⁹ See **CRC General Comment (2006)8** Art. 11, 18. The Committee defines “physical punishment” as any punishment in which physical force is used and intended to cause some degree of pain or discomfort for the child that mostly involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement (a whip, stick, belt, shoe, wooden spoon, etc.) kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). These include, for example, the punishment that belittles, humiliates, denigrates, scapegoats, threatens, scares, or ridicules the child.
- ¹⁰ According to Havana Rules, giving drugs to children as a means of restraint is not possible. (Rule 55).
- ¹¹ See **CRC General Comment no.24**, para. 95/f.
- ¹² See **Havana Rules**, Rule 64.
- ¹³ Such as attempt to flee, riot, taking hostage, attack, active or passive physical resistance against the law or regulatory order.
- ¹⁴ Situations regulated in **Article 25 of CGTIHK**.
- ¹⁵ **Circular 22/01/2007 dated and 45/1 numbered of General Directorate of Prisons and Detention Houses** Art. 8/a; The Ministry of Justice General Directorate of Prisons and Detention Houses Inspection Board determined that this obligation has not fulfilled and suggested “submitting emergency plans for the approval of the Chief Public Prosecutor, and execution of the plan after approval, ...”. In the same source, it was also criticized that the exercise was not carried out by saying “it has been observed that the “Emergency Plan Exercise” to prevent collective movements was not held.”
<https://teftis.adalet.gov.tr/Resimler/SayfaDokuman/1213201941601PMcik.pdf> p.12 Date of Access: 26.11.2020
- ¹⁶ According to Article 65 of **Regarding European Prison Rules Rec (2006) Recommendation no. 2**; There shall be detailed procedures about the use of force including stipulations. These procedures should include the various types of force that may be used; the circumstances in which each type of force may be used; the members of staff who are entitled to use different types of force; the level of authority required before any force is used; the reports that must be completed once the force has been used.

¹⁷ See **D.G. v. Ireland**, (No. 39474/98, 16.08.2002, para.) According to the court, the physical restrictive methods such as handcuffs by law enforcement officers in order to prevent the detainees or convicts from escaping and to avoid the danger of harming themselves or others does not constitute a violation of the prohibition of ill-treatment.¹⁸ AİHM, hücrelerinden ayrılmayı reddetmesi nedeniyle başvurana karşı lastik cop kullanılmasını orantısız ve doğası gereği misilleme niteliğinde olduğu kanaatine varmış ve Sözleşme'nin 3. maddesinin ihlal edildiği sonucuna ulaşmıştır. **AİHM, Artyomov v. Rusya**, No. 14146/02, 27.05.2010, para. 172.

¹⁸ See **Artyomov v. Russia**, (No. 14146/02, 27.05.2010, para. 172.) ECHR ruled that the use of rubber truncheons against the applicant who refused to leave the cell was un-proportionate and retaliatory and resulted in a violation of Article 3 of the Convention.

¹⁹ See **Constitutional Court, Gulsah Ozturk and Others**, (No. 2013/3936, 17.02.2016, para. 52); See **F.E. and Others**, (No. 2014/15586, 23.01.2019, para. 119.)

²⁰ See **Constitutional Court, F.E. and Others**, (No. 2014/15586, 23.01.2019 para. 121). "The ones who commit acts of aggression, active resistances, and riots are children between the ages of 16 and 17. This situation also should be taken into consideration. Thus, in many national and international legal regulations, it has been emphasized that all necessary measures should be taken for the protection of children."

²¹ See **Havana Rules**, Rule 85; See **CRC General Comment no. 24**, para. 95/f; See **HRIT, Sincan Prison Survey Report** (10.07.2014) p. 60.

²² See **Constitutional Court, Cihan Kolçak**, (No. 2014/12302, 21.09.2017, para.71) "In the concrete case, the applicant placed into the padded cell to prevent the applicant from harming execution officers, himself, and the room. Although this measure alone cannot be considered as any kind of ill-treatment, there must be a reasonable justification and an absolute reason for the applicant to be held in this room with feet and hands tied behind for almost six hours. Keeping the applicant handcuffed in a padded cell, where there is no possibility to harm anyone, causes the perception that the applicant is subjected to corporal punishment. The fact that the handcuffs on the applicant's hands could not be removed and kept for about two hours also strengthens this perception. Even in the event, it is admitted that the applicant is continuing to be aggressive, there is no evidence of the video footage that the applicant regularly checked to see whether she calmed down or not."

²³ See **Keser and Komurcu -Turkey** No 5981/03, 23.06.2009. "Except the claims related to events that occurred during transport with fourgon which is unacceptable, ECHR emphasized that the other claims -such as criminal complaint made by Attorney Kirdok- can be examined as two series of events and ECHR notes that the first of these was the events began with the arrival of the related persons and continued until they were placed in a cell, and the second was the allegations that the prison guards deliberately beat the applicants during roll call."

²⁴ **Court of Cassation CGK**, in its precedent with no 2014/269 E., 2017/108 K. with the justification of "the defendant who is the supervisor of the non-trial the defendants who batter the victim and has the final verdict on torture crime, had supervision and surveillance obligation over these non-trial defendants. It is understood with video footage and reports issued during discovery that the defendant knew victim who placed into prison on 30.09.2008 battered for not standing during roll calls and at the roll call on 07.10.2008 although he saw that victim was beaten by the prison guards, he did not intervene to prevent these acts. Witness ... stated that the defendant said "from now on, those who act like this will be punished in this way" by meaning the acts which the victim exposed to and these statements supported by other witnesses ... and Since the defense of the accused that he was unaware of the events is unreliable, it should be accepted that he committed the crime of torture, which was aggravated by negligence, by giving implicit consent to the acts that resulted in the victim's death and constitute the crime of torture." Uphold the decision of the regional court that the officer in charge "to be sentenced to life imprisonment in accordance with Articles 95/4, 62, 53/1 and 63- by TCK 94/5- for the crime of torture, which has become aggravated due to the consequences of negligence."

²⁵ See **Durmus Tezcan-Mustafa Ruhan Erdem-Murat Onok, Theoretical-Practical Criminal Law**, Seckin, 12. Edition, Ankara, 2015, p. 269

²⁶ See **HRIT, Sincan Prison Report** (10.07.2014) p. 62 "While investigating whether the authority of use force exceeded or not; instead of applying disciplinary measures by keeping reports due to not obeying the counting rule, actions such as hitting, kicking, throwing a chair, forcing to obey the rule – except the cases of intervention to eliminate the danger- should be carefully considered."

²⁷ See **HRIT, Sincan Prison Report** (10.07.2014) p. 78. "Personnel with the authority to use force should be specialized in using force techniques limited to neutralizing adolescents who have aggressive behavior; in the moments of crisis, it must be ensured that the personnel who will intervene and take measures should not give the impression of one-on-one struggle and has the sufficient knowledge and skills to neutralize without hurting opposite party; it should be ensured that the personnel has received special training regarding the measures to be taken in case of using fire extinguishers, etc."; See **CPT/Inf (2013) 27**, 05.12.2012, para. 20. Similarly, CPT recommended Turkey to train personnel for the techniques of using force."

²⁸ See **CGTIHK Art. 50**.

²⁹ See **CGTIHK Art. 50**.

³⁰ It is observed that investigations initiated against children for the crime of resisting an officer (to the prevention of performance) under Article 265 of Turkish Criminal Law. In these and similar cases, it will be useful to consider the behavior in question.

³¹ See section 9 for video footage evidence.

³² See **CGTIHK Art. 50**

³³ See **HRIT, Sincan Prison Report** (10.07.2014) p. 79 “The acts such as kicking and punching, throwing a chair, bending the wrist which would suggest authority to use force has been exceeded, and situations where there is no need to use of force such as bending the arms backward in a painful way ... should be carefully considered.”

³⁴ See **CPT/Inf (2013) 27**, 05.12.2012, para. 18-20. CPT noted the complaints during a visit to Turkey in 2012 that the use of force continued after neutralization of the resistance in Maltepe Prison and after juvenile prisoners taken under control; Accordingly, CPT stated that no justification could be accepted for the use of force after the resistance had ceased.

³⁵ See **HRIT, Sincan Prison Report** (10.07.2014) p. 79 “The following points should also be carefully examined; The responsibilities of the administration, such as the prevention of crisis, the use of risky materials such as fire extinguishers, adequacy of personnel equipment is, the administration’s orders and instructions, and the attitude to identify responsibly.”

³⁶ See section 7 for medical evidence.

³⁷ See **Coselav – Turkey** (No: 1413/07, 09.10.2012, para.74-75) “In the present case, the applicants were not informed of the death of their son until 30 December 2004. Thus, thirteen days the applicants were not only unable to participate in the investigation but were also not informed about the steps taken by the prosecutors. The Government submitted that the authorities had been unable to contact the family promptly because they could not find them. Nevertheless, the Court observes that, according to the documents submitted by the Government, contact details of Bilal Coşelav’s family were already in the prison records and, indeed, the prison governor obtained the telephone number of the second applicant from those records, Bekir Coselav, and informed him on 30 December 2004 when instructed to do so by the prosecutor (see paragraph 18 above). The Court thus cannot find credible the Government’s submissions about the authorities’ inability to contact the family in the immediate aftermath of the incident. Therefore, the court considers that the family was prevented from taking part in the investigation in its early and crucial stages directly because the authorities failed to inform them promptly.”

³⁸ See **Child Protection Law Art. 18**

³⁹ See **Korneykova and Korneykova v. Ukraine**, (No. 56660/12, 24.03.2016, para. 111); See **Okhrimenko v. Ukraine**, (No. 53896/07, 15.10.2009, para. 97.) ECHR ruled in many cases that to handcuff or chain someone who is sick or weak is disproportionate and should be considered as a humiliating treatment, regardless of the intention.

⁴⁰ See **Kashavelov v. Bulgaria**, (No. 891/05, 20.01.2011.) The ECHR decision on routinely handcuffing a prisoner each time removed from the cell.

⁴¹ According to CPT, handcuffs should never be too tight and should be worn only as long as it is compulsory. (CPT/Inf (2020) 7, 27.07.2020, para. 45). It is important to document the events with a forensic report where handcuffs are used too tight.; See **Constitutional Court, Gulsah Ozturk and Others**, (No. 2013/3936, 17.02.2016, para. 59). In the case of the Constitutional Court, applicants complained of police ill-treatment due to handcuffs used too tight. However, during the investigation, there was no mention of any injuries to the wrists in the forensic reports which are not subject to any objection, hence Court ruled that the use of force by the police was not unnecessary and disproportionate in a way to cause a violation.

⁴² See **HRIT, Sincan Prison Report** (10.07.2014) p. 62 “Children who taken out of the uniters and taken into the padded cells are not able to harm themselves, others or goods, hence, keeping them with handcuffs causes the thoughts of punishment purposes.”

⁴³ See **Constitutional Court, O.Ü.** (No. 2016/62587, 23.06.2020, para. 36) “While assessing the minimum threshold for deeming a legal treatment as ill-treatment, it is crucial to demonstrate the consequences of the treatment. For a legal practice made in this context to exceed the threshold sought in terms of the prohibition of ill-treatment, reasonable evidence regarding the intervention harmed the physical and mental integrity of the applicant is necessary and it appears that the applicant did not submit any evidence to the investigation or application file, except for the damaged honor claim.”; Similarly, see **Raninen v. Finland**, (No. 20972/92, 16.12.1997, para. 52-59.) ECHR ruled in a decision that transporting applicant as handcuffed, even if it is not a necessary precaution due to applicants attitude or even imposed due to unfair detention; the court did not convince that there is a negative impact of this treatment on the applicant’s mental state, and that a causal link between the negative developments regarding the applicant’s mental state and the incident of handcuff could not be established, which were stated in the medical reports received a few months after the incident; evaluated that the minimum threshold level sought for article 3 of the Convention was not exceeded in the event.

⁴⁴ See **Mimtas v. Turkey**, (No. 23698/07, 19.03.2013, para. 56) “Court ruled that injuries founded with the medical report issued by the prison doctor and these support the claims of the applicant regarding the events. Thus, this medical report points out -for example- the edema on the applicant’s wrists, which is in consistence with the applicant’s statement on that his/her wrists were tightly handcuffed by the security forces.”

5

EVIDENCE
REGARDING
DISCIPLINARY
PRACTICES



INTERNATIONAL STANDARDS

UNITED NATIONS

UNCRC, Art. 3, 37 (c) (d), 39
Havana Rules, Rule 6, 19, 25, 66-71
Beijing Rules, Rule 27
Mandela Rules, Rule 3, 8, 36-41, 43, 45-46
CRC General Comment no. 10, 40

EUROPEAN COUNCIL

European Prison Rules, Art. 27, 43, 56-63
Recommendation on Juvenile Offenders, Art. 94-97, 125-126
CPT 24th General Report, para. 126-129

Explanation

As body search and exceeding the limits of the use of force, practices aiming at discipline may attend to the level of torture and ill-treatment¹. Therefore, to evaluate whether the implementation of disciplinary measures and sanctions is in compliance with the law and whether it turns into torture and ill-treatment for children is necessary.

Disciplinary measures and sanctions should be in accordance with the educational purpose of execution of the measure and sanction² and should improve the sense of justice and self-esteem of the children³. Measures and sanctions and cases to apply them should be regulated by law.⁴ After regulating the types and the practice conditions of disciplinary measures and sanctions with CGTIHK and CGTIHY in the domestic law,⁵ the administration is given the possibility to take measures other than the disciplinary measures and penalties specified in the Law by the provision of;⁶ "In case the order of the institution and the security of individuals are subjected to serious danger, other measures not explicitly specified in the Law are also should be applied to ensure the discipline and order."⁷ These others measures are also considered as disciplinary proceedings in terms of international law, in spite of they are not disciplinary measures and sanctions as stated in the law.⁸ Therefore, although these measures are not explicitly regulated by law, they must be subject to the assurance of protective rights recognized for the ones deprived of liberty. As a matter of fact, even though these practices are not subject to the approval of the enforcement judge,⁹ such as disciplinary sanctions, they are subject to audition of the enforcement judge.¹⁰

Disciplinary rules must be given in written and explained to the children during admission to the institution.¹¹ The principle of individuality also must be followed as legality while practicing disciplinary measures and sanctions. Thus, collective punishment is prohibited.¹² To apply solitary confinement against children is also prohibited.¹³ Under certain circumstances, CGITHK allows authorities to order 'room confinement'.¹⁴ The execution of the room confinement may be ordered by taking the approval of the execution judge.¹⁵ The child must be examined by a doctor before, during, and after the execution of the punishment.¹⁶

In addition, any practices that reach the level of torture and ill-treatment under the name of measures or sanctions are prohibited.¹⁷ If the measure or penalty causes a heavy effect on the child's psychology, the punishment may reach the level of ill-treatment and the child is likely to be traumatized.¹⁸ Therefore, it is anticipated that the effects of the measure/punishment on the child's psychology before and after the decision should be examined by experts in the psychosocial service¹⁹ and all processes should be recorded²⁰ to prevent violations of rights during the practice of disciplinary measures and sanctions.

Disciplinary measures and sanctions should always be subject to audit and they should be recorded.²¹ Decisions by the disciplinary board should be with justification and authority, and it should include the duration for the complaint.²² The disciplinary measures and sanctions against convicts should be recorded in the "Observation and Classification Form"²³, which is kept by the institution.²⁴

When children are subject to disciplinary measures, they shall have all procedural guarantees²⁵, This includes the right to self defense²⁶, and the right to challenge the decisions. Even when the justification and appeal procedure is specified in the written form, they should be explicitly explained to the children. Law stipulates that before initiating the execution, the explanation should be made by the head of the institution or the head of the execution and protection officers. It is also depending on the type of disciplinary sanction.²⁷

The documents of the disciplinary investigation related to the actions of the child will also be important as evidence. Especially in cases where the defendant claims that the reason for the intervention acts subject to torture and ill-treatment allegations is child's behavior against the disciplinary rules.

The conditions of compliance with the law should also be sought with regards to the measures regulated by article 49 of the CGTIHK. All forms of disciplinary practices must be auditable, and the practices should be recorded to ensure the audition, and the practices should not violate the prohibition of torture and ill-treatment."²⁸

Points to be Informed in General for the Demands Regarding Disciplinary Measures and Sanctions

In order to evaluate the evidences, it is necessary to have knowledge on the following matters;

- ➔ Disciplinary measures and sanctions are defined by law.
- ➔ Information on the authority, which decides on disciplinary measures and sanctions.
- ➔ Complaint and appeal mechanism regarding disciplinary measures and sanctions.
- ➔ Procedures and principles on keeping the records of the measures and sanctions.
- ➔ Effects of the disciplinary measures and sanctions on the children psychology.

Guiding Questions

This list contains the evidence that should be gathered and the minimum information/characteristic you should seek for in each piece of evidence.

- ➔ Request the internal disciplinary regulation, if it does not exist, request a witness hearing.
 - Is there a written regulation?
 - Is there any disciplinary measure/sanction established in the institution's culture?
- ➔ Request the **records (administration monitoring board decisions and disciplinary board decisions)** of the disciplinary investigation and any other practices..
 - Is there a disciplinary measure that has been taken?
 - What type of measure has been taken?
 - Who ordered the implementation of the decision?
 - Who implemented it?
 - How long has it been implemented?
 - Is the decision ordered by the competent authority?
 - Has a disciplinary investigation been conducted against the child?
 - What is the reason for the disciplinary investigation?

- Have psychosocial service experts been consulted?
 - Has the defense of the child been taken?
 - Has there been a report regarding the investigation?
 - Who conducted the investigation?
 - What is the ordered sanction at the end of the investigation?
 - Has the sanction been executed?
 - Have the legal limits for the sanction been exceeded?
 - Has there been any collective punishment (to a group because of one person's action)?
 - Have the consultations of the psychosocial service experts regarding disciplinary measures and sanctions recorded?
 - Have psychosocial service experts studied the effects of disciplinary measures and sanctions on the child?
 - Have the evaluations of the psychosocial service experts been considered when deciding on disciplinary measures and sanctions?
 - If the sanction of room confinement has been applied, did the execution judge approve it?
 - Has the doctor examination been conducted prior, during, and after the room confinement sanction?
 - Has the effect of the measure and penalty for child psychology been evaluated during disciplinary measure and sanction?
 - Has the child had the right to meet psychosocial service experts anytime during disciplinary measure and sanction?
 - Are there any findings that require termination of the measure or sanction? If yes, has the measure or sanction been terminated?
 - Has there been a practice of a disciplinary measure and sanction that is not anticipated in the law?
 - Has the child had the right to appeal against the measure/sanction?
- ↘ If there is an objection against disciplinary measures and sanctions, request the admission and its decision.
- Is there a record of the objection?
 - Did the objections against disciplinary measures and sanctions duly communicate with competent authorities?
 - Has the objection decision been ordered duly?

Supportive Evidence for Disciplinary Measures and Sanctions:

In addition to the documents, admissions, records, and reports regarding disciplinary measures and sanctions, you can support your claim and test the accuracy of the evidence obtained with the following evidence:

- ▶ Video footage²⁹
- ▶ Records of psychosocial service studies³⁰
- ▶ Records of internal complaint and objection mechanism³¹

Indicators

The following points indicate that disciplinary practices in the institution are not in accordance with the law:

- ▶ Unwritten disciplinary rules.
- ▶ The disciplinary rules that not given and explained to children in a language they can understand.
- ▶ Not taking the defense of children.
- ▶ Conducting, deciding, and notifying disciplinary investigation by unauthorized persons.
- ▶ Not keeping duly records of the disciplinary investigation.
- ▶ Not taking the opinion of the psychosocial service before the disciplinary measures and sanctions or lack of sufficient research in the opinion.
- ▶ Not recognizing the rights of information on claims, self-defense, and objection for the child or lack of a mechanism to ensure these rights.
- ▶ Lack or insufficiency of psychosocial and educational services.

Footnote

- ¹ See **HRIT, Sincan Prison Report** (10.07.2014) p.62, 76,78. The determination of officer's behaviors should be carefully evaluated in the case of use of force under the name of discipline to ensure that children comply with the rule instead of initiating a disciplinary investigation..
- ² See **CGTIHK Art. 15**
- ³ See **Havana Rules Art. 66**
- ⁴ See **Gulmez v. Turkey** (No. 16330/02, 20.05.2008 para. 50-55.) In national law, this is regulated with Article 46 of CGTIHK. ECHR noted that despite the provision of disciplinary sanctions in the law, the disciplinary punishment imposed was against the principle of legality since the acts and actions requiring disciplinary punishment did not meet the legal nature of the Convention and enabled the administration to perform arbitrarily practices. The administration imposed a 1-year visitor ban for damaging the property in the prison in the decision. ; Additionally, see **Ankara BIM (District Administrative Courts) – 11th Administration Case Chamber** (No: 2017/128 Decision Date: 29.09.2017 para. 34-39.) The court founded that it is illegal to order two separate sentences for a single act that is subject to punishment.
- ⁵ See, **CGTIHK Art.45 - 48**
- ⁶ See, **CGTIHK Art.49**
- ⁷ See, the Constitutional Court decision, 2017/159 E. 2018/41 K. no, and 2/5/2018 dated, for the application of norm review to the Constitutional Court regarding Article 49 of CGTIHK.
- ⁸ See, UN General Assembly Resolution No. 45/113 (14.12.1990) Rules for the Protection of Juveniles Deprived of Their Liberty” Practical guide: monitoring places where children are deprived of liberty, Defence for Children International (2016); "Briefing Paper: Positive behaviour management and children in detention: Kazakhstan, Kyrgyzstan and Tajikistan" PRI 2016
- ⁹ See Court of Cassation Criminal Chamber no 19, decision no: 2015/16107 E. 2015/4563 K.
- ¹⁰ See **IHK Art.1;** Court of Cassation Criminal Chamber no15, decision no: 2013/14240 E. 2013/13968 K. dated: 23.9.2013."
- ¹¹ See **CGTIHK Art. 22-(1), CGTIHY Art. 56-(1)**
- ¹² In the reports of The Ministry of Justice General Directorate of Prisons and Detention Houses Inspection Board, it has been founded that the principle of legality and personality has not been complied with.
<https://teftis.adalet.gov.tr/Resimler/SayfaDokuman/1213201941601PMcik.pdf> p.20
- ¹³ See **Havana Rules Art. 67**
- ¹⁴ See **Havana Rules Art. 67**
- ¹⁵ See **CPT/Inf (2015) 6 Turkey** para. 110. CPT, in its 2013 visit, recommended that children should not be subjected to the sanction of room confinement for a period exceeding three days and that they must be guaranteed human contact throughout the measure.; See **CPT/Inf (2020) 22** In its 2017 visit, the CPT emphasized the impact of the room confinement sanction on child psychology and recommended the termination of the practice (para 138) and conducting regular medical examinations, (para 142) similar to the penalty for confinement in a cell.
- ¹⁶ See **CGTIHK Art. 48- (3)-a**
- ¹⁷ See **ECHR, Kucheruk v. Ukraine** (No. 2570/04, 06.09.2007 para 134-146.) The decision on violation of Article 3 due to keeping the applicant who showed aggressive behavior in solitary confinement with handcuffs as a disciplinary punishment.; See **Ramishvili and Kokhreidze v. Georgia** (No. 1704/06, 27.01.2009 para. 83.) The decision that states the things should be considered to rule disciplinary punishment; the nature of the unlawful act, the personality of the convict or detainee, the frequency of the unlawful act, and whether it will cause intolerable suffering for the person.; See **CPT/Inf (2020) 22 para. 140.** The recommendation regarding the prisoners who harm themselves should have psychosocial support for their mental problems and they should not be punished with disciplinary sanctions because they harmed themselves.
- ¹⁸ See **Bamouhammad v. Belgium** No. 47687/13, 17.11.2015 para. 131-132. The decision where the court ruled violation because it has not been taken into consideration that the reports of psychosocial service experts indicate that transporting children to different institutions often for security and disciplinary reasons causes negative results for the psychology of the child.
- ¹⁹ See **Renolde v. France** (No. 5608/05, 16.10.2008 para. 100-110, 128-130.) The European Court of Human Rights ruled that although the victim had psychological problems, sentencing the victim to solitary confinement, and subsequently causing the victim to commit suicide is a violation of Article 2 and heavy disciplinary punishment is a violation of Article 3.; See **Keenan v. United Kingdom** (No. 27229/95, 03.04.2001 para.100-116.)

²⁰ See **Renolde v. France** (No. 5608/05, 16.10.2008 para. 108.) The decision by citing European Prison Rules that the doctors must inform institution management in each case where the victim is under physical or mental danger.; See **Keenan v. United Kingdom** (No. 27229/95, 03.04.2001 para. 100-116). The decision regarding there is no record that the prisoner was kept under custody during the period of disciplinary punishment.

²¹ In the reports of The Ministry of Justice General Directorate of Prisons and Detention Houses Inspection Board, it has been founded that disciplinary punishments have not been stated in the Survey and Classification Form. p.19 <https://teftis.adalet.gov.tr/Resimler/SayfaDokuman/1213201941601PMcik.pdf> e.t.27.12.2020

²² See **CGTIHK** Art. 47- (5)

²³ See **CGTIHY** Art. 124-(1)

²⁴ The records of the transactions in prison and detention houses are being kept in UYAP “National Judiciary Informatics System”. Accordingly, all records must be kept in the automation space. Thus, while collecting evidence regarding transactions of institutions, digital records must be considered. <https://www.uyap.gov.tr/-Ulusal-Yargi-Agi-Projesinin-Ceza-Infaz-Kurumlari-Modulu--> (date of access: 27.12.2020)

²⁵ See **Bamouhammad v. Belgium** (No. 47687/13, 17.11.2015 para. 165-173.) The Court’s decision on violation of Article 13 because transporting children often due to disciplinary and security reasons is making it difficult to object to the decisions.; See **Gulmez v. Turkey** (No. 16330/02, 20.05.2008 para. 32-39.) The decision on violation of the right to a fair trial due to the decision against the convict who objected to disciplinary punishment by the only file without being heard by the criminal execution judge and without a hearing. See **ECHR, Keenan v. United Kingdom** (No. 27229/95, 03.04.2001 para. 123-133) The court ruled that punishing by solitary confinement sentence as a disciplinary punishment is a violation of Article 13 because it does not provide an objection right.; See **Payet v. France** (No. 19606/08, 20.01.2011 para. 133); See **Yankov v. Bulgaria** (No. 39084/97, 11.12.2003 para. 149-159); See **Campbell and Fell v. United Kingdom** (No. 7819/77 and 7878/77, 28/06/1984 para 76-80.) The Court ruled that the judgment on disciplinary punishment had to be conducted by an impartial authority and that a trial by an authority whose impartiality was questionable is a violation of Article 6. In the same decision there are founding regarding that the applicant should be able to defend with an attorney against the disciplinary punishment and heard by the judge in the context of the right to a fair trial.; See **CPT/Inf (2020) 22** para. 141. For the CPT recommendation that the prisoners should be heard by the competent authority about disciplinary punishment and they should be able to call witnesses.; See **Constitutional Court, Metin Yamalak (2)** (No. 2013/9450, 13.4.2016 para. 61-74.) Constitutional Court, stated that depending on the degree of complexity of the incident and if it is necessary for the execution of justice, the judge can listen to the related persons and decide on a disciplinary investigation with a simple procedure.

²⁶ See **CGTIHK** Art. 47-(4)

²⁷ See **CGTIHK** Art. 119.

²⁸ See the Constitutional Court, Ahmet Senol and Others decision, No.2014/16947, dated: 22.2.2018; and Cihan Kocak decision, No. 2014/12302, dated: 21.09.2017, the court concluded that the prohibition of torture and ill-treatment has been violated in the incident concerning the applicant’s being kept in handcuffs on his hands and feet in the padded room and his referral to the doctor was 6 hours later.

²⁹ In case no records are kept regarding disciplinary measures and sanctions; visuals of many institutional practices under the name of discipline are accessible, including the sanction of room confinement and violence against children.

³⁰ Within the scope of psychosocial service activities, it is possible to access information such as psychological evaluations and opinions/recommendations presented to the institution regarding the disciplinary sanctions.

³¹ Victims may make statements about the practices they have been exposed to under the name of disciplinary in their complaint admissions on institution practices.

6

EVIDENCE THAT
CAN BE OBTAIN
FROM INTERNAL
COMPLAINT MECHANISM



INTERNATIONAL STANDARDS

UNITED NATIONS

Havana Rules, Art 24, 25, 72-78

Beijing Rules, Rules 27

Mandela Rules, Rule 54-57, 71.

CRC 10 General Comment (2007)10, Art 89

EUROPEAN COUNCIL

European Prison Rules, Art. 70, 93

Recommendations on Child Criminals Art. 121

CPT; General Report no 24 paras. 131-133 / General Report no 27 paras. 68-91

Explanation

The children deprived of liberty also have the right of "freedom to claim rights" which is secured by the phrase of "Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures.¹ Just like everyone else, convict or detainee children have the "right to admission" i.e. the right to apply to the authorities regarding their wishes and complaints related to themselves or the public and the application results should be conveyed to the applicant without delay.²

Recording torture and ill-treatment allegations related to children and resolving these allegations legally by the lawful authorities is only possible with an efficient complaint mechanism³. ECHR considers the application to internal complaint mechanisms and the appeal to these decisions as to the exhaustion of domestic remedies.⁴ Accordingly, records of the complaint mechanism also have an important role in the investigation of torture and ill-treatment allegations.

Complaints and appeals can be filed against the institution's practices and the decisions taken by the internal units of the institution, such as the Administration and the Observation Board, and it should be noted that the specified time periods to resort these remedies are derogated periods. Appeals may also be filed against the decisions of the Administration and Observation Board⁵ based on the children's rehabilitation programs and their evaluations by the psycho-social service.⁶

It should not be forgotten that the application of appeal and complaint remedies are important pieces of evidence in the applications to the Constitutional Court and the European Court of Human Rights. In this respect, resorting to appeals and complaints against prepared reports is important to prevent and reveal the violations of rights that may occur. Similarly, while investigating the allegations regarding the practices of the institution, it should be taken into account that old dated complaints and appeals may also be considered as supporting evidence.

The children deprived of liberty and their families must be informed regarding the right and method of the complaint during admission to the institutions.⁷

Situations such as not recording the complaints⁸, not conveying them to the authorities.⁹ Ignoring the complaints¹⁰, or rejections may be encountered. While organizing complaint mechanisms it should be considered that children might hesitate to issue complaint due to their relationship with officers. The administration is obliged to ensure complaints issued by children without any pressure or fear¹¹ ECHR considers that not providing necessary material to issue a complaint is a violation of right¹². Ensuring the use of right to admission is within the context of the State's positive obligation.

It should be noted that writing complaints are not necessary. The child's willpower to complain can be proven with documents other than the complaint admission.¹³ Considering each related evidence as a proof method is important. Besides, it should be noted that evidence for violation of rights concerning various articles of ECHR can be obtained related to the complaint.¹⁴

The highest authority, personnel, or prosecutor, who receives and processes the complaints in the institution should be impartial¹⁵ and should examine the complaints by considering the best interest of the child.

Points to be Informed in General for the Demands Regarding Internal Complaint Mechanisms

In order to evaluate the evidences, it is necessary to have knowledge on the following matters:

- ➔ Operation of the complaint mechanism within the institution
 - Who receives the complaints with which method?
 - Which authorities examine the complaints?
 - Which method is used to decide on the complaints (verbal/written)?
 - How are the decisions implemented?
- ➔ Institutional practices subject to complaints in the past and transactions made in this regard.

Guiding Questions

This list contains the evidence that should be gathered and the minimum information/characteristic you should seek for in each piece of evidence.

- ➔ Request the **documents** regarding the operation of the institution's complaint mechanism.
 - How is the procedure for children to use the complaint mechanism? How is the procedure to decide on the complaints?
 - Are the children taught their rights regarding the complaint mechanisms?¹⁶
 - Are there complaints related to similar personnel?
 - Have there been any changes in the practices following similar events?
 - Does the contact between the ones involved in the events and the children continue?
- ➔ Evaluate the following possibilities by considering the **victim statements**.
 - Have children been pressured not to complain?
 - Have children felt any pressure regarding issuing complaints?
 - Have children been provided the tools to issue complaints?
- ➔ If the complaint has been issued, request the **admission to complain and the following transactions**.
 - Has the confidentiality principle respected in conveying the complaints to competent authorities?
 - Has the complaint been recorded in accordance with the law?
 - Has the complaint been conveyed to related authorities?
 - Has the related authority made a lawful decision regarding the complaint?
 - Has the child's family been informed regarding the complaint?
 - Are there any other violations besides the torture and ill-treatment allegations subject to the events of the complaint?

- Has the decision taken on the complaint been appealed?
- Has the appeal been decided?
- ↘ If the complaint has not been recorded, examine the evidence such as **psychosocial service records, letters, survey reports, statements of the family members**.¹⁷
 - Have the children met with the psychosocial service personnel regarding the complaints?
 - Have the children met with their families regarding the complaints?
 - Has the letters of the children include information regarding the institution's practices and complaints?¹⁸
 - How often is the institution surveyed? Is there any report within the scope of surveying and monitoring works?

Supporting Evidence that can be Used Regarding Internal Complaint Mechanism

In addition to the documents, statements, admissions, records, and reports regarding the internal complaint mechanism, you can support your claim and test the accuracy of the evidence obtained with the following evidence:

- ▶ Witness statement¹⁹
- ▶ Video footage²⁰
- ▶ Monitoring Reports²¹

Indicators

The following points indicate that the institution does not has an efficient complaint mechanism:

- ▶ Lack of written documents regarding the operation of the complaint mechanism.
- ▶ Lack of the tools to provide complaining anonymously and without names.
- ▶ Lack of independent external audit.
- ▶ Lack of efficient procedures to ensure confidentiality of the complaints.

Footnote

¹ Turkish Constitution, Art. 36

² Turkish Constitution, Art. 74

³ See **ECHR Yankov v. Bulgaria** decision (No. 39084/97, 11.12.2003 paras. 149- 158) where the court rules that complaint mechanism is not an efficient solution against disciplinary penalty.

⁴ See **ECHR Rzakanov v. Azerbaijan** (No. 4242/07, 04.07.2013 paras. 77 – 85.) decision on court's consideration that non-objection against the decision to dismiss the complaint causes non-exhaustion of domestic remedies.

⁵ See, **Regulation on Observation and Classification Centers and Evaluation of Convicts** Art. 32, 35.

⁶ See, **Regulation on Observation and Classification Centers and Evaluation of Convicts** Art. 17,27, 39.

⁷ See **CGTIHK** Art. 22-(1); **CGTIHY** Art. 56-(1) "Informing convicts, their relatives and those concerned: The administrators of the institution shall, orally and in writing, provide convicts at the time of admission into the institution with information concerning matters such as the rehabilitative activities to be implemented, the disciplinary offenses and penalties, the ways of obtaining information and making complaints, their rights and responsibilities, and such information as may be useful for their adaptation to life in the institution. They shall also be provided with information concerning protection and assistance following execution. Convicts of foreign nationality, who do not know Turkish shall be informed in their language or, if this is not possible, in English, French or German. Those who have hearing and speech impairment shall be given explanations in sign language. Those who have a visual disability shall be given a booklet written in their alphabet."

⁸ **ECHR Ebedin Abi v. Turkey** (No. 10839/09, 13.03.2018 para. 53); See the HRIT **Sincan Prison Report** (10.07.2014) p. 26 and 76, regarding that the complaints on institutional practices are verbally decided by the institution prosecutor through children's statements.

⁹ See **CPT/Inf (2020) 22** para. 146-147 recommendation regarding that in Trabzon Prison, the unsealed complaint letters are handed to the officers, the complaints are censored by the letter reading unit and an immediate end should be put to this practice.

¹⁰ See **ECHR, Gjini v. Serbia** (No. 1128/16, 15.01.2019 para. 94, 96-103) decision regarding procedural violation of Article 3 in the case of not initiating an investigation because a complaint has not been duly made although administration received complaints on torture and ill-treatment in various ways.; In addition See **Constitutional Court F.E and Others** (No. 2014/15586, 23.01.2019 para.94) the decision where Constitutional Court did not examine the incident since the complaint was not made duly.

¹¹ **ECHR, Chaykovskiy v. Ukraine** (No. 2295/06, 15.10.2009 para. 85)

¹² **ECHR, Cotlet v. Romania** (No. 38565/97, 03.06.2003 para. 60-65)

¹³ See **ECHR, Aksoy v. Turkey** (No.21987/93, 18.12.1996 para. 56) decision in which the Court considered that even if it were accepted that the applicant in police custody made no ill-treatment complaint to the public prosecutor, despite the torture and ill-treatment is apparent in the file the prosecutor's choice to not enquire is a violation. See **ECHR, Bati and Others v. Turkey** (No. 33097/96, 57834/00, 03.06.2004 para. 133-134); the decision that the Administration is obliged to initiate effective investigation by considering vulnerable may not complain on torture and ill-treatment.

¹⁴ It is seen that ECHR decides on violations of Art. 3,5,8 and 13 in various decisions due to the complaints of institutional practices but not limited with them.

¹⁵ See **ECHR, Bati Others v. Turkey** (No. 33097/96 57834/00, 03/06/2004 para. 135) decision regarding that the persons responsible for the investigation of torture and ill-treatment should be out of the events, without hierarchical or institutional connection, and impartial and independent in practice also. See Constitutional Court Cihan Alpyuruk (No. 2017/37528, 29.09.2020 para. 52-59) for a similar decision which court ruled violation due to not investigating the torture and ill-treatment allegations effectively, since the evidence was collected by the execution and protection officers by order of the prosecutor and based on the decision.

¹⁶ See **CPT/Inf (2020) 22** para.145 for the findings on lack of providing information for the prisoners regarding the complaint mechanism.

¹⁷ The records regarding the operations carried out in the Prisons and Detention Houses are kept within the scope of UYAP "National Judicial Network Project" Penal Execution Institutions Module "developed by the Ministry. Accordingly, all records must be kept in the automation. Therefore, digital records should also be considered while collecting evidence regarding institutional transactions. <https://www.uyap.gov.tr/-Ulusal-Yargi-Agi-Projesinin-Ceza-Infaz-Kurumlari-Modulu--date of access: 27.12.2020>; the education of the Justice Vocational School students related to the "Penal Execution Institutions Module of the National Judicial Network Project" is conducted within the scope of the programs prepared by

OEF. For information about the scope of these training programs, see. NATIONAL JURISDICTION NETWORK PROJECT II - Unit 2 Summary published by OEF- YouTube.

¹⁸ See **Constitutional Court, Ercan Oral** (No: 2013/3827, 03.02.2016 para. 44). Court decided on violation because a complaint letter written to the newspaper regarding institutional practices considered illegal by the prison disciplinary board and the letter could not be sent.

¹⁹ Statements of other children, who have witnessed the lack of investigation on complaints or torture and ill-treatment practices, may be consulted as well as the statements of the employees of the institution including but not limited to officers, doctors, specialists, personnel of psycho-social services and families. In any case, the witness statements should be considered integrally as a precaution to the situations such as inconsistent witness statements, the witnesses protecting each other or systematic violence.

²⁰ Since the victim's complaint is not necessary to initiate an internal disciplinary and judicial investigation, detecting the ones who witnessed the incident is possible by benefiting video footage.

²¹ It should be noted that the monitoring reports are always convenient as supportive evidence. If the complaints are not recorded, the incident subject to complaint might be detected in the monitoring reports. In addition, the complaints duly made but not taken into consideration also might be indicated in the monitoring reports. As it can be understood from the frequent reference to CPT reports in ECHR decisions, monitoring reports are the supporting evidence that should be consulted.

MEDICAL EVIDENCE



INTERNATIONAL STANDARDS

UNITED NATIONS

CRC, Art. 3/3, 37 (d)
Havana Rules, Rule 49-55, 87
Beijing Rules, Rule 13, 26
Mandela Rules, Rule 26-35, 46
CRC; General Comment (2007)10 Art. 89 / General Comment (2011)13 Art. 26
Istanbul Protocol

EUROPEAN COUNCIL

European Prison Rules, Art. 15-16, 39-48
Recommendation on Juvenile Criminals Art. 69-75
CPT; 23th General Report, para. 71-84 / 24th General Report, para. 113-118, 128

Explanation

Medical reports/forensic reports have great importance in terms that they can reveal various aspects of torture and ill-treatment and procedural violations¹.

Firstly, the findings in the results of physical and mental examinations indicate the impacts of torture and ill-treatment². UN Children Rights Committee emphasizes that torture and ill-treatment cause lifetime damage and social stress for the children.³ Thus, both body and mental health should be considered while investigating the allegations of torture and ill-treatment.

Secondly, not providing necessary health services to the people deprived of liberty⁴ or preventing people's access to health services⁵ also results in torture and ill-treatment⁶ i, and thus, it should be considered that the records regarding health services could be evidence.⁷ Unqualified examination⁸, not performing regular health controls⁹, not keeping the records of health-related complaints systematically¹⁰ or inability to prove that the appropriate examinations have been conducted based on evidence¹¹ are also should be considered within the scope of torture and ill-treatment allegations.¹² In this context, it should be noted that a medical examination before admission should be conducted to determine the institution that the children will be placed¹³. In this respect, obtaining evidence is possible from many other records. It includes such as the institutional records that are kept regarding the medical records of the children, their request for health services, and their complaints regarding the institutional practices.

Health care personnel, especially doctors, have a critical responsibility in detecting torture and ill-treatment¹⁴. 'Istanbul Protocol', approved by United Nations in 1999, is guidance recommended by the UN and it explains the legal and medical procedures that must be followed in investigating torture allegations. The text is considered as a guideline for the experts on various topics such as the conditions of the health examinations, the necessary elements for the reports and efficient investigation standards are considered as a guideline.¹⁵

The examination of the children, who have been exposed to torture and ill-treatment is being conducted at his/her request or the request of the prosecutor or by ex officio with the decision of the court, or by the decision of the prosecutor in a non-delayable case according to Art. 76 of CMK (Turkish Criminal Procedure Code). If the decision of physical examination has been given by the prosecutor, it should be submitted for the approval of a judge within 24 hours. The procedures and principles regarding (i) physical examinations of the suspects, defendant, victim, or others, (ii) taking samples from the body such as blood or similar biological samples and hair, saliva, and nails for medical examinations and (iii) determination of the physical characteristics for the identification of the suspect and the defendant, are all regulated by Regulations on Physical Examination, Molecular Genetic Examinations, and Physical Identification.¹⁶

Points to be Informed in General for the Demands Regarding Medical Evidence

In order to evaluate the evidence, it is necessary to have knowledge on the following matters:

- ➔ Practices in the nature of torture and ill-treatment.
- ➔ Physical and mental impacts of the torture and ill-treatment allegations.
- ➔ Especially the form and impacts of the alleged act

Guiding Questions

This list contains the evidence that should be gathered and the minimum information/characteristic you should seek for in each piece of evidence.

- ➔ **Request the medical records** that include the health examinations requested by the child and the given services.
 - How did the child convey his/her request for examination and treatment?
 - Have the written requests been recorded?
 - Have the verbal requests been taken as minutes?
 - Is it possible to expose with other evidence that the records have not been kept?
 - Have you controlled the accuracy of the records?
 - Have the examination and the treatment requests been fulfilled?
 - Is there a record of the medical care requests and the treatment?
 - Has a dispatch been made in cases requiring dispatch to a healthcare organization?
 - Have the drugs been provided on time and complete in cases requiring the medication?
 - Has the child had any complaints regarding the requests for examination and treatment?¹⁷
- ➔ If the health examination following torture and ill-treatment allegation is conducted within the institution, **request the medical records.**
 - Has the medical file kept by the institution doctor include torture and ill-treatment findings?
 - Are the examination and treatment requests include a statement regarding torture and ill-treatment?¹⁸
 - Are the medical records include the situations requiring dispatch/transfer?
 - In cases requiring dispatch/transfer, have the dispatch/transfer been conducted?
 - In cases requiring dispatch/transfer, has the negligence factor been taken into account in the medical reports and dispatch/transfer decisions?
 - Has the prosecutor completed the required preparation in a reasonable time in cases requiring dispatch/transfer?

- ↘ If the dispatch to the healthcare institution is made following the allegation of torture and ill-treatment, request the **medical records**.
 - Have you compared the hours between dispatch/transfer decisions and health/forensic reports?
 - Have the dispatch and transfer been carried out in accordance with the examination requirements?
 - Have you investigated who received the medical report after the dispatch/transfer?
 - Have you controlled whether the person who received the report was involved in the incident?
- ↘ Request the **medical reports/forensic reports** issued following the torture and ill-treatment allegations.
 - Does the healthcare institution where the examination took place have sufficient equipment to provide necessary health service¹⁹
 - Have the doctors, who conducted the examination, fulfilled their obligations²⁰ required by the Istanbul Protocol, and did they carefully examine in accordance with the professional standards and ethics of the healthcare personnel?²¹
 - Has the examination been conducted in a place that protects the intimacy and feels safe?
 - Have the law enforcement or execution and protection officers been presented in the examination?²²
 - If yes, did you request for the statement of the doctor who issued the report as a witness on whether the child "caused any difficulties" or not?²³
 - Have the names and the duties of the ones presented in the examination been recorded?
 - If no, did you request the assignment letters and records of entrance/exit to the institution to ensure the determination of the ones presented in the examination?
 - Has the confidentiality principle been followed in the examinations?
 - Has the child informed about who is and what is the duty of the healthcare personnel explained his/her self? Did the healthcare personnel obtain the child's approval before the examination?
 - Are the starting and ending times of the examination specified? Has sufficient time been allocated for the inspection?
 - Was the story conveyed by the child in person during the examination?²⁴ Does it include dispatch and transfer?
 - Are the examination and the child's story consistent?
 - Is the report including consistency assessment?
 - Has the examination been conducted in a way to include all systems? (from top to toe)
 - Is the report including a detailed and standard mental assessment?
 - Have the special diagnostic tests been conducted to expose the torture and ill-treatment allegations?²⁵

- Is the report includes any record or recommendation regarding the child's health requirements? If yes, what has been done regarding these recommendations?
- Has the family been informed about the inpatient treatment? Has a family member presented as an attendant with the child?
- Are there any situations or statements that would compromise the credibility of the medical reports or findings in them?
- Is there a need for an alternative report?²⁶
 - Was an alternative/second opinion required by the doctor or prosecutor?²⁷
 - Did the child request an alternative report/second opinion?
 - Is there any situation that requires an alternative report?²⁸

Supporting Evidence that can be Used Regarding Medical Evidence²⁹

In addition to the medical records and reports, you can support your claim and test the accuracy of the evidence obtained with the following evidence:

- ▶ Video footage³⁰
- ▶ Witness statements³¹
- ▶ Photography³²
- ▶ Reports of the monitoring boards³³
- ▶ Records of the complaints³⁴
- ▶ Psychosocial assessments

Indicators

The following points indicate that the institution does not provide sufficient health services:

- Absence of a regular doctor in the institution.
- Lack of the sufficient number of healthcare personnel to follow up on the children's medications and other health interventions.
- Lack of the sufficient number of vehicles for dispatch or transfer.
- Unreasonable waiting durations for a consultation with a doctor or a referral to the hospital.
- Lack of right to meet with the doctor alone without the presence of the execution and protection officer during the examination in the institution.
- Lack of medical examination by a doctor during admission to the institution.
- Lack of a daily plan for the child or lack of a medical treatment plan.

Footnote

¹ See **Constitutional Court Sevkan Aşan** (No. 2016/78468, 18.06.2020 para. 43-45, 50) the decision on procedural violation of the torture and ill-treatment prohibition due to inefficient investigation by the prosecutor despite the differences between health/forensic reports. Additionally, see **Court of Cassation 8. Criminal Chamber 2018/207E., 2018/6390K.** The decision regarding that in the victim of the events was beaten by the execution and protection officers and after the examination of the institution doctor the victim was sent to the hospital for further examinations, and the marks on the victim's body were evaluated by the forensic medicine and the defendants were found guilty.

² See **ECHR, J.M v. France** (No.71670/14, 05.12.2019 para. 98, 108-109.) The court found a violation in the event of using force against the prisoner with mental illness by examining statements and health/forensic reports. In the decision, the fact that the prosecutor did not obtain an expert opinion on how the prisoner was injured was also considered as a violation of effective investigation obligation.

³ **CRC General Comment** (2011)13 Art. 26

⁴ See **ECHR, Guvec v Turkey** (No. 70337/01, 20.01.2009 para. 85, 93,94, 96); **Coselav v. Turkey** (No. 1413/07, 09.10.2012 para. 62 – 65); **Hummatov v. Azerbaijan** (No. 9852/03 13413/04, 29.11.2007 para. 116); **Kotsaftis v. Greece** (No. 39780/06, 12.06.2008 para. 51-61.) Additionally, see **CPT/Inf (2020) 24 Turkey** para. 40-41 and see **CPT/Inf (2020) 22** para.121 regarding the recommendation that the health services provided in the institutions are insufficient and must be improved. See **CPT/Inf (2020) 22 para. 124.** Regarding the inadequate medical equipment in the penal institution.

⁵ See **ECHR, Mozer v. Moldova Republic and Russia** (No:11138/10, 23.02.2016 para. 173.) where the court found violation on the rejection of the transfer request while the prisoner needs to be transferred to hospital due to health needs. Also see **ECHR, Kondrulin v. Rusya** (No. 12987/15, 20.09.2016 para. 59) the ruling that failure to provide healthcare services to the prisoner within a reasonable time is considered as a violation.

⁶ All needs that affect the health of people, including the needs for glasses, dental problems, ulcer treatment, are evaluated within this scope. See **ECHR, Aleksanyan v. Russia** (No. 46468/06 22.12.2008 para. 140); **Patranin v. Russia** (No. 12983/14, 23.07.2015 para. 69); See **Jasinskis v. Latvia** (No. 45744/08, 21.12.2010 para. 60); See **Wenerski v. Poland** (No.44369/02, 20.01.2009 para. 56-65.)

⁷ See **Szuluk v. United Kingdom** (No: 36936/05, 07.05.2013 para. 49-55) the decision where the court assesses that the failure to keep personal data, including medical records, would cause hesitation for the prisoner's application to health services and violation of Article 8; See **CPT/Inf (2020) 22** para. 130, **CPT/Inf (2020) 24** para. 23, CPT's findings on non-compliance with the confidentiality principle.

⁸ See **CISST Juvenile Prisoners Report (2019)** p. 22. for the juvenile prisoner's statements of the allegations that the doctor did not perform a qualified examination and required health services were not provided in a reasonable time.

⁹ See **CPT/Inf (2020) 24 Turkey** para. 38/2 regarding the examinations that are not carried out systematically

¹⁰ See **CPT/Inf (2020) 24 Turkey** para. 38/3, regarding not to include patient's statements in the medical reports. See **CPT/Inf (2020) 24 Turkey** para. 38/3, CPT's findings on doctors do not know the procedure to be followed while investigating ill-treatment claims and they stated that informing the torture and ill-treatment is not their duty. See **I.E. v. Moldova Republic** (No. 45422/13, 26.05.2020 para. 44) ECHR's decision that not to initiate an investigation due to the doctor's incomplete report, who examined the child following being raped after placed to adult ward although the suspicion of mental handicap is a violation. See Constitutional Court, **Kahraman and Ozyurek** (No. 2013/8137, 20.4.2016, para. 30-31, 120-121.) decision of Istanbul Protocol and Constitution Art.17 violation under the consideration of doctor's statements as witnesses that; they do not know the prison institution practices, they informed by execution officers and they issued the medical report without examination. See **Court of Cassation CGK 2014/269 E. 2017/108 K.** decision on official document forgery crime due to the medical reports issued without examination by the doctors following the incident where the enforcement officers battered the victim to death.

¹¹ See **ECHR, Ashot Harutyunyan v. Armenia** (No. 34334/04, 15.06.2010 para. 165); See **Iacov Stanciu v. Romania** (No. 35972/05, 24.07.2012 para. 180-186.)

¹² See **ECHR, Dilek Aslan v. Turkey** (No. 34364/08, 20.10.2015 para. 57) the decision of Article 3 violation procedurally where the court did not consider the medical report not in compliance with the Istanbul Protocol as reliable evidence and prosecutor should request a new medical report. Additionally, see **CPT/Inf (2020) 22** para. 126, the ill-treatment practices such as execution officers' presence during the examination, use of handcuffs to prisoners during transfer/dispatch. See **CPT/Inf (2020) 24** para.23; **HRIT, Sincan Prison Survey Report** (10.07.2014) p. 73, the situations of law enforcement forces present during the examination.

¹³ **ECHR, Blokhin v. Russia** No.47152/06, 23.03.2016 para. 138

¹⁴ Additionally, Istanbul Protocol para. 52-73 regarding specific examinations for children para. 310-315.; See **ECHR, Alkes – Turkey** (No. 3044/04, 16.02.2010 para. 39.), the Court noted that doctor reports in accordance with the rules are one of the fundamental guarantees for detecting and preventing ill-treatment risk for the detainees, to force a confession of the crime.

¹⁵ Bicer, Umit, "Decisions of the European Court of Human Rights and the Istanbul Protocol, TIHV publish, 2017.

¹⁶ RG 01.06.2005 - 25832

¹⁷ See section 6 regarding complaint mechanism evidence.

¹⁸ See **Constitutional Court, Recep Kara** (No.2016/4084, 15.01.2020 para. 38-43), in the medical report of the applicant, who alleged torture and ill-treatment by the police, no signs of beating were detected and there are no statements concerning the police presence during the examination. Although, the application was found inadmissible because even though a lawyer participated to the statement of the child in the prosecution there was not any ill-treatment complaint against medical report.

¹⁹ See **ECHR, Ebedin Abi** (No. 10839/09, 13.03.2018 para 50-54.) The decision on violation due to not applying appropriate diet program required by the health problems of the applicant.

²⁰ See **Istanbul Protocol** para. 48-73, 161-186.

²¹ See **Istanbul Protocol** para. 310-315.

²² See **HRIT, Sincan Prison Report**, 10.07.2014, p.72-73; findings that execution officers presented during health examination and not recording the reason of presence. See for similar decision, **Constitutional Court, F.E. and Others** (No. 2014/15586, 23.01.2019 para.149-150.)

²³ See **ECHR, Mehmet Ali Okur - Turkiye** (No. 31869/06 17.01.2012, para. 60-61). Although, presence of the security forces might be necessary in certain conditions during the health examinations, - and even in such cases necessity must be proven- there exists no need for such necessity in the present case. According to the file content, the applicant did not cause a risk to the doctor. In contrary, the doctor stated that the person was not causing difficulties. Additionally, ECHR noted that State did not forward any justification in connection with the security. In this context, a detailed report is necessary regarding the examination of the personal conditions (e.g. presence of the security forces during an examination, attitudes of the escorts or threats against the doctor; in this context see. Istanbul Protocol). ECHR noted that according to Article 10 of the Apprehending, Detaining and Questioning Regulation, in case a doctor requests the examination to be conducted under the supervision of officers due to security concerns, such request should be recorded. However, in this case, the medical report did not include any information regarding the presence of the officers and a record on this. The applicant gave this information and the information was confirmed during the investigation.

²⁴ See **HRIT, Sincan Prison Survey Report**, 10.07.2014, p.70-71. regarding not obtaining children's stories during the health examination.

²⁵ For example, invisible signs of torture and ill-treatment can be revealed by a bone scintigraphy test. Additionally see. **Istanbul Protocol** Add-2.

²⁶ See **ECHR, Dilek Aslan v. Turkey** (No:34364/08, 20.10.2015 para. 48) Regarding the necessity of obtaining a medical report immediately to support the torture and ill-treatment allegations.

²⁷ See **Constitutional Court, F.E. and Others** (No. 2014/15586, 23.01.2019 para. 149.) Regarding the necessity of alternative medical report in cases lack of a detailed examination or presence of the officers.

²⁸ See **Constitutional Court, S.Ç** No.2016/3594, 26.02.2020 para. 47-50. The decision of violation due to the prosecutor did not see the need for an alternative report despite the applicant claimed that the medical/forensic report was issued without examination.

²⁹ See **ECHR, Krivolapov v. Ukraine** No.5406/07, 02.10.2018, para. 76 Regarding the demands for health-related needs and applying other methods.

³⁰ The evidence regarding the allegations of torture and ill-treatment against children after the health examination can be obtained by using the visuals of the dispatch/transfer to the hospital. Additionally, see **HRIT, Sincan Prison Survey Report** (10.07.2014) p. 32-54, the decision on a determination that the children battered by camera records with a detailed examination.

³¹ Information on the torture and ill-treatment allegations can be obtained by the statements of the ones who witnessed or were involved in the incident. The methods to obtain evidence will expand by gaining knowledge on many practices including witness statements and complaint mechanisms, disciplinary measures and penalties.

³² Immediately photographing the practices that cause torture and ill-treatment is possible for the experts. In this context the practices or standards encountered during crime scene, discovery and monitoring works should be supported by photographing various situations including the beat marks told during the interviews with children.

³³ The monitoring boards might have findings in various subjects including but not limited to the examinations, health needs, ill-treatment allegations. According to **GNAT (IHIK) Izmir Children and Youth Penal Institution Survey Report** (2013) the child with a mental disability can access health services. According to the dissenting opinion, the institution's explanation on the reason of children's inaccessibility to health services by mental disability is criticized by citing NGO monitoring report. See dissenting opinion para 6. Additionally, the report includes statements regarding torture by the children.

³⁴ See **ECHR, Kyriacou Tsiakkourmas and Others v. Turkey** (No.13320/02, 02.06.2015 para. 283). ECHR acknowledges the difficulty to access certain evidence under the supervision of administration. On the other hand, court states that evidence regarding the existence of the complaint can be presented to support the allegations, thus court denies the claim on the grounds that it is clearly unfounded.; Similarly, see **ECHR, Ocalan v. Turkey** (No.12261/10, 27.09.2018, para. 34.), the claim should be supported with filing a complaint against penal institution.

8

FINDINGS AND
MINUTES OF
CRIME SCENE
INVESTIGATION



INTERNATIONAL STANDARDS

UNITED NATIONS
Istanbul Protocol

Explanation

Crime scene investigation; is the investigation of each piece of findings in the crime scene that have evidential value by various scientific and technical methods to clarify the incident and sending the obtained data to the crime lab in order to determine and record, collect, protect and examine them.¹

One of the essential parts of a whole and impartial torture investigation is collecting and analyzing the physical evidence². Therefore, the evidence and the reports of the results are critical to helping crime reenactment, determine the perpetrator's identity and the relation between perpetrator-victim-crime scenes.

Istanbul Protocol sets specific standards regarding the collection and protection of the evidence. Law It also has been regulated in national law with Art.6/7 of Police Powers and Duties Code and Art.9 of Forensic and Preventative Search Regulation.

A detailed, systematic, and planned examination of the crime scene has a determining role in the evidential value of the findings to be obtained. All material evidence should be collected³, handled, packaged, labeled with great care, and the safety of this evidence must be ensured in a place preventing the risk of damage or loss, whether intentionally or unintentionally⁴. Therefore, for both the crime scene officers and the personnel who work in the examination stage and reporting the obtained evidence, to be well-trained regarding the procedures and operations is important.⁵

There may be difficulties in obtaining healthy and qualified evidence from crime scene investigation findings due to the faulty attitudes of the ones who participated in the crime scene investigation, the inability to protect the crime scene and an incomplete investigation, the lack of information and the lack of coordination⁶ among the personnel conducting crime scene investigation. Therefore, conducting the investigation on time with the participation of the experts, ensuring the collection of the evidence per the procedure and its protection are among the most important ways to combat impunity.

Points to be Informed in General for the Demands Regarding Crime Scene Investigations

In order to evaluate the pieces of evidences, it is necessary to have knowledge on the following matters:

- ➔ The nature of the violation and methods that were used.
- ➔ Where evidence can be obtained:
 - The crime scene itself, near and far environment of it.
 - Body and clothes of the perpetrator and the victim.
 - Belongings and places that are used by the perpetrator and the victim.

- Evidence types can be obtained from the crime scene (biological⁷, chemical⁸, physical evidence⁹ and marks¹⁰).
- Tools, equipment and materials used in crime scene investigation.¹¹
- Obtaining evidence methods in crime scene investigation.¹²
- Factors that affect the security of the crime scene.
- The protection measures to be implemented according to the occurrence of the event and environment feature.

Guiding Questions¹³

This list contains the evidence that should be gathered and the minimum information/characteristic you should seek for in each piece of evidence.

- Control the following points before the crime scene investigation.
 - Has a plan been prepared for the organization and coordination of crime scene investigation?
 - Has the necessary equipment and materials¹⁴ provided to investigate the allegations?
- **Control the following points; during the crime scene investigation and the drafting of the minute if you are a participant, or from the crime scene investigation minute if the crime scene investigation completed;**
 - Has the necessary precaution been taken to protect the crime scene?¹⁵
 - Has the security of the crime scene been ensured immediately and properly?¹⁶
 - Was there any intervention to the crime scene before the investigation?¹⁷
 - Has anyone other than authorized experts been allowed to access the crime scene?
 - Has anything been taken out or brought to the crime scene? (e.g., garbage, cigarette filters/butts or items)
 - Even if the incident was at night, was the area examined once more in daylight?
 - Has an appropriate investigation method been used to determine the evidence found at the crime scene and keep them from being lost or destroyed?
 - Have the necessary materials been checked on the way to the crime scene?
 - During the collection of evidence, did the experts use appropriate clothing and equipment in order not to contaminate their biological evidence?
 - Which methods have been used to investigate the evidence in the crime scene? (e.g., spiral, linear/horizontal/vertical or squaring)
 - Have the appropriate methods been followed while reaching to evidence and obtaining all evidence?
 - Has every piece of object in the crime scene been subjected to the examination?
 - Has the evidence been classified according to their characteristics?
 - Has the evidence been numbered or coded?

- Have the measures to prevent evidence from being corrupted been taken while before sending them to the investigation centers?
- Have comparison samples been taken from the related ones in parallel with the evidence collected?¹⁸
- Is there evidence conveyed from different sources? If so, by whom? (e.g., by victims, eyewitnesses, or healthcare professionals)
- Have the findings obtained from the crime scene been recorded with appropriate methods?
 - Has all the evidence in the crime scene been duly visualized and recorded?
 - Are there records regarding the centers that evidence was sent and when?
 - Has the crime scene photographed properly?¹⁹ Has the video footage been taken?
 - Have general photographs been taken to understand the crime scene and the relation between the objects while photographing?
 - Has the evidence regarding the incident been photographed separately?
 - Has the scale been used in photographs?
 - Have the scales been within the frame?
 - Have the witness statements been recorded?
 - Have the evidence and other evidence methods founded in the crime scene been recorded?
 - Has the map of the crime scene been draw?²⁰ Has the direction and scaling been made in the sketch?²¹
 - Has it been recorded that the records are kept by who, when, by which tools, equipment, and methods?
- Is there a minute that recorded after the crime scene investigation? Does that minute include the information below?
 - The occurrence, place, and date of the event
 - Departure and arrival time to the crime scene
 - Starting date and time of the crime scene investigation
 - The ending date and time of the crime scene investigation
 - If a break has been given to the crime scene investigation; the date, time, and duration of the break
 - Measures were taken for the detection and protection of the crime scene during the break
 - Observations regarding the crime scene
 - The weather and light conditions during the investigation.
 - Personnel or equipment shortages that encountered
 - Information on who the responsible persons for the crime scene investigation
 - Who among the following participated in the crime scene investigation
 - Judge or prosecutor²²

- Lawyers
- Personnel who conducted the crime scene investigation
- Victim
- Witness
- If information regarding the incident was obtained from the witnesses at the scene;²³
 - Information of the witnesses
 - Information of the ones who listened to the witnesses
- Identity information of the ones consulted and participating in the investigation
- Names and signatures of the personnel who has a role in the investigation
- Map of the crime scene
- Video footage and photographs from the crime scene

Supporting Evidence that can be Used Regarding the Crime Scene Investigation

In addition to the minutes and the findings during the crime scene investigation, you can support your claim, and test the accuracy of the evidence obtained with the following evidence:

- ▶ Video footage²⁴
- ▶ Victim and witness statements²⁵

Indicators

The following points indicate the possibility of evidence tampering.

- ▶ Unprotected crime scene.
- ▶ Cleaning that been carried out at the crime scene before the investigation.
- ▶ Moving the objects that were in the crime scene on the day of the incident
- ▶ Lack of the officers who were at the crime scene on the day of the incident

Dipnotlar

¹ **Yukselođlu, E. H., Ozcan, S. S. & Ceylan, B.**, "Crime Scene Investigation: The Case of Turkey", Turkish Journal of Police Studies, Vol: 10, No: 1, 2008, p. 64; <https://app.trdizin.gov.tr/publication/paper/detail/TORjNU5UzZQ> (d.o.a. 05.12.2020).

² İstanbul Protokolü, para. 101.

³ See **Constitutional Court, Y.K.** No. 2016/14347, 02.06.2020, para. 110 "Crime investigations need to be conducted with reasonable diligence and speed in order to be efficient. Investigating authorities should act ex officio and identify all evidence that could reveal the ill-treatment allegation and the responsible ones. This evidence can be criminal inquiries, crime scene discovery, statements of witnesses, victims or possible suspects."

⁴ Istanbul Protocol, para. 102.

⁵ See. **Gultekin, O.**, "Common Practice Problems and Solution Offers in Crime Scene Investigation", TAAD, Vol: 2, No: 4, 2011, p. 496-500 <http://www.acarindex.com/dosyalar/makale/acarindex-1423934988.pdf> (d.o.a. 05.12.2020) Detailed information regarding Common problems in practice.

⁶ See **Gultekin**, ibid p. 480.

⁷ These can be blood, hair, saliva, nose flow, sweat, sperm, vaginal or anal snap, piece of tissue, nails, and similar evidence.

⁸ These can be explosives, dyes, fiber-cloth pieces, bottle-glass pieces, flammable and caustic substances, drugs, narcotics, and similar evidence.

⁹ These can be all kinds of firearms, bullets, cartridges and cores, metals, documents related to the incident, all kinds of tapes and videotapes, electronic recording devices such as CD-DVD-VCD, tools and equipment used in the crime, and all other evidence related to the incident.

¹⁰ These can be fingerprints, palm prints, footprints, vehicle tire prints, tool prints and similar marks.

¹¹ See **Gultekin**, ibid p. 493. For example, personal safety equipment such as disposable gloves, clothing, masks, shoe covers, plastic bags, paper bags, evidence collection materials such as evidence collection bags, lanyard strip, flashlight and battery, projector, sign spray, scissors, chalk, reflector, various pens, and warning signs.

¹² "Searching for the evidence in the crime scene should be conducted full and systematically. Various search methods are used to ensure this, such as circular system, intersecting horizontal and vertical lines system, linear system, and regional system. The search method in a crime scene depends on the type of the event, size of the field and personnel numbers." **Yukselođlu and ark.**, ibid p. 67

¹³ The questions under this heading were compiled from the checklist in the "Guideline on Crime Scene Investigation and Documentation of Human Rights Violations for Independent Monitoring and Documentation Committees" prepared by Ümit Bicer. See **Biçer, Ü.** "Guideline on Crime Scene Investigation and Documentation of Human Rights Violations for Independent Monitoring and Documentation Committees", Human Rights Foundation of Turkey Publications.

¹⁴ See **Bicer, Ü.**, ibid, p. 20; "These could include notebooks, tags, pen, measuring tape, thermometer, magnifier, ruler, flashlight, body charts, recording devices, video, crime scene investigation forms and other materials required for the collection of biological and physical evidence (small plastic bags, injectors, swaps, envelopes, tapes, lam, lamel scissors, forceps)";

¹⁵ "See **ECHR, Guzelaydin v. Turkey** (26470/10, 20.09.2016 para. 88-89) The Court rules that strict measures should be taken for the gendarmes to protect the scene by pulling a security strip during the investigation, and to prevent material evidence from being altered as much as possible; here, basic conditions are mentioned to examine the events correctly, to reconstruct the course of events and to understand what happened."

¹⁶ "Any building or area under investigation must be closed off so as not to lose any possible evidence. Only investigators and their staff should be allowed entry into the area once it has been designated as under investigation." **Istanbul Protocol**, para. 102

¹⁷ "See **ECHR, Guzelaydin v. Turkey** (26470/10, 20.09.2016 para. 88-89) The Court determined that the crime scene was cleaned before the prosecutor went there five days after the events. There is a deficiency that has the effect of excluding the preliminary investigation and its results from judicial control. (...) Recording the evidence before cleaning by the gendarmes does not affect this determination."

¹⁸ "If torture is recent enough for it to be relevant, an inventory of the clothing of the person alleging torture should be taken and tested at a laboratory, if available, for bodily fluids and other physical evidence." **Istanbul Protocol**, para. 102

¹⁹ See **ECHR Tanrikulu v. Turkey** (No.23763/94, 08.07.1999, para. 104.) Regarding the lack of photographing of the crime scene

²⁰ “A labeled sketch of the premises or place where torture has allegedly taken place must be made to scale, showing all relevant details, such as the location of the floors in a building, rooms, entrances, windows, furniture and surrounding terrain. Color photographs must also be taken to record the same.” (Istanbul Protocol, para. 102).; See **ECHR, Hamiyet Kaplan and Others v. Turkey**, (No. 36749 / 97, 13.09.2005, para. 62); See **Tanrikulu v. Turkey** No.23763/94, 08.07.1999 para. 105 “The sketch maps are limited with the area determined by the team supervisor and the movements and positions of each police officers are not shown. The statements of the police officers were un-detailed and stereotyped and no photographs were taken. All of these deficiencies prevented the judicial authorities from significantly re-enacting the events and verifying the applicants’ allegations.”

²¹ See **ECHR, Nachova and Others v. Bulgaria**, (No. 43577/98 and 43579/98, 06.07.2005, para. 115.)

²² See **Istanbul Protocol**, para. 101 “Investigative personnel and other investigators should coordinate their efforts in carrying out a thorough investigation of the place where torture allegedly occurred. Investigators must have unrestricted access to the alleged scene of torture. Their access must include, but not be limited to, open or closed areas including buildings, vehicles, offices, prison cells or other premises where torture is alleged to have taken place.”

²³ See **ECHR Tanrikulu v. Turkey**, (No. 23763/94, 08.07.1999, para. 104); **Gulec v. Turkey**, (No. 54/1997/838/1044, 27.07.1998, para. 79.) regarding the lack of witnesses who lives around the crime scene in the crime scene report.

²⁴ Video footage regarding the time gap between the incident and crime scene investigation can be proof of interventions to the crime scene

²⁵ Video footage and victim-witness statements are also can be accepted as supporting evidence.

VIDEO FOOTAGE



INTERNATIONAL STANDARDS

UNITED NATIONS

ÇHS, Art. 3/3

Convention Against Torture, Art. 2/1

CAT General Comment no.2, para. 14

Mandela Rules, Art. 89/2

Recording voice and/or visuals in penal institutions with camera systems are among the methods to prevent torture and ill-treatment¹. Also, video footage is highly important in regards to determining the perpetrators and revealing the structure of the incident in ill-treatment cases.

An international standard does not exist particularly in viewing, backup, and access footage in penal institutions. In national law, the CGTIHK states that "closed penal execution institutions are facilities which have internal and external security personnel, which are equipped with technical, mechanical, electronic or physical barriers against escape"; however, there is no explicit provision regarding video surveillance systems in the institutions in both primary and secondary legislation. Thus, various practices may occur between different penal institutions and it should be noted that this would cause arbitrary practices. Insufficiency of the necessary regulations to determine the rules is the most significant difficulty regarding video footage evidence.

Regulations are needed on the issues such as the placement of cameras, the storage and deletion of the footage, the procedures to be followed in case of malfunction and the rights and obligations of the persons and personnel deprived of liberty regarding the video footage to comply with the law.

The type of system in place, quality of the devices and images, number and location of cameras define the quality of the evidence to be obtained. Operating most video footage systems with insufficient memory, and thus re-recording the visuals, the recording resolution, the light adequacy in the recording environment and the distance are important factors affecting the clarity and comprehensibility of the recording. Reasons such as deactivation, damage or malfunction in the application are causing problems in accessing video footage. In some cases, obtaining clear and detailed images of the video footage is not possible due to the obstacles such as lack of lighting, the distance of the camera or the obstacles in front of the camera such as doors or clustered execution officers in a way closing the camera angle². Analyzing the records including such practices in a detailed and rigorous way is important.

In certain situations, people involved in the incident may destruct (delete, change, manipulate) the records. The problems on record quality can be improved afterward in some cases and the interventions can be detected with a technical examination by the experts.

The administration is responsible for ensuring security cameras properly fulfill their functions and prevent interventions to the cameras. Therefore, the administration's responsibilities should be carefully examined when a problem related to the recordings is detected. The technical service performs the maintenance and repair works of the institution's tools, equipment, and building, and monitoring and ensuring that they are always in working condition. (CGTIHY, Art. 11/1). This service's personnel are responsible to fulfill all requirements of their branch and inform their works to the institution administration with a report. (CGTIHY, Art. 11/2) Therefore, if the video footage is inaccessible during the investigation of an ill-treatment allegation due to damage, defect, etc., whether the cameras have been properly maintained and repaired should be investigated regardless of intention. Such problems related to the video footage will cause presumption against the administration regarding the accuracy of the allegations, and the burden of proof will shift.

Areas without cameras and blind spots outside the camera angle should also be taken into consideration while investigating the violations of rights. These areas are generally well known to both children and institution personnel. To prevent security issues in penal institutions, to discover these areas and prevent the misuse of these areas are subject to the administration's responsibilities. Therefore, besides the collection of video footage the locations and blind spots of the cameras should be determined while referring to video footage evidence.

All reasonable steps should be taken, the evidence should be obtained and this evidence should be secured during the investigation of torture and ill-treatment³. Considering that the video footage will be destroyed after a certain period, it is crucial to request⁴ access and backup the recordings.⁵

Points to be Informed in General for the Demands Regarding Video Footage Evidence

In order to evaluate the evidences, it is necessary to have knowledge on the following matters:

- ➔ The camera technology is used by the institution where the events occurred (such as analog and/or digital/IP cameras).
- ➔ Regulations regarding the location of cameras to the type of institution where the alleged events occurred.
- ➔ Visual storage method used in the type of institution where the alleged events occurred.
- ➔ Methods to be used regarding security⁶ and resolving the video footage
- ➔ Methods to be used to detect the interventions to the camera recordings.⁷
- ➔ Preliminary information on the subject of the request:
 - Detailed information to be obtained during, before, and after the incident, in the interview with the victim.
 - The information can be obtained from the ones who witnessed during, before, or after the incident, if possible.
 - Detecting all the areas where the actions subject to complaint took place according to the information obtained
 - Receiving and securing the records immediately.

Guiding Questions

This list contains the evidence that should be gathered and the minimum information/characteristic you should seek for in each piece of evidence.

- ➔ Determine the location, time and persons by considering **Parties' Statements and Witnesses**
 - The ill-treatment occurred in which place(s)? (such as warden, common areas, padded room, observation room, ring vehicle, entrance or exit of the hospital)
 - The ill-treatment occurred in which time frame?
 - Who are the alleged perpetrators of ill-treatment?
 - Are there persons who helped the perpetrators?
 - Are there person(s) who saw the events and who are these persons?

- ↘ **Request the documents** including institution plan, camera placement plan, video footage and storage.
 - Are these documents include the storage duration of the video footage?
 - How long is the video footage kept in the general practice of the institution?⁸
 - How long have the recordings related to the time and place of the incident been kept?
 - Are there enough qualified personnel to monitor the video footage 24 hours and to take necessary precautions in case of a problem
 - Have you requested the ID information of all the personnel responsible for monitoring the recording on the incident date?⁹
 - Are there any cameras that were disabled, damaged, or broken at the time of the incident?
- If yes:
 - Have those cameras been subject to repair or similar work?
 - Have all the responsible technical personnel been identified?
 - Have you requested an expert on when and how the technical problem occurred?
- ↘ **Request discovery and participate in the discovery** to determine the common areas and blind spots with or without cameras.¹⁰
 - Does your discovery request contain topics and areas to be examined?
 - Have you requested expert assignments according to the topics and areas to be examined?
- ↘ **Examine the institution plan, the institution placement plan and the discovery report** to answer the following questions.
 - Are there enough cameras in the institution, especially around the place where the incident occurred?¹¹
 - Is there a room without a camera in the institution?¹² ? (Especially such as the place where body search conducted, padded room, observation room¹³, cell, and manager room)
 - Is there a common area without a camera in the institution?¹⁴
 - Are the camera angles suitable for recording the whole area?¹⁵
 - Are there any blind spots where the cameras cannot detect images?¹⁶
 - Has any demand/warning etc., been sent to the administration regarding blind spots?
 - Has the administration taken any action to remove the blind spots?
- ↘ **Request the video footage** of the areas related to the allegation to be included in the file.
 - Have the recordings of all the related areas been requested?
 - Have the recordings of the wards, isles, and the areas mentioned in the children's statements been requested with a specific time frame?
 - Have you requested the video footage showing the ones entering and leaving the system control room?¹⁷
 - Have you requested the video footage showing the inside of the system control room if it exists?¹⁸

- Have you requested the video footage of the rooms that monitor multiple places' video footage within the institution (such as manager room, head-officer room, etc.) with the specific time frame of the incident?¹⁹
- Has a restrictive measure been taken for the detained child to be kept alone and under a strict regime or to be kept in a special room? (CGTIHK Art. 115) If restrictive measures were taken, have you requested the room's video footage where the child has been kept?
- In case the ill-treatment practiced during dispatch or transfer, have you requested the video footage in the ring vehicle?
- Is there any security camera in the waiting areas outside the dispatch or transfer vehicle?²⁰ If yes, have you requested those recordings?
- Have you requested for the hard disk/image of the video footage taken into safekeeping?
- Have you requested the image of the hard disk?
- Have you secured the image record copy, including the video footage of the incident, into your file?
- If the safekeeping request declined, have you obtained an expert opinion for analyzing the image record and submit it to the file? (CMK Art 67/6)
- If the video footage has been seized, is it recorded?
- ↳ Request **expert examining** regarding the video footage.
 - Have the records been given to the expert for analysis?
 - In case a manual intervention to video footage is possible, has an expert examination been requested to determine whether there has been an intervention?
 - Has lip-reading²¹ been requested if necessary?
 - Have you obtained an expert opinion for analyzing the recordings and submit them to the file? (CMK Art. 67/6)
 - If you think that the video footage is incomplete, have you requested the recordings to be examined again?
 - Have independent experts examined the analyzed video footage?²² In cases video footage been analyzed by the ones involved in torture events, have you detected this and requested a re-examination by independent experts?
- ↳ See and compare the video footage with the report and determine the gaps, if any.²³
 - Does the obtained video footage have integrity in terms of angle, place²⁴ and time²⁵?
 - Do the testimonies and statements agree on the events and images? If there are multiple child victims, have you controlled the continuity of the records for each child?
 - Have you controlled the continuity of the records regarding locations and the ones involved in ill-treatment allegations?
 - Have you determined the locations of the institution chiefs and their roles during the events?²⁶
 - Are there any records with unclear visuals? (Such as lights off, grouping around the child or standing behind the door²⁷)

- Did you request an expert report on lip reading to examine the cameras without sound-recording?²⁸
- If the expert opinion request was rejected, did you submit an expert opinion to the file, taking an expert opinion?²⁹
- Did you make a list regarding the angles, locations and/or times that you believe are missing?³⁰
- Did you request a re-examination by using basic and advanced restoration³¹ methods in cases the video footage is unclear or etc.? ³²

Supporting Evidence that can be Used Regarding Video Footage

In addition to the victim and witness statements, institution's internal correspondences, video footage, discovery, and expert examination you can support your claim and test the accuracy of the evidence obtained with the following evidence:

- ▶ The video footage of times other than the event's time (to investigate the claims of breakdown, fault, etc.)
- ▶ Forensic report/medical reports (to compare date and time on the reports and the footage)
- ▶ Disciplinary sanction reports (to determine blind spots)

Indicators

The following points indicate that the administration does not fulfill its' obligations on video footage.

- ▶ Lack of a plan on locating cameras.
- ▶ Blind spots.
- ▶ Lack of regulation on recording, keeping, and destroying the footage.
- ▶ Defective cameras.
- ▶ Tampered footage.
- ▶ Not presenting/not obtaining all video footage of the area/s and time frame of the event.

Footnote

- ¹ See **Constitutional Court, Semra Omak (2)**, No. 2016/78494, 12.11.2019, para. 72.
- ² See **HRIT, Sincan Prison Survey** (10.07.2014) p.68.
- ³ See **ECHR, Ciorap v. The Republic of Moldova** (5), No. 7232/07, 15.03.2016, para. 60; See **ECHR, Tanrikulu v. Turkey**, No. 23763/94, 08.07.1999, para. 104.
- ⁴ See **Constitutional Court, K.K.** (No.2017/37068, 22.07.2020 para. 50) "Failure to obtain video footage of an incident from approximately one year ago due to the applicant's late complaint is not a deficiency that can be attributed to the investigating authority. Because, according to the general practices in security camera systems, video footage can be stored within a reasonable time interval. Since, likely, a record from a year ago is not available, it is understandable that the Office of the Chief Public Prosecutor did not request the records from the Penal Execution Institution. Moreover, the applicant neither made a request in the petition of complaint nor in the statement for obtaining the obtention of the video footage by the public prosecutor."
- ⁵ See **Constitutional Court, Ayşe Adanalı** (No. 2017/36722 09.05.2019 para. 82) "An attempt should be conducted to obtain a copy of the video footage especially in the application where the findings of the assault allegation during custody were revealed by the medical reports. Automatic deletion of records after a period of appr. two months will not relieve the state's obligation to reasonable disclose."
- ⁶ See Documents and Materials Requested by the Forensic Medicine Institution's Administrative Board and Deputies for the Preparation of Reports, Forensic Medicine Institute, 2012. Detailed information on sending the audio and/or video recordings subject to examination under appropriate conditions. <https://www.atk.gov.tr/belgevateryaller.pdf> (date of access: 07.10.2020).
- ⁷ For example, the detailed information on the delectability on the date and time counter manipulations in video footage. See <https://dergipark.org.tr/tr/pub/gazibtd/issue/40059/415932> (date of access: 07.10.2020).
- ⁸ See **CPT/Inf (2020) 27**, para. 47; **CPT/Inf (2019) 16**, para. 15. According to the CPT, the records of closed-circuit video cameras in penal institutions should be kept for at least 30 days as a rule. In the case of torture or ill-treatment, records should be kept for a sufficient period available to be used as evidence when needed.
- ⁹ See **Constitutional Court, Semra Omak (2)**, (No. 2016/78494 12.11.2019 para. 29) "Penal Execution Institution stated that the cameras are monitored through the television in the emergency room and the duty of monitoring is on the daytime emergency team officers between 08.00-17.00, the chief officer after 17.00, and that the said records can be monitored from both computer in the chief officer's room, that there is no personnel assigned for such duty, that each shift monitors within their time, and presented the documents containing the signature of the day team and shift chief officers."
- ¹⁰ See **CMK Art. 83 and 84**; See **Court of Cassation 1th Criminal Chamber** (2017/2701 E, 2019/2503 K, T. 30.4.2019); "Conducting the discovery by preparing the parties and witnesses and to allow the inspection of their statements at the scene of the incident, by applying the crime scene investigation report and sketch by the experts in accordance with the conditions and time and within this scope, determining the locations of the deceased, victims ..., ... and the defendants by considering the crime scene investigation report and crime scene photographs, preparing a detailed sketch by photographing the crime scene from different angles suitable for inspection, making measurements, and as a result of the shots made by the accused against the victim ...; considering the presence of a firearm bullet entry hole with a 0.5x0.8 cm hitting ring around the lower medial end of the right scapula in the autopsy report, it was determined whether the victim ... and the victim ... were hitting absolutely and definitely without considering the discretion and determination of the legal status of the judgment by examination "; See **Court of Cassation General Criminal Assembly** (2014/269 E. 2017/108 K.)
- ¹¹ See **GNAT, İHIK Muğla Open and Type E Closed Penal Institutions Review Report (2017), p.4**; during the 2017 examination of the Grand National Assembly of Turkey on the Muğla Open and E Type Penal Execution Institution, it was determined that there were 32 cameras in total for the security and surveillance of the institution, but this number was insufficient.
- ¹² See **CPT/Inf (2019) 7** para.58. During its visit to Romania in 2019, the CPT determined that ill-treatment usually occurs in areas where cameras are not available and underlined that cameras should be located accordingly to these areas.
- ¹³ See **HRIT, Sincan Prison Survey** (10.07.2014) p. 79. If there is no video footage in areas that alleged ill-treatment occurred, the administration should be reminded that they will be responsible, and it should be ensured that all the sponge rooms and observation rooms are placed and monitored by placing cameras that are not likely to be broken and closed."
- ¹⁴ See **TBMM İHIK Children and Youth Closed Penal Institution and Education Houses Survey Report** (2011). The report noted that in Adana/Pozantı M Type Closed Penal Institution, eight children were staying in each ward and there was no camera system in the common areas; it was emphasized that this situation may lead to ill-treatment among and towards children. (p. 7)

¹⁵ See **CPT/Inf (2020) 2**, para.16. In the report prepared after the CPT's visit to Italy in 2018, it was determined that the ill-treatment of prisoners took place in certain areas where the camera was not placed or in blind spots. Accordingly, the CPT advised Italy to take the necessary measures to include these areas in the camera angle.

¹⁶ See **GNAT IHIK Maltepe Juvenile and Youth Closed Penal Institution Survey Report (2015)**, p. 15. During the 2015 investigation conducted by IHIK, the blind spots where cameras cannot detect images and that this situation poses a danger has been emphasized; "Another issue that causes security weakness in the institution is the presence of blind spots where the cameras cannot receive images. Especially the presence of blind spots inside the unit on the stairs, under the stairs and on the upper floor, and the fact that these points are known by children, may lead to dire consequences. The fact that the fight between the children took place under the stairs the day before the examination of our commission draws attention to this danger."

¹⁷ See **Court of Cassation General Criminal Assembly** (E. 2014/269 K. 2017/108 T. 14.2.2017) "During the morning roll-call, which was held with the participation of a large number of officers, unlike the normal roll-calls held with 3-4 officers in 10-15 seconds, when the defendant ..., who was the second director of the prison and assigned on 01.10.2008, was in the temporary wards, and stating that he was not aware of the events that lasted appr. 15 minutes and then, when the deceased was taken to the B-8 ward, that it is not possible for him to not be aware of the various incidents that occurred due to failure to stand up during the roll-calls, as a matter of fact, the defendant also observed the camera recordings in the system room due to the obligation of supervision and surveillance in his defense; thus the defendant is in a position to be aware of the actions in the ward where ... is located, which is much greater than in the normal roll-calls,"

¹⁸ See **Court of Cassation General Criminal Assembly** E. 2014/269 K. 2017/108 K. 14.2.2017. Considering the court's reference regarding the monitoring of the video footage in the system room, not only the records of the entrance to the room, but also to request the record from inside of the room is recommended. The records showing the inside of the system room also constitute evidence as to whether the devices that protect the recordings have been tampered with.

¹⁹ Screens with multiple camera views can be used as evidence to determine which cameras are operating at a particular time. The situation of the cameras allegedly not working during the incident can be examined in this way.

²⁰ **GNAT IHIK Izmir Juvenile and Youth Penal Execution Institution Survey Report (2013)** p. 4. The following statements by a child were included during the examination carried out by IHIK; "While being taken to and from the court or hospital, we are subjected to ill-treatment by the gendarmes. This type of treatment is usually done in waiting areas other than the ring car. The disabling camera is also possible by turning off the power switch in the ring vehicle."

²¹ See **Court of Cassation General Criminal Assembly** 2014/269 E. 2017/108 K. 14.2.2017. "... afterward, immediately he headed back to the ward door and talked in front of the ward door where he came as of 08:18.00, which could not be resolved by the lip-reading specialist, and then left the front of the ward at 08:18.17, ..."

²² See, the Constitutional Court, **Sevkan Aşan**, No. 2016/78468, 18.06.2020, para. 47-48 "Following the clarification of when and in which part of the Police Department the incident might have occurred based on the applicant's allegations, to determine whether there are video footages of these areas is necessary. If there are footages obtained, they should be resolved by independent experts". In the events of the case, the court concludes that "the officers responsible for conducting the investigations should be independent from the ones involved in the events to ensure effectiveness of the investigation. Although it is important for those assigned to resolve the footages should not be police officers- at least not working in the same unit -, in the events of the case it appears that two police officers monitored the footages, and issued the minutes.

²³ Deciphering video footage is a subject to expertise. For this reason, an expert review is required for deciphering. At the same time, both lawyers, judges and, prosecutors need to monitor records directly and examine and compare analyzes made by experts.

²⁴ See **ECHR, Ciorap v. The Republic of Moldova (No. 5)**, (No. 7232/07, 15.03.2016, para. 65-66.) The ECHR decided on violation of the prohibition of ill-treatment procedurally, because from the 30 minute search video regarding the search, only 6 minutes of it has been presented to the judicial authorities and the judicial authorities did not take the necessary steps to complete the missing record although the content and integrity was controversial.

²⁵ See **Constitutional Court, Sevkan Aşan**, No. 2016/78468, 18.06.2020, para. 46 "Although the applicant was not informed on the exact time of the incident, the footage was monitored in a limited time between 08.00 and 16.00. However, it is seen that the applicant's examination was made at 09.20. "

²⁶ See **Court of Cassation General Criminal Assembly**. (E. 2014/269 K. 2017/108 T. 14.2.2017) "Pursuant to Article 94/5 of the TCK, the penalty to be imposed is not reduced due to the crime of torture is committed with negligence. According to the reasoning of the article, the crime of torture is often committed with the tacit consent of chief officers. In other words, the chief officers may have tacitly consented to the torture by not making the necessary intervention in this regard, even though the chief officer predicted that people were tortured during an investigation conducted under his supervision obligation. In such cases, the chief officer will be deemed to have committed the crime of torture through negligent behavior and will therefore be held responsible for the result without any reduction in his sentence. ... is the supervisor of the defendants who battered the deceased and convicted on torture, and the defendant ..., who has the responsibility of

supervision and surveillance on these defendants, is aware that the deceased, who was put into prison on 30/09/2008, was battered during the roll-calls because he did not stand up and during the roll-call on 07/10/2008 and no intervention was made to prevent these acts although he saw the beaten by the warden was understood from the camera recordings and the report prepared as a result of the discovery, according to the witness ...'s statements the defendant consistently in his statements supported by the witnesses ..., ... and ..., said "those who act in this way will be punished like that from now on" by meaning the actions against the deceased; Since the defense of the accused that he was not aware of the events could not be credited, it should be accepted that the deceased was killed constituted the crime of torture, and ... also committed the crime of torture, which was aggravated by the consequences of negligence, by tacit consent to the actions."; For more information on the fact that the negligent behavior of the institution chiefs also requires criminal liability, see section 4, which examines the evidence regarding the authority to use force.

²⁷ See **HRIT, Sincan Prison Survey Report** (10.07.2014) p. 79-80 "Security camera footage of children being taken away, taken into rooms, evacuated, etc. it was observed that the prison staff sometimes gave images in a clustered way to close the camera angle, while the children were taken into the rooms, the door of another room in the corridor was left/ remained open, and displayed a stance that gave the impression of hiding what they were doing."

²⁸ See **Court of Cassation General Criminal Assembly** 2014/269 E. 2017/108 K. 14.2.2017 While examining the images of the cameras that did not record sound in the incident subject to the decision, an expert report was requested by the lip reader and the lip movements of the people in the image were analyzed and examined.

²⁹ See CMK Art. 67/6

³⁰ See **ECHR, Milić and Nikezić v. Montenegro**, No. 549910/10 and 10609/11, 28.04.2015, para. 99. According to the ECHR, failure to obtain all the video footage in the corridor where the incident took place causes a violation of Article 3 of the Convention in terms of procedure.

³¹ To assess each concrete event would be useful before requesting the use of image enhancement techniques. Image enhancement should be requested if there is an opportunity to obtain supplementary evidence in matters such as identifying someone from the visuals, analyzing someone's movements and revealing the structure of the event. In any case, whether the request will extend the litigation process unnecessarily should be considered. To ensure this, contacting and getting their opinions and cooperating with experts in image analysis and informatics is extremely important.

³² See **ECHR Berber and Others** "Several changes and corrections can be made on the image by using methods such as brightness adjustments, saturation settings, contrast settings, interpolation, layering, cropping, sharpening, blur removal, noise reduction, image frames averaging, image stabilization and editing the histogram of the image."; See "Evaluation of the Cases that comes to Image Laboratory of Counsel of Forensic Medicine between 2007-2010.", *Journal of Forensic Medicine*, 2010, 24/3, p. 14.



STATEMENT EVIDENCE



INTERNATIONAL STANDARDS

UNITED NATIONS

CRC, Art. 2, 4, 12, 19

Convention Against Torture, Art 12, 13

Istanbul Protocol

Additional Principles to General Assembly 55/89 on Efficient Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

EUROPEAN COUNCIL

CPT 14th General Report

Explanation

In torture and ill-treatment cases, information obtained in the first stage significantly influences the following steps. The victim and witness's statements are essential especially in detecting the perpetrators, revealing the incident's structure, and eliminating the contradictions in the file.

Identifying the victims, suspects¹ and eyewitnesses and obtaining their statements on the events of torture is compulsory in order to ensure an investigation that is conducive to detecting and punishing those responsible². Otherwise, conducting an objective evaluation would not be possible due to the lack of investigation. In such a case, violation of the obligation to effective investigation on torture and ill-treatment would occur.

Statement evidence has significant importance, especially in situations such as lack of physical³ evidence or unable to reveal the material facts⁴ with such evidence.⁵ Applying to statements of the witness who are likely to see the incident, cross-examining⁶ the witnesses, and comparing the statements with other evidence will help to make an objective analysis⁷.

Like all the other evidence, the statement evidence is also subject to the risk of loss. Displacement of witnesses and difficulties in remembering the events might cause complications for collecting evidence or the evidence might lose its ability to illuminate the truth⁸. Therefore, the investigation should be carried out quickly and in-depth; all reasonable steps should be taken to obtain evidence from victims and eyewitnesses⁹. It should be noted that law enforcement officers and experts who collect the evidence are among those whose statements should be consulted.

Whereas, in practice, the victims' and witnesses' statements are not received, or sufficient effort is not conducted to highlight the critical matters¹⁰. In some cases, decisions on no prosecution for further investigation without determining the possible eyewitnesses, was encountered¹¹. However, the testimony of the eyewitnesses is crucial to illuminate the investigation, especially in the absence of certain physical evidence.¹² Hence, identifying the possible eyewitnesses and obtaining their testimonies by the public prosecutor without delay is vital in torture and ill-treatment events. Similarly, there are cases where the suspects involved in the torture incident are not identified, and their statements are not obtained even if they are identified¹³ or the testimonies obtained incompletely.¹⁴

States should take necessary protective measures against all kinds of violence, threats, or intimidation to ensure the physical and psychological integrity of victims, witnesses and their families, and they are not discouraged in any way from participating in the investigation.¹⁵ Suspending the perpetrators of torture and ill-treatment from duty during the investigation process is a measure that reduces the risk of using the privilege given by their duties over victims and witnesses¹⁶.

The rules on testimony are regulated in articles 43 to 61 in the Criminal Procedure Code. The expert's statement during the hearing is regulated in Article 68. Procedural rules regarding the statement and interrogation of the suspects and defendants are regulated in articles 147-148 and rules regarding the hearing of the victim and the plaintiff are regulated in article 236. Direct and cross-examinations against the witnesses are regulated in Article 201. In case the victim is a child, an expert may be present during the statement, according to Article 236 of the CMK. According to the Children Protection Law, a social worker can be present with the child. In addition, according to domestic law, there are detailed regulations on the protection of victims, witnesses and their families by the Witness Protection Law.

Points to be Informed in General for the Demands Regarding Statement Evidence

In order to evaluate the evidences, it is necessary to have knowledge on the following matters:

- ➔ The elements and the form of the torture, torture methods and other torture practices.
- ➔ Primary information in interviewing the child victim.¹⁷
- ➔ Forensic interview techniques with child victims.
- ➔ Information is recommended to be obtained from child victims under the Istanbul Protocol (para. 137-138).

Guiding Questions

Interview with Child Victim and Obtaining Statement

- ➔ Ensure that the procedures below are followed when preparing for and during the interview:
 - Have you prepared a plan before the interview?
 - Is the location safe and comfortable for the interview?¹⁸
 - Did you meet with the child victim alone?
 - During the interview, did you inform the child victim that he/she has the right to stop questions whenever he/she wants; to take a break is possible when necessary or that he/she is free not to answer any questions?¹⁹
 - At the beginning of the interview, did you provide enough information to the child on the procedures of the interview process, the reasons for the interview, and whether or how to use the available evidence?
 - Have you determined any signs during the interview that indicate the child victim needs medical or psychological care? Or did the child make any request in this direction?
 - Have you noted the signs you detected during the interview?
 - Have you informed the prison authorities and health personnel on these signs with the consent of the child victim?²⁰
 - During the interview, did you obtain the minimum required information on the torture incident?
 - The environment and conditions of the place where the torture occurred
 - Approximate date and time of the torture, including when the last torture event occurred
 - A detailed explanation of the person(s) involved in torture²¹
 - The content of the questions asked to the child victim
 - Description of daily routine and ill-treatment occurred in prison or detention house
 - Definition of torture findings, including torture methods

- Whether the child was sexually assaulted²²
 - Physical wounds due to torture
 - Description of weapons or other physical objects used
 - Identities of the persons who witnessed incidents involving torture
 - During the interview, did you determine the physical marks occurred due to torture, using the forensic examination forms and/or body diagram?
 - Did you take photographs of the physical traces? When there is an obstacle to take photographs, did you request to record the locations of the traces and ensure the prosecutor to see the existing traces?
 - During the interview, did you pay attention to whether the use of language and expression of the child was appropriate for his/her age and maturity?
 - During the interview, did you avoid leading questions as much as possible and help the child to express him/herself with open-ended questions?²³
 - Does the child victim in need an interpreter?²⁴
- ↘ Examine the victim statement report.
- When was the statement of the child victim obtained?²⁵
 - Who obtained the child victim's statement?²⁶
 - Has one of the relatives been presented during the child's statement?
 - Has the Provincial Directorate of Family, Labor, and Social Services been notified?²⁷
 - Were the audio and video recorded during the statement of the victim child?²⁸
 - If the audio and video were not recorded, has it been requested?
 - Were the recordings taken in a suitable environment?
 - Are there any situations that cause a risk for the child victim to meet face to face with the suspect or the accused?
 - Has the child's statement obtained in CMC's or FIR's by the experts?²⁹
 - Has a specialist in psychology, psychiatry, medicine, or education been presented during the interview?³⁰
 - If an expert did not present, has it been requested?
 - If the expert request was rejected, did you record this in the report?
 - Has a diagnosis³¹ been made in cases where the victim can identify those responsibly?³²
 - Have leading questions been asked?
 - Has the statement been interrupted? If so, have the reasons for the interruption and duration of it been recorded?

Witness Statement

- ↘ Identify the potential eyewitnesses who can illuminate the victim's story and provide information to confirm the allegations.³³

- Have the records and books of the institution have been obtained to identify possible eyewitnesses?³⁴
- Do the identified eyewitnesses include everyone possible?
 - Everyone who was presented at the time and place of the torture incident
 - Other convicted or detained children who were near the child victim³⁵
 - The ones in contact with the child victim
 - Doctors and other health professionals who witnessed the health condition of the victim child³⁶
 - Prison staff³⁷
 - Officials who visited the prisons and detention centers
 - People who regularly visit prisons and detention centers (such as religious officials)
- Control the minutes of the witness statements:
 - Have the statements of possible eyewitnesses been obtained?
 - Who obtained the witness statements?
 - In cases where the only evidence is the witness's statement, did this witness testify at the hearing? Was this evidence considered decisive for the incident?³⁸
 - Do the victim and witness statements provide integrity?
 - Are the parties allowed to ask questions while the witness is being heard?
 - Have the parties been able to ask the witness direct and cross-questions?
 - Have the questions and the answers of the witness been recorded?
 - Have audio and video been recorded when obtaining the witness statement?
 - Has the audio and video recording been deciphered?
 - Has the deciphered been shared with the parties?
- Control the possible situations that require protection of the witness:³⁹
 - Could the witness be included in the witness protection program?⁴⁰
 - Will revealing the identity of the witness cause a danger to the witness or relatives?⁴¹
 - Is witness protection obligatory?⁴²
 - Would it be favorable to benefit from the protection measure?⁴³
 - Have the necessary measures been taken to protect the witness?
 - Hearing the witness without the ones entitled to be present during the testimony⁴⁴
 - Keeping the identity of the witness confidential before and during the testimony⁴⁵
 - Taking necessary protective measures following the testimony⁴⁶
 - Did the witness, whose identity is secret, explain how he/she witnessed the event?
 - Have questions been asked to reveal the identity of the witness, even indirectly?
 - Is the personal information of the witness being kept by the public prosecutor, judge, or court in order to keep the identity anonymous?



Information recommended to be obtained from child victims under the Istanbul Protocol⁴⁷;

- ↘ What was the time?
- ↘ Where were you?
- ↘ What were you doing?
- ↘ What happened first?
- ↘ Where have you been taken to?
- ↘ Who was there?
- ↘ Can you describe the looks of the ones presented there?
- ↘ What type of weapons they had?
- ↘ What did they say?
- ↘ Have you been subjected to violence?
- ↘ Have you been threatened?
- ↘ Can you describe the condition of the cell/room (such as dimensions, presence of others, light, ventilation, temperature, insects and rats, bedding, access to food, water, and toilet)?
- ↘ What did you hear, see and smell?
- ↘ Have there been situations such as restriction of movements or blindfolding?
- ↘ Were there any witnesses?
- ↘ Have identification procedures (such as personal information recorded, fingerprints, photographs) been carried out?
- ↘ Have you been asked to sign anything?
- ↘ Have you had any contact with someone from outside (such as a family, lawyer, paramedics)?
- ↘ Did you receive medical care?
- ↘ Can you give information regarding the means of transportation, destination, and names of the officers during the transfer or dispatch?

Supporting Evidence that can be Used Regarding Statement Evidence

In addition to the statements of the victim, suspect/accused, witness, the ones issuing the minutes, and experts, you can use the following evidence to identify possible witnesses.

- ▶ Video footage
- ▶ Forensic medical/medical reports
- ▶ List of staff on duty in the institution to identify them
- ▶ All minutes and reports presented as evidence to the file
- ▶ Records and books of institutions such as penal institution, hospital, polyclinic, etc. (especially for witness detection)

Indicators

The following points indicate that the statement evidence has been obfuscated:

- ▶ Lack of eyewitness identification.
- ▶ The presence of institution staff and law enforcement officers during the victim's statement.
- ▶ Lack of sufficient information and psycho-social support to the victim.

Footnotes

¹ See **Constitutional Court, Tuna Ayçiçek**, (No. 2014/6526, 24.01.2018, para. 87.) "Although the statements of the suspects are essentially related to defense, they are also - even in the absence of situation such as confession etc. - there is no regulation restricting its use as an element of evidence."

² See **Istanbul Protocol, para. 76, 161**; See ECHR, *Bati and Others v. Turkey*, (No. 33097/96 and 57834/00, 03.06.2004, para. 134); See **Constitutional Court, Tuna Ayçiçek**, (No. 2014/6526, 24.01.2018, para. 86); See **CPT, 14th General Report**, para 33.

³ See **CPT, 14th General Report** para. 29. "Adequately assessing allegations of ill-treatment will often be a far from straightforward matter. Certain types of ill-treatment (...) do not leave obvious marks. Similarly, making persons stand, kneel or crouch in an uncomfortable position for hours on end, or depriving them of sleep, is unlikely to leave identifiable traces. (...). Consequently, when allegations of such forms of ill-treatment come to the notice of prosecutorial or judicial authorities, they should be especially careful not to accord undue importance to the absence of physical marks. (...) Adequately assessing the veracity of allegations of ill-treatment may well require taking evidence from all persons concerned and arranging in good time for on-site inspections and/or specialist medical examinations."; See **Istanbul Protokolü**, para. 161. "Witness and survivor testimony are necessary components in the documentation of torture. To the extent that physical evidence of torture exists, it provides important confirmatory evidence that a person has been tortured. However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars."

⁴ See **Constitutional Court, Cihan Alpyürük** (No. 2017/37528, 29.09.2020, para. 50.) "Even though the medical report is one of the most important pieces of evidence that enables to obtain the truth in case of allegations of ill-treatment, in cases where the injury remains undetectable with a medical report or when a report is received after a long time, medical reports alone will not be insufficient to reveal the truth un-doubly. Therefore, the fact that no trace of assault was detected in the medical report taken seven days after the incident does not prevent the applicant's claims from being defensible; Also it does not negate the legitimacy of the expectation for an effective investigation which includes details about the date, place and perpetrator."

⁵ See **ECHR Mursic v. Croatia** (No. 7334/13, 20.10.2016 para 127-128.) On the fact that the prison standards of the ECHR should be supported by methods such as written statements of other prisoners or photographing, and that the burden of proof belongs to the state, the one with more documents and data.

⁶ See **Read, F. Tom**, "Direct and Cross Examinations" University of Bahcesehir and Turkish Bar Association, December 2014 <http://tbbyayinlari.barobirlik.org.tr/TBBBooks/510.pdf> date of access: 23.12.2020

⁷ See **Constitutional Court, Erdoğan Akdoğdu**, (No. 2017/17795, 16.09.2020, para. 62.)

⁸ See **ECHR, Mikheyev v. Russia**, No. 77617/1, 26.01.2006, para. 109; See **Constitutional Court, Y.K.**, No. 2016/14347, 02.06.2020, para. 116; See **Constitutional Court, Yavuz Durmuş**, No. 2013/6574, 16.12.2015, para. 62; See **Constitutional Court, Sedat Ekmekçi**, No. 2014/17642, 11.01.2017, para. 40.

⁹ See **ECHR, Abdülsamet Yaman v. Turkey**, No. 32446/96, 02.11.2004, para. 56. "It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating torture or ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts."

¹⁰ See **Constitutional Court, Erdoğan Akdoğdu**, No. 2017/17795, 16.09.2020, para. 56 "In the present case, the investigating authorities did not take the applicant's statement by being settle with the petition of complaint. Therefore, it was not possible to reveal the necessary details of the complaint for a healthy investigation and to determine the evidence of the application completely. The applicant was not asked whether he could identify the law enforcement officer he claimed to have injured him with a truncheon. Also, the distinguishing details that would serve to identify the officers whom the applicant claimed to be responsible were not identified.; See **ECHR, Cobzaru v. Romania**, No. 48254/99, 26.07.2007, para. 71.

¹¹ See **Constitutional Court, Mesut Uçar and Ramazan Acar**, No. 2016/1066, 08.07.2020, para. 51. "No action was taken to identify the persons who might have been informed on the incident and their testimony was not applied by the Prosecutor's Office. In the decision given by the prosecutor on no need for prosecution, no justification could clarify the reason why the testimony of the said witnesses was not used. "

¹² See **Istanbul Protocol**, para. 161; See **14th General Report**, para. 29.; See **ECHR, Volkan Özdemir v. Turkey**, No. 29105/03, 20.10.2009, para. 44. "The prosecutor also appears to have failed to secure the testimonies of potential eyewitnesses, such as other police officers on duty that day, the persons arrested or detained together with the applicant or others present at the police station on the day of the events. In the absence of conclusive medical evidence in the case

file, these testimonies would, in the Court's opinion, have provided important information capable of casting light on the origins of the injuries."

¹³ See **Constitutional Court, Y.K.**, No. 2016/14347, 02.06.2020, para. 111

¹⁴ See **Constitutional Court, Tuna Ayçiçek**, No. 2014/6526, 24.01.2018, para. 95. "In the case, the fact that the investigation is reduced to only a part of the suspects and conducted with limited evidence has a restrictive effect on the effort to reach the truth. Therefore, the investigation conducted could not be accepted as successful since it's conditionally and focusing on only some suspects."

¹⁵ See **Convention Against Torture**, Art. 13. "Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."; See **Istanbul Protocol**, para. 79, 87, 94, 111 and 112; See **Additional Principles to UN General Assembly Resolution 55/89**, Art. 3/b. ; See **Constitutional Court, Baran Karadağ**, 2014/12906, 7.5.2015, para. 60. "The witnesses have the right to ask for the protection of themselves or their relatives or property due to the information they give by performing a public duty. An unprotected witness who is worried about the life of himself or his relatives may not be able to express what he knows even if he will be punished. Accordingly, it is also the responsibility of the State to take the necessary measures in order to ensure not suffering due to the information given by the witness who fulfills his public duty".

¹⁶ See **Additional Principles to UN General Assembly Resolution 55/89**, Art. 3/b; See ECHR, **Uğur v. Turkey**, No. 37308/05, 13.01.2015, para. 108. In this decision the Court also reiterates the importance of the suspension from duty of an agent under investigation or on trial, as well as his dismissal if he is convicted. (...). The importance of doing so is well evidenced in the present application, where the police officers who ill-treated the applicants (...) used their powers to stall the investigation by failing to reply to the prosecutor's requests for a long period and by putting pressure on the applicants.; See ECHR, **Abdülsamet Yaman v. Turkey**, No. 32446/96, 02.11.2004, para. 55. "The Court also underlines the importance of the suspension from duty of the agent under investigation or on trial as well as his dismissal if he is convicted."

¹⁷ See **ECHR Tüysüz and others**, "Legal Aid Educator's Handbook for Children Driven into Crime", Ankara, 2010, pp. 240-258; http://cocukhaklari.barobirlik.org.tr/dokuman/egitimbasvuru_egitim/sucasuruklenencocuklara.pdf (date of access: 05.12.2020).

¹⁸ See **Istanbul Protocol**, par. 92.

¹⁹ See **Istanbul Protocol**, par. 92.

²⁰ In cases of suspicion from the prison authorities, the necessary support can be obtained for the treatment of the child in direct cooperation with health personnel or NGOs. The **Istanbul Protocol** also indicates same matter such as; "Alleged victims of torture should be given contact information for advocacy and treatment groups that might be of assistance to them." (par. 88).

²¹ All the details should be tried to obtain whether the child knew anyone before the alleged torture or remembers their clothing, scars, birthmarks, tattoos, height, weight, anything different in the anatomy of the torturer, language and accent etc.

²² Verbal assault, denude, handling, deviant or degrading behavior, or acts such as striking the genitals or giving electric shocks are generally not defined as sexual assault by torture victims. However, it should be kept in mind that these behaviors violate the privacy of the person and are a part of sexual assault.

²³ The victim statement must be based on the answers of the non-leading questions. Non-leading questions do not make assumptions or judgments and allow the person to give full and unbiased statements. For example, the non-leading question should be "What happened to you, and where?" instead of "Have you been tortured in prison?". The second question assumes that what was done to the witness was torture and limits the place of the action to the prison.

²⁴ See **Istanbul Protocol**, par. 146-152.; See CMK Art. 202

²⁵ See **Constitutional Court F.E. and Others** No. 2014/15586, 23.01.2019, par. 148. The decision on the necessity to obtain the victim child's statement without delay.; See **Constitutional Court, Cihan Alpyürük** No. 2017/37528, 29.09.2020, para. 52. "The prosecutor's office did not take the applicant's statement on the incident; and did not identify all complaints and evidence in detail. In addition, the applicant, who stated that he could identify the perpetrator, was not diagnosed, and even the identity of the executioner he complained about was not determined. Therefore, it is not possible to mention that the applicant's active participation in the investigation was ensured, and at the same time, it cannot be mentioned that efforts were made to obtain evidence that could be put forward by the applicant."

²⁶ See **Constitutional Court, Cihan Alpyürük** No. 2017/37528, 29.09.2020, para. 54. "In the investigation (...), all of the evidence based on the decision of the Prosecutor's Office, including the statements of witnesses, were collected by the Execution Institution, not by the Prosecutor's Office itself, but on the order of the Prosecutor's Office. (...) None of the witnesses confirmed that the assault took place. All these procedures were carried out by the execution officers-supervisors working in the Institution. Therefore, it seems difficult to say that this process, carried out by those who are the colleagues and superiors of the perpetrators of the alleged event, is compatible with the principle that the investigating authorities should be independent and impartial."

²⁷ See **CMK Art. 6**

²⁸ See **CMK Art. 52/3**; Such audio and video recordings are used only in criminal proceedings! (**CMK Art. 52/4**); See Regulation on the Use of Audio and Video Information System in Criminal Procedure (RG. 28060 – 20.09.2011)

²⁹ See **CMK Art. 236/4**

³⁰ See **CMK Art. 236/3**.

³¹ See **Tüysüz and Others**, *ibid* s. 57-60 for detailed information on diagnosis.

³² See **ECHR, Labita v. Italy**, No. 26772/95, 06.04.2000, para. 72; See **ECHR, Batı and others v. Turkey**, No. 33097/96 and 57834/00, 03.06.2004, para. 142. Decisions on; although the applicant declared he/she can identify those responsible no steps were taken in this regard.

³³ See **ECHR, Volkan Özdemir v. Turkey**, No. 29105/03, 20.10.2009, par. 44. "The public prosecutor did not seek to obtain evidence from the accused police officers, others who arrested with the applicant and the eyewitnesses from the police stations. According to the ECHR, since there is no definite medical evidence in the file, the statements in question could shed light on the cause of the injuries.; Similarly, see **Mikheyev v. Rusya**, No. 77617/1, 26.01.2006, para. 112; See **Barabanshchikov v. Rusya**, (No. 36220/02, 08.01.2009, para. 62); See **Grimailovs v. Letonya**, (No. 6087/03, 25.06.2013, para. 115).

³⁴ See, The Directive Regarding the Books and Documents to be Used in Penal Execution Institutions and their Regulation, entered into force with the approval of the Minister of Justice on 07.07.2016. The examples of the documents that compulsory to be issued can be found in the directive attachment.

³⁵ See **Constitutional Court, S.Ç.** No.2016/3594, 26.02.2020 par.46; Similarly, see **ECHR, Bozdemir and Yeşilmen v. Turkey**, (No. 33860/03, 09.07.2013, para. 57) "No investigation was conducted as to whether there were any other persons at the same time left in custody together with the applicant, thus, the hearing possible witnesses was neglected."

³⁶ See **ECHR Volkan Özdemir v. Turkey**, (No. 29105/03, 20.10.2009, para. 44.) The decision regarding that the statements of the doctors who examined the applicant were not obtained in order to eliminate the contradictions in the two medical reports prepared one day apart and therefore the essential and effective conditions of the investigation were not met.

³⁷ Prison personnel are key witnesses as they are likely to be present at the time of the torture or have information on the torture and/or perpetrators. However, in practice, it is challenging for officials to testify against their colleagues. In this case, by reminding the duties and responsibilities of prison staff, it should be explained that this attitude is defined as a crime in the Turkish Penal Code. However, there is a risk of retaliation. All these issues should be evaluated and decided whether to resort to the testimony of prison staff accordingly.

³⁸ See **CMK Art. 210**; See **Constitutional Court, Tuna Ayçiçek**, (No. 2014/6526, 24.01.2018, para. 86.) "In a case of ill-treatment resulting in non-prosecution - according to the statement of the applicant - the fact that the statement of C.Y., which can be shown among the decisive evidence of the incident, is incompatible with the regulation in Article 210 of the Law No. 5271, which is the basis of the investigation management."

³⁹ See **ECHR, Van Mechelen v. Netherland**, (No: 21363/93, 23.04.1997, para. 58.)

⁴⁰ See **WPL Art.4**

⁴¹ See **CMK Art. 58/2**; See **WPL Art. 4/2**; See **Constitutional Court, Baran Karadag**, (No. 2014/12906, 07.05.2015, para. 64.) "In cases involving anonymous witnesses, the ECHR considered the fear that the defendants would take revenge as a valid reason for not disclosing identities in *Al-Khawaja and Tahery v. England* case. However, according to the ECHR, a subjective fear is not enough, and the necessary investigation should be conducted by the trial court as to whether there are objective grounds for the fear in question"

⁴² See **WPL Art. 4/2**

⁴³ The statement of the witness whose identity is kept confidential within the scope of witness protection will not constitute the basis of the judgment alone. (**WPL Art. 9/8**). Therefore, an evaluation should be made considering this situation. Additionally see **ECHR, Birutis v. Lithuania**, (No. 47698/99, 48115/99, 28.03.2002, para. 31); See **Constitutional Court, Baran Karadag**, (No. 2014/12906, 07.05.2015, para. 63.) "In assessing the fairness of a trial involving anonymous witnesses, the ECHR first examines whether there are reasonable grounds for concealing the identity of the witness. Secondly, the court considers whether the anonymous witness testimony is the sole or decisive basis on the verdict based. Third, if the judgment is largely or solely based on the testimony of an anonymous witness, the court examines the proceedings of the decision to detailed scrutiny."

⁴⁴ See **WPL Art. 9**

⁴⁵ See **WPL Art. 10**

⁴⁶ See **WPL Art. 5**

⁴⁷ See **Istanbul Protocol**, par. 137-138.

Concerning the Effective Investigation and Prosecution of
Maltreatment of Juvenile Prisoners in the Penal Execution Process

CONTROL QUESTIONS AND INDICATORS



II. PART

A CASE REPORT:
MONITORING RIGHTS IN CASES
RELATED TO CHILDREN
A METHOD RECOMMENDATION

TORTURE AND
ILL-TREATMENT

Introduction

The obligation to prevent torture, and fight against torture has been imposed on states with “The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” and the “European Convention on Human Rights”.

According to the Constitutional Court (Constitutional Court), the state is obliged to “*protect individual’s corporeal and spiritual existence from all kinds of dangers, threats and violence*”¹ and “*to take measures to prevent people from being subjected to torture and torment or a punishment or treatment against human dignity*”.² The Constitutional Court rules that “*the state has a positive obligation to protect the physical and mental integrity of individuals through administrative and legal regulations*” and this constitutes an element of the substantive dimension regarding the prohibition of torture and ill-treatment. Therefore, “*if the authorities did not take reasonable measures to prevent the danger of ill-treatment that they knew or they should know, the state’s responsibility in terms of the third paragraph of Article 17 of the Constitution may arise. (Cezmi Demir and others § 82)*”.³

On the other hand, the lack of an effective criminal investigation is a violation of Article 17 as well as the action causing torture or ill-treatment or failure to take necessary measures to prevent that action.⁴ In the Constitutional Court’s terminology, such a violation is subject to the procedural dimension of the prohibition of torture and ill-treatment.

The Constitutional Court has the opinion that to consider treatment within the scope of the prohibition of torture and ill-treatment, an evaluation should be conducted “*by taking into account the characteristics of the concrete event*”⁵ to see whether the treatment has reached a “*minimum level of severity*”⁶ and whether this relative minimum level is exceeded. Also, the Constitutional Court stated the method to be followed; “*examines all the submitted evidence while evaluating whether there is ill-treatment in terms of violation of Article 17 of the Constitution. This evidence may have been submitted by the applicant, reported by the Ministry, or obtained from other sources. To ascertain the truth of the alleged events, reasonable evidence without any doubt is required. This evidence can be obtained from sufficiently strong, clear, and concerted conclusions or from presumptions that have not been proven otherwise. While evaluating the evidence, the attitudes of the ones involved in the process should also be considered (an evaluation in the same direction, see Cezmi Demir and others § 95)*”.⁷

Therefore, to ensure that actions causing violation of prohibition of torture and ill-treatment against children are effectively investigated and prosecuted in each case is important. Also, collecting evidence in full and completely in accordance with the law from the very beginning of the work, is very crucial for the protection of the rights. Additionally, to concretize demands and to make the legal descriptions clearly and correctly is noteworthy. The decisions regarding the applications brought to the Constitutional Court on violation of prohibition of torture and ill-treatment are also confirms this finding.

Scanning has been conducted in the Constitutional Court’s decision database on 24.02.2021. The search has been carried out by choosing the “prohibition of ill-treatment” in the options of the “examination results” section under the heading of “rights and freedoms”; and the “ill-treatment in a penal institution” under the heading of “allegation of intervention”. Fifty-eight applications were found as a result of the search conducted with this method and these results were scanned according to

MONITORING RIGHTS IN CASES RELATED TO CHILDREN
A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

the type of the decision. (Table 1) Among the applications, only the decisions regarding the allegations on violation of prohibition of torture and ill-treatment were included in the scanning. Nevertheless, one hundred-two decisions were determined since applications contain several allegations and decisions. As a result, it has been observed that out of thirty violation decisions; eleven of them resulted in violation in terms of substantive dimension, and nine-teen of them resulted in violation in terms of procedural dimension. This shows that 63% of the violation decisions resulted in terms of the procedural dimension. Therefore, the procedural dimension of the torture and ill-treatment and the decisions of violation provide sufficient data that will enable us to understand the deficiencies regarding the procedures applied in the investigation or prosecution processes and the methods followed during the collection of evidence. Considering the non-violation decisions, the importance of the pre-application processes becomes more explicit/clearer.

Table 1. Types of decisions regarding 58 applications where the Constitutional Court examines allegations of torture and ill-treatment

Decision type	Decision Quantity
Violation in terms of Substantive dimension	11
Violation in terms of Procedural dimension	19
Non-exhaustion of legal remedies	22
Manifestly ill-founded	21
No violation	18
Lack of jurisdiction <i>ratione personae</i>	2
Lack of jurisdiction <i>ratione materiae</i>	3
Rejection of application (repetitive)	1
Rejection of application (abuse of right)	1
Expiry of time limits	3
Striking out of the application	1
Total	102

The idea to issue an example report regarding the Guideline in Part 1 and a method to practice this Guideline has occurred from the shortcomings revealed by this data.

This report has been prepared in order to show the practice method of the first part of the study, *Guideline*. The practice aims to monitor the investigation and prosecution processes with regards to the violation of prohibition of torture and ill-treatment. In this respect, the report offers a method that can be used by lawyers, prosecutors, judges, doctors, execution officers, and monitoring institutions, organizations, and NGOs.

The purpose of this study is not to examine the court order. The purpose is to evaluate the process based on the decision and demonstrate how guiding questions and indicators can be practiced for similar cases. The deficiencies in collecting evidence in many cases cause difficulties in proving the allegations both in the courts and in organs with secondary jurisdiction as in the F.E. and Others decision in the subject. The Guideline, which has been prepared to help overcome this difficulty,

will also create an opportunity for a detailed process assessment for those conducting monitoring studies.

Some of the frequently encountered deficiencies which have been found by benefiting from the guideline during our review:

- Forensic examinations are incompatible with the Istanbul Protocol,
- Lack of causal link amongst the story and the findings in the health examination reports,
- Lack of mental health examination, which should be done in cases of torture ill-treatment,
- Lack of consistency assessment amongst the findings, statements, and other evidence,
- In the interviews with the children, the statements were not fully and completely recorded or received in a way to reveal the allegations,
- Lack of matching the place, time, and person by examining the camera records related to the allegations,
- Lack of frequent appeal and complaint to the execution judge regarding the practices of the penitentiary institution; or the records of the cases are not included in the evidence,
- Not benefiting enough from the information that can be obtained by using open sources (news, NGO reports, etc.) without considering its contribution on the illumination of the incident and the investigation, regarding the violation of rights in the detention places against children,
- Excluding the experts from relevant disciplines to the process, by considering that the investigation of torture and ill-treatment allegations should be done in a multi-disciplinary manner,

The F.E. and Others decision, which is the subject of the study, is a decision that also shows the importance of right-based monitoring studies. The decision refers to the reports of three separate monitoring institutions: Human Rights Association of Turkey (HRIT), the Parliamentary Human Rights Monitoring Commission (Parliament IHIK), and the European Committee for the Prevention of Torture (CPT). This reference is valuable since the monitoring committees also address the issue, and it shows the evidential value of the reports prepared by the monitoring boards.

The decision is also considered since it shows the persons and institutions who have a role and responsibility in revealing the allegations and their effects on the outcome, and it creates awareness that its effect does not originate from a single person or institution.

We hope this study will be helpful...

About Method

As stated in the introduction, the purpose of this study is not to examine the decision. It is to set an example based on a decision for the works which will be conducted to determine the evidentiary problems in the proof of the allegations of prohibition of torture and ill-treatment has been violated in a juvenile institution.

The first part, *Guideline*, includes guiding questions and indicators to be used during both monitoring and investigation of such claims.

Although the decision of F.E. and Others, which was decided by the Constitutional Court in 2019, has been studied to set an example to show the practice of the guideline, there are also references in various decisions. In accordance with the purpose of the study, firstly, the evidence which shaped the court's opinion will be examined in the following sections by benefiting from the guideline. Thus, a brief evaluation of each piece of evidence will be made, and difficulties in proving the allegations will be examined. Then, the claims will be examined with the status of the evidence used for proof, and the other evidence that can be proved will be mentioned with the help of the guideline.

Thus, an example study on the method of benefiting from the guideline will be used for both the conductors of investigation, prosecution, defense and expertise institutions who will practice similar cases and for the representatives of the institutions and organizations that will monitor such cases.

1 Events and Facts



Initially, to analyze the events and the facts by summarizing is necessary. Such an abstract will provide to establish the claims of the applicants. Thus, assessing the possibilities of proof regarding each claim and the process would be more understandable.

The application concerns the allegations that the execution officers have violated the prohibition of ill-treatment by treating convicted and detained children systematically in an unhuman way. In the Constitutional Court decision, *"The application form and its attachments and the relevant incidents according to the documents obtained from the Ankara Batı (Sincan) Chief Public Prosecutor through the National Judicial Network Information System (UYAP)"* were summarized.⁸

There are 11 applicants in the F.E. and Others application. In the decision, the fact that the applicants stayed separately in units C-10 and C-12 and they expressed different complaints in their statements is underlined. The court determines that the allegations and actions should be examined separately for each applicant within the scope of their statements.⁹

The allegations in the statements of the children in the HRIT Report:¹⁰ *When a child in Ankara Juvenile and Youth Closed Penal Institution (Sincan Prison) did not want to get up by citing his illness during the roll-call held in C10 unit on 01.01.2014, an execution and protection officer said, "I do not leave until you get downstairs" and swear to the children and this caused to a brawl, following the backup requests of the officers approx 30-40 officers were involved, they beat 4 children and took*

them off from their ward, meanwhile the arrested children in the C12 unit, who heard the fight in the C10 unit, wanted to see the ones subjected to intervention, but they were not allowed, the unit doors were closed, the children inside started punching the doors and shouting slogans, and they also tried to prevent the attack by placing tables and chairs in front of the stairs to prevent possible intervention against them, when the children did not go down, pressurized water sprayed on them, then yellow colored gas was sprayed on them, children who neutralized due to the gas were beaten and handcuffed and taken to the observation room, after being kept there for a few hours, they were first taken to the hospital on the prison campus and then to the Sincan State Hospital, they were not allowed to communicate with doctors, on the way back, they were subjected to a strip search at the entrance of the prison, they were beaten again in the room without a camera and taken to the observation room, children were not given clothes and beds in this room with open windows and were left hungry until the next day;

The press statements of the Human Rights Association (HRA) İzmir and İstanbul branches that the four children involved in this incident were transferred to İzmir Juvenile and Youth Closed Penal Execution Institution (Sakran Prison) and four of them were transferred to Maltepe Child and Youth Closed Penal Institution (Maltepe Prison) and that similar allegations included in their statements and also subjected to insults by the officers during the transfer of the children in ring vehicles;

The detained children mentioned above were not given food and water during their first transfer to the Sincan Prison;

There are allegations that “during the transfers from Ankara to other provinces, the money in the children’s accounts was either not sent at all or was sent partially, and some of their personal belongings, including their clothes and books, were not given”.

The court examines all allegations with respect to their admissibility first. The court stated that the allegations determined to be admissible - considering the diversity of the alleged treatment applicants subjected to and the complexity of the concrete case - will be examined by dividing them into headings. Court divided the complaints into two: the substantive dimension and the procedural dimension. In this context, three headings were determined for the complaints of the applicants in terms of substantive dimension: “the use of authority to intervene to the crisis and use of force”, “allegations before and after being taken to the observation room” and “strip search”.¹¹

2 Evidence and Evaluation



In this section, an evaluation will be made regarding the sources of evidence and the method used in collecting and evaluating the evidence based on the court decision. In terms of right-based monitoring studies, to proceed with the determination of the evidence status with the following method is recommended after determining the incident and factual situation of the case being followed.

The courts usually benefit from more than one source while examining the application, and these sources would include more than one evidence in them. (See Table 2) At the same time, it appears that some evidence is not available or not used.

Table 2. Evidence Sources and Evidence

The Constitutional Court generally benefits from the following sources regarding the evidence:

- Monitoring Reports
 - Committee on Human Rights Inquiry of the Grand National Assembly of Turkey¹²
 - Human Rights Institution of Turkey¹³
 - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Reports¹⁴
- Interview Records of Lawyers with Children¹⁵
- Judicial proceedings¹⁶

We understand from the decision that from the above sources, the following evidence is used:

- Children's statements¹⁷
- Medical reports¹⁸
- Video footage¹⁹
- Evidence obtained from the grievance mechanism²⁰

Also, the sources above contain the following evidence, but these are not based on the decision:

- Expert report on camera recordings²¹
- Articles sent by the Ministry of Justice²²
- The articles of the institution regarding the camera locations and the status of the cameras²³
- Reports of non-governmental organizations²⁴

Also, it is understood that there is evidence collected during the investigation phase and judicial proceedings. (See Table 3) However, the content of this evidence was not included in the decision. As an example, it was mentioned that there were expert reports of the video footage submitted to the Public Prosecutor on 06.03.2014 and 06.06.2014; however, no information was given about its content.

Table 3. Summary of Judicial Transaction Steps in the Constitutional Court Decision

Date	Judicial Steps
2/1/2014	Penitentiary Execution Institution Directorate filed a criminal complaint to Ankara Batı (Sincan) Chief Public Prosecutor's Office (Chief Public Prosecutor's Office) against the detained children and submitted CDs containing the doctor reports and footage of the incident to the Chief Public Prosecutor's Office.
2/1/2014	Some of the children met with their lawyers.
8/1/2014	Prosecutor summons execution and protection officers to testify.
9/1/2014	A request of a new report from the Sincan Forensic Medicine Institute Branch Office for the evaluation of the forensic reports prepared by the Public Prosecutor's Office.
10/1/2014	The applicants' lawyers file a criminal complaint regarding the alleged ill-treatment of the officers by attaching the minutes of their meetings with the detained children.
10/1/2014	Separating the detainees' complaints against the officers from the investigation conducted against the children in detention.
.....	Instructions to the relevant chief public prosecutor's offices to obtain the statements of children who have not been testified and were transferred to other penal execution institutions.

MONITORING RIGHTS IN CASES RELATED TO CHILDREN A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

6/3/2014	Submitting the expert examination on the video footage to the Public Prosecutor.
6/6/2014	
9/6/2014	The decision of the Chief Public Prosecutor that there are no grounds for prosecution stating that in the investigation initiated for the crimes of simple battery, insult, threat and violation of the authority to use force.
12/8/2014	Dismissal of the objection by Ankara Batı 1st Criminal Magistrate Judge filed against the decision of no prosecution.
28/8/2014	Notifying the dismissal of the objection decision.
23/9/2014	Filing the individual application.



The statements, medical reports, video footage and the reports of the monitoring boards are included within the scope of the evidence in the decision and the Court mentioned the inability to find the evidence to be obtained from the complaint mechanism. Therefore, an evaluation of the process will be carried out with this evidence.

2.1 Statements of the Detainee Children

The Constitutional Court considers the statements of the applicant children given at various times to different authorities as statement evidence.²⁵ These include the minutes of the interviews that the applicants had with their lawyers, the reports of their meetings with the representatives of the monitoring boards, and the statement records prepared by the Public Prosecutor's Office.

The applicants F.E., B.D., H.E., M.K., B.K., and M.H.A. met with their lawyers the day after the incident. Among the statements in the decision, references from the minutes of these interviews were also included. However, in the decision, minutes of A.D., K.Ş., F.T., E.T., and H.B.'s statements during the attorney interviews were not included.

Except for H.B., all children's statements during their interview with the board members were included in the decision. Since H.B. was released after a while following the incident, he does not have any interviews with the members of the HRIT.

After the incident, all children were testified at the Public Prosecutor's Office and their statements were included in the decision as statement evidence. Besides, a statement by H.B. at the Silopi District Police Department is included.

Obtaining all the necessary information during the interview related to the torture incident²⁶ and recording such information is crucial.²⁷ The ones who will involve in the processes regarding the allegations of torture and ill-treatment should have information on the traces of the actions and the mental symptoms that were caused by the alleged events and should conduct detailed research before the interview.²⁸ Thus, information that will support the allegations can be obtained definitively. As an example, if the effects of the alleged events on children's physical and mental health are investigated before the interview, to ask questions accordingly that will differ and vary should not be forgotten (See Table 4).

Table 4. Comparison of The Statements with Guiding Questions²⁹

Guiding Questions	Is it included in the statements?
• Have you obtained the minimum information regarding the torture incident during the interview?	
▪ Atmosphere and conditions of the place where the torture occurred	No
▪ Approximate date and time of the torture, including when the last torture incident occurred	Yes
▪ A detailed explanation of the one(s) involved in torture	No
▪ The content of the explanations and the questions asked to the child victim	No
▪ Description of the daily routine and ill-treatment in prison or detention house	Partially
▪ Description of torture findings, including torture methods	No
▪ Whether the individual is exposed to sexual assault	No
▪ Physical injuries sustained during torture has occurred	Partially
▪ Description of weapons or other physical objects	No
▪ The identity of the person who witnessed the events involving torture	No

Under the consideration of one of the comparisons given in Table 3 as an example, the children alleged that they were ill-treated in the observation room and in areas without cameras. However, a description of these places is not included in any of the statements reflected in the decision.

Statements constitute the basis for the allegations. Therefore, each of the professionals interviewing with a child deprived of his/her liberty should have the skills to interview and record each of the details which will enable to understand the circumstances regarding the allegation of torture and ill-treatment. The guiding questions and indicators in the 10th section of the Guideline, Statement Evidence, will provide you a guide to check whether the matters to be considered regarding this point, which is the base and beginning of the process, have been included.

By benefiting from the Forensic Examination Forms, detecting physical traces is possible during the interview with children. Likewise, body diagrams also can be beneficial to mark traces. At the same time, for the one who obtains the story of the incident to take photographs of the traces is an effective method. If there is no obstacle to take photographs, for example, photographs of the traces may be taken by the lawyer during the interview with the client before the courthouse statement, and they can also be reflected in the minutes of the statement. If there is an obstacle to take photographs, legal assistance may be provided to the client and advise the child to explain and show the traces of the incident in a concrete and detailed manner during the statement by ensuring that the locations of the traces included in the report and ensure the prosecutor to see the existing traces.

The consistency between the statement and other evidence and amongst the statements is important. As a matter of fact, in the court decision, the findings detected in the bodies of the applicants and stated in the lawyer interview minutes are compared with the findings in the medical report.³⁰ For example, The Constitutional Court controls the consistency between the applicants' medical reports and their statements.³¹ In similar applications, linking the statements with the images detected in the video footage and medical reports should be considered.

2.2 Medical Reports

As acknowledged by The Constitutional Court, to conduct medical examinations following the procedure stipulated in the Istanbul Protocol and submit medical reports duly is indispensable for the prevention of torture and ill-treatment allegations.³² Forensic examination reports also have a crucial role in F.E. and Others case. Some of the applicants were subjected to medical examinations two times and some of them three times after the events subjected to the allegations regarding the violation of prohibition of torture and ill-treatment, and as a result, some marks were detected on their bodies. (See Table 5.) However, these reports were not found sufficient by the Constitutional Court to consider the applicants' allegations as a violation in terms of substantive dimension. Therefore, one of the pieces of evidence that should be taken into consideration while monitoring this case is medical reports.

Table 5. Findings Detected on Children According to the Medical Examination Reports Summarized in the Constitutional Court Decision³³

Children	Findings
B.K	The radiography of both hands with edema was evaluated as normal, as there were no external lesions.
B.D	Edema in the right hand, edema and ecchymosis of 1 cm in the right frontal, edema and hyperemia of 1 cm in the occipital region, ecchymosis of 10x5 cm in the lateral of the right arm, ecchymosis of 5x5 cm in the medial of the left arm, no neurological deficits were found and the radiograph was normal.
A.D.	2x3 cm edema and ecchymosis behind the left ear, 3 cm edema in the left temporal, sensitivity in the dorsal of the right wrist, sensitivity on the first finger distal phalanx and no neurological deficits were found to be normal.
H.E	In the report prepared by the campus physician, a 3x3 cm ecchymosis on the left maxilla, a 1x1 cm scratch on the right tibia, a 0.5 cm graze on the left eyelid were found and the occipital bone fracture was found in the direct skull radiography referral to an upper center has been approved for further examination and treatment. In the report prepared by the Emergency Medicine specialist of Sincan State Hospital, in the physical examination, the children were brought as a result of the batter, hyperemia and tenderness in the left eyebrow and left zygomatic region, and minimal sensitivity in the left parieto has been found.
K.Ş.	It was reported that there were 3x1 cm ecchymoses in the right acromion and 2 1x0.5 cm ecchymoses in the medial of the left scapula.
F.T.	It was stated that there was dizziness, a history of fainting twice, pain in the right leg, edema in the proximal right tibia, ecchymosis in the left and right wrists, tenderness on the right zygomatic bone, and no pathological findings were found in the cranial radiography.
M.K.	It was evaluated that there was a line-like ecchymosis at the end of the middle scalp skin on the forehead and a 1 cm ecchymosis in the thenar area of the right hand.
M.H.A.	In the first examination report, it was evaluated that there was a 1 cm incision in the chin, swelling in the nose and ecchymosis.
H.B	It has been reported that there is a superficial scratch of 0.5 cm in the left shoulder head, a 2 cm scratch on the lower right part of the neck, a double row of 8-10 cm in length starting from the medial of the dorso to the right wrist and ending in the dorsolateral.
F.E.	Minor edema, tenderness in the left toe, bruising in the right groin and a 1x1 cm ecchymosis were found.
E.T.	Subconjunctival hemorrhage in the left eye, left periorbital ecchymotic area, 3x3 cm edema in the left occipital, and superficial abrasions on the right and left wrists were reported.

The ECHR considers that “the obligation to protect the life of individuals in custody also implies an obligation for the authorities to provide them with the medical care necessary to safeguard their life”³⁴ and that “it is incumbent on the State to account for any injuries suffered in custody”³⁵. However, according to the Constitutional Court decision, concerning each scar in cases where the authority to use force is practiced, it is important to evaluate by considering the concrete situations specific to each event to see whether the scar occurred during the use of force to control the incidents, and if it occurred during this time, whether it occurred due to the use of illegal means or disproportionate force. Especially, in cases where the administration defends that “the injuries occurred during the control of the events”, to demonstrate that allegations of applicants have occurred as a result of unlawful acts is important.

The availability of the medical reports to prove the allegations in terms of content

The Constitutional Court decision has limited information on the scope of the medical examination and reports. According to the court decision, the first examinations of the children were carried out in the campus hospital, but the time of this examination was not determined, and the second examination was carried out at the Sincan State Hospital after 22:00. This corresponds to approximately 4 hours after the children are placed in the observation rooms.³⁶

According to the Constitutional Court decision, after the examinations carried out by the campus hospital and the Sincan State Hospital, another examination was carried out by the Public Prosecutor at the Forensic Medicine Institute following the criminal complaint by the applicants. On the other hand, the Forensic Medicine Institute examined H.B., F.E., and E.T. who held in the Penitentiary Institution on that date and “*minor injuries that could be treated with a simple medical intervention*”³⁷ have been determined. The other applicants were not examined by the Forensic Medicine Institution and “*the result was obtained through the reports prepared in the Campus and Sincan State Hospital*”³⁸. The Constitutional Court found that after the children were referred to the first doctor’s examination at 22:00 on 01.01.2014; the Public Prosecutor’s Office requested an examination from the Forensic Medicine Institute on 09.01.2014, and “*for the rest, no documents were found indicating that the detainees were transferred to the hospital again, apart from the reports received on the night of the event*”.³⁹

The decision emphasizes the principle in Article 6 of the Istanbul Protocol; “*medical examinations should result in reliable and truthful reports.*”⁴⁰ The Constitutional Court ruled that “*to accept the medical report as the sole basis for the decision without investigating whether the report fulfills the necessary conditions is contrary to the aforementioned principles*”⁴¹. The court acknowledged this conclusion as one of the bases for its decision that the prohibition of torture and ill-treatment was violated in terms of procedural dimension.⁴² On the other hand, the Constitutional Court is in the opinion of the medical reports did not illuminate the incident enough to prove the applicants’ allegations and conclude that the prohibition of ill-treatment was violated in terms of substantive dimension.⁴³

It is important that both those who will conduct monitoring studies and those who will use this study in the preparation of a similar case to see the justification for this opinion of the Court. Thus, the deficiencies and what needs to be worked on can be seen explicitly.

Although named differently in the decision, the incidents are dealt within three stages: (1) The moment of intervention, (2) The duration that starts after the events are taken under control and until the children are taken to the Sincan State Hospital, (3) After the forensic examination. Based on these stages, table 6 includes the court’s method of description and evaluation of the events according to the stages. This classification is important to reveal the insufficiency of the medical reports in proving the allegations.


Table 6. The Constitutional Court’s Assessment on the Events Subject to the Application According to its Stages

Stage	Court’s description of the events according to the stages	Court’s assessment on the medical report findings in relation to the events at this stage
<p>The moment of intervention</p> <p>“Intervention to the crisis and practicing the authority to use force.” (Constitutional Court)</p>	<p>The applicants, who were in the C-10 unit, “started to argue”⁴⁴ with the enforcement and protection officers regarding the roll-call, thereat, one of the children “attacked”⁴⁵ an officer by head-butting, and then the other children started to “hit”⁴⁶ the officers and continued to “attack”⁴⁷ with mop sticks, then after the children in Unit C-10 signals, children in the C-12 unit “started swearing and hit the windows”⁴⁸, “tried to initiate a riot”⁴⁹ and “set up barricades”⁵⁰. They threw “hard objects and items”⁵¹ to execution and protection officers who tried to prevent it and some of them were “injured”.⁵²</p>	<p>“On the other hand, whether the injuries detected as a result of the applicants’ forensic examination occurred during the intervention in the unites or during the assaults in the observation room, -which they alleged to be- could not be determined. However, the footage shows that children actively encourage each other to resist and attack, and they are subjected to physical force as a result. In this context, during the intervention carried out within units C-10 and C-12, violence beyond the limits of the authority to use force was not observed.”⁵³</p>
<p>The duration that starts after the events are taken under control and until the children are taken to the Sincan State Hospital</p> <p>“Taken to the observation room”(Constitutional Court)</p>	<p>“In the concrete incident, the applicants were taken under control after the aforementioned events and taken to the observation room in handcuffs. The existing records confirm the applicants’ allegations in this respect. However, taking the applicant children to the observation room did not base on a disciplinary penalty. The applicants were placed in the observation room in order to end the attacks, active resistance, and rebellion, and restore the discipline and order in the penal institution. Therefore, take the children to the observation room is a temporary measure.”⁵⁴</p>	
<p>After the forensic examination</p> <p>“Following allegations and strip search” (Constitutional Court)</p>	<p>The children claim that they were also placed in the observation room after the forensic examination. There is no description of this stage in the decision.</p>	<p>“No substance evidence was submitted especially based on the applicants’ complaint stating that the assault continued even after the forensic examination, and no evidence regarding this was reflected in the investigation file by the Office of the Chief Public Prosecutor. Therefore, the examination of the aforementioned allegations of the applicants has been concluded within the scope of the procedural dimension of the prohibition of ill-treatment.”⁵⁵</p>

Some traces of injuries were found in both children and the execution and protection officers during the medical examination. Therefore, since the events are associated with the authority to use force of the administration, the detection of the traces on the children during physical examinations and to record this will not be sufficient, these traces will also need to be identified⁵⁶. This is the only method to determine whether the traces were occurred within the scope of intervention in accordance with the law or were occurred due to the violation of the prohibition of ill-treatment. According to the decision, these traces are not identified in the medical reports within the file.

For example, assessing the allegations that children were kept in handcuffs for a long duration and the traces in terms of consistency and photographing the traces on the wrists of children will in-

crease the strength of the evidence and secure it and will allow additional examinations in the future if necessary⁵⁷.

 Guiding questions related to medical evidence allow for those conducting monitoring studies to easily identify deficiencies regarding medical reports.

The failure to conduct forensic examinations and reporting in accordance with the Istanbul Protocol constitutes an important obstacle to the proof of the allegations as can be seen from the example in Table 7.

Table 7. Use of Guiding Questions to Evaluate the Adequacy of Medical Report for Identification Purpose

Guiding questions ⁵⁸	Presence in Medical Reports
▪ Was the story conveyed by the child in person during the examination? Does it include dispatch and transfer?	No.
▪ Are the examination and the child's story have consistency?	No.
▪ Is the report including consistency assessment?	No.
▪ Has the examination been conducted in a way to include all systems? (from top to toe)	No.
▪ Have the special diagnostic tests been conducted to expose the torture and ill-treatment allegations?	No.
▪ Is the report including a detailed and standard mental assessment?	No.

When such a situation is encountered, methods such as requesting an additional report, requesting the doctor who prepared the report to testify at the hearing, obtaining alternative expert opinion, and to identify with the other evidence in the file should be conducted. As an example, if we try to understand when the traces of H.E., who has a distinct claim among children, occurred, there are several steps need to be followed with the limited resources available. Initially the unit where H.E. is staying should be determined. Then, by benefiting the video footage of children removed from that unit, the findings, detections and traces in the medical report should be compared which will enable us to understand the action that caused an impact on the head and especially on the chin area, and whether the injury occurred as a result of this impact. According to the Constitutional Court decision, H.E. stayed in the C-10 unit. In the first two columns in Table 8, H.E.'s statements and the information in the medical report of H.E. are included. The last two columns contain video footage that may be relevant. At this stage, one more piece of information is needed. It is the determination of whether this person in the video footage is H.E. or not. This determination can only be made by H.E. himself or the doctor, lawyer, prosecutor, experts examined the footage, and/or a judge who have met with H.E..

Table 8. A Table to Give an Idea on the Identification of Traces in Medical Reports⁵⁹

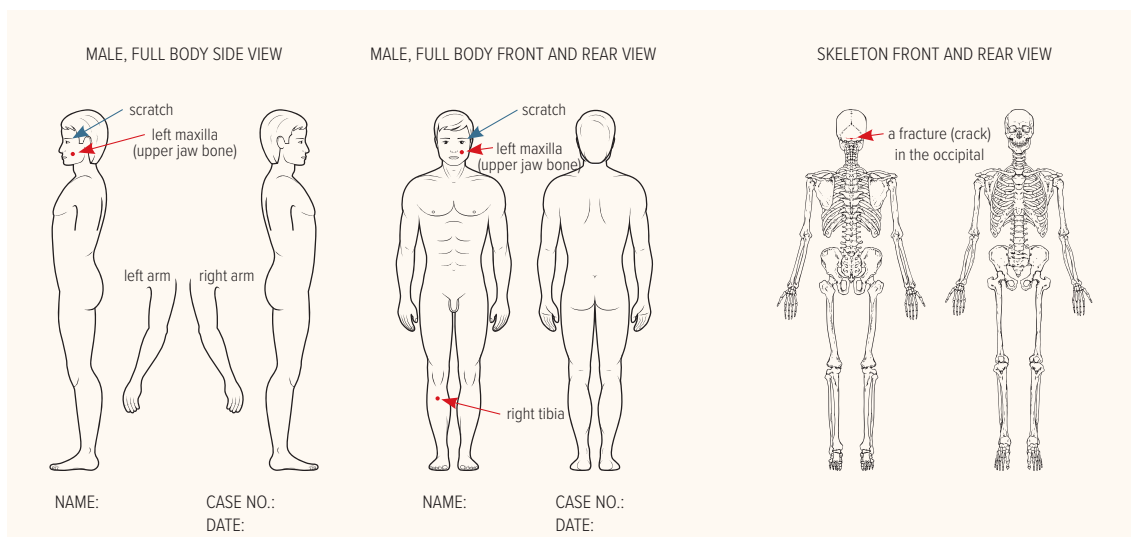
Statement	Report (H.E.'s report and the information in the decision of the Constitutional Court decision)	Video footage-1 (Identification is unknown.)	Video footage-2 (Identification is unknown.)
<p>According to the reports during the meetings with the HRIT delegation, the applicant H.E. states that "he has been taken to the observation room by his face hitting to the wall, and he turned to the delegation during the interview, 'I have a wound on my face, look, you can see, it is obvious in the report also, my tooth is shaking, they punch my tooth!'"⁶⁰</p>	<p><i>In the report prepared by the campus doctor, there is a 3x3 cm ecchymosis on the left maxilla, a 1x1 cm scratch on the right tibia, a 0.5 cm graze on the left eyelid, and a fracture in the occipital bone detected on the direct skull radiography, thus, referral to an upper center has been approved for further examination and treatment.</i></p> <p><i>In the report issued by the Emergency Medicine specialist of Sincan State Hospital, a hyperemia and tenderness in the left eyebrow and left zygomatic region, and minimal sensitivity in the left parieto occipital, has been reported in the physical examination of the injury.⁶¹</i></p>	<p>"(between 16:20-16:22): ... The first child, while his arms were grabbed by four IKM (execution officer) from behind, hit another IKM in front of him with his knee, an IKM holding the child hit the child with his knee, another IKM took the mop stick from the child's hand, while another IKM came and took it away from the hand of that IKM and hit the child who was grabbed and controlled by four IKMs, the child collapsed with this impact while in the hands of the IKMs, the other IKMs gathered on top of the child and tried to lift the child by holding the arms, the officer who hit the child with the mop stick left it on the ground, the child was picked up from the ground by holding his arms and taken to a point outside the camera's angle, the child went out of view, but some of the IKMs were visible, and the IKMs was kicking and punching at the same time..."⁶²</p>	<p>RETURN FROM THE HOSPITAL (BEFORE INTERVENTION)": (Camera name: written as "CAM 07". The video has real system time and timeline. Date: 01.01.2014 Hour, shows between:22:55:00-23:00:00 Footage duration: 5 minutes Footage transcription: The camera shows a corridor and the doors and large windows of the rooms to the right and left along this corridor. Five children were brought at short intervals by IKM's hold by his arms, and the fourth child had a bandage on the chin.⁶³</p>

In addition, health reports should be converted to an understandable form in order to prove the claims. Obtaining information regarding the terms from a doctor, marking the traces on body diagrams, and requesting the doctor to testify in the hearing are methods to ensure a better understanding of the findings on the body. An example has been given below according to the findings in the report of H.E.; "In the report prepared by the campus doctor, there is a 3x3 cm ecchymosis on the left maxilla, a 1x1 cm scratch on the right tibia, a 0.5 cm graze on the left eyelid, and a fracture in the occipital bone detected on the direct skull radiography, thus, referral to an upper center has been approved for further examination and treatment."

- First of all, the translations of the medical terms in the report should be determined: "In the report prepared by the campus doctor, there is a 3x3 cm ecchymosis on the left maxilla(upper jaw bone), a 1x1 cm scratch on the right tibia(shinbone), a 0.5 cm graze on the left eyelid, and a fracture (crack) in the occipital bone (bone behind the head) detected on the direct skull radiography; thus, referral to an upper center has been approved for further examination and treatment."

MONITORING RIGHTS IN CASES RELATED TO CHILDREN A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

- Then, the findings should be plotted on the body diagram:



- In the following stage, a control should be conducted to see whether the evaluation is compatible with the findings: In the report issued by the Emergency Medicine specialist of Sincan State Hospital after the referral to an upper authority at the campus hospital, “*physical examination revealed hyperemia and tenderness in the left eyebrow and left zygomatic region, and minimal sensitivity in the left parieto occipital*”⁶⁴ detected.

In the examination of the child whose head trauma and skull fracture are determined in the referral report, **the findings should be recorded, and radiological examination should be made to investigate whether there is a fracture.** Also, the child should be observed and monitored, and the clinical picture should be clarified by the neurosurgeon.

This clarification is vital both for the child to receive the necessary medical treatment and to prove the allegations. Because, if a fracture in the skull would be detected as a result of this examination, this finding will indicate a “vital danger” in terms of Forensic Medicine.

- While doing this, the mental health examination should also be checked to see whether it was performed or not: To understand whether or not a mental health examination was carried out within the scope of this examination is not possible from the information on the medical evidence in the decision. However, as well as their physical effects, behaviors that constitute torture and ill-treatment may have negative consequences on children’s mental health. In addition, acts of torture and ill-treatment can be emotionally abusive even in situations where physical damage cannot be detected. Therefore, only when the mental examination is fulfilled together with a physical examination, the integrity of forensic medical evaluation and medical evidence will be ensured. On the other hand, depending on the physical findings, a mental health assessment may be required. For example, considering that brain damage can be seen not only in the brain regions adjacent to the skull fracture but also in other parts of the brain (for example, the frontal region) in head traumas, to examine the mental and/or neuropsychological effects related to the damage is necessary.

While making such an assessment, an examination on how the psychological diagnoses the child carries, if any, affect his daily functionality, how influent he/she is (rules, routine life, relationship with authority, relationship with peers...) in adapting to prison conditions (non-compliance with prison

rules or engaging in impulsive behavior) must be conducted. In this context, the child's evaluations in the psychosocial service, his/her requests or needs for mental help, whether he/she received mental treatment before came to prison, and whether his/her treatment needs were met after he/she came to prison should also be taken into account.

Therefore, while examining the psychological evaluation, to obtain information from different sources who know the child (*parents, school, teachers of the courses the child attended at the institution, information from the physicians he/she received treatment...*) would be beneficial. Also, to assess both the psychological complaints that may arise after the alleged incident and the psychological state of the child before the incident will be important. Also, as the physical findings, the detected psychological complaints should be stated to see whether they are related with the event.

As a result of the assessment, the child mental health specialist should not only answer the judicial authorities' questions, but she/he also should define the child's need for mental treatment and demand a "health measure".

- Thus, where and what kind of injury occurred on the body will become clear. This will provide important data in terms of determining what action caused the findings which are detected in the medical examination. In order to evaluate the harmony between the findings and the story, it will be possible to investigate with which impact the finding occurred by determining the moments when the child was hit by using the video footage. It is also possible to request that the doctor be heard at the hearing for this purpose.

Regarding the complaints related to the medical examination and the reports

The applicants alleged that they have been subjected to disproportionate use of force in other times before the incident of intervention to the events. They alleged that practices such as beating and reverse handcuffs, which are a violation of prohibition of torture and ill-treatment, were used in the observation room, when they were taken to a doctor, and in places outside of the camera angles.⁶⁵ The children also alleged that they were referred for a medical examination 4 hours after the events⁶⁶ and that the examination was carried out with the presence of the officers⁶⁷, and the doctor wrote a report without detailed examination⁶⁸, and not all of their complaints were recorded in the reports⁶⁹. In addition, the reports received are limited to the incidents leading up to the children being taken to hospital. It is also among the allegations that the applicants were subjected to violence on their return from the hospital and that they were not retaken to the examination despite their requests and complaints.

These complaints of the applicants are also included in the statements on the report of the HRIT: *"According to allegations, the children were accompanied by the gendarmerie and execution and protection officers during the examinations carried out both in the Campus State Hospital where they were first taken and in the Sincan State Hospital, where they were referred due to the seriousness of their situation. During the examination, the presence of the officers is documented in the forensic examination reports prepared by the doctors, but there is no report showing the reason for their presence."*⁷⁰

Also, the report shows that; the medical reports do not meet the standards set by the Istanbul Protocol. The date and time are not specified in the medical reports, the medical history of the examined person' and the "story of the event' sections are incomplete or briefly filled. Some parts of the forensic examination forms are not filled at all in. Some parts are illegible and, therefore, cannot be summarized in the HRIT reports.⁷¹

The decision also includes the information that the reports are incomplete in terms of date and time; also, a detailed report was not written, and that the findings were noted under the referral letter as “marginal notes”.⁷² In conclusion; there are multiple claims regarding medical reports:

- 1** Claims regarding the examination:
 - a. The doctor examination was carried out under the supervision of law enforcement.
 - b. The examination took place 4 hours after the children were placed in observation.
 - c. The request for an examination regarding alleged ill-treatment after a doctor’s examination was not met.
- 2** Claims regarding the reports:
 - a. The reason for the doctor’s examination in the police custody and the information of the participating law enforcement officer was not included in the records.
 - b. The applicants’ allegations have not been recorded completely.
 - c. The Forensic Examination forms were filled incompletely; some of them did not contain important information, including date and time information.
 - d. A detailed report was not prepared, and the findings were noted as marginal notes under the referral letter.
- 3** Regarding the findings:
 - a. From the applicants’ point of view, the findings were incomplete since no comprehensive examination was carried out.
 - b. According to the Constitutional Court, why and when the findings occurred is not clear.

This decision reveals that it is important for the professionals working on the torture and ill-treatment allegations, to request medical reports and to evaluate the accuracy of the records and affiliate them with the applicants and other evidence.⁷³

The fact that the findings reflected in the HRIT report and the decision are written in the referral letter as marginal notes also cause a violation of confidentiality and cause the risk to increase for children. Learning of the information in children’s medical reports by law enforcement officers may cause pressure on children and the continuation of behaviors that constitute torture and ill-treatment. According to the law, the reports issued after the custody exit examination must be sent to the prosecutor’s office in a closed and sealed envelope. Also the reports issued due to the events occurred during the detention process should be evaluated as the custody exit examination.⁷⁴

There are applications that require obtaining medical reports multiple times, including the investigation phase, after the incident subject to the application. For example, when children are referred to a different institution, they need to subject to a health check before departure. Similarly, a medical examination should be performed again during their admission to the new institution.⁷⁵ According to the decision, the medical reports of this kind are not included in the file.

In conclusion, since the court decided on violation of prohibition of ill-treatment in terms of procedural dimension; there is no obstacle to request medical reports at different stages and evaluate the consistency between reports. However, in similar cases, the guiding questions on Medical Evidence in Chapter 7 of the Guideline can be used as exemplified in this section for the exact and complete preparation of medical reports. In addition, in this example, in cases where the consistency evaluation is not included in medical reports and there is not enough information to identify the traces, the information obtained from video footage⁷⁶ and statements⁷⁷ can be used to evaluate the consistency.

2.3 Reports of the Monitoring Boards

In the decision of the Constitutional Court, the reports issued by GNAT Human Rights Inquiry Commission and HRIT are referred to or evaluated by using the statements in the reports. Also, the Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) are occasionally cited as the basis.

The Parliamentary Human Rights Commission's and the Human Rights Institution of Turkey's reports are directly related to the subject of the application. The two reports examined and evaluated the same event differently.

Grand National Assembly of Turkey Human Rights Investigation Commission visited Ankara Child and Youth Prisons after the incident to survey and the report of this survey is adopted in its meeting on 29.01.2014.

As a result, some of the commission's evaluations on the events reflected in the decision are as follows:

5. The allegations that children were sprayed with pepper gas and that they were soaked for torture are considered as not reflecting the truth. Since the institution accommodates children, there is not any pepper gas in the institution. It was learned that the water was used in order not to cause an adverse event when the children who set up barricades in the C-12 unit said, "we will burn this place". Again, for the same purpose, it was learned that fire extinguishers were kept ready and 112 emergency service and fire brigade were notified.

6. There is an opinion that the children had planned the event beforehand. It is because before the incident starts, it is monitored from the video footage that a child in the C-10 unit gives a signal to the C-12 unit. It could not be determined whether the children made this decision independently or if there was an outside direction.

7. Verifying the allegations that children were not examined by doctors is not possible. In the forensic examination reports submitted to our commission, the medical examinations of children are carried out in detail. In addition, the edema, ecchymosis, and lesion-type elements in various parts of the children's bodies are noted.

8. Problems such as edema, ecchymosis, and lesions observed in the children's medical reports are possible to occur during the quarrel between prison officers and children. "

The HRIT published a report dated 10/7/2014 regarding the events that took place in the Ankara (Sincan) Juvenile and Youth Closed Penal Institution. In the report, the statements of most of the detainees involved in the incident and the transcription of the incident's footage, medical reports, and findings obtained from the correspondence of the institution were included.

The Constitutional Court summarizes the HRIT Report as follows⁷⁸: *"The report stated that the enforcement officers treated the children in detention in a way that would be considered as ill-treatment in terms of using their authority to intervene in crisis and use force, that the legal basis of detention in the observation room should be explained, and the allegation that children were strip-searched, the gendarmerie and the police were presented while the doctor was preparing the forensic report should be effectively investigated. Besides, the issues regarding the roll-call, stand to attention, transfer, assignment of children and the absence of experts outside of working hours were evaluated regarding the administration of the Execution Institution."*

The Constitutional Court considered that since *"the main evaluation in the decision of the prosecutor was limited to the Commission's examination (GNAT Human Rights Investigation Commission)*

*and whether the authority to use force was exceeded in the intervention to the events*⁷⁹, an effective investigation has not been conducted.

However, the Constitutional Court also considers the descriptions in the GNAT Human Rights Commission Report while summarizing the events and facts. For example, the description in the GNAT Human Rights Inquiry Commission report on what happened in the C-10 unit, which is *“execution and protection officers are attacked when intervening to the children who were setting up barricades”*⁸⁰ was repeated in the Constitutional Court decision. In the text of the decision, the actions of children were described as *“assault”*⁸¹; The actions of the executioners and protection officers were accepted as *“an individual reaction that occurs at a moment of high excitement and intensity of emotion”*.⁸²

On the other hand, in the decision of the Constitutional Court, the determination of the HRIT’s report that those who are subjected to use of force are adolescents with developmental characteristics such as conflict with the authority should be considered⁸³ are also included:

*“While evaluating the conditions of using force in terms of concrete incident, the fact that the applicants are children in the 16-17 age group should be taken into consideration. In this context, conflict with the authority is the usual behavior of adolescence, so the rules of institutions where children are kept should be determined by taking into account the characteristics of this period; Officers of these institutions should also have skills based on expertise dealing with these behaviors.”*⁸⁴

Although the Constitutional Court did not include the CPT reports among the evidence, Court referred to these reports in the decision and considered them as evidence while determining the law to be applied to the incident.⁸⁵ Concerning the Report prepared by the CPT after its visit to the Ankara (Sincan) Juvenile and Youth Closed Penal Institution on 27 November 2013 and published on 15 January 2015,⁸⁶ the following determinations have been made:

- Although not on the scale of the 2012 visit – children’s allegations of physical ill-treatment by the officers in Penitentiary Institution has been encountered,
- Most of these allegations are physical punishments in the form of slapping, punching, kicking, or hitting the hand and/or soles of the feet with a plastic stick,
- Regarding the allegations; the ill-treatment of the officers and the administration towards the convicts/detainees is unacceptable. The officers should be regularly communicated this as a strict instruction that they could be punished due to such practices. Also it should be reminded that no form of corporal punishment can be practiced to children.
- The material conditions of the Penitentiary Institution are very good compared to the 2013 report⁸⁷, the living areas are large, there are nine cells in the institution, there are beds, tables, chairs, shelves, and cabinets in the cells.

This situation shows the importance of activating the monitoring boards and using their reports during applications or researching the applications to support the allegations regarding the practices in the execution institutions.⁸⁸ People who do not have the opportunity to see the file of the Public Prosecutor’s Office can obtain information through the report of the HRIT regarding the petition submitted by the Penal Execution Institution to the Public Prosecutor’s Office and the information within the scope of this petition. Important information on the allegations can be obtained from this correspondence on page 63 of the HRIT Report. “The following information about the insulated room was given in the petition of the institution: *“The cameras in the entrance corridor of these rooms and the room are available and they can be monitored 24 hours a day.”* In addition to providing information on the evidence that can be gathered, reports are also essential tools to obtain information regarding the conditions of the prison, as in the example of the CPT Reports.

2.4 Video Footage

The video footage is one of the most important pieces of evidence regarding the allegations in the file. The Constitutional Court is aware of the video footage related to the interventions in the C10 and C12 units from the evaluation of the decision justification; however, whether the Court is familiar with the video footage after the intervention cannot be understood from the content of the decision. However, the video footage of the observation room, which the Constitutional Court considered as the basis for the violation decision in procedural dimension, was not investigated by the Public Prosecutor. At the same time, as can be understood from the HRIT report, these footages are not among the video footage sent to the Institution by the administration.

For this reason, to evaluate the status of the evidence regarding the video footage is possible by using the HRIT Report together with the decision of the Constitutional Court. In the report, the video footage of the C10 and C12 units and the corridors in front of the units and the observation corridors regarding the period between the beginning of the events and 01:00 at night are included.⁸⁹ When the number of children in these records is compared with the number of applicants, it is understood that the Institution (HRIT) does not have the footage and the records of certain period when some children are taken to the observation rooms.⁹⁰

In addition, the HRIT determined that some of the video footage obtained were not clear due to reasons such as *“the lights are off, the camera is far away, the view angle of the camera is blocked by the doors which are opened”*.⁹¹ In some records, that the execution and guard officers were clustered in such a way to block the camera angle has been reported.⁹² During the events, it was recorded that the children shot the camera in the corridor (CAM 12) on the upper floor of the C-12 unit, the angle of view was changed, and therefore it could not record the corridor after a moment.⁹³

On the other hand, the HRIT compared the statements of the applicants with the CD footage in the file and found that the records of some areas subject to the complaint were not submitted:

“The record of the corridor to the left of the screen where the fourth child was removed from the C-12 unit and was taken... has not been submitted.

Footage of the moment when the sixth child, who was brought to the door of the C-12 unit, taken back into the unit, was not submitted.⁹⁴

On the other hand, in the response letter dated 04.02.2014 and 20717 numbered by the Ministry of Justice, all areas except the rooms were 24 hours monitored with a camera.⁹⁵ To understand whether inspection⁹⁶ has been conducted to detect the areas with or without cameras from the decision of the Constitutional Court is not possible.

Therefore, the issue of continuity of the records on the concrete incident has not been enlightened with regards to everyone related to the place, the time, and the event.⁹⁷ While making use of video footage evidence, if possible, an examination should be conducted to follow the continuity of the recordings regarding individual, place, and time with an expert examination. Table 9 contains an example comparison to evaluate the video footage. This comparison provides the following data:

- There is footage on the placement of only two children in the observation rooms related to the area where the observation rooms are located. From the footage on this camera, it is understood to detect the other children in the rooms behind other doors on the corridor is possible, but there is no record of them. Also, the following footage on the same corridor shows that at least five chil-

MONITORING RIGHTS IN CASES RELATED TO CHILDREN
A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

dren were placed to the rooms in this corridor. In this case, the lack of footage can be detected regarding the moment of at least three children being brought to the observation room

- Both time intervals are not clear and they are unambiguous due to reasons such as light and angle.
- Regarding the corridor where the observation rooms are located, there are no records of the period before 16:50, between 17:30 and 22:58, and from 23:03:30 until the children are taken out of the observation rooms.

Tablo 9. A Comparison Example Based on One Camera Record in the HRIT Report

Camera No	Area in sight	Moment	Start/End Time	Image quality	The number of people detected in the image and their characteristics	Whether there is ill-treatment
CAM 16	The corridor, the doors on this corridor	Taken to the observation	16:50 / 17:30	The lamps in the middle of the corridor are not lit and the light is not sufficient for a clear view.	2 children (one with reverse handcuffed and the feet cuffed) Execution and Protection Officers (at least 6 IKMs, the exact number is not specified)	<i>“The first child ... an IKM opened the door, while the child was left to the ground, an IKM dropped on his knees and pushed the child on the ground from behind, while the others took the child from the top and pull the child into the room and thus went out of sight of the camera; the second child, handcuffed by the arms (behind) and feet, was dragged into the room by two IKMs, grabbed by the armpits, with the knees down on the floor.”⁹⁸</i> In this video footage, a long period of mobility in front of the room farthest from the camera, and more than one IKM entering and leaving the room can be detected.
CAM 16	The corridor, entrance door, the doors on this corridor	Return from the hospital (observation)	22:58:25 / 23:03:30	Some lights are off, observation room doors left open and block the camera’s angle, some areas and moments cannot be seen due to the execution officers moving in groups and surrounding children.	5 Çocuk (tarif yapılmamış) 5 children (no description) Execution and Protection Officers (at least 3 IKMs, the exact number is not specified)	<i>“When an IKM lifts the child’s right arm in the air while another IKM starts to turn the child’s arm in the opposite direction by holding the wrist (22:58:43), the child’s pain is visible with the expression on the face and tilting the body to the left, and it takes 10 seconds to keep the wrist bent.”⁹⁹</i>

Under the consideration of such an assessment, addressing each of the actions individually will also be possible. For example; as seen in the footage of CAM 16 at 22:58:43, detecting that “one IKM (execution officer) raised the child’s right arm to the air while another IKM started to rotate the child’s arm in the opposite direction by holding the wrist” and this took 11 seconds, is enough to evaluate the allegations of prohibition of ill-treatment is violated in terms of substantive dimension. The Constitutional Court found that the evidence had not been collected by conducting an effective investigation regarding the period of this footage, and decided on the prohibition of ill-treatment was violated in terms of procedural dimension. Likewise, it has not been clarified whether the lights in the

corridor are turned off due to a technical malfunction or a deliberate turning off to prevent the visualization of the facts of ill-treatment by collecting technical fault records and conducting a technical expert examination on site.¹⁰⁰ This shows the importance of separating the allegations according to the concrete facts and matching the evidence for each action with the facts.

As a matter of fact, in another decision,¹⁰¹ the Constitutional Court questioned three elements while evaluating the video footage: (1) *“The Office of the Public Prosecutor arrived at a conclusion according to the content of the article sent by the Penal Institution within the scope of the investigation and did not conduct any other research.”*; (2) *“Although the submitted article and its attachments stated that the camera was recorded in the area under observation, the transcription of these records by an impartial expert was not obtained.”* (3) *“In addition, the Penitentiary Institution did not submit a reliable minute or report on the content of the video footage to the Prosecutor’s Office.”* Due to these deficiencies, the Constitutional Court concluded that *“whether the applicant was handcuffed during his detention despite the existence of an objective evidence”* could not be determined.

Also, it should not be ignored that while using the video footage as evidence; the recordings should cover the whole process¹⁰² and if necessary, the video footage can be requested to cover both before and after the event without being limited to the moment of the incident.¹⁰³ It should also be considered that in case of a delay in preservation, the possibility of obtaining the video footage might be lost.¹⁰⁴ Regarding the fact that the delay in keeping the records arises from the late filing of the complaint, it should be noted that the Constitutional Court considers; *“investigation authority has no responsibility in eliminating the possibility of obtaining the forensic examination report and video footages, which are among the important evidence in terms of the allegations.”*¹⁰⁵



While conducting the monitoring work, initially, the evidence of video footage, if exist, must be controlled to see whether this evidence has been collected full and complete in terms of time and place. Then, the competency of the evidence in terms of proving the allegations and whether they have been used adequately should be evaluated by using the indicators and guiding questions in Chapter 9 of the Guideline as in the example above.

2.5 Evidence that can be obtained from Internal Complaint Mechanism

Although the Court decision did not include the evidence obtained from the grievance mechanism, the Court frequently mentioned that no complaint was filed. For this reason, these pieces of evidence are also examined separately.

According to the decision, the applicants alleged multiple violations regarding the institutional practices. The children have complaints regarding the standing roll-call and strip searches practices and also the general institutional conditions and practices.

The Constitutional Court found that *“the applicants did not submit any evidence indicating that they filed any complaints to the execution judge before the events”*¹⁰⁶ regarding the standing roll-call practice. The court has a similar finding regarding the complaints on the strip search. (Table 10) The Constitutional Court considers the application to the execution judge as a domestic law remedy that must be exhausted in its other decisions as well.¹⁰⁷ With regard to above mentioned decisions, one should

MONITORING RIGHTS IN CASES RELATED TO CHILDREN
A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

exhaust legal remedies such as the complaint procedure, to ensure an effective conclusion in the individual applications related to institutional practices. If the legal remedies have not been exhausted, one should prove that legal remedy namely complaint mechanism was not an effective remedy.

Table 10. The Constitutional Court’s Examination of the Allegations in Terms of Being a Subject of Complaint Before

Allegation	Previous complaint status	How included in the statements
Some practices of the Penal Institution before the events	No evidence was provided that they had filed any complaints to the execution judge before the events. ¹⁰⁸	“...we made some requests from the prison administration with our prisoner and convict friends. The administration did not accept these demands. Upon this, our friends O. and B. and H.E. went on a hunger strike. While the hunger strike was continuing, the Prison Prosecutor met with us. The Prosecutor accepted our demands.” ¹⁰⁹
Standing roll-call		<p>“... that the administration always wanted to practice standing roll-calls, that the children have been forced against their will, following a tense event the prison prosecutor told them they would roll-call next to the tennis table, and they wanted to attend the roll-call while sitting,, and the practice continued as this after the prosecutor’s approval.”¹¹⁰</p> <p>“On the day of the incident, the director of the prison, the chief of guards and the execution officers came and asked us to line up. We said that we met with the prosecutor and our request was accepted, therefore we would not attend a standing roll-call.”¹¹¹</p> <p>“The guards demanded respect by force, instructed the children to come in front of them during the roll-call, cursed to their parents and siblings, then the children reacted to the events they saw, ...”¹¹²</p>
Strip search	<p>(1) “Whether or not it was practiced in a way that would damage their dignity in terms of method, frequency and implementation.”</p> <p>(2) “Some of the applicants did not complain regarding the strip search during the investigation phase.”¹¹³</p>	<p>“.. not subjected to strip search”¹¹⁴</p> <p>“.. forced to be subjected to a strip search”¹¹⁵ “When they came to the prison, the white-haired guard forcefully took off his clothes and trousers in the search room, only his underwear remained, they tear off his trousers, they started to hit him with a belt, then they opened the door and put him on.”¹¹⁶</p> <p>“They wanted to do the strip search, they forced it, but they did not accept it,”¹¹⁷</p> <p>“... That he was not subjected to searching naked”¹¹⁸</p>
Kept in the observation room for a long time	“The applicants also do not claim that they were kept in the observation room for a long time.” ¹¹⁹	“Especially the fact that the applicants could meet with their families and lawyers the day after the incident clearly shows that this measure was taken temporarily.” ¹²⁰

For example, the Constitutional Court concluded that the substantive dimension of the prohibition of torture was not violated related to the strip search, citing both the contradictory statements and the fact that there was no claim by the children that these practices were degrading.

In cases where the institution’s practices are incompatible with the law and especially with the juvenile law, filing complaints to both the institution and the execution judge, and using the documents of such complaints as evidence is important. When filing such a complaint, it must be ensured that the complaint is filed to the related authorities as an essential requirement. For example, if the practice is degrading, the complaint should separately include the definition of degrading treatment, its effects,

and the allegation of degrading itself. The guiding questions under the heading “Body Search” in the third part of the guideline will be a reference.

The allegations that these practices lead to degrading consequences should be filed in the form of concrete facts as a complaint and should be supported by “*sufficiently serious, clear and consistent indicators or certain presumptions*”. In this case, it should be taken into consideration that a complaint can be filed to both, the Public Prosecutor and the execution judge, by considering it may constitute a “crime of torture” as regulated under Article 94 of the Turkish Criminal Law.

It should be taken into account that resorting to complaint remedies is accepted as an indication of a right being persistently sought and this is considered as supporting evidence for the applicants’ claims in individual application decisions. If there is an obstacle to resorting to this mechanism or if such mechanism is considered ineffective, this will also have to be emphasized and included in the demand. In order to obtain and use evidence from the grievance mechanisms or to claim that this mechanism is not effective, the heading of Evidence that can be obtain from Internal Complaint Mechanism can be used in section 6 of the Guideline.¹²¹



In this section, the status of the evidence that can be obtained from the complaint mechanism regarding the allegations has been examined with the help of the guiding questions and indicators in the 6th section of the Guideline. This step should definitely be considered during the monitoring work. Also, the complaint mechanisms used for the allegations, what the result was, and if not used; the reasons of that should be investigated.

3 Evaluation of Applicants' Demands




After the facts and events are determined and the evidence situation is evaluated; the court’s evaluation of the applicants’ demands should be conducted by considering each allegation separately. Completing the previous stages is essential to evaluate the demands and the court’s decision on these demands. Thus, determining how and which evidence is used how, and if there are any other means of proof that will be possible regarding the claim is important.

The Court determine that the applicants alleged that their rights in Articles 17, 19, 38, 40 and 41 of the Constitution were violated and that they requested a re-investigation and award of compensation.¹²² According to the Court, the applicants states that a series of violation has been practiced ; “*In Ankara (Sincan) Juvenile and Youth Closed Penitentiary Institution, when the children were detained in C-10 and C-12 wards, during the forced standing roll-call in C-10 units on 1/1/2014 by the execution officers, one of the children objected to the standing roll-call because he was ill; therefore the execution officers intervened to the situation, the planned interventions were applied to the children in the C-12 ward as well, and that the treatments during the intervention and the previously applied practices were against human rights.*” (See Table 11)

The Court has decided that Article 17/3 of the Constitution has been violated in terms of procedural dimension on three of these allegations.

Table 11. Allegations of the Applicants according to the Constitutional Court Decision and the Court's Evaluation ¹²³

Allegations of the applicants	Court's Evaluation				
	17	19	38	40	41
Forced to standing roll-call	-				
Strip searched in a in a humiliating and degrading way	-				
Used force by the execution officers	-				
Subjected to torture especially in places where the camera was not recording	/3				
The related video footages were not submitted to the prosecution file	-		-	-	
They were handcuffed from their back at their feet and held in a cell called the observation/ sponge room.	/3	-			
That the basic needs such as food are not met	-				
Although it was alleged that people in the C-12 ward were sprayed with gas and pressurized water with fire extinguishers because they would start a fire, the administration knew that they the children did not have any equipment to start a fire.	-				
The medical reports obtained appr. four hours after the incidents showed that the children were tortured, that they filed a criminal complaint for these reasons, but there was no effective investigation on the torture and ill-treatment they were subjected to, and this situation was incompatible with the principles of the Istanbul Protocol.	/3		-	-	
The attention and care the children needed have not been taken into account.					-

 While monitoring, evaluating each of the allegations that were found admissible and inadmissible separately will be helpful. Identifying the evidence cited in the decision regarding each claim, along with other evidence that can be used to support the allegation, also guides in assessing whether sufficient research has been done.

3.1 Allegations Not Examined, Justification and Evaluation

In the decision, the requests of the applicants regarding the standing roll-call and the institution conditions were considered as pre-incident allegations and were not examined since these allegations had not been filed as complaints to the execution court before. In the Table 12 you may find the allegations of the applicants and the evaluations of the Constitutional Court.

Some of the applicants stated that the insistence on standing roll-call and the institution's standards and practices are the reason for the start of the events. For this reason, examining the relationship between the evidence and the allegations is important. This assessment of the court and the evidence obtained from the complaint mechanism with regards to the proof of both allegations were discussed in the previous part under heading no.IV.5. In this section, a review will be made on other evidence that can be used to support these claims.

Table 12. Complaints Regarding “Forced to Standing Roll-call, Living Standards and Institutional Practices”¹²⁴

Allegations of the applicants	Court’s evaluation
Standing roll-call has been practiced	“ In the concrete case, the officers came to the C-10 unit for the roll-call and called the child to downstairs for the roll-call. Considering that delaying the roll-call is also regulated as a disciplinary offense causing a warning penalty according to Article 46 of the Execution Regulation, the enforcement officer’s insistence for the roll-call is acceptable. As a matter of fact, the purpose of the roll-call is not only to prevent escape, but to ensure order and discipline in the Penitentiary Institution and to determine whether children are subjected to any force. ¹²⁵
“The applicants also complained regarding some of the practices of the Penal Execution Institution before the events, regardless of the events that took place on and after 1/1/2014. In this connection, the applicants alleged that their compulsion to carry outstanding roll-calls was a treatment that is incompatible with human dignity.” ¹²⁶	“However, no data has been submitted that the applicants had made any complaints to the execution judge before the events regarding this practice that caused the events. For this reason, the matter of being forced to standing roll-calls has not been exclusively evaluated. ¹²⁷
“The applicants also complained on some practices of the Institution before the events, regardless of the events that took place on and after 1/1/2014.” ¹²⁸ The living standards of the Penitentiary Institution and the general practices of the administration are not suitable for the protection, protection, education and participation rights of convicted/imprisoned children. ¹²⁹	“By considering that the applicants did not file a complaint to the competent public authorities regarding such matter and the CPT reports (see §§ 84-86), were not examined separately” ¹³⁰

3.1.1 Forced to Standing Roll-Call

The applicants allegations that they forced to practice standing roll-call is “treatment incompatible with human dignity” ¹³¹ and also “the execution officers forced them to stand roll-call with insults and threats.”¹³² The Constitutional Court did not consider the claims by citing the applicants’ failure to file a complaint to the execution judge.

To cause delay of the roll-call or be late to it is an action that requires a warning penalty within the scope of CGTIHK. ¹³³ Therefore, since the dispute regarding the roll-call practice had been polemic, a determination can be requested from the Court to see whether disciplinary action has been taken. Thus to evaluate the attitude of the administration on this matter would be possible and, if there are any actions, records related to this evaluation can be used as evidence to support the claims. To ensure this, the guiding questions in Chapter 5 of the Guideline under the heading of “Evidence Regarding Disciplinary Practices” can be used.

In this context, another area where evidence can be obtained may be the investigations carried out against the execution officers. If, as alleged, the children who resist the roll-call are insulted or threatened, these acts will constitute degrading treatment and will require an administrative investigation as well as a judicial investigation.

3.1.2 Living Standards of the Penal Institution and Administration's General Practices

According to the decision, the applicants have complained that the living standards of the Penal Institution and the general practices of the administration are not suitable for the protection of the convict/prisoner children's rights to development, protection, education and participation. The Court decided not to examine these complaints separately on the ground that the applicants had not resorted to a complaint on this matter and the CPT reports did not contain any findings to support these complaints.

According to paragraph 94 of the decision, there are two types of complaints under this heading: living standards and administrative practices. However, according to the decision, the concrete facts put forward by the applicants regarding these allegations were not explicit. The applicants consider that the physical conditions and practices are not convenient to the children's "rights of survival, development, protection and participation". According to the decision, the applicants claim that this situation is contrary to Article 41 of the Constitution.

The ECHR considers that the institutions should be able to support the education and development of children in terms of physical infrastructure, psycho-social services and personnel qualifications which are concerns with the right to freedom and security of the person, and one of the fundamental human rights.¹³⁴ In the event that these practices exceeds a certain limit and reach to the level of torture and ill-treatment, violation of Article 17 of the Constitution would be in question. In such case, the methods practiced concretely during the application, the effect this has caused and the violated rights should be explicitly indicated.¹³⁵ For example, the claims can be supported by an expert opinion on the compliance of the practices to the children's institutions characteristics and potential negative effects on the child. In order to prepare and evaluate the aforementioned evidence, the guiding questions and indicators in the 10th section of the Guideline under the heading of Statement Evidence can be used.

Although the way expressed in the application is unknown, another issue that the children have complaints within the scope of institutional practices is related to psycho-social services. For example; A.D., during his interview with the members of the HRIT, stated that "he did not need psychologist support, but some of his friends did, his psychology was impaired in the cell, therefore they did not want to be punished for observation, they wanted everyone involved in the incident to be punished if a penalty will be imposed due to the incidents,..."¹³⁶. F.T. stated that "he still has some psychological problems, he will be fine if psychological support would be provided, he cannot sleep until morning, he sometimes feels fear, he feels alone at night, his psychology deteriorates..."¹³⁷.

In this context, while investigating the complaints on the appropriateness and adequacy of the institutions where children are detained, the availability of psycho-social services must be focused. If the children with mental health problems do not receive adequate care, these services will cause discussions regarding the violation of the right to health. Finally, examining the psycho-social activities conducted in the institution will be necessary for terms of evaluating the relationship between the inability of children to benefit from adequate psycho-social support and the events that occur. In all these possibilities, the "Reports and Records Created within the Scope of Psycho-social Support Provided to Children" in the second part of the Guideline can be used as evidence.

3.2 Allegations, Reasons and Evaluations Examined as Substantially Admissible

In this section, allegations that the Constitutional Court considered being examined within the scope of substantive violations of the prohibition of ill-treatment will be discussed.

The Constitutional Court conducted examinations under separate headings due to the complexity of the events and the differences in the alleged treatments that the applicants have been subjected to. The Court also found that the allegations and actions should be examined separately for each applicant within the scope of their own statements. Accordingly, the Court conducted its examination regarding the allegations that the authority to use force was exceeded under the heading “In terms of Intervention and Practice of the Authority to Use Force” and within the scope of the substantive dimension of Article 17 of the Constitution. On the other hand, the allegations that children were subjected to violence after the crisis in observation rooms and in areas without camera surveillance were examined under the heading “In Terms of Allegations Regarding Being Taken into the Observation Room and Later”.¹³⁸



While conducting the monitoring study, classifying the allegations and the evaluations regarding the allegations as in Tables 13, 14 and 15 is important in order to facilitate the understanding of the court’s decision and the justification of it.

3.2.1 In terms of Intervention and Practice of the Authority to Use Force

The allegations in the application subject to the decision regarding the intervention to the incident and the practice of the authority to use force are discussed in three categories:

- The **disproportionate use of force** during the intervention by the execution officers,
- The use of force without a **legal basis** during the intervention,
- The execution officers do not have **sufficient expertise** in the use of force.

Table 13 contains the court’s evaluations regarding each claim.

Table 13. Allegations Regarding the Intervention and Authority to Use Force and Evaluations of the Constitutional Court

Allegations of the applicants	Evaluation of the Court
The disproportionate use of force during the intervention by the execution officers,	<i>“However, the footage shows that children actively encourage each other to resist and attack, and as a result, the physical force practiced on them. In this context, the practice of violence beyond the limits of the authority to use force was not observed in the intervention carried out within units C-10 and C-12. Therefore, the use of force against the children in the intervention is cannot be considered as an unnecessary and disproportionate intervention at this stage, by taken into account that it does not only constitute retaliation or corporal punishment. Thus, the allegation that children were subjected to violence after the use of physical force to neutralize them is evaluated under a separate heading below.”¹³⁹</i>
The use of force without a legal basis during the intervention	<i>“According to the (8) numbered paragraph of Article 22, the Execution Regulation; The law enforcement officers are entitled to use force under the situations of; the events that disrupt the security of the institution such as jailbreak attempts, riot, hostage-taking, attack, active or passive physical resistance against a law or regulatory order and under the legitimate defense and obligation situations according to the 25th article of the Law no.5237. “¹⁴⁰ “Within the scope of the aforementioned Regulation provision, there were no problems regarding the legal basis of the officers’ authority to use force regarding the incidents that occurred in units C-10 and C-12.”¹⁴¹</i>
The execution officers do not have sufficient expertise in the use of force.	<i>“The children are from the ages of 16 and 17 the perpetrators of the attacks, active resistance and riots in the events. In many national and international regulations the necessity that all measures should be taken for the protection of children has been emphasized (see §§ 67-75). In this context, the ones who should intervene in the problems mentioned and the methods they should follow in juvenile and youth closed penal institutions must be regulated in detail. However, in terms of the development of the concrete incident, the lack of regulation for the execution officers - given the severity and consequences of the events - cannot be interpreted as a violation of the positive obligation regarding the prohibition of ill-treatment . “¹⁴²</i>

The Constitutional Court benefited from the principle of legality, necessity and proportionality in order to determine whether the authority to use force was exceeded or not. In this context, the interventions conducted in the C-10 and C-12 units were considered separately. The Constitutional Court indicated that it evaluated the allegations of the applicants on the concrete case by taking into consideration the minutes of the interviews with applicants’ lawyers, the HRIT Report, the statements obtained by the law enforcement and/or the public prosecutor’s office.¹⁴³ On the other hand, the Court conducted its assessment regarding the practice of the authority to use force based on medical reports and video footage.

Lack of legal basis

The Constitutional Court described the actions of children as “attack”, “active resistance” and “rebellion”; accordingly, the Court considered that the use of force in the incident is in accordance with the law.¹⁴⁴ On the other hand, the Court emphasized the importance of applying all kinds of precautions to protect children and therefore attracted attention to the lack of detailed regulations regarding who will use which method and how in such problems occurring in the penal institutions. Although the Court also determined that there is no written regulation on how to practice the authority to use force at the Institution, it concluded by considering the severity and the consequences of the events that this particular point alone cannot be interpreted as a violation of the positive obligation regarding the prohibition of ill-treatment.¹⁴⁵

On the other hand, it is not explicit in the justification of the court decision whether the state of the emergency plan, which regulates the authority to use force, and all other related internal correspondence and the documents have been requested or not.¹⁴⁶ While investigating an allegation regarding violation of rights in cases related to crisis intervention, the preparation of the Institutions to intervene in any crisis and to have a duly prepared intervention plan are within the scope of the administration's positive obligation.

The "emergency plans", which are the methods for the administration to practice its authority to intervene the crisis, are one of the most important pieces of evidences in this matter. The guiding questions under the heading Evidence Regarding the Authority to Use of Force can be used in the collection and evaluation of the emergency plans and evidence related to these plans.

Disproportionate use of force

The Constitutional Court has the opinion that the use of force to control children "*cannot be considered as unnecessary and disproportionate*"¹⁴⁷ regarding the intervention to the events and authority to use force. Likewise, the court considered that "*the necessity of handcuffs also arises in terms of the development of the event and children's behavior*".¹⁴⁸

While the decision is examined in terms of the proportionality principle, the incidents within the units are mentioned in a limited way and a detailed assessment is not conducted regarding the intervention found to be proportional. For example, a child from the C12 ward that "*they saw their friends staying in the C-10 ward were beaten, (...) they were taken to the observation room, and went upstairs thinking that they would be attacked too and put the table on the ladder to prevent the attack*".¹⁴⁹ In the decision, the Court did not consider whether the reaction of the applicants to the events were an attempt of rebellion or made for defensive purposes due to the fear created by the situation since they are children as they alleged.

Below are some actions that can be evaluated in terms of proportionality:

- 1 "*while another IKM came and took it away from the hand of that IKM and hit the child who was grabbed and controlled by four IKMs, the child collapsed with this impact while in the hands of the IKMs ..., the child was picked up from the ground by holding his arms and taken to a point outside the camera's angle, the child went out of view, but some of the IKMs were visible, and the IKMs was kicking and punching at the same time...*"¹⁵⁰
- 2 "*... an IKM at the door entrance came in towards them and hit the child with a fist from top to bottom ...*"¹⁵¹
- 3 "*...an IKM took the child out, an officer from the opposite side scared this child by pretending to raise his arm and hit a fist ...*"¹⁵²
- 4 "*... when the images are watched in slow motion, the officer who hold the child's left arm hits the child with a knee from bottom to top while the child was walking among the officers ...*"¹⁵³

The statements of F.T. obtained by Aliaga Prosecution Office as a victim are in compliance with the video footages:

"... They dragged us to the corridor, there were 30-40 officers in the corridor. Every time we passed, they hit and beat us, they put us on the ground in front of the observation, (...) they hit us in front of the cell's door under the camera."¹⁵⁴

In the decision, only the interventions made during the crisis were considered and discussed within the scope of the practice of the authority to use force¹⁵⁵; however, actions such as “to kick” the child who was under control of the execution officers in the unit, “to kick with a knee from bottom to top” while being taken out of the ward and being taken to the observation room, as included in the video footage analyzes in the HRIT report, were not evaluated and not discussed to see whether the authority to use force was exceeded.

The Constitutional Court’s approach by considering the incidents based on the moment of initiation and as a whole, evaluating the intervention as inevitable and normal, and accepting it as proportionate, should be carefully considered in order not to impose this interpretation into a principle.

The decision shows that decomposing the events, classifying the actions and associating them with the evidence is very important. The ECHR’s *Giuliani and Gaggio v. Italy* decision¹⁵⁶ is an example in terms of separating each action at the moment and before the incident. The application is regarding the allegations following the death of a demonstrator during the protests against the G8 Summit in Italy as a result of the fire by the Gendarmerie. The method used in this decision helps to examine complex events, in which many people have practiced more than one action. Separating, classifying and qualifying the actions should be done by all professionals involved in the process within their roles. For example, each scar should be considered separately in the health examination and matched with other findings and narratives. Likewise, by the lawyers who undertake the defense, the legal qualification, investigation, prosecution, and individual application stages of each act should be conducted separately with the same meticulousness.

The guiding questions to be used in the collection and evaluation of evidence regarding the authority to intervene and use force in emergency situations are included in Chapter 9 of the Guideline. In addition, the evidence in the entire Guideline is the means of proof for the allegations on this matter.

Personnel without sufficient expertise

According to the HRIT report, “when the CD recordings were watched, it was observed that the execution and protection officers were in uncertainty while performing their duties due to insufficient knowledge or training or not being given appropriate training and they behave incompatibly with expertise. To ensure that the execution officers have enough expertise and conduct their actions accordingly during the interventions is the responsibility of the administration.”¹⁵⁷

A series of findings to support this assessment in the report of the HRIT are available in the transcript of the camera recordings.

The Constitutional Court correctly determined that personnel of the juvenile institutions should have “skills based on expertise while intervening to such behaviors (conflict with authority)”¹⁵⁸. However, the Court later described the execution officers’ treatment as “individual reactions” that occur at a “moment of high excitement and intensity of emotion”¹⁵⁹. However, as can be seen in the analysis of the video footages in the report of the HRIT¹⁶⁰, the Court did not examine whether the same kinds of actions practiced multiple times by more than one officers could be considered as consistent when they evaluated separately and/or as integral and whether such practices constituted torture and ill-treatment.

According to the decision, “during the dispute between the prison officers and the detained children, the applicant B.D. attacked by head-butting to the execution and protection chief officer”¹⁶¹. However, the Court did not evaluate whether, -as indicated by some of the applicants-, the allegations that the execution and protection officers insulted children constituted degrading treatment

within the scope of Article 17 of the Constitution. As a matter of fact, according to the video footages a verbal discussion between the execution and protection officers and the applicants can be seen before the events started.¹⁶² In the statements made by the applicants at the Public Prosecutor's Office and also included in the Constitutional Court decision; the children alleged that the execution and protection officers insisted on the roll-call by insulting and threatening the children, and the chief officer shouted "you will come to my feet like a dog"¹⁶³ at the child who was asked to come down for the roll-call. However, the court did not examine these allegations.

Similarly, the court did not examine whether the fact that the children outside the C10 and C12 units freely roamed in the corridor¹⁶⁴ during the event, the doors of the units kept open¹⁶⁵, the children are assigned to the duties related to expertise and preparedness such as carrying materials water, gas masks, etc.¹⁶⁶, and bringing fire fighting equipments after the intervention¹⁶⁷ are constituted violations of rights.

The fact that the institutions where children are located are not assigned with sufficient expertise is an issue that should be examined within the framework of the state's positive obligation. To fulfill such examination, investigating the personnel policy of the institution¹⁶⁸ and collecting the related evidence¹⁶⁹ to see whether the personnel involved in the events had any in-service training that they should have during admission and during the service is necessary. Adequate information on the content of the allegations and the evidence in the file regarding this examination cannot be obtained from the Constitutional Court decision.

Additionally, in the decision, the Court accepted that the intervention was planned¹⁷⁰ with the participation of the director of the institution and the second director and that it should be regulated in detail¹⁷¹ 'who should intervene with what method and how to the problems mentioned in closed juvenile and youth penal institutions'. However, the Court concluded that "the absence of a regulation for the enforcement officers in terms of the development of the concrete incident - considering the severity and consequences of the events - cannot be interpreted exclusively as a violation of the prohibition of ill-treatment's positive obligation"¹⁷². The following points should also be examined within the scope of the state's positive obligations; whether there is an "emergency plan"¹⁷³ ensuring the intervene to crises is appropriate for children-, and, in cases where such a plan exists, whether it includes sufficient safeguards for children who are convicted and in custody. Guiding questions regarding the evidence that can be used in the examination of the allegations on this subject are included in Chapter 4 of the Guideline under the heading "Evidence Regarding Authority to Use Force".

An expert examination can be conducted to see whether the attitudes followed by the execution officers at the beginning of the events are suitable for their responsibilities and whether they include the necessary expertise. Also, "Evidence Regarding the Training and Competencies of the Institution Personnel" included in the first part of this Guideline can be followed to request evidence.

3.2.2 In Terms of Allegations Regarding Being Taken to the Observation Room and After

The Constitutional Court finds that the applicants have complaints that they were taken to the observation room with handcuffs,¹⁷⁴ they were kept in the observation room being handcuffed on their hands and feet¹⁷⁵, "there was no bed in the observation rooms, the room was cold, they were not given blankets and food"¹⁷⁶ and being kept in cell-type rooms, which are called observation/padded rooms is a violation of the right to freedom and security regulated by the Article 19 of the Constitution¹⁷⁷. Therefore, there is more than one allegation regarding the placement in the observation room.

MONITORING RIGHTS IN CASES RELATED TO CHILDREN
A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

The Constitutional Court considers that “there is not enough evidence in the investigation file, in the GNAT Human Rights Inquiry Commission Report, and the HRIT Report, and the applicants could not submit any evidence that is argumentative and has reasonable suspicion “ .¹⁷⁸ The Constitutional Court used the CPT Reports as a supportive factor while forming its opinion. The Court has the opinion that the applicants did not base on indicators contrary to these reports that are enough to ensure their allegations be examined in terms of substantive dimension. ¹⁷⁹

Tablo 14. The allegations regarding the observation room and the Constitutional Court’s examination

Allegations of the applicants	Court’s evaluation
Being taken to the observation room in handcuffs. ¹⁸⁰	<p>“The children were taken out of the unit to be taken under control, handcuffed and taken to the observation room. ... In this context, the necessity to wear handcuffs has arisen is clear in terms of the development of the event and the behavior of children”¹⁸¹</p> <p>“... Later, the prison officers took the children under control and took them to the observation room. Taking the detained children to the observation room in handcuffs cannot be considered as a disproportionate intervention according to the conditions of the concrete case.”¹⁸²</p> <p>“In the concrete case, the applicants were taken under control after the aforementioned events and were taken to the observation room in handcuffs. The submitted records are in line with the applicants’ claims in this respect.”¹⁸³</p>
Being kept in cell-type rooms, which are called observation/padded rooms is violation of right to freedom and security regulated by the Article 19 of the Constitution	<p>“Keeping the applicants in rooms they claimed to be cell-type - considering that the personal freedoms of the applicants who were detained in prison are already limited - should be examined within the scope of the prohibition of ill-treatment regulated in the third paragraph of Article 17 of the Constitution, not within the scope of Article 19 of the Constitution. “ ¹⁸⁴</p>
Being placed into the observation room as a disciplinary punishment.	<p>“... the imprisonment of the applicant children in the observation room is not due to a disciplinary punishment. The applicants were placed in the observation room in order to cease the attacks, active resistance and rebellion, and to restore the discipline and order of the penal institution. Therefore, being put in the observation room is a matter of temporary measure. Also, this practice of the administration is based on the authority to take “other measures not explicitly specified in the Law in order to maintain discipline and order in case the institution’s order and the persons’ security face a serious danger” within the scope of Article 49 of the Execution Regulation. This authority cannot be considered as a disciplinary action. As a result, placing the applicants in the observation room in order to maintain order in the penal execution institution alone cannot be considered as ill-treatment.”¹⁸⁵</p> <p>“Especially the fact that the applicants could meet with their families and lawyers the day after the incident clearly reveals that this measure was taken temporarily. The applicants also do not claim that they were kept in the observation room for a long time.”¹⁸⁶</p>
The observation rooms were lack of beds, blankets, food and it was cold. (Except H.B.)	<p>“... are the issues that need to be examined within the framework of the prohibition of ill-treatment . However, even in this case, the allegations of the applicants must consist of sufficiently serious, clear and consistent indications or some presumption that the contrary has not been proven. Considering the reports prepared after the visits of the CPT in 2012 and 2013 (see §§ 84-86), the fact that these allegations by the applicants are not based on indications enough to ensure examination in terms of substantive dimension is explicit.”¹⁸⁷</p>
Kept in the observation room with handcuffs both hands and feet	<p>“There is not enough evidence within the scope of the investigation file, the report of the GNAT Human Rights Inquiry Commission (see § 54) and the HRIT report (see §§ 55, 56) to examine the substantive dimension of the allegations claimed by the applicants regarding what they have been subjected to in the observation room. Also the evidence submitted by the applicants cannot be considered as debatable and that will arisen reasonable suspicion. In particular, no material evidence was provided on the basis of the applicants’ complaint stating that the assault continued even after the forensic examination and the Chief Public Prosecutor’s Office did not reflect any evidence on this matter in the investigation file. Therefore, the Court concluded that aforementioned allegations by the applicants should be examined within the scope of the procedural dimension of the prohibition of ill-treatment. “ ¹⁸⁸</p>

Children being taken to the observation rooms in handcuffs and keeping them in the observation room

The applicants alleged that they were taken to the observation rooms in handcuffs by the execution officers.¹⁸⁹ These allegations of the applicants are accepted in the reply letter sent to the HRIT by the Ministry of Justice.¹⁹⁰

The Constitutional Court reminds that the handcuffs¹⁹¹ can only be used “*by order of the institution’s highest authority under the instruction and supervision of a doctor for medical reasons and in case of insufficiency of other control procedures to prevent the convict from harming himself or others or destroying property*” and has the opinion that “*the obligation to wear handcuffs has arisen due to the development of the event and the behavior of children*”¹⁹². The court considered that the placement of children to the observation room was a measure¹⁹³ in order to “*end the acts of attack, active resistance and riot, and to restore the discipline and order of the penal institution*” occurred in the units C10 and C12 and concluded that this act of the administration was based on the authority to take “*other measures not explicitly specified in the Law to ensure discipline and order in the event that the institutional order and the security of individuals are faced with a serious danger*”¹⁹⁴ given by Article 49 of the CGTIHT.

On the other hand, the HRIT by referring to Article 67 of the Havana Rules, accepts that the practice of taken to the observation room is a disciplinary measure, even if it is within the scope of Article 49, and therefore its compliance with the law should be examined.¹⁹⁵ Although the Constitutional Court did not evaluate the 49th article of the CGTIHK with regards to the legality principle under this case, the Court has conducted a constitutional review in another case¹⁹⁶, and ruled that such practices is not unconstitutional and rejected the application. In the aforementioned decision, the Court decided that “*since limiting the events by counting is not in accordance with the natural flow of life and may cause a serious danger for the institution’s order and the people’s safety, to determine the measures against each event separately by the legislator*”¹⁹⁷ is not possible; however, to determine such measures with regulation, circular, prudence or other regulatory process is possible. Additionally, the Court ruled that the provisions of the Law on Enforcement Judges will be applied with regard to the practices within the scope of this article and concluded that “*therefore, legal assurance is provided against erroneous or arbitrary practices in terms of the measures to be taken within the scope of the objected rule*”.¹⁹⁸

In the light of these decisions, it is important to investigate whether there is a regulation by a regulatory act on the practices within the scope of article 49, and ensure compliance with the law by filing complaints to the Enforcement Judge on the measures. The decision is not explicit on whether there is an allegation on such a matter and, if any, what is submitted as supporting evidence. The first area to be examined in terms of evidence on such a claim is the conditions of compliance with the law, which can be benefited by using the guiding questions and indicators in section four, the Evidence regarding Authority to Use Force and, the Section 6, Evidence that can be obtained from the Internal Complaint Mechanism.

The Constitutional Court ruled that to be placed into the observation room would not solely constitute an ill-treatment practice.¹⁹⁹ The Court considered the applicants’ placement in the observation room as a natural consequence of their presence in a closed execution institution, and decided that the allegations of violation with such practice are not within the scope of the violation of the right to freedom and security of the person regulated in Article 19 of the Constitution, but within the framework of the prohibition of ill-treatment regulated by the third paragraph of Article 17 of the Constitution²⁰⁰. Although this decision of the Constitutional Court is accurate, since the evaluation

conducted within the scope of violation of torture and prohibition of ill-treatment imposes a heavier obligation on the administration in favor of those deprived of their liberty; to base the decision on the justification that the freedom of children is already limited was not appropriate. Being subjected to a disciplinary measure or punishment that will restrict the ability of children to move within the institution for a long time and contrary with the law is an issue that can be evaluated separately, regardless of their presence in prison.

The ECHR, in the case of *X/Turkey*, 2012, §§ at 41-45, “besides the lack of appropriate judicial audition, the Court ruled that the Article 3 of the Convention has been violated by placing the applicants to cell for protection without any justification regarding the measures to forbid exercise outdoors and contact with inmates.”²⁰¹

Therefore, while investigating whether keeping children in the observation room constitutes violation of the prohibition of torture and ill-treatment; the concrete facts, their effects and the evidence should be examined. In this respect, guiding questions related to the evidence that will support the allegations can be used in the sections titled “Medical Evidence, Reports and Records Issued within the Scope of Psycho-social Services Provided to Children”, “Evidence Regarding Practices On Disciplinary Actions and Penalties”.

Kept in the room with handcuffs

The Constitutional Court indicated the conditions that the handcuffs and other physical restrictive devices could be used; as “*the necessity to use handcuffs has arisen due to the development of the event and the behavior of the children*”.²⁰² However, the Court did not examine the fact that handcuff practice continued despite the elimination of the mandatory conditions and the possibility that the tight handcuffs might caused the findings in the reports issued by the Forensic Medicine Institution²⁰³ due to excessive force; “*there is a trace of handcuffs with scratches on the edges of the double row of 8-10 cm in the right wrist, starting from the dorso medial to the palmar face and ending in the dorso lateral*”. In another decision, the Constitutional Court ruled that keeping a person in the observation room with handcuffs for a long time was a violation of the torture and prohibition of ill-treatment with its procedural dimension.²⁰⁴ For example, in this decision, the Constitutional Court, concluded by examining the documents sent by the Penal Institution to the Chief Prosecutor’s Office through UYAP that there were no minutes or statement of the execution officers regarding how long the applicant was handcuffed or whether the handcuffs were released during the delivery of food.²⁰⁵

Apart from the allegation that the children were taken to the observation rooms in handcuffs, the children alleged that they were handcuffed behind their back and with their hands and feet, and the video footage supporting these allegations is also included in the report of the HRIT.²⁰⁶ The Constitutional Court decided that the allegations of being handcuffed behind their back, the hands and feet handcuffed, and held in the observation room handcuffed until the time they were transferred to the doctor²⁰⁷ have not been supported with evidence ensuring “*sufficiently serious, explicit and consistent indications or presumptions*”²⁰⁸ enough to consider them as a substantive violation of the prohibition of ill-treatment.²⁰⁹ However, the Court decided that these allegations should be investigated; therefore, they could be examined within the scope of the procedural dimension of the ill-treatment prohibition.²¹⁰

Among the allegations, investigation of the facts that children are handcuffed behind their back or that their hands and feet are handcuffed at the same time and very tightly, and that they are handcuffed in the observation room is necessary. In another decision of the Constitutional Court, “*The ap-*

plicant was held in the observation room aprx. six hours in handcuffs on his feet and hands behind his back, when the injuries detected in the health report of the applicant and after the evaluation of the treatment, the Court ruled that to consider the treatment within the scope of "torture" is possible and that the state acted contrary to its negative obligation under Article 17 of the Constitution."²¹¹

In the analysis of the video footages in the HRIT Report; information included that one of the children had reverse handcuffs on his hands and feet at the same time, and therefore was dragged from the corridor and placed in the observation room.²¹² In their statements, which are also included in the Constitutional Court decision, the children, A.D.²¹³, B.D.²¹⁴, H.E.²¹⁵, K.Ş.²¹⁶, M.K.²¹⁷, B.K.²¹⁸, F.T.²¹⁹, E.T.²²⁰, M.H.A.²²¹, alleged that they are handcuffed by their hands and/or feet and that there are scars on their hands and feet due to this treatment for a long time and they consistently repeat this in more than one statement. Among the findings on the applicants, B.K., B.D., A.D., F.T., M.K., H.B., and E.T.'s body in the medical reports, there are edema, bruises and scars on the wrists caused by handcuff has been detected.²²² (Table 5) The finding in H.B.'s report is based on the decision as; *"it was stated that there is a trace of handcuffs on the right wrist, starting from the dorso medial to the palmar face and ending at the dorso lateral, with scratches on the double row of 8-10 cm long margins.*"²²³

Although the Constitutional Court ruled that the allegations of *"keeping them in the observation room with handcuffs on their hands and feet"* by the children should be examined while deciding that the torture and prohibition of ill-treatment were violated with its procedural dimension, the examination must include whole handcuff process reflected the decision. Evaluating the consistency between the scars on the wrists detected in the medical report²²⁴ and the allegations, clarifying whether the handcuffs' tightness causes the scars and whether the form of handcuffing is a pain for the child is important. Meanwhile, the method of evidence and examination in the Kocak Application²²⁵, where the Constitutional Court concluded that keeping the applicant in the padded room as hands and feet are handcuffed constitutes torment and should be considered that the state violated its negative obligation under Article 17 of the Constitution, is a guiding decision. In addition, control questions and indicators related to Medical Evidence in Chapter 7 of the Guideline can be used.

Kept for a long time

The court examined the detention in the observation room in terms of duration and concluded that the measure was implemented temporarily by indicating that the children could meet with their lawyers and their families the day after the events. The Court also did not examine with regards to duration by considering that the children did not claim that they were kept in the observation room for a long time.²²⁶

The duration of their detention in the observation room until the children are taken to the doctor and their total detention period is separately mentioned. For example, when a child said that he was taken to the doctor after stayed *"3-5 hours"*²²⁷ in the observation room and then said, *"the heating of the observation room was broken on the first day and that he was cold because of his clothes were wet, but the heating was repaired in the morning"*²²⁸, this indicates that he stayed in the observation room at least until the morning. It is understood that he is afflicted. Another child stated that they were kept in the observation room for *"10 hours"*²²⁹ and another child *"until the third of the month"*²³⁰ from the day of the incident.²³¹ Also, according to the footage in the HRIT Report, the children were taken back to the observation rooms on their return from the hospital. Accordingly, it is understood that an investigation regarding the time children taken out of the observation room has not been conducted. Obtaining a detailed statement for each child will be of great importance regarding how long and in which room the observation process is carried out, and to examine and compare the

video footage of the time between being taken to the observation room and leaving the room with this statement.²³² Also, the video footage of the observation room, entry and exit records, doctor and psychosocial service records should be examined to determine the time. Part 2, 7 and 9 of the Guideline can be used during such a study.

It should be noted that the confinement of children in a closed or single room as a disciplinary punishment or measure is prohibited under international principles.²³³ Thus, even if putting children in the observation room is initially considered in accordance with the law, the duration and form of the practice should be controlled in terms of compliance with the law. In the events of the case, the fact that children were taken to the observation room after the incident and kept in there for 4 hours until the time they were taken to the hospital, then the fact that they were taken back to the observation rooms on their return from the hospital, and the duration and conditions of their stay in the room should be examined in terms of the prohibition of torture and ill-treatment in order to see whether “*it has reached to a certain severity degree to be considered within the third paragraph of the Article 17 of Constitution*”²³⁴. The Constitutional Court indicates that “*the factors such as the duration of the treatment, physical and mental effects and the gender, age and health status of the victim*”²³⁵ are important to consider the certain severity degree, and that the motive and purpose behind the treatment also should be taken into account. Therefore, to examine the purpose, motive, duration, physical and mental effects of such treatments, and take into account the state of being a child and his state of health during this examination is necessary. For example, to examine whether the children who are placed in the observation room have periodic psycho-social and health controls will be necessary.²³⁶

Standards of the observation room

The court accepted that the standards of the observation rooms were among the matters that should be examined within the framework of the prohibition of ill-treatment.²³⁷ However, the Court concludes that the applicants did not provide any evidence regarding their complaints on the conditions of the observation room and the treatment in the room, and also that there is no information in other sources of evidence to support the allegations on this matter.²³⁸ The Court based its evaluation on the CPT reports.²³⁹ In their statements, the children stated that there were no bed or blanket in the observation rooms, that their observation rooms were cold, and they were not given any food.²⁴⁰ The petition submitted to the Public Prosecutor by the Penal Institution indicates that; “*Each room is 14m2, there are fixed glass and ventilation in the room. There is no faucet. There is a camera in the entrance corridor of these rooms and inside the room, and they can be monitored 24 hours a day.*”²⁴¹

In similar cases, to include the detailed statements of the children given in the meeting minutes of the lawyers or during the prosecutor’s office regarding the standards of the observation room and to conduct discovery by the investigation and prosecution authorities on their own or upon request, and the examination of the video footages are some of the methods to obtain evidence in terms of illuminating the incident. In addition, complaints regarding the standards of observation rooms and reports of the inspection institutions such as the CPT and Prison Monitoring Boards may also contain evidentiary value.

The guiding questions and indicators under the titles “Statement Evidence” in chapter 10 of the Guide, “Crime Scene Investigation Findings and Minutes” in chapter 8, and “Evidence that can be obtained from the Internal Complaint Mechanism” in chapter 6 can be used in terms of allegations regarding the standards of the observation rooms.

Alleged beating of children in observation rooms

In their statements, the children stated that the execution officers beat them in the observation rooms and handcuffs. The court indicated that the evidence to support the allegation of assault could not be reached through the report of the HRIT and the Human Rights Inquiry Commission of the Turkish Grand National Assembly. In addition, the Court stated that the evidence regarding the allegation of assault was not reflected in the investigation file. The court concluded that there is no need to examine the violation of the prohibition of ill-treatment in terms of substantive dimension due to the lack of “*argumentative and reasonable suspicion*” evidence regarding these allegations.²⁴² On the other hand, the failure to examine these allegations, along with other allegations, during the investigation phase was considered as a violation of the procedural dimension of the prohibition of ill-treatment.

Guiding questions and indicators on Medical Evidence may also be used, which is one of the strongest means of proof regarding the allegations of children that they have been subjected to physical violence at different times and places. In the decision, the evidence obtained from the analysis of camera recordings in the report of HRIT, the health reports, the petition sent to Ankara Chief Public Prosecutor by Ankara (Sincan) Child and Youth Closed Penal Institution and children’s statements are included. In addition, the CPT report was taken into account in the examination.

The Court referred to the reports issued by the CPT after the visit to Sincan Prison while determining that there was no evidence of a violation of prohibition of torture and ill-treatment in a substantive dimension. The decision also included that in the reports there are allegations of physical ill-treatment (slapping, punching, kicking, or hitting the hand and/or soles of the feet with a plastic stick) which are used as a means of punishment.²⁴³ It is contradictory that although the Court considered the CPT report as a reference for the conditions of the observation rooms, it did not respect the findings that violence has been practiced as a means of punishment against children. At the same time, when examining the allegation of batter in a concrete incident, the court’s generalization of the reports on the general condition of the penal institution, which are prepared a few years ago as evidence against the allegations, is a matter that should be addressed. On the other hand, the Court’s references reveal that such reports can be used as evidence in order to prove the allegations.

In the petition submitted to the Public Prosecutor by the Penal Institution; There is a camera in the entrance corridor of the observation rooms and in the room, which is monitored 24 hours a day.²⁴⁴ According to the report of HRIT, there are video footages in the corridor where the observation rooms are located; however, records of some areas are not submitted: “*Especially no video footages of the places related to allegations such as the observation rooms, the search room, the referral vehicle were submitted.*”²⁴⁵ To submit such evidence is also not possible for the applicants.²⁴⁶ At this stage, the fact that the video footages are not cover the whole process should also be noted. The video footage evidence has been examined under the IV.4. numbered title.

It was determined that despite the allegations on ill-treatment in the observation room, the video footage of the observation rooms were not taken into consideration and a medical examination was not conducted. Also, in the analysis of the camera recordings in the HRIT Report, even in the footages of the moments of being taken into the observation rooms in the corridor and the observation rooms, the executioners and guard officers took actions such as hitting, kicking and punching the children while the children were taken to the observation room after they were completely taken under control. When these data are obtained together with the stable and consistent statements of the children, “the shifting of the burden of proof”²⁴⁷ regarding the allegations of ill-treatment in the observation room and it will be the responsibility of the administration to prove otherwise.

As in the ECHR case, the Constitutional Court determined the burden of proof in terms of allegations of torture and ill-treatment as submitting evidence *“beyond a reasonable doubt”*.²⁴⁸ In order to conclude that the torture and prohibition of ill-treatment have been violated, the applicants must submit evidence beyond raising reasonable suspicion.²⁴⁹ However, the Constitutional Court also admits that for people who deprived of their liberty, to fulfill this requirement may be difficult: *“With regards to the applicants, who lost contact from the outside world since they were in prison, or who could not meet with doctors, lawyers, relatives, or friends to help them and obtain the necessary evidence to support the allegations of ill-treatment, to collect evidence is difficult. Regarding the allegations of the applicant within this scope, to conclude is possible only if all the data in the file are examined together (Cezmi Demir et al., § 99).”*²⁵⁰

The ECHR acknowledges that the applicants are in a disadvantageous position in terms of accessing information and documents since the penal institutions are under the control of the administration and the applicants are deprived of their liberty.²⁵¹ Therefore, regarding the injuries that occurred on the bodies of the persons who are under the administration’s custody, the Court indicated that the administration is under the obligation to prove that these injuries were not caused by institution’s officers. *“When all or most of the events in question occurred within the knowledge of the competent authorities, as in the case of related to the ones under their control, the strong presumption will emerge regarding the injuries or deaths in custody. In this case, to evaluate that the burden of proof belongs to the competent authorities who have to make a satisfactory and convincing explanation.”*²⁵² However, in cases where the burden of proof shifts, establishing a litigation strategy accordingly will be important.

Referral of the children under supervision to the health examination after 4 hours

Although the children were injured, they were taken to the hospital 4 hours later for a medical examination. The court indicated that many people, including the officers were injured in the incidents, and that the late transfer to the hospital might have been due to the insufficient facilities of the institution.²⁵³ However, the Court did not exclude the possibility that the institution could act to punish children. While the court found that the prohibition of ill-treatment had been violated in its procedural dimension, the Court concluded that allegations of late referrals, along with other allegations, had not been effectively investigated.

In the events of the case, whether the injured children *“have reached a minimum level of severity in order to be considered within the scope of the third paragraph of Article 17 of the Constitution”*²⁵⁴ in terms of the torture and prohibition of ill-treatment should be investigated. The effects on the physical and mental health of the children caused due to the delay of the right to access health care, such as the suffering and fear of waiting for injured children, should be taken into account, and it should be examined whether this aspect of the practice exceeds the minimum level required for torture and ill-treatment. This examination should be carried out by an expert board composed of experts who have expertise on the related subjects. For guiding questions and indicators related to medical reports, the Medical Evidence heading in Chapter 7 of the Guide can be used.

3.2.3 In Terms of Strip Search

Tablo 15. Allegations in Terms of Strip Search and Evaluations of the Constitutional Court

Allegations of the applicant	Court's evaluation
Strip search has been practiced (F.E., B.D., K.Ş., E.T. excluded) ²⁵⁵	"In the events of the case, applicants' complaint on being subject to strip search. However, they did not indicate whether the strip search was conducted in a manner that would damage their dignity in terms of method, frequency and practice. When it was observed that some of the applicants did not complain on the strip search during the investigation phase, the Court concluded that the substantive dimension of the prohibition of ill-treatment was not violated." ²⁵⁶
	"On the other hand, considering the findings that there are no defensible complaints regarding the violation of the substantive dimension of Article 17 of the Constitution (see §§ 140-141), the allegations of the applicants regarding the violation of the procedural dimension of Article 17 of the Constitution in terms of strip search have not been evaluated separately." ²⁵⁷

The children's statements included allegations such as being forced to strip-searched during their visit to and returning to the medical examination, tearing off their trousers and being beaten with a belt during a strip search. The Constitutional Court assessment of the naked search claims is based on the statements of the applicants.²⁵⁸

The Constitutional Court first layout the legal basis of the strip search and determines that it is regulated by Article 46 of the Regulation on the Administration of Penal Institutions and the Execution of Penalties and Security Measures²⁵⁹, which is the law in force during the examination. Then, referring to the ECHR's²⁶⁰ precedent, the Court points out that strip search alone does not constitute ill-treatment, the method and frequency of strip search may violate the prohibition of ill-treatment, and especially in the case that the search becomes a routine practice then should be taken into consideration in terms of the prohibition of ill-treatment.²⁶¹ In the decision, the Court reminded again that the applicants are children and emphasized that special attention should be cared for to ensure children's physical and mental protection.²⁶²

The general comment of the ECHR on the strip search is as follows: "*.. sometimes strip searches may be necessary to ensure prison security or to prevent disorder or crime (Iwańczuk v. Poland, 2001, § 59; Van der Ven v. The Netherlands, 2003, § 60). However, even single instances of a strip search could constitute degrading treatment given how the strip search was carried out, if it was intended to humiliate and diminish the reputation, and if there was no reason to do so (Valašinas v. Lithuania, 2001, § 117).*"²⁶³



If the monitoring work is conducted through a court decision, considering the Constitutional Court's decisions and the ECHR regarding both the conceptual analysis and the evaluations regarding the facts would be beneficial. Thus, an assessment would be made in terms of compliance with established case law.

The Constitutional Court found that the applicants did not indicate whether the search was "*conducted in a manner that would harm dignity in terms of its procedure, frequency and practice*" and that some of the applicants did not complain on the strip search during the investigation phase; thus the Court concluded that the substantive dimension of the prohibition of ill-treatment was not violated.²⁶⁴ Accordingly, the Court has not evaluated the allegations regarding the violation of the procedural aspect of the prohibition of ill-treatment separately.²⁶⁵

According to the regulation referred in the decision²⁶⁶, strip search can be conducted subject to reasonable and serious indications that the child has an object that is forbidden to be brought into the penal institution or kept in the institution. The Constitutional Court indicated that turning the strip search into a practice that exceeds the purpose of security, order and prevention of crime and damages of convicts/detainees should be taken into consideration in terms of the prohibition of ill-treatment.²⁶⁷

While considering *“whether the strip search is conducted in a method that will damage the honor with regards to its procedure, frequency and practice”*²⁶⁸;

- In the HRIT report, the children stated that they were frequently asked to be strip searched before the incident also, but they did not consent to this, and that the search was conducted by removing only their clothes without taking off their underwear or by wearing an apron,²⁶⁹
- H.E., one of the applicants, was beaten on his way to and from the hospital and during this time, a strip search was practiced,²⁷⁰ *“... when he came to the prison, the white-haired officer forced his trousers off in the search room, that only his underwear was left, that they took off his trousers by tearing them, that they started to hit with a belt, that they forced to dress while the door is open...”*,²⁷¹ *“... that a body search was conducted on the way to and from the hospital, that the search continued although Prison Prosecutor ordered it would not...”*²⁷²
- Another applicant, M.H.A., stated that the execution officers *“... wanted to strip search, they said take your clothes off, but they didn’t, upon which the guards started to beat them ...”*²⁷³
- Among the statements of other children, there are also other statements on whether a strip search was practiced. In one of the children’s statement, the child alleged that the strip search was conducted by the *“white-haired officer”*, not by the doctor.

Although the children did not clearly declare that the strip search was *“conducted in a way that would harm their dignity”*, they stated specific facts that would damage their honor. For example, there are statements such as strip search before being transferred to the hospital, frequently strip searched, removing trousers by tearing them off, being beaten with a belt during the strip search. While considering the legal qualification of these statements, the fact that the applicants are children, and they describe the events according to their age, education and development status should be taken into account. Even if children do not express themselves by using legal concepts such as torture, human dignity, honor, persecution, cruel behavior; the facts and conditions that may be considered as within this context should be examined carefully. In addition, according to these narratives, the strip search has been conducted by the execution officers instead of the doctor.

In the decision, the Court did not consider whether the elements on the practice of strip search in article 46 of CHTIHT were met according to the conditions of the incident, whether the applicants’ search constitutes a violation of the prohibition of torture and ill-treatment as alleged, and whether the strip search practiced by the doctor in accordance with the legislation. Again, the decision does not include whether there is a document or report with the identities of the searchers and the search results, and the reason for the strip search is recorded and whether documents are containing written rules on the search in the penal institution, and whether the written rules, if any, were considered during the investigation phase.²⁷⁴

The records kept by the administration regarding its practices can be used as a means of proof as well as the records that have not been kept.²⁷⁵

While the court decided that *“the substantive dimension of the prohibition of ill-treatment was not violated”* and there is no need to *“examine the allegations regarding the violation of the procedural*

dimension separately”, the Court also considered the absence of requests and complaints, and the minutes of the meetings with the lawyers and the members of the monitoring boards and the statements and the testimonies to the judicial authorities. This situation shows once again the importance of detailed interviews with children and recording them. According to the decision, the applicant stated that a strip search was practiced in the report prepared after M.H.A. meets with his lawyer on the day after the incident. To file complaints on such allegations²⁷⁶ and the “continuity”²⁷⁷ and “stability”²⁷⁸ of the allegations has significant importance in terms of evidence. In addition, including the footage of the areas where the search practiced to the file and the witness statements may change the course of such cases. The guiding questions regarding the evidence of the body search process are included under the heading “Evidence Regarding the Body Search” in Section 3.

3.3 General Review

At the end of the trial, the Constitutional Court ruled dismissal in respect of M.K.’s case due to the death of the applicant after the application.²⁷⁹ Regarding the applicants H.B. and F.E.’s application; the Court examined their application separately since they did not complain during the investigation phase. The Court considered although they did not complain, ex officio investigations was necessary. The Court ruled, their complaints also should be examined by considering the rejection of the appeal filed by the applicant’s attorney against the decision of no grounds for prosecution by the Chief Public Prosecutor’s Office without examining whether the applicants complained or not.²⁸⁰

The Constitutional Court ruled that the prohibition of ill-treatment guaranteed in the third paragraph of Article 17 of the Constitution was not violated in terms of substance regarding the application. The Court ruled for one of the applicants (H.B.) that the prohibition of ill-treatment guaranteed in the third paragraph of Article 17 of the Constitution was not violated in terms of procedure.

With regards to other applicants, the Court decided that the prohibition of ill-treatment guaranteed in the third paragraph of Article 17 of the Constitution has been violated in terms of procedure, and concluded that the following matters should be examined:²⁸¹

- The applicants were beaten in areas without a camera after being taken under control,
- They were kept in the observation room with their hands and feet handcuffed,
- They sent late for medical examination,
- The report was lack of the facts.

The Constitutional Court concluded the remedy as re-investigation and non-pecuniary damages.²⁸²

Until this part of the report, the process of investigating the allegations of torture and ill-treatment has been discussed in line with the purpose of the study. Finally, the “subsidiarity principle” and “full examination power” regarding the Constitutional Court’s examination of the allegations will be discussed.

The Constitutional Court can be applied with the unconstitutionality claim within the scope of individual application; and the ECHR can be applied with the claim of violation of the European Convention on Human Rights and the additional protocols. Both ECHR and the Constitutional Court emphasizes in its decisions that they have no “*duty to determine a fact regarding someone’s guilt or inno-*

cence”²⁸³. For this reason, while exhausting the remedies, the allegations regarding the substantive dimension of the violations should be concretized, clearly and explicitly explained, and evaluated regarding which right is violated in the Constitution and the Conventions on a case-by-case basis. This has crucial importance in terms of determinations regarding concrete events. The Constitutional Court considers that, although the findings of the domestic courts do not bind the Constitutional Court, *“there should be strong reasons to separate from the findings of these courts regarding the facts under normal conditions”*.²⁸⁴

Although the Constitutional Court has the authority to conduct a *“full examination”*²⁸⁵ regarding the alleged violation of the prohibition of torture and ill-treatment regulated by Article 17 of the Constitution, the Court generally follows the principle of *“all of the administrative and judicial remedies regarding the alleged transaction, action or negligence must have been exhausted before the individual application can be made.”*²⁸⁶ the principle of subsidiarity (principle of subsidiarity).²⁸⁷

The Constitutional Court seeks the allegations of ill-treatment to be expressed to the investigating authorities and *“supported by appropriate evidence”*²⁸⁸. Under the consideration of the applications regarding the violation of the right to life and the torture and prohibition of ill-treatment, the courts have stated in principle that the Constitutional Court will conduct *“full examination”*²⁸⁹ and the ECHR will conduct *“particularly thorough scrutiny”*.²⁹⁰ Although the Court did not clearly state how this examination should be conducted and its limits, it stated that *“the Court should be very careful in cases where it is inevitable to fulfill the role of first instance court due to the conditions of some cases”*²⁹¹. Even in such cases, the Court stated that to assess the evidence is the duty of the instance courts as a rule, and that *“the duty of the Constitutional Court is not to replace the assessment of these courts with their evaluation of the facts”*²⁹², *“criminal law responsibility should be separated from the Constitution and international law responsibility”*²⁹³ and the Court emphasized that it will conduct an investigation limited with the *“responsibility of international and Constitutional law”*²⁹⁴. In this context, the Constitutional Court emphasized that it isn't the Court's *“duty to decide findings regarding guilt or innocence in the context of criminal liability”*.²⁹⁵ This emphasis is important in terms of evaluating the authority of the Constitutional Court to *“conduct all kinds of research and investigation to see whether a fundamental right is violated while examining individual applications”*²⁹⁶ and *“to request from the relevant persons' information, documents and evidence considered necessary on the application”*²⁹⁷. When the applicants cannot submit certain parts of the documents based on their allegations, they should indicate this separately in the application form. At the same time, they should convincingly explain why they could not access them and bring the importance of the information and documents in question in revealing violations of rights to the Court's attention.²⁹⁸

The Constitutional Court did not practice its authority *“to conduct any kind of research and examination”* and *“to request the necessary information, documents and evidence from the relevant persons”*, as in line with the *“full examination”* principle in its decision of F.E. and Others. The Court concluded violation in terms of procedural dimension and decided *“re-investigation in order to eliminate the consequences caused by the violation of the prohibition of ill-treatment”*²⁹⁹.

In the guide titled *“Prisoner Rights”* prepared by the ECHR, the approach of the ECHR to submitting and collecting evidence is explained as follows: *“Moreover, in Muršić, §§ 127-128, the Court clarified the methodology for its assessment of conditions of detention cases. In particular, the Court stressed that it is particularly mindful of the objective difficulties experienced by applicants in collecting evidence to substantiate their claims about conditions of their detention. However, applicants must provide a detailed and consistent account for the complained facts. In certain cases applicants are able to provide at least some evidence in support of their complaints. The Court has considered as*

*evidence, for example, written statements by fellow inmates or if possible photographs provided by applicants in support of their allegations.*³⁰⁰ This statement could be considered as a guide for the studies on allegations of torture and ill-treatment.

As stated in the introduction, the purpose of this study is not to assess the court decision. Therefore, the evidence was dealt with first, and then the allegations, in accordance with the purpose and without entering into a dispute over the appropriateness of the court's assessment. Thus, the issues on collecting evidence that should be taken into consideration were focused as much as possible. In other words, this study tried to emphasize what needs to be considered for the complete and full handling of the the facts before the individual application phase.



As a result, to ensure an effective fight against violations of rights, for everyone who has a role and responsibility in the process to have expertise in their field and carefully fulfill the responsibility required by their profession is significant. The fact that the monitoring studies cover the whole process will support the fulfillment of the expertise and diligence obligation.

Footnotes

- ¹ See Constitutional Court, Gökhan Gündüz No. 2017/32051 03.11.2020 para.56
- ² See Constitutional Court, Gökhan Gündüz No. 2017/32051 03.11.2020 para.57
- ³ See Constitutional Court, Gökhan Gündüz No. 2017/32051 03.11.2020 para.57
- ⁴ See Constitutional Court, Serdar Avcı No. 2015/19474 09.01.2020 para.43
- ⁵ See Constitutional Court, Gökhan Gündüz No. 2017/32051 03.11.2020 para.59
- ⁶ See Constitutional Court, Gökhan Gündüz No. 2017/32051 03.11.2020 para.58
- ⁷ See Constitutional Court, Serdar Avcı No. 2015/19474 09.01.2020 para.44
- ⁸ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.7-19
- ⁹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.92
- ¹⁰ See HRIT, Sincan Prison Survey Report (10.07.2014) p.4 – 5
- ¹¹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.105
- ¹² See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.54
- ¹³ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.55 – 56
- ¹⁴ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.84, 85, 86, 94, 133
- ¹⁵ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.58
- ¹⁶ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.57 – 65
- ¹⁷ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.20 – 48
- ¹⁸ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.49 – 50
- ¹⁹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.55, 62; HRIT, Sincan Prison Survey Report p.32 - 53
- ²⁰ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.94
- ²¹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.62
- ²² See HRIT, Sincan Prison Survey Report p.16 – 18
- ²³ See HRIT, Sincan Prison Survey Report p.17 – 18
- ²⁴ See HRIT, Sincan Prison Survey Report p.53 – 54
- ²⁵ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para. 20 – 48
- ²⁶ See (10) Statement Evidence p. 84 “Information recommended to be obtained from child victims under the Istanbul Protocol”
- ²⁷ See (10) Statement Evidence p. 81 “The following procedures should be considered while preparing and during the interview”.
- ²⁸ See, (7) Medical Evidence p. 57 “General Information Required When Making Requests for Medical Evidence”
- ²⁹ See (10) Statement Evidence p. 81
- ³⁰ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.50-51.
- ³¹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.149
- ³² See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.150
- ³³ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.50
- ³⁴ See Guidance on the case law of the ECHR, ECHR 31.12.2019 para.99
- ³⁵ See Guidance on the case law of the ECHR, para.100
- ³⁶ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.88, 138, 149; HRIT, Sincan Prison Survey Report p.63
- ³⁷ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.50
- ³⁸ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.50

MONITORING RIGHTS IN CASES RELATED TO CHILDREN A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

- ³⁹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para. 60
- ⁴⁰ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.150
- ⁴¹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.151
- ⁴² See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.153
- ⁴³ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.137
- ⁴⁴ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.10
- ⁴⁵ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.12
- ⁴⁶ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.12
- ⁴⁷ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.12
- ⁴⁸ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.14
- ⁴⁹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.14
- ⁵⁰ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.14
- ⁵¹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.16
- ⁵² See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.16
- ⁵³ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.127
- ⁵⁴ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.132
- ⁵⁵ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.137
- ⁵⁶ See (7) Medical Evidence p. 58 “Is the report including consistency assessment?”
- ⁵⁷ See (7) Medical Evidence p. 59 “Supporting evidence that can be used regarding medical evidence”
- ⁵⁸ See (7) Medical Evidence p. 58
- ⁵⁹ This comparison has been made based on assumptions as an example. In order for such a comparison to be conducted properly, to have full knowledge of the evidence in the file is necessary.
- ⁶⁰ See HRIT, Sincan Prison Survey Report, p.29
- ⁶¹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para. 50
- ⁶² See HRIT, Sincan Prison Survey Report, p.34
- ⁶³ See HRIT, Sincan Prison Survey Report, p.50
- ⁶⁴ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.50
- ⁶⁵ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.88
- ⁶⁶ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.88, 138, 149; HRIT, Sincan Prison Survey Report p.63
- ⁶⁷ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.149
- ⁶⁸ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.149
- ⁶⁹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para. 25
- ⁷⁰ See HRIT Sincan Prison Survey Report, p.73
- ⁷¹ See HRIT Sincan Prison Survey Report, p. 21
- ⁷² See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.49; HRIT, Sincan Prison Survey Report, p.22
- ⁷³ See (7) Medical Evidence p.58
- ⁷⁴ See Regulations on Physical Examination, Molecular Genetic Examinations and Physical Identification Art.20 Official Gazette 25832 – 01.06.2005
- ⁷⁵ See CGTIHK Art.21(1)
- ⁷⁶ See (9) Video Footage, p. 70 – 78
- ⁷⁷ See (10) Statement Evidence, p.79 – 88
- ⁷⁸ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.56

MONITORING RIGHTS IN CASES RELATED TO CHILDREN A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

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- ⁸¹ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.123
- ⁸² See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.124
- ⁸³ See HRIT Sincan Prison Survey Report p.67
- ⁸⁴ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.118.
- ⁸⁵ See Constitutional Court F.E and Others No. 2014/15586, 23.01.2019 para.84 - 86
- ⁸⁶ See CPT/Inf (2015)6
- ⁸⁷ See CPT/Inf (2013)
- ⁸⁸ See, (6) Evidence that can be obtained from the Internal Grievance Mechanism p.49 - 54
- ⁸⁹ See HRIT Sincan Prison Survey Report p.32
- ⁹⁰ See HRIT Sincan Prison Survey Report p.69
- ⁹¹ See HRIT Sincan Prison Survey Report p.68
- ⁹² See HRIT Sincan Prison Survey Report p.47
- ⁹³ See HRIT Sincan Prison Survey Report p.39
- ⁹⁴ See HRIT Sincan Prison Survey Report p.68
- ⁹⁵ See HRIT Sincan Prison Survey Report p.18, 63
- ⁹⁶ See (9) Video Footage p.73 *“Request discovery and participate in the discovery to determine the common areas and blind spots with or without cameras”.*
- ⁹⁷ See. (9) Video Footages p. *“Watch the video footage and compare it with the report to identify any gaps”.*
- ⁹⁸ See HRIT Sincan Prison Survey Report s.46
- ⁹⁹ See HRIT Sincan Prison Survey Report p.52
- ¹⁰⁰ See (9) Video Footage p. 73 *“Are there any cameras that were disabled, damaged, or broken at the time of the incident?”*
- ¹⁰¹ See Constitutional Court, Cem Kuru No. 2017/29874 14.10.2020 para.59
- ¹⁰² See Constitutional Court, Sevkan Aşan No. 2016/78468, 18.06.2020 para.46
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- ¹¹⁵ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.29
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MONITORING RIGHTS IN CASES RELATED TO CHILDREN A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

- ¹¹⁹ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.132
- ¹²⁰ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.132
- ¹²¹ See. **(6) Evidence that can be obtained from the Internal Grievance Mechanism** p. 52 *If the complaint is not recorded, examine other evidence such as psycho-social service records, letters, audit reports, statements of family members.* “
- ¹²² See, **The Constitutional Court F.E and Others** No. 2014/15586, 23.01.2019 para.88
- ¹²³ If the article related to the demand was not found appropriate for examining or acceptable in terms of substantive dimension regarding the violation of the prohibition of ill-treatment, “-”, the procedural dimension and the regulation violated are shown by giving the relevant paragraph number.
- ¹²⁴ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.94
- ¹²⁵ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.122
- ¹²⁶ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.94
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- ¹³³ See CGTHIK Art.46
- ¹³⁴ See ECHR, *Boumar v. Belçika* No. 9106/80 29.02.1988 para.52
- ¹³⁵ See **(10) Statement Evidence** p.81 *“Control the following procedures while preparing for the interview and during the interview.”*
- ¹³⁶ See HRIT Sincan Prison Survey Report p.25
- ¹³⁷ See HRIT Sincan Prison Survey Report p.28
- ¹³⁸ See the evaluations under the title of “In terms of Observation (Kept in the Room) Incident”,
- ¹³⁹ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.127
- ¹⁴⁰ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.120
- ¹⁴¹ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.121
- ¹⁴² See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.121
- ¹⁴³ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.93
- ¹⁴⁴ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.121
- ¹⁴⁵ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.121
- ¹⁴⁶ See **(4) Evidence regarding Authority to Use Force** p.36 *“Request internal documents regulating the authority to use force ”.*
- ¹⁴⁷ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.127
- ¹⁴⁸ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.125
- ¹⁴⁹ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.43
- ¹⁵⁰ See HRIT Sincan Prison Survey Report p. 34, the analyze of the footages between 16:20-16: 22 of the camera named “CAM 04”
- ¹⁵¹ See HRIT Sincan Prison Survey Report p. 40, the analyze of the footages between 16:49-16:55 of the camera named “CAM 15”
- ¹⁵² See HRIT Sincan Prison Survey Report p. 40, the analyze of the footages between 16:49-16:55 of the camera named “CAM 15”
- ¹⁵³ See HRIT Sincan Prison Survey Report p. 42, the analyze of the footages between 16:49-16:58 of the camera named “CAM 15”
- ¹⁵⁴ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.40
- ¹⁵⁵ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.115 – 128
- ¹⁵⁶ See ECHR *Giulliani and Gaggio v. Italy*, No. 23458/02, 24.03.2011, para.183 – 196
- ¹⁵⁷ See HRIT Sincan Prison Survey Report p.60, Also, for HRIT’s recommendations on personnel, see. 78

MONITORING RIGHTS IN CASES RELATED TO CHILDREN A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

- ¹⁵⁸ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.118
- ¹⁵⁹ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.124
- ¹⁶⁰ See HRIT Sincan Prison Survey Report p.32 – 53
- ¹⁶¹ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.12
- ¹⁶² See. HRIT Sincan Prison Survey Report p. 32 – 33 , the analyze of the footages between 16: 06-16: 22 of the camera named “CAM 04”
- ¹⁶³ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.23, 24, 26
- ¹⁶⁴ See HRIT Sincan Prison Survey Report p.38, 44, 45, 48
- ¹⁶⁵ See HRIT Sincan Prison Survey Report p.77
- ¹⁶⁶ See HRIT Sincan Prison Survey Report p.44
- ¹⁶⁷ See HRIT Sincan Prison Survey Report p.38
- ¹⁶⁸ See. (1) Evidence Regarding the Training and Competence of the Employees, p. 15 “Request the institution’s personnel policy”.
- ¹⁶⁹ See. (1) Evidence Regarding the Training and Competence of the Employees p. 15 “Request evidence officers’ involved in the incident”.
- ¹⁷⁰ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.15
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- ¹⁷⁴ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.17
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MONITORING RIGHTS IN CASES RELATED TO CHILDREN
A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

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- ²¹³ See Constitutional Court, F.E and Others No. 2014/15586, 23.01.2019 para.23, 24
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- ²²⁴ See, (7) Medical Evidence p. 58 “Is the report includes consistency evaluation?”
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- ²²⁷ See HRIT Sincan Prison Survey Report p.26
- ²²⁸ See HRIT Sincan Prison Survey Report p.26
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MONITORING RIGHTS IN CASES RELATED TO CHILDREN A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

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MONITORING RIGHTS IN CASES RELATED TO CHILDREN
A METHOD RECOMMENDATION TORTURE AND ILL-TREATMENT

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International Standards

Organ	Abbreviation Used Within the Text	Title
European Council	European Committee on Crime Problems Guiding Principles	Guidelines Regarding Recruitment, Selection, Education, Training and Professional Development of Prison and Probation Staff, CM (2019)111
	European Prison Rules	Recommendation Rec (2006)2, The Prison Rules
		<p>CPT General Reports</p> <ul style="list-style-type: none"> - 3rd General Report [CPT / Inf (1993) 12] - 9. General Report [CPT / Inf (1999) 12] - 10. General Report [CPT / Inf (2000) 13] - 14. General Report [CPT / Inf (2004) 28] - 23rd General Report [CPT / Inf (2013) 29] - 24th General Report [CPT / Inf (2015) 1] - 27th General Report [CPT / Inf (2018) 4] <p>CPT Country Reports:</p> <ul style="list-style-type: none"> - Turkey CPT / Inf (2013) 27 - Turkey CPT / Inf (2015) 6 - Norway CPT / Inf (2019) 1 - Romania CPT / Inf (2019) 7 - Armenia CPT / Inf (2019) 16 - Slovak Republic CPT / Inf (2019) 20 - Denmark CPT / Inf (2019) 35 - Italy CPT / Inf (2020) 2 - Turkey CPT / Inf (2020) 22 - Turkey CPT / Inf (2020) 24 - Moldova CPT / Inf (2020) 27
	Recommendation on Juvenile Offenders	Recommendation CM/Rec(2008)11 on the European Rules for Juvenile Offenders
Documents of United Nations		Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Recommended by General Assembly resolution 55/89
		CAT, General Comment No.2, "Implementation of Article 2 by States Parties.
		General comment (2006)8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia)
	CRC	General comment (2007)10: Children's Rights in Juvenile Justice
		General comment (2011)13: The right of the child to freedom from all forms of violence
		General comment (2016)24: Children's Rights in the Child Justice System
	Beijing Rules	Standard Minimum Rules for the Administration of Juvenile Justice
	CRC	Convention on the Rights of the Child
Havana Rules	Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)	

GUIDING QUESTIONS AND INDICATORS
REGARDING THE EFFICIENT INVESTIGATION AND PROSECUTION OF ILL-TREATMENT
AGAINST JUVENILE PRISONERS DURING THE PENALTY EXECUTION PROCESS

Documents of United Nations	Istanbul Protocol	The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
	Convention Against Torture	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
		Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/31/57, 5 January 2016
	Bangkok Rules	Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
	Mandela Rules	Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela)
	CCPR	Covenant on Civil and Political Rights
		Code of Conduct for Law Enforcement Officials
The World Medical Association (WMA)		"Statement on Body Searches of Prisoners"

Code of Ethics and Professional Conduct

Metin İçinde Kullanılan Kısaltması	Başlık
Council of Europe Code of Ethics for Prison Staff	Recommendation CM/Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff
	Bangalore Principles of Judicial Conduct
	UN Guidelines on the Role of Prosecutors-Havana Rules
	CCBE Code of Conduct for European Lawyers
	"Court of Cassation Public Prosecutors Ethical Conduct Principles
	Turkish Bar Association, The Attorneys' Code of Ethics
Medical Ethics for the Role of Physicians	Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
	TMA, the Code of Medical Ethics
	TMA, Declaration of Medicine and Human Rights
	TMA, Declaration relating to Persons Deprived of Their Liberty
	WMA, Declaration of Tokyo
	WMA, Declaration of Malta
	UN, Istanbul Protocol

GUIDING QUESTIONS AND INDICATORS
REGARDING THE EFFICIENT INVESTIGATION AND PROSECUTION OF ILL-TREATMENT
AGAINST JUVENILE PRISONERS DURING THE PENALTY EXECUTION PROCESS

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Ashot Harutyunyan v. Armenia No. 34334/04 15.06.2010
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Cobzaru v. Romania No. 48254/99, 26.07.2007
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GUIDING QUESTIONS AND INDICATORS
REGARDING THE EFFICIENT INVESTIGATION AND PROSECUTION OF ILL-TREATMENT
AGAINST JUVENILE PRISONERS DURING THE PENALTY EXECUTION PROCESS

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GUIDING QUESTIONS AND INDICATORS
REGARDING THE EFFICIENT INVESTIGATION AND PROSECUTION OF ILL-TREATMENT
AGAINST JUVENILE PRISONERS DURING THE PENALTY EXECUTION PROCESS

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GUIDING QUESTIONS AND INDICATORS REGARDING THE EFFICIENT INVESTIGATION AND PROSECUTION OF ILL-TREATMENT AGAINST JUVENILE PRISONERS DURING THE PENALTY EXECUTION PROCESS

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