



TURKEY TRIBUNAL

Because Silence is the Greatest Enemy of
Fundamental Human Rights

Impunity in Turkey Today

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in collaboration with



**INTERNATIONAL
OBSERVATORY
HUMAN RIGHTS**

Executive Summary

Impunity in Turkey Today

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This report addresses the persistent problem of impunity in Turkey in respect of serious human rights violations committed by state officials. More particularly, it aims to provide answers to two overarching questions:

- I. Is there an internal system of preventing and monitoring torture or mistreatment, and if yes, how does it function in reality?
- II. Is there an efficient system of sanctioning possible torture or mistreatment, or can we speak of an organised impunity towards torture or mistreatment against people held in detention?

The findings of the report shed a clear light on the prevailing impunity problems in Turkey. The pervasive culture and overwhelming legacy of impunity for serious human rights violations lasted through the 1980s in the aftermath of the 12 September 1980 military coup and through the 1990s in the context of the Kurdish ‘Troubles’ in the Eastern and Southeastern part of Turkey. Despite some of the most flagrant human rights abuses against the Kurdish people, including systematic torture, kidnapping, enforced disappearances, extra-judicial killings, the Turkish state authorities showed no willingness to react to these grave human rights violations. The entrenched practice of impunity and the allegations of torture and ill-treatment have reached unprecedented levels in more recent years, especially the period that started after the 7 June 2015 parliamentary elections and continued until the aftermath of the 15 July 2016 attempted coup. Despite increasingly persistent allegations, rare formal investigations and prosecutions continue to create a strong perception of impunity for acts of torture and other forms of ill-treatment.

The report concludes that the impunity in Turkey has virtually become the norm, as far as the human rights violations committed against individuals state officials are concerned.

As highlighted throughout the report, the impunity issue is emblematic of many structural and inextricably intertwined problems in Turkey. In this regard, each problem is either a result or a cause of one another – factors that cumulatively contribute to the entrenched culture/practice of impunity. The report identifies (some of these) factors as follows:

- (a) Gaps in the legal structure
- (b) Political rhetoric reinforcing patterns of impunity
- (c) Lack of political will to hold state officials/agents accountable
- (d) Ineffective and delayed investigations by prosecutors; and finally
- (e) Complicit judiciary

In short, the report provides a chilling reminder of the organised, institutionalised and entrenched impunity problem in Turkey. It urges the Turkish authorities to combat effectively the impunity of state officials for serious human rights violations by conducting adequate, effective and independent investigation and a fair trial, on the basis of which perpetrators face justice, but whether that will become reality nonetheless remains very uncertain.

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1. Introduction

This report, written for the Turkey Tribunal, addresses the persisting problem of impunity in Turkey in respect of serious human rights violations. More particularly, it aims to provide answers to two overarching questions:

- I. Is there an internal system of preventing and monitoring torture or mistreatment, and if yes, how does it function in reality?
- II. Is there an efficient system of sanctioning possible torture or mistreatment, or can we speak of an organised impunity towards torture or mistreatment against people held in detention?

Some methodological points are in order. For the purposes of this report, we define impunity as

“the impossibility, *de jure* or *de facto*, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings.”¹

Immunity may be caused or facilitated by many systematic factors, including the lack of appropriate legal mechanisms and the failure of states to react to, and investigate serious human rights violations. As used in this report, “serious human rights violations”² encompass grave breaches of internationally protected human rights that are crimes under international law and/or that require States to penalise, such as torture, enforced disappearance, extrajudicial, summary or arbitrary execution.³ Under international law, States are under an obligation to “combat impunity

¹ United Nations, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005.

² Throughout the report, terms such as ‘gross’, ‘grave’, ‘flagrant’, ‘systematic’ and ‘widespread’ will be used interchangeably.

³ For a detailed account on the definitional question of what constitutes a serious violation of human rights law, See Takhmina Karimova, ‘What amounts to ‘a serious violation of international human rights law’?’, Academy Briefing No. 6, Geneva Academy of International Humanitarian Law and Human Rights, August 2014, available at <https://repository.graduateinstitute.ch/record/295203?ln=en>.

In his working paper to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Chernichenko explains that “[t]he main point of declaring gross and large-scale human rights violations ordered or sanctioned by a Government to be international crimes is to highlight the fact that the responsibility of the State cannot be kept separate from the criminal responsibility of the individuals who perpetrate such violations”. See, ‘Definition of Gross and Large-scale Violations of Human Rights as an International Crime’, Working Paper submitted by Mr Stanislav Chernichenko in accordance with Sub-Commission Decision 1992/109, UN doc. E/CN.4/Sub.2/1993/10, 8 June 1993, para. 42.

as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system.”⁴

In general, the report addresses the issue of impunity for crimes of torture and ill-treatment as well as use of deadly force, which are allegedly committed by the Turkish security forces. Additionally, and where appropriate, the report also mentions other types of impunity for crimes of enforced disappearances and extrajudicial killings, which are believed to be perpetrated by state agents. It draws upon information collected from an assessment of relevant legal provisions and court cases, statements by the Turkish authorities, detailed reports of intergovernmental organisations and human rights NGOs and a survey of relevant literature/research on impunity issues.

In terms of the report’s time frame, the particular focus will be on recent years, especially the period after the 7 June 2015 parliamentary elections, which led the ruling Justice and Development (AKP) Government to scrap a two year peace process with the PKK (Kurdistan Workers’ Party - *Partiya Karkerên Kurdistanê*) and which continued in the aftermath of the 15 July 2016 attempted coup, while reference will also be made to the overwhelming legacy of impunity for mass human rights violations in Turkey in the aftermath of the 12 September 1980 military coup and throughout the 1990s in the context of the Kurdish ‘troubles’ in the Eastern and Southeastern part of Turkey. The report zooms in on three recent cases of impunity with special emphasis on more recent years. These are the most widely reported, exemplary cases of the torture and killing.

- **Case 1:** The killing of Gokhan Acikkollu
- **Case 2:** The notorious torture incidents that took place in Urfa
- **Case 3:** Torture incidents in Ankara

The report also includes two annexes:

- **Annex I** details (the outcomes of) many court cases especially from 1990 onwards.
- **Annex II** provides a table based on the official judicial statistics on Article 94 (torture), Article 95 (severe torture) and Article 96 (torment / deliberate injury – not amounting to

⁴ Directorate General of Human Rights and Rule of Law (COE), Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations, Provision I. (‘The need to combat impunity’) p. 7.

torture) of the Turkish Criminal Code released by the Turkish Ministry of Justice for the years between 2013 and 2018.

2. The Legacy of Impunity in Turkey: Past and Present

In the aftermath of the 1980 military coup, martial law was extended throughout the country and until 1983 and Turkey was governed under repressive military rule, leading to devastating consequences for human rights. As an illustration, more than half a million people were arbitrarily detained on political grounds and thousands were subjected to widespread torture and mistreatment.⁵ Additionally, more than two hundred extrajudicial killings and fifty court-ordered executions occurred during that era.⁶ Despite these massive numbers, in a provisional article the 1982 Turkish Constitution adopted under the military rule provided full immunity to the leaders of the military coup, as well all as military-public officials, from any form of prosecution.⁷ This provision was revoked in the 2010 referendum and criminal cases were initiated in respect of the 1980 coup leaders, including Kenan Evren and Tahsin Sahinkaya, in 2012. They were later convicted of crimes against the state for setting the stage for the army intervention and for conducting the 1980 coup, and sentenced to life imprisonments in 2014, but both defendants died during the appeal procedure.⁸

This pervasive culture of impunity lasted through the late 1980s and 1990s. At that time, Turkish state security forces and the PKK engaged in violent confrontations, at times verging on full-scale warfare. A state of emergency was thus declared where the fighting between Turkish state forces and the PKK was most intense.⁹ Regional governors in each emergency province and in the adjacent provinces, with all private and public security forces under their command, were

⁵ 1,683,000 persons were investigated, with 650,000 detained and 52,000 charged; 30,000 persons were removed from their positions; and 14,000 persons lost their citizenship. See, “12 Eylül Darbesinin Korkunç Bilançosu” (The horrendous tool of 12 September) *BIRGUN News*, 10 May 2015, available at <https://www.birgun.net/haber-detay/12-eylul-darbesinin-korkunc-bilancosu-78576.html>.

⁶ Amnesty International, *Turkey: Human Rights Denied*, London, 1988, p. 1.

⁷ See the Provisional Article 15 of the 1982 Turkish Constitution.

⁸ See, ‘Kenan Evren, 97, Dies; After Coup, Led Turkey With Iron Hand’ *The New York Times*, 9 May 2015 available at <https://www.nytimes.com/2015/05/10/world/europe/kenan-evren-dies-at-97-led-turkeys-1980-coup.html>

⁹ Turkey, Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms Notification (ETS No.5), 6 August 1990, available at <http://www.coe.int/en/web/conventions/search-on-reservations-and-declarations/>.

responsible for taking any and all necessary measures under the state of emergency regime.¹⁰ These ‘quasi-martial law’ exceptional powers included the authority to impose curfews, to prohibit persons whose activities were deemed detrimental to public order from entering the concerned region, and to evacuate villages.¹¹ The exercise of arbitrary and sweeping powers by the Turkish state agents resulted in the most flagrant human rights abuses against the Kurdish people, including systematic torture, kidnapping, enforced disappearances, extra-judicial killings, forced evacuation of villages, destruction of homes and similar human rights infringements.¹² Alas, the state authorities showed no willingness to react to these grave human rights violations. One of the fundamental (*de jure*) reasons for this is that the decrees adopted in this period also provided full immunity to the regional governors for all actions taken¹³, lacking any mechanism for impartial judicial review. As such, the protection of human rights became increasingly fraught with difficulty to deliver in practice in Turkey.

Against this backdrop, the European Court of Human Rights (ECtHR) examined a large number of applications alleging grave human rights violations, including torture, extrajudicial killings and enforced disappearances that arose out of state officials’ activities in the 1990s in Turkey’s Kurdish southeastern region. The Court has repeatedly found Turkey violating the European Convention on Human Rights (ECHR) in over 175 cases concerning the right to life (Art. 2), the freedom from torture, inhuman and degrading treatment or punishment (Art. 3), the right to liberty and security (Art. 5), the right to a fair trial (Art.6), the right to an effective remedy (Art. 13) and the protection of property (Art. 1 of Protocol No.1).¹⁴ The findings of the ECtHR in these cases shed clear light

¹⁰ The Legislative Decree on the Establishment of a State of Emergency Special Governor, No. 285, 10 July 1987. By Decree No. 285, a state of emergency was initially declared in eight provinces: Bingol, Diyarbakir, Elazig, Hakkari, Mardin, Siirt, Tunceli and Van.

¹¹ See generally Decree no. 285 of 1987; Decree no 424 of 1990 and Decree no. 425 of 1990.

¹² As Amnesty International’s 1996 Report clearly expresses, “[r]epression has long been the response to security problems in Turkey, but in 1991 certain elements in the security forces went even further. They stepped outside the law and began to wage a full-scale dirty war. An unprecedented wave of political murder swept through the southeast...” Amnesty International, *Turkey: No security without human rights*, London - October 1996, p. 20, available at <https://www.amnesty.org/en/documents/EUR44/084/1996/en/>.

¹³ See Article 8 of Decree 430 of 16 December 1990 which states: “No criminal, financial or legal responsibility may be claimed against the State of Emergency Regional Governor or a Provincial Governor within a state of emergency region in respect of their decisions or acts connected with the exercise of the powers entrusted to them by this decree, and no application shall be made to any judicial authority to this end.” See also, Article 5 and 7 of Decree No. 413.

¹⁴ See cases concerning the actions of the Turkish security forces bundled into four groups of cases: Aksoy group of cases (287 cases), Bati group of cases (117), Erdoğan and Kasa group of cases (30). The Committee of Ministers decided to close the issue in 2008 on the ground that the follow-up steps taken by the Turkish state authorities were deemed satisfying to guarantee efficient and adequate investigations. See, Interim Resolution CM/ResDH (2008) 69, Committee of Ministers, Council of Europe, 18 September 2008. See also Ataman group of cases (46 cases) that involve excessive force used during public demonstrations, most cases also concerning the issue of ineffectiveness of investigations under Articles 2, 3 and 13 of the ECHR.

on the prevailing impunity problems in Turkey. In almost all cases before the Court, the Turkish Government completely and repeatedly denied all sorts of atrocities conducted by its agents against the Kurdish population. In turn, the Court has consistently found that the Turkish state authorities failed to conduct a thorough and effective investigation into the incidents (procedural element of Art.2 ECHR) arising from a great many factors, including the reluctance to seek evidence/statements from complainants¹⁵ and witnesses¹⁶; the failure to collect material evidence from the crime scene¹⁷; the ban on complainants' access to the investigation file¹⁸; the lack of the necessary information in post-mortem examinations (autopsies) required to enable a meaningful conclusion¹⁹; the laxity in investigation of offenses (mostly on the part of Turkish prosecutors)²⁰; and finally, the non-prosecution and non-competence verdicts in the absence of evidence²¹. In many other cases, the Court considered that the sufferings of the relatives of forcibly disappeared persons caused by their disappearance constituted a breach of the prohibition of inhuman treatment contrary to Article 3 ECHR.²²

In the last decade, the Turkish Government has taken some legal and institutional steps²³ with a view to giving effect to the ECtHR's judgments, and in response to shortcomings identified by the

¹⁵ *Akdeniz and others v. Turkey*, App. No. 23954/94 (ECtHR, 31 May 2001) para. 91; *Ikincisoy v. Turkey*, App. No. 26144/95 (ECtHR 27 July 2004) para. 78; *Nesibe Haran v. Turkey*, App. No. 28299/95 (ECtHR, 6 October 2005) para. 77.

¹⁶ See inter alia *Kurt v. Turkey*, App. No. 24276/94 (ECtHR 25 May 1998) para. 106; *Mahmut Kaya v. Turkey*, App. No. 22535/93 (ECtHR, 28 March 2000) para. 106; *Ipek v. Turkey*, App. No. 25760/94, (ECtHR, 17 February 2004), para. 176; *Türkoğlu v. Turkey*, App. No.34506/97, (ECtHR17 March 2005) para. 126.

¹⁷ *Nuray Şen v. Turkey*, App. No. 25354/94, (ECtHR, 20 March 2004) para. 177; *Ipek v. Turkey*, App. No. 25760/94, (ECtHR, 17 February 2004) para. 176; *Şeker v. Turkey*, App. No. 52390/99 (ECtHR, 21 February 2006) para. 73.

¹⁸ *Çakıcı v. Turkey*, App. No. 23657/94 (ECtHR, 8 July 1999) paras. 112-113; *Koku v. Turkey*, App. No. 27305/95, (ECtHR, 31 May 2005) para. 157.

¹⁹ *Tepe v. Turkey*, App. No. 27244/95 (ECtHR, 9 May 2003) para. 18; *Ikincisoy v. Turkey*, App. No. 26144/95 (ECtHR, 27 July 2004) para.78.

²⁰ *Tekdağ v. Turkey*, App. No. 27699/95 (ECtHR, 15 January 2004) para. 80. *Osmanoğlu v. Turkey*, App. No. 48804/99 (ECtHR, 24 January 2008) para. 91.

²¹ *Mahmut Kaya v. Turkey*, App. No. 22535/93 (ECtHR, 28 March 2000) para.103.

²² *Günay and others v. Turkey*, App. No. 51210/99 (ECtHR, 21 October 2008) paras. 103-104; *Osmanoğlu v. Turkey*, App. No. 48804/99 (ECtHR, 24 January 2008) paras. 97-98; *Enzile Ozdemir v. Turkey*, App. No. 54169/00 (ECtHR, 8 January 2008) paras. 64-65; *Canan v. Turkey*, App. No. 39436/98 (ECtHR, 26 June 2007) para. 84; *Taniş and others v. Turkey*, App. No. 65899/01 (ECtHR, 2 August 2005) para. 124; *Ipek v. Turkey*, App. No. 25760/94 (ECtHR, 17 February 2004) paras. 182-183; *Orhan v. Turkey*, App. No. 25656/94 (ECtHR, 18 June 2002) paras. 359-360; *Çiçek v. Turkey*, App. No. 25704/94 (ECtH, 27 February 2001) paras. 173-174; *Timurtaş v. Turkey*, App. No. 23531/94 (ECtHR, 13 May 2000) paras. 96-98; *Kurt v. Turkey*, App. No. 24276/94 (ECtHR, 25 May 1998) paras. 133-134.

²³ In particular, the applicants were given the opportunity to claim compensation before a special compensation commission or before administrative courts on the basis of a new Law on Compensation of 2004 which provided a right to compensation on the grounds of the State's liability for losses caused in the fight against terrorism. This law supplemented and gave more precise effect to the State's liability for damages caused by administrative acts, as a special *lex temporalis*, stipulating that the provisions of this legislation were retroactively applicable to events taking place after 1987 and before 2004. See, Department for the Execution of Judgments of the ECtHR, Effective Investigation into Death and Ill-Treatment Caused by Security Forces, Thematic Factsheet, July 2020, available at <https://rm.coe.int/thematic-factsheet-effective-investigations-eng/16809ef841>. On a more general level, the AKP Government -largely owing to the official membership negotiations with the European Union- engaged in an ambitious program of legal reforms, which include the adoption of a new Turkish Penal Code, Law No 5237 and a new Code of Criminal Procedure Law No 5271 – both came into force on 1 June 2005, as well as considerable numbers of changes to a variety of laws. These changes provided greater safeguards for individuals in detention including such changes of significant reduction in detention periods and the right to immediate access to legal counsel etc. For a detailed analysis on the improvements and setbacks in the legal framework, see: Amnesty International, 'Turkey: The Entrenched Culture of Impunity Must End' 5 July 2007, available at <https://www.amnesty.org/download/Documents/64000/eur440082007en.pdf>.

Council of Ministers in its supervision of the execution of these judgments²⁴, but those “served merely a “band-aid” on prevailing impunity problems, rather than having a real impact on the ongoing investigative, prosecutorial and judicial practice”.²⁵ This is mainly due to the fact that these steps were not supported by diligent reaction and political will of the Turkish state authorities to hold state agents accountable. Accordingly, the mere formal adoption of legislative measures proved to be inadequate and inefficient, and there is still a huge accountability gap for grave and systematic human rights violations, which have occurred in the 1990s against Kurdish civilians. For instance, in his report of 2015, the then UN Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, Christof Heyns underlined that,

“the fight against impunity remained a serious challenge in Turkey...Vulnerable groups remain particularly at risk. The lack of fully independent mechanisms for accountability and the great challenges experienced in the judicial system feed into the practice as well as the perception of impunity in the country”.²⁶

Similarly, the UN Committee against Torture has repeatedly highlighted serious concerns “about a pattern of delays, inaction and otherwise unsatisfactory handling [...] of investigations, prosecutions and conviction of police, law enforcement and military personnel for violence, ill-treatment and torture offences”.²⁷ Such problem is most apparent in countless ‘acquittal, dismissal or non-prosecution’ verdicts at the Turkish domestic level as can be seen in detail in **Annex I**.

This problem has increasingly persisted in more recent years, especially in the aftermath of the June 2015 parliamentary elections, which led to the collapse of a two-year peace process with the PKK. Since July 2015, the Turkish Government has adopted a policy reminiscent of the violence

²⁴ See also footnote (n 14).

²⁵ Hafiza Merkezi & ECCHR, Monitoring Report (15 January 2016), para.8, available at https://hakikatadalethafiza.org/wp-content/uploads/2016/03/Rule-9-2-Communication-on-TurkeyJan.-2016-HM_ECCHR.pdf.

²⁶ Christof Heyns, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, Follow-up to country recommendations: Turkey, 6 May 2015, A/HRC/29/37/Add.4.

²⁷ See Concluding observations of the UN Committee against Torture, CAT/C/TUR/CO/3, 20 January 2011 and Concluding observations of the UN Committee against Torture, CAT/C/TUR/CO/4, 2 June 2016.

of the 1990s, which is marked by a campaign of counter-insurgency, the declaration of open-ended curfews and anti-terrorism operations that killed and displaced a large number of civilians²⁸ and caused destruction in the Kurdish region. Reports of severe human rights violations and violence by security forces have become commonplace over that period.²⁹ A particularly striking case concerns the killing of Hacı Lokman Birlik – a Kurdish militant whose body was filmed by the Turkish security officials as it was dragged behind a police car on the streets of Şırnak in October.³⁰

In the wake of the 15 July 2016 attempted coup, the entrenched practice of impunity and the allegations of torture and ill-treatment have reached an unprecedented level. On 15 July 2016, Turkey experienced an attempted military coup allegedly perpetrated by a faction within the Turkish army loyal to the so-called ‘Gülen Movement’³¹, leaving 246 killed and 2,194 wounded, and sending a shockwave through Turkish society. On 21 July 2016, the Turkish Government declared a nationwide State of Emergency pursuant to – then in force³² – Articles 119 to 121 of the Turkish Constitution and the 1983 Turkish State of Emergency Law. On the same day, referring to the failed coup and ‘other terrorist attacks’, it informed the Council of Europe (CoE) of its intention to derogate from ECHR pursuant to Article 15.³³ A similar notification was lodged with

²⁸ “According to official figures related to Sur (a district in Diyarbakir province of Turkey), for example, 22 000 persons were displaced for 50 terrorists rendered ineffective; a ratio of 440.” See, Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey, Council of Europe Commissioner for Human Rights, Comm.DH (2016) 39, 2 December 2016, para.28.

²⁹ International Crisis Group, A Sisyphean Task? Resuming Turkey-PKK Peace Talks, 17 December 2015, available at <https://d2071andvip0wj.cloudfront.net/b77-a-sisyphean-task-resuming-turkey-pkk-peace-talks.pdf>.

³⁰ Ibid, p.9.

³¹ The Gülen Movement – named after its exiled leader Fethullah Gülen – was originally regarded as a religious (liberal Islamist) organisation – see Bülent Aras and Ömer Çaha, ‘Fethullah Gulen and his liberal ‘Turkish Islam’ movement’ (2000) 4(4) Middle East Review of International Affairs 30. Since the 1990s, the movement had gained a wide support base in social, political and economic landscapes in Turkey and abroad, and developed into a broad transnational network of individuals and institutions, including educational establishments, cultural foundations and charities. With the rise to power of the AKP in 2002, the AKP and the Gülen Movement formed an alliance. Over time, the AKP’s political power reinforced the Gülen Movement’s social and bureaucratic power until this marriage (of convenience) ended and gradually turned into a fierce power struggle in late 2013 – see Hakkı Taş, ‘A history of Turkey’s AKP-Gülen conflict’ (2018) 23(3) Mediterranean Politics 395. The 15 July 2016 failed coup is widely believed to be the result of this struggle. While the group’s reach and activities largely remain a matter of speculation, Turkish authorities have for some time (prior to the 2016 coup) denounced what is termed the ‘Fetullahist Terrorist Organisation/Parallel State Structure’ (‘FETÖ/PDY’) as a threat to national security and an ‘armed terrorist organisation’ – see Turkey, ‘Memorandum prepared by the Ministry of Justice of Turkey for the visit of the delegation of the Venice Commission to Ankara on 3 and 4 November 2016 in connection with the emergency decree laws’, CDL-REF(2016)067, 23 November 2016, 5.

³² That framework used to enable the Turkish government to declare a state of emergency ‘in the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order’, and to adopt emergency decrees on ‘matters necessitated by the state of emergency’ (*sic*). On 16 April 2017, the Turkish people voted in favour of a package of constitutional amendments in the constitutional referendum, which *inter alia* established an executive presidential system. Under the amended Turkish Constitution, the power to declare a state of emergency now resides with the President of the Republic. See, Article 119 of the Turkish Constitution, as amended on April 16, 2017; Act No. 6771, available at https://global.tbmm.gov.tr/docs/constitution_en.pdf.

³³ See also Turkey, *Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms Notification* (ETS No.5), JH8187C TR/005-191 22 July 2016.

the United Nations pursuant to Article 4 of the International Covenant on Civil and Political Rights (ICCPR).³⁴ Since the initial declaration, the state of emergency was prolonged seven times for a total period of 24 months, until it was eventually lifted on 17 July 2018.³⁵

In the wake of the 21 July 2016 emergency declaration, the Turkish authorities adopted numerous emergency decrees,³⁶ introducing sweeping measures affecting a broad range of human rights. The numbers³⁷ are mind-boggling: more than 130,000 persons, including military personnel, police officers and teachers, were detained, and more than 90,000 people were charged. More than 3,000 institutions, including some 190 media outlets as well as schools, dormitories, associations and foundations, were disbanded and liquidated with immediate effect. Furthermore, more than 150,000 judges, prosecutors, military personnel, police officers, teachers and other civil servants were collectively dismissed from their positions.

Importantly, the emergency decrees imposed drastic procedural and substantive restrictions in the field of pre-trial detention, many with serious repercussions for key protection entailed in Articles 5 and 6 of the ECHR. As early as 22 July 2016, the first emergency Decree No. 667 was issued, which authorised detention without access to a judge for up to 30 days ‘due to the difficulty of collecting evidence or a higher number of suspects’.³⁸ This 30-day period of unsupervised detention applied to all terror-related organised crimes substantially exceeded the outer limit the ECtHR has held to be justifiable in times of derogation under Article 15 of the ECHR.³⁹ While

³⁴ See Turkey, *Notification under Article 4(3) ICCPR*, C.N.580.2016.Treaties-IV.4, 2 August 2016 (‘measures taken may involve derogation from obligations under the [ICCPR] regarding Articles 2/3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27, as permissible in Article 4 of the said Covenant.’).

³⁵ See, Turkey, *Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms Notification* (ETS No.5), JJ8719C TR/005-223, 8 August 2018.

³⁶ Since the first Decree (No 667) of 23 July 2016, a total of 32 emergency decrees were adopted during the 24-month emergency rule.

³⁷ This report (compared and) used both the data compiled by the Turkish Purge, a website established set up by a group of young Turkish journalists, with the aim of tracking the human rights abuses in Turkey (<https://turkeypurge.com/>) and the data released by the Turkish Ministry of Interior on 15 July 2020. See, “Bakan Soylu: FETO ile mucadelede 99 bin 66 operasyon yapildi (Minister Soylu: 99.066 operation conducted in the fight against FETO) Cumhuriyet, (15 July 2020) <https://www.cumhuriyet.com.tr/haber/bakan-soylu-feto-ile-mucadelede-99-bin-66-operasyon-yapildi-1751629>

³⁸ See, Article 6 (1) of Decree No. 667.

³⁹ In exceptional circumstances, for instance under a state of emergency, the ECtHR has acknowledged that a longer period of detention may be justified – see *inter alia*, *Magee and Others v. the United Kingdom*, App. Nos. 26289/12, 29062/12 and 29891/12 (12 May 2015) para. 74; *Brogan and Others v the United Kingdom* App. Nos. 11209/84; 11234/84; 11266/84 and 11386/85, paras. 60 et seq.; *Demir and Others v. Turkey*, App. No. 34503/97 (23 September 1999) para. 49 et seq. However, even under such circumstances, the ECtHR, in *Aksoy v. Turkey* (App. No. 21987/93, 18 December 1996, paras. 70-78), held that holding a suspect for fourteen days, and in *Nuray Sen v. Turkey* (App. No. 41478/98, 17 June 2003, para. 28) for eleven days, without judicial intervention, was not a proportionate derogation from Article 5 ECHR.

another Decree No. 684 of 23 January 2017 reduced the unsupervised detention to seven days, with the possibility of an extension of a further seven days (thus 14 days in total), the period of time within which a suspect had to be brought before a competent judicial authority,⁴⁰ the Turkish authorities persisted in employing unsupervised detention periods of 30 days over six months during which an overwhelming number of criminal proceedings were conducted. In August 2017, Decrees No. 693 and 694 increased the maximum period of pre-trial detention for terror charges from five years to seven,⁴¹ giving rise to valid concerns that its use had become a form of summary punishment.⁴²

The emergency decrees in Turkey also imposed significant restrictions on the right to access to effective legal defence. Decrees No. 667 and 668 authorised, *inter alia*, a five-day initial period of incommunicado detention,⁴³ the recording of meetings between a detainee and his/her lawyer, and judicial powers to stop a detainee from consulting his/her lawyer.⁴⁴ The ability of lawyers to examine the contents of the case file was limited; any documents exchanged with a detainee could be seized.⁴⁵ Defendants were prevented from hearing all the evidence brought against them and, in some cases, from having a lawyer present during their trial.⁴⁶ Family visits and phone calls had also been strictly limited, rendering detainees yet more vulnerable to torture, abuse and ill-treatment.⁴⁷

⁴⁰ Decree No. 684 on Specific Regulations Under the State of Emergency, 23 January 2017.

⁴¹ Article 100(2) of the TCPL stipulates that “[w]here the crime is under the jurisdiction of the court of assize, the maximum period of detention is two years. This period may be extended by explaining the reasons in necessary cases, but the extension shall not exceed 3 years”. Decrees Nos. 693 and 694 increased the maximum detention period to 7 years – see Decree Law nos. 693 and 694 on Specific Regulations under the State of Emergency, 23 August 2017.

⁴² Human Rights Watch, World Report of 2018, ‘Turkey: Events of 2018’ available at hrw.org/world-report/2019/country-chapters/turkey

⁴³ Article 3(1)(m) of Decree No. 668. This five-day period was later revoked in January 2017 – see Article 11 of Decree No. 684. In *Salduz v. Turkey*, (App. No. 36391/02, 27 November 2008, para. 63) the ECtHR stated that access to a lawyer is at the core of the concept of a fair trial and found that Turkey violated the European Convention because “the absence of a lawyer while [the applicant] was in police custody irretrievably affected [the applicant’s] defence rights”.

⁴⁴ See generally Article 6 (1) of Decree No. 667 and Article 3 (1) of Decree No. 668.

⁴⁵ Article 3(1(l)) of Decree No. 668.

⁴⁶ See Article 6(1(d)) of Decree No. 667.

⁴⁷ A detainee’s vulnerability was addressed by the ECtHR in *Aksoy v. Turkey* (n 39, para. 78) when it concluded that the period of fourteen days for holding a suspect in custody ‘is exceptionally long, and left the applicant vulnerable not only to arbitrary interference with his right to liberty but also to torture’.

3. (Inter)national Reactions

From the very first days following the 2016 attempted coup, disturbing images have fueled allegations of torture and ill-treatment of detainees in Turkey and have been widely reported by the media and international organisations. Despite the fact that the Turkish government strenuously denied these claims (in official occasions), avowing their commitment to “zero tolerance for torture” and labelling them part of a “misinformation campaign”⁴⁸, they have failed to adequately respond to the allegations.⁴⁹ There are now credible reports from reputed international human rights monitoring bodies and national organisations and NGOs which call into question the government’s commitment to prevent torture and ensure accountability for abuse. The section will now turn to these reports.⁵⁰

The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer, in his report of December 2017 at the conclusion of his mission to Turkey expressed serious concerns about the rising allegations of torture and other ill-treatment in Turkish police custody, noting that he heard persistent reports of widespread torture and other forms of ill-treatment including severe beatings, electrical shocks, extended blindfolding, handcuffing, sleep deprivation, threats and verbal abuse, insults and sexual assault.⁵¹ He also

⁴⁸ Responding to a July 2016 Amnesty International report detailing allegations of torture and ill-treatment, for example, the then Turkish Minister of Justice Bekir Bozdağ, said in an interview, the transcript of which was later posted on the ministry’s website, that “Whoever says that there is torture in Turkey’s prisons is lying, defaming. There is no possibility that we have torture in our prisons.” See, “Bozdağ: Cezaevlerinde İşkence Kesinlikle Yoktur” (There is definitely no torture in prisons”), Ministry of Justice website posting, 2 August 2016, available at <http://www.basin.adalet.gov.tr/Etkinlik/bozdag-cezaevlerinde-iskence-kesinlikle-yoktur>. Former Prime Minister Binali Yıldırım similarly denied such allegations. See, “Turkish Premier Demands US Help with Gulen”, *Wall Street Journal*, 26 July 2016, available at <http://www.wsj.com/articles/turkish-premier-demands-u-s-help-with-gulen-1469555265>

⁴⁹ It should be also noted that on some non-official occasions, such as television interviews and rallies, the Government officials have appeared to encourage torture and ill-treatment, thus contributing to the climate of impunity. For instance, President Erdogan at a rally on 4 April 2017 said: “We are purging every Gülenist in the army, in the police and in state institutions, and we will continue cleansing [these organisations of] them because we will eradicate this cancer from the body of this country and the state. They will not enjoy the right to life. They divided this nation, this Ummah [Islamic nation]. Our fight against them will continue until the end. We won’t leave them wounded” – see, ‘President Erdogan: Gülenists will not enjoy right to life in Turkey’ Turkey Purge, 5 April 2017 available at <https://turkeypurge.com/president-erdogan-gulenists-will-not-enjoy-right-to-life-in-turkey>. Similarly, the then Economy Minister, Nihat Zeybekci said of the coup plotters: “We will put them into such holes [jails] for punishment that they won’t even be able to see the sun of God as long as they breathe. They will not see the light of day. They will not hear a human voice. They will beg for death, saying ‘just kill us’” – see, “Economy Minister Says Government will Make Coup Plotters Beg For Death”, *Turkish Minute*, 1 August 2016, available at <https://www.turkishminute.com/2016/08/01/economy-minister-says-govt-will-make-coup-plotters-beg-for-death/>.

⁵⁰ See also the report ‘Torture in Turkey Today’ prepared by Eric Sottas and Johan Vande Lanotte for the Turkey Tribunal, available at <https://turkeytribunal.com/executive-summary-torture-in-turkey-today/>.

⁵¹ UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey, A/HRC/37/50/Add.1, 18 December 2017, para.26, available at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/50/Add.1

regretted that, despite these persistent allegations, “formal investigations and prosecutions in respect of such allegations appear to be extremely rare, thus creating a strong perception of de facto impunity for acts of torture and other forms of ill-treatment”⁵².

In a report of March 2018 on the impact of the state of emergency on human rights in Turkey, the UN High Commissioner for Human Rights highlighted that his office had “documented the use of different forms of torture and ill-treatment custody”, generally aimed at “extracting confessions or forcing detainees to denounce other individuals” and found that perpetrators included “members of the police, gendarmerie, military police and security forces”⁵³. A particular concern in the report was devoted to the fact that “emergency decrees foster impunity and lack of accountability by affording legal, administrative, criminal and financial immunity to administrative authorities acting within the framework of the decrees”.⁵⁴ (On the impunity clauses introduced by the emergency decrees, see Section 4) In his report of November 2019 to the UN Human Rights Council in the context of the Universal Periodic Review (Third Cycle 2017-2021), the UN High Commissioner noted that one of the common threads in over 100 stakeholders’ submissions was “the escalation of torture and violence against detainees while, at the same time, security personnel who may have committed crimes on behalf of the government, enjoyed immunity from prosecution both during and after the attempted coup”.⁵⁵ As such, the Commissioner urged the Turkish Government “to tackle the numerous root causes of impunity” in the country.

The consistent allegations of torture and ill treatment and the long-standing problem of impunity in Turkey have been one of the most notable features of the work carried out by the Office of the Commissioner for Human Rights of the Council of Europe. Nils Muižnieks, the then Commissioner, in his memorandum following the 2016 attempted coup was particularly concerned by the “on-going criminal proceedings, among the most immediate human rights concerns are

⁵² Ibid, para. 23

⁵³ UN Office of the High Commissioner for Human Rights (OHCHR), Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, March 2018, paras 77-80, available at <https://www.refworld.org/docid/5ab146c14.html>

⁵⁴ Ibid, para. 5.

⁵⁵ See, Human Rights Council Working Group on the Universal Periodic Review, ‘Summary of Stakeholders’ submissions on Turkey, Report of the Office of the United Nations High Commissioner for Human Rights’, A/HRC/WG.6/35/TUR/3 (12 November 2019) para. 26.

consistent reports of allegations of torture and ill-treatment.”⁵⁶ In another report of December 2016, Muižnieks devoted a long section on ‘the need for effective investigations and the risk of impunity’ in Turkey and urged the Government “to establish an effective and independent complaint mechanism” in order to combat impunity among members of law enforcement forces, mostly because the structural problems surrounding the impunity problem are not easy to be overcome.⁵⁷ In February 2020, the current Commissioner for Human Rights Dunja Mijatovic saw the prevailing attitude within the Turkish judiciary to give precedence to the protection of perceived interests of the state over individuals’ human rights as one of the core reasons of the long-standing immunity problem in Turkey.⁵⁸

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) conducted four visits (three *ad hoc* and one periodic) to Turkey since 2016.⁵⁹ During these visits, the CPT delegations examined the conditions of prisons, detention centres, psychiatric hospitals and social welfare institutions and interviewed several hundreds of prisoners detained by law enforcement agencies (in each visit). However, in the CPT’s work, the consent of the government is required in order to publish the actual visit report. As reportedly, the Turkish Government refused to authorise the publication of the final reports of the CPT visits for years.⁶⁰ However, on 5 August 2020, the reports of the CPT’s 2017 periodic visit⁶¹ and 2019 *ad hoc* visit⁶² have been eventually published. In its 2017 periodic visit report, the CPT noted that its delegation had received “a considerable number of allegations from detained persons (including women and juveniles) or recent physical ill-treatment by police and gendarmerie officers”⁶³ which were

⁵⁶ CoE Commissioner for Human Rights, ‘Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey’, Comm.DH (2016) 35, 7 October 2016, para. 15, available at [https://rm.coe.int/ref/CommDH\(2016\)35](https://rm.coe.int/ref/CommDH(2016)35).

⁵⁷ CoE Commissioner for Human Rights, ‘Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey’, 2 December 2016, CommDH(2016)39, paras. 73-106, available at <https://www.refworld.org/docid/58c68e9f4.html>.

⁵⁸ CoE Commissioner for Human Rights, ‘Country Report following her visit to Turkey from 1 to 5 July 2019’, CommDH(2020)1, 19 February 2020, para. 38, available at <https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>.

⁵⁹ See, ‘The CPT and Turkey’ Activities, available at <https://www.coe.int/en/web/cpt/turkey>.

⁶⁰ European Anti-Torture Committee says Ankara does not allow report on Turkey to be published, Hurriyet Daily News, 21 April 2017 available at <https://www.hurriyetdailynews.com/european-anti-torture-committee-says-ankara-does-not-allow-report-on-turkey-to-be-published-112277>.

⁶¹ CPT, Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017, CPT/Inf (2020)22, available at <https://rm.coe.int/16809f209e>.

⁶² CPT, Report to the Turkish Government on the visit to Turkey from 6 to 17 May 2019, CPT/Inf (2020)24, available at <https://rm.coe.int/16809f20a1>.

⁶³ CPT Report (n 61) p. 4.

“supported by medical evidence”⁶⁴ and which, in its view, “was of such severity that it could be considered as amounting to torture”.⁶⁵ The CPT also regretted that “the specific recommendations repeatedly made in this regard by the Committee after previous visits have not been implemented.”⁶⁶ In its 2019 *ad hoc* visit report, the CPT had the impression that, “compared to the findings of the 2017 visit, the severity of alleged police ill-treatment has diminished. However, the frequency of allegations remains at a worrying level.”⁶⁷

At the time of writing, the reports of the CPT’s two *ad hoc* visits in 2016 and 2018 have remained unpublished. It should be noted that under certain conditions – as an *ultima ratio* in the case of a state party (that either fails to co-operate or) refuses to improve the situation in the light of the CPT’s recommendations) –, the CPT may resort to a ‘public statement’.⁶⁸ In December 1992⁶⁹ and December 1996⁷⁰, this measure was taken in relation to the situation in Turkey, in both cases due to a failure to improve the situation in light of the CPT reports which “found persuasive evidence of the continuation of acts of torture and other forms of severe ill-treatment by the police against both persons suspected of ordinary crimes and suspected terrorists”.⁷¹ Especially as regards the two unpublished CPT reports, it remains a valid question as to why the CPT has not resorted to this measure in more recent years.⁷²

The European Commission in its 2019 report similarly underlined that the impunity for alleged cases of abductions and enforced disappearances, as well as for credible allegations of torture and ill-treatment, remains a serious concern in Turkey – noting that the Government “failed to take steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses”.⁷³

⁶⁴ Ibid, p. 12

⁶⁵ Ibid.

⁶⁶ Ibid, p. 4

⁶⁷ CPT Report (n 62) p. 3.

⁶⁸ See Article 10(2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT), CoE, Text amended according to the provisions of Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) which entered into force on 1 March 2002, CPT/Inf/C(2002)1.

⁶⁹ CPT, Public statement on Turkey (Adopted on 15 December 1992), CPT/Inf(93)1, available at <https://rm.coe.int/16806981a6>.

⁷⁰ CPT, Public statement on Turkey (Adopted on 6 December 1996), CPT/Inf(96)34, available at <https://rm.coe.int/16806981d8>.

⁷¹ See, CPT, Report to the Turkish Government on the visit to Turkey from 22 November to 3 December 1992, CPT/Inf(2007)5, para18 available at <https://rm.coe.int/16806981a4>.

⁷² The CPT also indicated that an excessive delay in providing an interim response as an official reply to its report could lead it to make a public statement under Article 10 (2) ECPT. See, CPT, Sixth General Report, CPT/Inf (96)21, para 10.

⁷³ European Commission, Turkey 2019 Report (2019 Communication on EU Enlargement Policy) SWD(2019)220, 29 May 2019, p. 30, available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

These persistent allegations and the lack of accountability have also been addressed by human rights NGOs. In a detailed report of 25 October 2016 based on interviews with more than 40 lawyers, human rights activists, former detainees, medical personnel and forensic specialists, Human Rights Watch (HRW) documented the use of ‘torture and ill-treatment’ methods ranging from stress positions and sleep deprivation to severe beating, sexual abuse and threat of rape.⁷⁴ Importantly, the report observed that “a pattern of impunity for acts of torture and ill-treatment continued and successive AKP governments notably failed to ensure the prosecution of law enforcement officers and members of the security forces implicated in abuses”.⁷⁵ In a more recent report in 2020, HRW again noted that “[p]rosecutors do not conduct meaningful investigations into such allegations and there is a pervasive culture of impunity for members of the security forces and public officials implicated.”⁷⁶ Amnesty International similarly and repeatedly called on the Turkish authorities “to initiate a prompt, impartial, independent and effective investigation into the allegations of excessive use of force, torture and other ill-treatment committed by police officers.”⁷⁷

4. Turkey’s International Commitments and its Counter-Terrorism Law and Emergency Decree Framework

As detailed above, torture and ill treatment of individuals held in detention by police remains as one of the most serious human rights problems in Turkey. Despite the Turkish Government’s repeated attempts to ignore and downplay the scope of the problem, credible accounts offered by victims and their lawyers as well as reports of (inter)national organisations and human rights NGOs indicate that the use of torture by security forces is systematic and widespread and there is an entrenched culture of impunity within the country.

⁷⁴ HRW, ‘A Blank Check: Turkey’s Post-Coup Suspension of Safeguards Against Torture’ 24 October 2016, available at https://www.hrw.org/sites/default/files/report_pdf/turkey1016_web.pdf.

⁷⁵ Ibid, p. 14.

⁷⁶HRW, ‘World Report 2020’ (Turkey), p. 578, available at https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf.

⁷⁷ Amnesty International, ‘Turkey: Authorities must immediately investigate torture allegations of student protestors’, 11 June 2018 available at <https://www.amnesty.org/download/Documents/EUR4485672018ENGLISH.pdf> and “Turkey: Deepening Backslide in Human Rights” Submission for the UN Universal Periodic Review, 35th session of the UPR Working Group, January 2020, available at <https://www.amnesty.org/download/Documents/EUR4408342019ENGLISH.pdf>.

Under international (human rights) law, Turkey has obligations not only to eliminate the use of torture, but also to provide an effective means of redress for victims of torture and police abuse. Accordingly, a claim for torture/abuse and the failure to investigate/prosecute it give rise to multiple violations. Under Article 3 ECHR (counterpart to Article 7 ICCPR, which Turkey ratified in 2003), “[n]o one shall be subjected to torture or to inhuman and degrading treatment or punishment.” Article 5 ECHR (counterpart to Article 9 ICCPR) moreover addresses police abuse more generally and stipulates that “[e]veryone is entitled to liberty and security of person.” Article 13 ECHR (counterpart to Article 2 (3)) guarantees that “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

The UN Convention against Torture, which Turkey ratified in 1998, requires State parties to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (under Article 2); to “ensure that all acts of torture are offences under its criminal law” (Article 4); to “ensure that any individual who alleges he has been subjected to torture.., has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities” (Article 13) and to “provide redress and adequate compensation” to torture victims (Article 14). Turkey is also a party to both the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁷⁸ and to European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁷⁹, under which it has similar additional obligations.

From a formal perspective, the Turkish domestic law has a strong level of compatibility with its international legal standards. Article 17 of the Turkish Constitution provides that,

“[n]o one shall be subjected to torture or ill-treatment incompatible with human dignity.”⁸⁰

⁷⁸ Turkey signed it on 14 September 2005 and ratified on 27 September 2011. See, Ratification Status for CAT-OP - Optional Protocol of the Convention against Torture, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CAT-OP&Lang=en.

⁷⁹ Turkey signed it on 11 January 1988 and ratified it on 26 February 1998. See, Chart of signatures and ratifications of Treaty 126, available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/126/signatures?p_auth=tItrNfE3.

⁸⁰ See, Turkish Constitution, official translation available at https://global.tbmm.gov.tr/docs/constitution_en.pdf.

The Turkish Criminal Code similarly prohibits the use of torture by the police – establishing under its Article 94 (para.1) that

“[a]ny public officer who causes severe bodily or mental pain, or loss of conscious or ability to act, or dishonours a person, is sentenced to imprisonment from three years to twelve years”

and abolishing (para.6, added on 11 April 2013) the statute of limitation for that offence.⁸¹ Moreover, Article 95 protects against ‘severe torture’ and Article 96 punishes acts of torment (those acts not amounting to torture).

Notwithstanding these proscriptions of torture and police abuse in its domestic law, especially in cases involving enforcement of the Turkish Anti-Terrorism Law (ATL)⁸², there is a heightened risk of torture and abuse. Turkey’s broad-reaching ATL offers only a vague definition of terrorism, lacking the level of legal certainty required by international human rights standards.⁸³ This has been used widely and arbitrarily to designate and criminalise many instances of peaceful activity of political opponents, human rights defenders and journalists as terrorist activity (in particular for alleged “membership of a terrorist organisation”); as per the succinct conclusion of an Amnesty International report, “when correctly viewed, everyone’s a terrorist” in post-coup Turkey.⁸⁴

Moreover, one core problem, which frustrates the investigation/prosecution of complaints of torture and ill-treatment, are the impunity clauses under Turkish law. As a principle, under Article 160/1 of the Turkish Code of Criminal Procedure, public prosecutors “shall immediately investigate the factual truth in order to make a decision on whether to file public charges” as soon

⁸¹ See for an English translation of the Turkish Criminal Code on the Venice Commission website, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e).

⁸² Turkey, The Law on Fight against Terrorism, No. 3713, adopted on 12 April 1991, published in the Official Gazette of Turkey on 12 April 1991 and amended in 1995, 1999, 2003, 2006 and 2010.

⁸³ The ECtHR has most recently condemned Turkey’s legal framework on terrorism in two important judgments. In *Imret v. Turkey* (No. 2) (App. No. 57316/10, 10 July 2018, para. 55) and *Işıkırık v. Turkey* (App. No. 41226/09, 14 November 2017, para. 41), the Court held that Sections 6 and 7 of Article 220 of the Turkish Criminal Code imputing membership of an illegal organisation to the mere fact of a person having acted ‘on behalf of’ that organisation or for having ‘aided an illegal organisation knowingly and willingly’ respectively, were not ‘foreseeable’ in their application since they did not afford the applicants legal protection against arbitrary interference with their rights to freedom of assembly and association under Article 11 ECHR.

⁸⁴ Amnesty International, ‘Punishment Without Trial: Pre-Trial Detention in Turkey’ 5 May 2017, available at [amnestyusa.org/punishment-without-trial-pre-trial-detention-in-turkey/](https://www.amnestyusa.org/punishment-without-trial-pre-trial-detention-in-turkey/).

as they are “informed of a fact that creates the impression that a crime has been committed either through a report of crime or any other way”⁸⁵. However, as noted, there are a spate of laws providing impunity to state officials:

- I. Under the Law No. 4483 on the Prosecution of Civil Servants and Other Public Officials, Turkish civil servants, including police cannot be prosecuted without the permission of relevant administrative authorities for crimes that are not excluded from the scope of the law⁸⁶ and that have been committed in the course of the civil servant’s duties.⁸⁷ While the crime of torture is excluded from the scope of the law – meaning that prosecutors do not need an authorisation to investigate⁸⁸, the distinction between ‘judicial and administrative law enforcement’ gives rise to conflicting practice. The duty of the administrative law enforcement is to prevent the disturbance of public order (such as maintaining public order, crowd control, etc.), whereas the judicial law enforcement is tasked with the duty to collect criminal evidence in the event of any act that may be considered a crime, to apprehend the perpetrators and deliver them to judicial authorities, and to ensure the conditions for a sound investigation.⁸⁹ An authorisation by the highest-ranking civil administrator **must be issued** for crimes committed by security forces during the execution of **their administrative law enforcement** duties. For crimes committed during their **judicial law enforcement duties**, such authorisation **is not needed**. Such a vague and abstract distinction is very difficult to maintain in practice in terms of the structure, organisation and duties of the law enforcement agencies. Most often, the investigations into crimes allegedly committed by security officers are hindered by subjecting them to an administrative authorisation, thereby contributing to the climate of impunity in the country. This procedural protection has the effect of considerably delaying if not removing certain police misconduct cases from the judicial process entirely. To give one striking example,

⁸⁵ Turkish Code of Criminal Procedure, Law No. 5271, 2005 available at https://www.legislationline.org/download/id/4257/file/Turkey_CPC_2009_en.pdf.

⁸⁶ Excluded crimes involve corruption, bribery, embezzlement, and treason.

⁸⁷ This protection is included in a general way in Article 120 of the Turkish Constitution that provides that “[p]rosecution of public servants and other public officials for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law.”

⁸⁸ Within the framework of the harmonization package prepared as part of Turkey’s EU membership process, an amendment was made in the Law No. 4483 in 2003.

⁸⁹ On this distinction, see Mehmet Atılğan, and Serap Işık. Disrupting the Shield of Impunity: Security Officials and Rights Violations in Turkey, TESEV Publications, 2012, p. 12, available at https://www.tesev.org.tr/wp-content/uploads/report_Disrupting_The_Shield_Of_Impunity_Security_Officials_And_Rights_Violations_In_Turkey.pdf

in the case of Hrant Dink (a journalist and human rights defender), there were clear indications that the police and gendarmerie officers of Trabzon and Istanbul had been involved in Dink’s murder through (at least) negligence – which has been corroborated by the investigation reports (probes) by the Chief Inspectors of the Ministry of Interior. However, (most of) the investigations have been considerably delayed (and prevented) by withholding administrative authorisations.⁹⁰ Moreover, the trials have also been “marred with serious shortcomings and have failed to fully elucidate these murders so far”.⁹¹

- II. The Turkish Law No. 2937 of 2011 on the State Intelligence Services and the National Intelligence Agency (MIT) – as amended by the Law No. 6532 of 2014 gives MIT personnel effective immunity from persecution unless the head of the intelligence agency issues an authorisation. The public prosecutor thus has no authority to initiate direct criminal investigations.⁹² Since 2012, the MIT has allegedly been involved in a high number of crimes, including enforced disappearances, torture and ill-treatment.⁹³ Such an authorisation is also required by the President to put the Chief of the General Staff and Chief of Staff of the Land, Sea and Air Forces on trial for crimes they allegedly committed in the course of their duties under the Turkish Law No.353 on Military Criminal Procedure Law.⁹⁴
- III. Importantly, the Turkish Law No. 6722 of 2016, which amended the Law No. 5442 on Provincial Administration, granted Turkish security forces a *de facto* immunity from prosecution for acts carried out in the course of their operations in the Turkish South-east (especially in 2015 and 2016). The law applies retroactively and introduces the requirement to seek authorisation from relevant authorities (in particular ministries) before any public

⁹⁰ HRW, ‘Closing Ranks against Accountability, Barriers to Tackling Police Violence in Turkey’, 2008 at p.16.

⁹¹ Commissioner for Human Rights (n 58) para. 165.

⁹² See, HRW, ‘Turkey Spy Agency Law Opens Door to Abuse’ 29 April 2014, available at <https://www.hrw.org/news/2014/04/29/turkey-spy-agency-law-opens-door-abuse#>.

⁹³ See, for instance, the very recent case of Yusuf Bilge Tunc. At the time of writing, the fate and whereabouts of Mr. Tunç, who disappeared in August 2019 under suspicious circumstances, are unknown. See, Amnesty International, ‘Turkey 2019’, available at <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/>. However, there are credible reports that the enforced disappearance incidents were carried out by the Turkish intelligence service officials and the victims were subjected to torture at black sites that belong to the Turkish MIT. For investigation reports on Turkey’s ‘extraordinary renditions’, see: ‘Black Sites: Turkey’ CORRECTIV, available at <https://correctiv.org/en/top-stories-en/2018/12/06/black-sites/>.

⁹⁴ Turkey: Law No. 353 of 1963 on Establishment of Military Courts and Tribunal Procedure (Military Criminal Procedure Law), 25 October 1963, available at <https://www.refworld.org/docid/3ae6b4d12c.html>.

officials taking part in counter-terrorism operations can be prosecuted for any offences committed while carrying out their duties. This legislation has received harsh criticism from a wide swath of international community.⁹⁵

IV. Notwithstanding the potential for abuse created by the Turkish post-coup emergency (see above Section 2), the Emergency Decrees also increased the risk of impunity. Decree No. 667 of 22 July 2016 granted full immunity from legal, administrative, financial and criminal liabilities to state officials who would otherwise be subject to criminal investigation and prosecution.⁹⁶ Article 37 of Decree No. 668⁹⁷ and its subsequent amendment, (Article 121 of) Decree No.696⁹⁸, extended this immunity to civilians - those ‘who have adopted decisions and executed decisions or measures with a view to suppressing the coup attempt and terrorist actions performed on 15/7/2016 and the ensuing actions’ ... ‘without having regard to whether they held an official title or were performing an official duty or not’. This effectively prevented accountability for any and all abuses that might have been perpetrated during this time,⁹⁹ and also raised concerns of pro-state vigilantism.¹⁰⁰ These decrees were later approved by the Turkish Parliament as Laws Nos. 6749, 6755 and 7079 and added to Turkey’s broad counter-terrorism arsenal.¹⁰¹ In an application on the constitutionality of these impunity clauses, the Turkish Constitutional

⁹⁵ The UN Special Rapporteur, Nils Melzer criticized that the legislation has the potential of “rendering investigations into allegations of torture or ill-treatment by the security forces involved more difficult, if not impossible” See, Report of the Special Rapporteur supra n. 51 at para. 69. The CoE Human Rights Commissioner, Dunja Mijatovic similarly noted it “further strengthened the shield of impunity” in Turkey. See COE, Human Rights Commissioner Third party intervention by the Council of Europe Commissioner for Human Rights, CommDH(2017)13 25 April 2017 para. 32, available at <https://rm.coe.int/168070cff9>.

⁹⁶ See, Article 9 of Decree No. 667 of 22 July 2016: “Legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and fulfil their duties within the scope of this Decree Law.”

⁹⁷ Article 37 of Decree No. 668 of 25 July 2016: “Legal, administrative, financial and criminal liabilities of the persons who have adopted decisions and executed decisions or measures with a view to suppressing the coup attempt and terrorist actions performed on 15/7/2016 and the ensuing actions, who have taken office within the scope of all kinds of judicial and administrative measures and who have adopted decisions and fulfilled relevant duties within the scope of the decree laws promulgated during the period of state of emergency shall not arise from such decisions taken, duties and acts performed”.

⁹⁸ Article 122 of Decree No. 696 of 24 December 2017: The following paragraph has been added to Article 37 of Law No. 6755 on the Adoption of the Amendments of the Decree Law on Measures to be Taken Under the State of Emergency and Arrangements Made on Certain Institutions and Organisations, dated 8 November 2016: “(2) Provisions of paragraph 1 shall also be applicable to those individuals who acted with the aim of suppressing the coup attempt and the terrorist activities that took place on July 15, 2016 and actions that can be deemed as the continuation of these, without having regard to whether they held an official title or were performing an official duty or not”.

⁹⁹ See Article 6 (1 (e)) of Decree No. 667.

¹⁰⁰ See, Critics Say Turkey’s New Emergency Decree Could Incite Vigilante Groups, VOA NEWS (25 December 2017), available at voanews.com/a/critics-say-turkish-new-emergency-decree-could-incite-vigilante-groups/4178637.html.

¹⁰¹ It must be noted that they have become part of legal framework, but whether they have become an ordinary law is questionable in the doctrine.

Court (TCC) ruled that they aim at protecting state agents in fulfilling their legally mandated duties in the fight against a terrorist organisation (“FETO”) which poses a grave threat to survival and security of the nation through its clandestine infiltration to state mechanisms.¹⁰² Accordingly, the Court dismissed the application.

5. Recent Cases: Torture, Ill-Treatment and Impunity

Despite the prevalence of torture and ill treatment along with unprecedented mass arrests and detentions in Turkey in recent years, the Turkish state authorities have failed to adequately and thoroughly investigate, prosecute and punish perpetrators.¹⁰³ It is clear that the low number of investigations initiated in response to allegations of torture and ill-treatment remains flagrantly disproportionate given the alleged frequency and the greater number of such violations. **In Annex II**, the present authors provide a detailed table showing the official judicial statistics on Article 94 (torture), Article 95 (severe torture) and Article 96 (torment / deliberate injury – not amounting to torture) of the Turkish Criminal Code between the years of 2013-2018. To put it in a nutshell, the table clearly indicates the insufficient determination or unwillingness on the part of the responsible authorities to investigate claims of torture, much less to hold the perpetrators to account and take such cases forward. This section will now focus on a number of recent cases (of impunity) – most of which have been concluded and closed (with a non-prosecution decision) where perpetrators have not been brought to justice despite clear evidence against them.

A. Case 1: The torture and killing of Gökhan Açikkollu

Gökhan Açikkollu, a purged history teacher, was detained on 24 July 2016 within an investigation into the 2016-attempted coup over his alleged membership in the “FETO”. Throughout his police custody, he was subjected to torture and different forms of ill-treatment and abuse until he suffered

¹⁰² TCC Constitutionality Review, Plenary Assembly, Docket No. 2016/205, Decision No. 2019/63, 24 July 2019, paras. 130-137.

¹⁰³ The Stockholm Center for Freedom (SCF), for example, in a report of March 2017, investigated and documented 53 deaths in custody and detention since the 15 July 2016 attempted coup. These cases were registered as ‘suicides’, but the Turkish Government has refused to share (any) the details of these suspicious cases. To the best of knowledge of the present report’s authors, no investigation has been carried out. See, SCF, ‘Suspicious Deaths and Suicides in Turkey’, March 2017, available at https://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey_22.03.2017.pdf.

a heart attack into the 13th day of detention, resulting in his death.¹⁰⁴ Striking as it is, Açikkollu was never officially interrogated by police. Yet, the police took him from his cell every day and due to the torture he faced, every day he was rushed to the hospital. The medical reports gathered by the Stockholm Center for Freedom (SCF), a Sweden-based advocacy organisation, clearly highlighted severe beatings including broken ribs and blunt force trauma to his head and body.¹⁰⁵ Despite the fact that he had chronic disorders, he was not given his insulin and because of this, Acikkollu suffered two diabetic comas during the 13 days of detention.

On 5 August 2016, Acikkollu died of a heart attack (acute myocardial infarction). On the same day, and without even waiting for the conclusion of the official investigation into the death, including autopsy reports, the Istanbul Chief Public Prosecutor's Office issued a statement denying the allegations of torture and noting that the necessary medical treatment had been administered.¹⁰⁶ A number of human rights NGOs strongly criticised this statement and called for accountability for the death of Acikkollu. In a joint statement, the Turkish Medical Association and the Human Rights Foundation of Turkey highlighted that “[n]ews accounts in the media based on the chief public prosecutor's office's statement contain strong evidence that the state violated the right to life of a person in its custody and deprived Gökhan Açikkollu of his right to not be subjected to ill-treatment and torture”¹⁰⁷. In a subsequent report, Prof. Şebnem Korur Fincancı, a human rights defender and an expert in forensic medicine who also acts as the President of the Human Rights Foundation, pointed to the aggravating factors that led to Acikkollu's heart attack:

“When the injuries that conform with the definition of rough beating and acute stress disorder detected in mental evaluations are considered together, the case should be classified as torture.”¹⁰⁸

¹⁰⁴ For a detailed account of the torture and death of Acikkollu, See SCF, ‘Tortured to Death: Holding Gokhan Acikkollu's killers to account’ November 2017, available at <https://stockholmcf.org/wp-content/uploads/2017/11/Tortured-to-death-holding-gokhan-acikkollu-killers-to-account-report-21.11.2017.pdf>

¹⁰⁵ Ibid, p.14-24.

¹⁰⁶ ‘Bassavciliktan Gokhan Acikkollu Aciklamasi (A Statement by the Chief Prosecutor Office regarding Gokhan Acikkollu)’ *Hurriyet*, 5 August 2016, available at <https://www.hurriyet.com.tr/gundem/bassavciliktan-gokhan-acikkollu-aciklamasi-40764588>

¹⁰⁷ ‘Gokhan Acikkollu Gozaltinda Olmustur’ (Gokhan Acikkollu died in detention), Human Rights Foundation of Turkey, 7 August 2016, available at <https://tihv.org.tr/basin-aciklamalari/gokhan-acikkollu-gozaltinda-olmustur/>

¹⁰⁸ Prof. Fincancı's interview to the SCF; see: SCF Report (n 104) p. 31.

On 20 December 2016, the Istanbul Public Prosecutor, Burhan Gorgulu, who led the investigation into allegations of torture, decided ‘not-to-prosecute’ them, stating that “there was no malicious intent or negligence; the death was not deliberate; and there was no external reason behind Açıkkollu’s death.”¹⁰⁹ Soon afterwards, Erol Bayram, the lawyer of Açıkkollu’s family, objected to this decision. He claimed that an effective investigation had not been conducted into Açıkkollu’s death due to the prosecutor’s failure to take into account some of the evidence including the CCTV surveillance records, medical reports and witness statements. In a decision seven months later (circa July 2017), the Turkish Assize Court ruled that the non-prosecution decision must be reversed and ordered a fresh investigation. The Court also ruled that Acikkollu’s death should be evaluated in light of a new expert report from the Supreme Council of Health at the Ministry of Health or from the Council of Forensic Medicine on the causal link between illnesses reported in prior medical reports and his death. In February 2018, the Istanbul Chief Public Prosecutor’s Office issued a new statement in which it stated that such a new report was demanded. In May 2019 however, the Istanbul Chief Public Prosecutor’s Office decided to drop the investigation into the death of Gokhan Acikkollu after years of investigation.¹¹⁰

B. Case 2: The torture and sexual abuse of several detainees in Urfa

On 18 May 2019, in the wake of an armed clash between the Turkish security forces and the PKK, which caused the death of a police officer, a group of 54 people, including men, women and three children were taken into custody as part of the investigation launched by the Şanlıurfa Chief Public Prosecutor’s Office. During the custody, the detainees reported, through their lawyers, that they had been subjected to torture and ill-treatment, including electrocution of the genitals.¹¹¹ In response to the public outcry, the Prosecutor’s Office issued a public statement, in which it denied the allegations.¹¹²

¹⁰⁹ ‘Savcilik Gozaltinda Olume ‘Dogal Yollarla’ Dedi, Avukatinin Itirazi Kabul edildi’ (The Prosecutor Office said the Death was Natural, The objection of the Lawyer was accepted) *BIANET*, 28 February 2018, available at <https://bianet.org/bianet/insan-haklari/194733-savcilik-gozaltinda-olume-dogal-yollarla-dedi-avukatinin-istirazi-kabul-edildi>.

¹¹⁰ Istanbul Chief Public Prosecutor’s Office, Investigation No: 2017/10439, Decision No: 2020/4015. See also, SCF, Turkey drops investigation into demise of teacher who was tortured to death, 19 May 2020, available at <https://stockholmcf.org/turkey-drops-the-investigation-into-the-death-of-a-teacher-who-was-tortured-to-death/>.

¹¹¹ See Press Release by the Sanliurfa Bar Association, available at <http://www.sanliurfabarosusu.org.tr/Detay.aspx?ID=118920>. See also Amnesty International, ‘Urgent Action: Dozens at Risk of Torture in Police Detention’, 24 May 2019 available at <https://www.amnesty.org.uk/resources/urgent-action-dozens-risk-torture-police-detention>.

¹¹² The press release (in Turkish) is available at <http://www.sanliurfa.adalet.gov.tr/manset/halfetitoror21052019.pdf>.

In a report of late May 2019, which draws on interview with lawyers, detainees, and eyewitnesses, as well as judicial reports, detailed accounts, observations and examinations, the Foundation for Society and Legal Studies, a Turkish civil society organisation, highlighted that the detainees were interrogated in the absence of lawyers and documented the practices of torture and ill-treatment including rear-handcuffing, blindfolding, hooding, electric shocks, beating, bastinado, sexual torture, verbal insults, threats against the individuals and their relatives (especially concerning their daughters and wives).¹¹³ The report concluded that this has long become “a method of interrogation and punishment” of the enforcement forces in Turkey. In a report of 3 June 2019 (interviews with lawyers and detainees), the Sanliurfa Bar Association reached similar conclusions.¹¹⁴

Despite the credible allegations, however, as per the general pervasive climate of impunity within the country, the authorities have failed to take the initiative proactively to investigate the torture incident in Urfa. Turkey’s Human Rights Foundation (HRF), in a report of February 2020, regretted “[t]he fact that an effective investigation has not yet been carried out against torture offenders and those responsible indicates that the impunity policy is applied without compromise in any case.”¹¹⁵

C. Case 3: The torture of purged diplomats in Ankara

Between 20-31 May 2019, a group of 249 persons, all are former Ministry of Foreign Affairs officials, were detained as part of investigations launched by the Ankara Chief Public Prosecutor’s Office in relation to crimes of “membership of a terrorist organisation, aggravated fraud and

¹¹³ See, Foundation for Society and Legal Studies (TOHAV), Preliminary Report on the Human Rights Violations in Urfa from 18 May onwards, 31 May 2019, available at <http://www.tohav.org/Content/UserFiles/ListItem/Docs/katalog1427tohavs-report-on-torture-in-urfa.pdf>.

¹¹⁴ Şanlıurfa Bar Association “Torture Report on the Incidents in Halfeti” (only in Turkish) available at https://www.raporlar.org/wp-content/uploads/2019/06/UrfaBarosu_Halfeti_iskence_Raporu.pdf.

¹¹⁵ See HRF, Report on Human Rights Violations of 2019 in Eastern and Southeastern of Turkey (in Turkish), 7 February 2020, available at https://www.ihd.org.tr/wp-content/uploads/2020/02/20200207_2019YiliInsanHaklariIhlalleriRaporu-Rapor.pdf.

forgery for terrorism purposes”.¹¹⁶ Soon afterwards, claims of torture (of at least 46 detainees) have arisen, including stripping people naked, beatings, and threats of being raped with batons.¹¹⁷

At the application of the detainees’ lawyers, the Ankara Bar Association prepared a report based on interviews with six detainees.¹¹⁸ The report notes that the detainees “were taken to meetings under the pretext of ‘interviews’ where they were forced to become informants”, and that they were “stripped completely [*or some of them, partially*] naked ... were handcuffed in the back, put in fetus position, had truncheons brush their anal areas; they were subjected to threats and insults all the while.”¹¹⁹ Five detainees also noted that the law enforcement officers accompanied them during the medical examination and one detainee stated that the doctor refused to register the evidence of the torture (and wrote in the medical report that “there is no mark of battery of force”).

On 1 January 2020, a coalition of national human rights organisations made a joint statement regarding the increasing number of torture and ill-treatment incidents in Turkey with the aim of exerting pressure on people, punishing, intimidating and forcing them to confess.¹²⁰ The statement highlighted that the Human Rights Foundation of Turkey alone received a total of 840 applications in the first 11 months of 2019 in which the applicants claimed that they were exposed to torture and other forms of ill-treatments. It also noted that “[i]n the case of Ankara [*referring to the torturing of the purged diplomats*], these practices have unfortunately become systematic” and concluded that “[a]ll these applications regarding torture and ill-treatment remain inconclusive due to impunity policy, ineffective investigations and those responsible are not punished.” Indeed, despite a number of official complaints, no meaningful steps were taken by the Turkish authorities to investigate the incidents and end the ongoing practice of torture in Ankara. Against this

¹¹⁶ Turkish lawyers’ group says foreign ministry staff tortured in custody, *Reuters*, 28 May 2019, available at <https://www.reuters.com/article/us-turkey-security-torture/turkish-lawyers-group-says-foreign-ministry-staff-tortured-in-custody-idUSKCN1SY26O>.

¹¹⁷ Amnesty International, Turkey: Deepening Backslide in Human Rights, August 2019, available at <https://www.amnesty.org/download/Documents/EUR4408342019ENGLISH.pdf>.

¹¹⁸ Ankara Bar Association (Center for Attorney Rights, Penal Institution Board and Center for Human Rights of the Ankara Bar Association), Report on the Claims of Torture in Ankara Police Headquarters, (in Turkish), 28 May 2019, available at http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?BASIN_ACIKLAMASI&=3099.

¹¹⁹ A summary translation of the Ankara Bar Association Report is available at <https://arrestedlawyers.files.wordpress.com/2020/01/joint-report-ankara-bar-28-may-2019.pdf> (emphasis added)

¹²⁰ The coalition consisted of the Ankara Medical Chamber (ATO), the Human Rights Association, the Lawyers Association for Freedom, the Contemporary Lawyers’ Association, the Rights Initiative Association, the Revolutionary 78’ers’ Federation, the Human Rights Agenda Association, the SES Ankara Branch, and the Human Rights Foundation of Turkey (HRF). See, ‘Torture is a crime against humanity without exception and is strictly prohibited!’ 1 January 2020 available at <https://hakinisiyatifi.org/torture-is-a-crime-against-humanity-without-exception-and-is-strictly-prohibited.html>.

backdrop, it came as no surprise that the Ankara Chief Public Prosecutor's Office eventually gave a non-prosecution decision on 6 August 2020.¹²¹

6. Discussion and Conclusion: Answers to the key research questions

This report addressed the persisting problem of impunity in Turkey in respect of serious human rights violations committed by state officials. In what follows, we aim to provide answers to its two research questions. To reiterate, these are:

- Is there an internal system of preventing and monitoring torture or mistreatment, and if yes, how does it function in reality?
- (II) Is there an efficient system of sanctioning possible torture or mistreatment, or can we speak of an organised impunity towards torture or mistreatment against people held in detention?

The findings of the present report shed clear light on the prevailing impunity problems in Turkey. At the outset, it is clear that the impunity problem in Turkey has an entrenched legacy. In the aftermath of the 1980 military coup which brought about devastating consequences for human rights, a provisional article in the 1982 Turkish Constitution provided full immunity to the leaders of the military coup, as well all as military-public officials, from any form of prosecution.

This pervasive culture of impunity lasted through the late 1980s and 1990s. Despite some flagrant human rights abuses against the Kurdish people, including systematic torture, kidnapping, enforced disappearances, extra-judicial killings, forced evacuation of villages, destruction of homes and similar human rights infringements, the Turkish state authorities showed no willingness to react to these grave human rights violations. In almost all cases before the ECtHR, moreover, the Turkish Government completely and repeatedly denied all sorts of atrocities conducted by its agents against the Kurdish population. In turn, the ECtHR consistently found in over 175 cases that Turkey violated multiple ECHR provisions with most cases concerning the issue of ineffectiveness of investigations under Articles 2, 3, and 13 of the ECHR.

¹²¹ SCF, 'Turkish authorities drop investigation into torture of former diplomats' 26 August 2020, available at <https://stockholmcf.org/turkish-authorities-drop-investigation-into-torture-of-former-diplomats/>.

The entrenched practice of impunity and the allegations of torture and ill-treatment have reached unprecedented levels in more recent years. Despite increasingly persistent allegations, rare formal investigations and prosecutions continue to create a strong perception of impunity for acts of torture and other forms of ill-treatment.

Against this background, we should regrettably note that the impunity in Turkey has virtually become the norm, as far as the human rights violations committed against individuals state officials are concerned. In other words, to recall from our second research question, we can certainly speak of an organised and institutionalised impunity towards torture or mistreatment against people held in detention. As highlighted throughout the report, however, the impunity issue is emblematic of many structural and inextricably intertwined problems in Turkey. In this regard, each problem is either a *result* or a *cause* of one another – factors that cumulatively contribute to the entrenched culture/practice of impunity. Some of these factors can be identified as follows:

- a. **Gaps in the legal structure:** When it assumed office in 2002, the AKP Government avowed its commitment to “zero tolerance policy against torture and ill-treatment”. As a result of this policy which has been informed in part by the above mentioned ECtHR cases, the Government has taken some legal and institutional steps in the last decade with a view to bringing better safeguards to protect suspects against torture and ill-treatment. Yet, as noted above, these changes served merely as a ‘band-aid’ solution on prevailing impunity problems and did not have a real impact on the ongoing investigative, prosecutorial and judicial practice. As such, the shortcomings in ensuring accountability and reparation, and the inadequate and inefficient procedural safeguards at domestic legal level still persist. This culture of impunity and the ensuing lack of accountability are further fostered/perpetuated via laws/emergency decrees that operate as amnesties and impunity clauses (See Section 4). These legal regulations afforded legal, administrative, criminal and financial immunity to public authorities and created insurmountable obstacles for investigation and prosecution. The harsh political climate in the context of state of emergencies often served as fertile backgrounds for these legal regulations.

- b. Political rhetoric reinforcing patterns of impunity:** Despite the official discourse, the patterns of impunity are clearly reinforced by the political rhetoric, which resulted in a moral legitimisation towards state officials who violate the absolute prohibition on torture and other ill-treatment. In many cases in the aftermath of the 2016 attempted coup, Turkish state authorities have made public pronouncements on cases by either labelling them part of a ‘misinformation campaign’ or strongly implying that the result of the investigation has already been decided and absolving members of the security forces of blame. Moreover, in many other non-official occasions, such as television interviews and rallies, they have appeared to encourage torture and ill-treatment, thus contributing to the climate of impunity (See footnote (n 49)).
- c. Lack of political will to hold state officials/agents accountable:** While a ‘zero tolerance policy’ for torture and ill-treatment per definition must mean that perpetrators are brought to justice by being thoroughly and independently investigated, prosecuted and convicted to custodial sentences commensurate with the gravity of their crimes, the implementation of such a policy requires a clear commitment and a strong political will to hold state officials/agents accountable. As examined more particularly in case studies (See Section 5), despite the prevalence of torture and ill treatment along with unprecedented mass arrests and detentions in Turkey in more recent years, the Turkish state authorities have failed to adequately and thoroughly investigate, prosecute and punish perpetrators. One can rightly argue that nothing short of a fully-implemented policy of “zero tolerance for impunity” will end the spectre of torture and ill-treatment in Turkey.
- d. Ineffective and delayed investigations by prosecutors:** As again noted in case studies (See Section 5), the low number of investigations initiated in response to allegations of torture and ill-treatment remains flagrantly disproportionate given the alleged frequency and the greater number of such violations. The table in Annex II clearly indicates the insufficient determination or unwillingness on the part of the prosecutors responsible for investigations claims of torture and ill-treatment, much less to hold the perpetrators to account and take such cases forward. As demonstrated in the case of the torture of Gokhan Acikkolu and of the purged diplomats in Ankara, the investigations into the incidents been

concluded and closed (with non-prosecution decisions) where perpetrators have not been brought to justice despite clear evidence against them.

- e. **Complicit judiciary:** The attitude of Turkish judges coupled by the great challenges experienced in the judicial system inter alia the political pressure, the chilling effect of dismissals and forced transfers, the widespread self-censorship among judges and prosecutor, feed into the practice as well as the perception of impunity in the country. As shown in detailed in Annex I, judges frequently exercise greater discretion in arbitrarily rejecting cases as exemplified in countless ‘acquittal and dismissal verdicts.’

In conclusion, for every system where people lose their freedom and are kept in detention, the risk of mistreatment or torture is present. The most important guarantee to avoid this to happen in a regular way, is the fact that these who commit these acts and these who are responsible for that, know they will be punished when the facts are discovered. If a system of impunity is *de jure* or *de facto* installed torture and mistreatment will occur, that is nearly a certitude. Without doubt, such is the case in Turkey. As shown in the report, we cannot state that there is an effective preventive or sanctioning mechanism towards acts of torture and ill-treatment in Turkey. The legal safeguards are insufficient, often not respected and/or easily circumvented. The Turkish authorities moreover show no willingness to adequately and thoroughly investigate, prosecute, and punish perpetrators. It is also clear that the Turkish criminal justice system is in serious crisis. Given valid concerns over the Turkish Government’s enhanced control over the whole judiciary in Turkey, it should be noted that the independence of the judiciary cannot be trusted. The kernel of that justice system needs to be rebuilt to establish faith and trust in the rule of law and the judicial independence. In short, this report provides a chilling reminder of the organised, institutionalised and entrenched impunity problem in Turkey. It urges the Turkish authorities to combat effectively the impunity of state officials for serious human rights violations by conducting adequate, effective and independent investigation and a fair trial on the basis of which perpetrators face justice, but whether that will become reality nonetheless remains very uncertain.

ANNEX I:

The following table was extracted from a report, entitled “Impunity: An Unchanging Rule in Turkey” prepared by the Human Rights Defenders e.V, the Arrested Lawyers Initiative and the Italian Federation for Human Rights – Italian Helsinki Committee. The report is based on data gathered from a digital archive (*Faili Belli* – Perpetrator Not-unknown) that documents the results revealed in the trial monitoring work on gross human rights violations occurred in Turkey’s recent history conducted by the Truth Justice Memory Center (*Hafıza Merkezi*). The *Hafıza Merkezi*, founded in 2011, is an independent human rights organisation based in Istanbul, Turkey, that aims to uncover and document the truth concerning gross violations of human rights that have taken place in the past, strengthen collective memory about these violations, and support survivors in their pursuit of justice.

The *Hafıza Merkezi* gathered data on judicial proceedings regarding the extra-judicial killing or enforced disappearance of 363 individuals. Of those, only 81 have proceeded to become criminal cases while prosecutor decided not to pursue investigation regarding 282 victims. 15 cases have managed to reach the trial stage about the 81 victims, but of those, only two continue while the rest 13 concluded with acquittal or dismissal decisions due to the statute of limitations.

Case	Summary	Outcome
The Trial against Cemal Temizöz and others	21 people were tortured, forcibly disappeared or extra-judicially killed in 1993 in the Şırnak Province.	The indictment was filed in 2009 after the ECtHR had ordered that this should be done. The case was transferred to Eskişehir from Diyarbakir for so-called security reasons. On 5 November 2015, the case ended with acquittal and dismissal decisions due to the statute of limitation.
The Trial on the murder of Musa Anter and Ayten Öztürk (The Main Jitem Case)	This trial was about the murder of the journalist and author Musa Anter, in 1992, the abduction and murder of Ayten Öztürk in 1994 and state-sponsored murder, sabotage and bombing carried out by JITEM (the Intelligence Service of the Turkish Gendarmerie)	Three indictments were filed in 2010 (The Main Jitem Case), 2013 (Musa Anter) and 2019 (Ayten Öztürk). The case was transferred to Ankara from Diyarbakir for so-called security reasons. The trial (2015/64) continues in the Ankara 6th Heavy Penal Court.
The Trial of Jitem Ankara	19 people, including Abdülmecit Baskin, who was head of the Ankara-Altındag Registry Office, were forcibly disappeared or extra-judicially killed in Ankara between 1993 and 1996.	Two indictments were filed, in 2011 and 2013, after the ECtHR had ordered that this should be done in 2002, 2004 and 2006. On 13 December 2019, the case ended with an acquittal decision (Ankara 1st Heavy Penal Court, 2014/163)

The Trial on the enforced disappearance of Nezir Tekçi	The enforced disappearance of Nezir Tekçi after he was arrested by soldiers.	The indictment was filed in 2011. The case was transferred to Eskisehir from Hakkari for so-called security reasons. Eskisehir 1st Heavy Penal Court acquitted all of the defendants in 2015.
The Trial against Musa Çitil and others	13 people were tortured, forcibly disappeared or extra-judicially killed in the Derik district of Mardin Province between 1992 and 1994.	The indictment was filed in 2012. The case was transferred to Çorum from Mardin for so-called security reasons. Çorum 2nd Heavy Penal Court acquitted the defendant, Musa Citil, on 21 May 2014. The Court of Cassation and the Turkish Constitutional Court upheld the acquittal. Musa Citil was promoted to Deputy Chief Commander of the Turkish Gendarmerie Forces.
The Trial against Mete Sayar (The Village of Görümlü)	The murder and enforced disappearance of 6 people in Görümlü village in the Şırnak Province in 1993.	The indictment was filed in 2013. The case was transferred to Ankara from Şırnak for so-called security reasons. Ankara 9th Heavy Penal Court acquitted all of the defendants on 6 July 2015.
The Trial of Lice	In 1993, 14 civilians lost their lives during a military operation in the district of Lice in the Diyarbakir Province. This operation was led by the Gendarmerie Regiment's Commander, Esref Hatipoglu. Many houses and workplaces were also damaged, and hundreds were forcibly displaced.	The indictment was filed in 2013 after the ECtHR had ordered that this should be done in 2004. The case was transferred to Izmir from Diyarbakir for so-called security reasons. The Izmir 1 st Heavy Penal Court acquitted all of the defendants on 7 th December 2018 (2015/58).
The Trial against Naim Kurt	In 1993, about 60 villagers from the evacuated and burnt down village of Kızılağaç, in the Muş Province. went back there to get what remained of their belongings, but they were detained by the Kızılağaç Gendarmerie Command and taken to the Muş Province Gendarmerie Regiment Command Post. While some of the detainees were released after being subjected to torture for three days, Mahmut Acar, Ali Can Öner, Yakup Tetik and Mehmet Emin Bingöl remained in detention in the Regiment's Command Post. On 6 November 1993, their bodies were found near a water trench not far from the Muş Province Gendarmerie Regiment's Command Post.	The indictment was filed in 2013. The Muş 1st Heavy Penal Court acquitted Naim Kurt on 22 December 2014.
The Trial of Vartinis	Nine persons, all members of the same family, were killed in the Vartinis (Altınova) hamlet in the Muş Province on 3 October 1993, when their house	The indictment was filed in 2013. The case was transferred to Kirikkale from Muş for so-called security reasons.

	was set on fire following allegations that they had aided and abetted a terrorist organisation	Kirikkale 1 st Heavy Penal Court acquitted all of the defendants on 1 March 2016.
The Trial against Yavuz Ertürk	In 1993, during a military operation carried out in the villages of the Province of Muş, 11 people who were detained were never heard from again. On November 5, 2004, a mass grave was found in which 11 individuals were buried.	The indictment was filed in 2013 after the ECtHR had ordered that this should be done in 2001. The case was transferred to Ankara from Diyarbakir for so-called security reasons. In 2018, the case ended with a decision for acquittal and dismissal due to the statute of limitation. (Ankara 7 th Heavy Penal Court, 2014/139.)
The Trial of Jitem Kiziltepe	On the grounds of the enforced disappearance, or extrajudicial killing, of 22 persons in the Kiziltepe district of the Mardin Province between the years 1992-1996.	The indictment was filed in 2014. The case was transferred to Ankara from Mardin for so-called security reasons. On 9 September 2019, the Court dismissed the case against İzzettin Yiğit, Yusuf Çakar, Abdurrahman Öztürk, Mehmet Ali Yiğit, Abdülbaki Yiğit, Abdülvahap Yiğit, Mehmet Nuri Yiğit, Tacettin Yiğit due to the statute of limitation. The other defendants were acquitted for the other crimes of disappearance or killing, and for forming a criminal organisation to commit those crimes, due to lack of evidence. (Ankara 5 th Heavy Penal Court, 2014/367)
The Trial of Jitem Dargeçit	The case concerning the enforced disappearance of eight persons, including three children, in the Dargeçit district of the Mardin Province between 29 October 1995, and 8 March 1996.	Two indictments were filed in 2014 and 2015 after the ECtHR ordered that this must be done in 2004. The case was transferred to Adıyaman from Mardin for so-called security reasons and goes on in the Adıyaman 1 st Heavy Penal Court.

ANNEX II:

The following table is based on the official judicial statistics on Article 94 (torture), Article 95 (severe torture) and Article 96 (torment / deliberate injury – not amounting to torture) of the Turkish Criminal Code released by the Turkish Ministry of Justice for the years between 2013 and 2018.¹²²

Judicial Statistics on Article 94 of the Turkish Criminal Code (Torture)					
		Investigation Phase		Trial Phase	
Year	Total	Non-Prosecution	Filing a Public Case (Indictment)	Acquittals	Imprisonment
2013	1774	1111	210	86	20
2014	1688	1004	246	88	8
2015	1438	868	293	65	14
2016	1343	901	118	52	11
2017	1181	795	98	144	7
2018	952	646	83	38	10
Total	8376	5325	1048	473	70

Judicial Statistics on Article 95 of the Turkish Criminal Code (Severe Torture)					
		Investigation Phase		Trial Phase	
Year	Total	Non-Prosecution	Filing a Public Case (Indictment)	Acquittals	Imprisonment
2013	52	37	1	-	-
2014	31	25	2	11	5
2015	37	26	1	-	3
2016	16	2	10	-	-
2017	10	9	-	-	-
2018	8	6	-	-	-
Total	154	105	14	11	8

Judicial Statistics on Article 96 of the Turkish Criminal Code (Torment)					
		Investigation Phase		Trial Phase	
Year	Total	Non-Prosecution	Filing a Public Case (Indictment)	Acquittals	Imprisonment
2013	1518	683	536	275	248
2014	3072	2408	522	270	285
2015	1044	410	470	299	280
2016	979	332	445	215	177
2017	1173	417	536	161	179
2018	1235	383	683	282	261
Total	9021	4633	3192	1502	1430

¹²² These statistics are available in English on the website of the Turkish Ministry of Justice, <http://www.adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arsivi>



TURKEY TRIBUNAL

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