



**Alternative Report  
to the  
United Nations Committee Against Torture  
for its Consideration of the 5<sup>th</sup> Periodic Report of Turkey**

**June 2024**

## ABBREVIATIONS

<b>ATUD</b>	: Association of Forensic Medicine Specialists
<b>CC</b>	: Constitutional Court
<b>CJP</b>	: Council of Judges and Prosecutors
<b>CoE</b>	: Council of Europe
<b>CPC</b>	: Criminal Procedure Code
<b>CPT</b>	: European Committee for the Prevention of Torture
<b>ECHR</b>	: European Convention on Human Rights
<b>ECtHR</b>	: European Court of Human Rights
<b>ENCJ</b>	: European Network of Councils of the Judiciary
<b>EU</b>	: European Union
<b>FATF</b>	: Financial Action Task Force
<b>GÖÇİZDER</b>	: Migration Monitoring Association
<b>HCJP</b>	: High Council of Judges and Prosecutors
<b>HREIT</b>	: Human Rights and Equality Institution of Turkey
<b>HRFT</b>	: Human Rights Foundation of Turkey
<b>ICCPR</b>	: International Covenant on Civil and Political Rights
<b>İHD</b>	: Human Rights Association
<b>LOIPR</b>	: List of Issues Prior to Reporting
<b>NPM</b>	: National Preventive Mechanism
<b>OHCHR</b>	: Office of the United Nations High Commissioner for Human Rights
<b>OPCAT</b>	: Optional Protocol
<b>SES</b>	: Health and Social Service Workers' Union
<b>SoE</b>	: State of Emergency
<b>SOHRAM</b>	: Center Social Support, Rehabilitation and Re-adaptation for Victims of Torture, War and Violence
<b>SPT</b>	: UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>TAF</b>	: Turkish Armed Forces
<b>TOHAV</b>	: Foundation for Society and Legal Studies
<b>TPC</b>	: Turkish Penal Code
<b>TTB</b>	: Turkish Medical Association
<b>UNCAT</b>	: United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## I. INTRODUCTION

1. This report<sup>1</sup> is an alternative to the fifth periodic report of the Government of Turkey (the Government)<sup>2</sup>, which was distributed by the Committee Against Torture (the Committee) on 27 December 2018 (re-distributed on 4 April 2022) and which contains the Government's responses to the "List of issues prior to submission of the fifth periodic report of Turkey (LOIPR)."<sup>3</sup> This report will also address other and current issues of concern occurred since the publication of the LOIPR. The report follows the structure of the LOIPR and the government's report. Through this format, it focuses on the implementation of the provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).<sup>4</sup>
2. Due to the difficulties associated with informed consent processes, a limited number of examples are presented in this report. However, they should be considered as manifestations of systemic problems<sup>5</sup> as they are useful for identifying systemic problems in the implementation of UNCAT.
3. The Human Rights Foundation of Turkey (HRFT) has been providing treatment and rehabilitation services to torture survivors and their relatives and has been working to prevent torture since 1990. In addition to its pioneering role in the preparation of *the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol), which was completed in 1999 and submitted to the relevant UN bodies, the HRFT is also one of the four non-governmental organizations that contributed to the preparation of the 2022 edition of the Istanbul Protocol. The HRFT has been a part of the review process since 2010 and had submitted alternative reports to the Committee prior to the review of Turkey's third and fourth periodic reports.<sup>6</sup>

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1 This report should be considered as the product of the joint efforts and collaborative work of not only the HRFT, but also numerous related human rights organizations and human rights defenders. We would like to thank the human rights defenders and esteemed members of Antalya Bar Association Human Rights Center, Association of Forensic Medicine Specialists (ATUD), Association of Lawyers for Freedom (ÖHD), Civil Society in the Penal Execution System (CISST), Diyarbakır Bar Association, Foundation for Society and Legal Studies (TOHAV), Human Rights Association (İHD), Legal Aid Office Against Sexual Harassment and Rape in Custody, Progressive Lawyers Association (ÇHD) and Truth Justice Memory Center (Hafıza Merkezi).

2 *Fifth periodic report submitted by Turkey under article 19 of the Convention pursuant to the simplified reporting procedure* [CAT/C/TUR/5] (4 April 2022), <https://undocs.org/Home/Mobile?FinalSymbol=CAT%2FC%2FTUR%2F5&>. (Accessed on 21 April 2024)

3 Committee Against Torture (27 December 2018), List of issues prior to reporting (LoIPR), [CAT/C/TUR/QPR/5].

<https://undocs.org/Home/Mobile?FinalSymbol=CAT%2FC%2FTUR%2FQPR%2F5>. (Accessed on 21 April 2024).

4 This report adheres to the word limit of 21,200 established by the UN General Assembly Resolution A/RES/68/268 circulated on 21 April 2014. The lack of a standardized word count for alternative reports, the time passed since the Committee's last concluding observations, the gravity and the prevalence of violations recorded during this period necessitated such a choice. In the word count, tables and footnotes were excluded. See Un General Assembly (21 April 2014), *Strengthening and enhancing the effective functioning of the human rights treaty body system* (A/RES/68/268).

<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/68/268&Lang=E>. (Accessed on 21 April 2024)

5 In the examples shared with the Committee in this report, the principle of "do no harm" and the right to privacy were upheld. In some cases, upon obtaining information from publicly available sources, the lawyers of the individuals were contacted and with the consent of their lawyers, the relevant documents were obtained and the information provided was accessed. In cases other than those accessed from publicly available sources, the individuals concerned were informed about the reporting process and their informed consent was obtained. These individuals, who have also been subjected to human rights violations, were also informed about the San José Guiding Principles, which aim to protect those who are subjected to reprisals for cooperating with UN bodies, and they were informed that their contact with UN bodies could be facilitated in the event of such an eventuality.

6 HRFT (15 October 2010), *Submission of the Human Rights Foundation of Turkey to the UN Committee against Torture for its consideration of the 3rd Periodic Report of Turkey*, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FNGO%2FTUR%2F45%2F10192&](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FNGO%2FTUR%2F45%2F10192&); HRFT (March 2016), *Alternative Report To the United Nations Committee Against Torture For Its Consideration of the 4th Periodic Report of Turkey*. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FCSS%2FTUR%2F23459&](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FCSS%2FTUR%2F23459&). (Accessed on 21 April 2024)

## II. ISSUES RELEVANT TO ARTICLES 1 AND 4

4. Article 94 of the Turkish Penal Code (TPC), which criminalizes torture, has not been amended in line with the Committee's recommendation.<sup>7</sup> This creates loopholes that give way to impunity, as noted by the Committee in its General Comment No. 2.<sup>8</sup> These loopholes are caused, as the Committee has found,<sup>9</sup> by the legal construction of the article of the law as well as its interpretation. The interpretation in the Court of Cassation judgment referenced by the government<sup>10</sup> is a result of the way in which acts constituting torture are defined in the preamble to Article 94 and the condition that these acts must be committed "systematically and within a certain period of time" and in a "continuous manner." Considering the fact that allegations of torture and other ill-treatment are often investigated under Articles 86 and 256 of the TPC instead of Articles 94-96<sup>11</sup> and that these investigations are subject to a system of administrative authorization,<sup>12</sup> this issue remains a source of concern in terms of impunity.

In fact, during the reporting period, an addition was made to the first paragraph of Article 94.<sup>13</sup> Through this addition which disregards the first article of the UNCAT, the penalty to be imposed for acts of torture has been increased in relation to discrimination. However, the motivation for discrimination foreseen in the addition to law is based on biological sex, not gender. While this is a positive development, it is an inadequate and incorrect regulation, especially because it leaves out gender.

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7 Committee Against Torture (2 June 2016), *Concluding observations on the fourth periodic reports of Turkey* (CAT/C/TUR/CO/4), para.18. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/C/TUR/CO/4&Lang=E>. (Accessed on 22 April 2024)

8 Committee Against Torture (24 January 2008), *General Comment No.2: Implementation of Article 2 by States Parties*, para.9. <https://www.ohchr.org/node/84504>. (Accessed on 22 April 2024)

9 CAT/C/TUR/CO/4, para.18.

10 CAT/C/TUR/5, para.9.

11 Committee Against Torture (20 January 2011), *Consideration of reports submitted by States parties under article 19 of the Convention* (CAT/C/TUR/CO/3), para.7. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/C/TUR/CO/3&Lang=E>. (Accessed on 22 April 2024)

12 See. paras. 40-41.

13 Türk Ceza Kanunu ve Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun [Law Amending the Turkish Penal Code and Certain Laws] (12 May 2022), Article 4: "(Additional sentence: 12/5/2022-7406/4 Art.) If the offense is committed against a woman, the lower limit of the penalty shall not be less than five years." <https://www.resmigazete.gov.tr/eskiler/2022/05/20220527-7.htm>. (Accessed on 22 April 2024)

## RECOMMENDATIONS REGARDING ARTICLES 1-4

The state party should:

- Amend Article 94 of TPC in line with Article 1 of the Convention by (i) clearly expressing the motivations and reasons behind acts of torture (ii) by extending the definition of torture to include acts aimed at intimidating those other than the tortured to extract information from them or to force them to confess and acts of torture based on any kind of discrimination,
- Take necessary measures to ensure that acts of torture are not defined over the condition of these acts to be committed “systematically and within a certain period of time” and in a “continuous manner” as stated in Article 94’s preamble,
- Provide guidelines which clearly set out the conditions in which the prosecutors can refer to Articles 86 and 256 of TPC thereby ensuring that these articles are not referred for investigations into allegations of torture and other forms of ill-treatment instead of Articles 94-95,
- Guarantee that in addition to criminal sanctions, appropriate and effective disciplinary sanctions are imposed upon law enforcement officers who are perpetrators of torture and other forms of ill-treatment,
- Guarantee that high ranking law enforcement officers who failed to prevent torture and other forms of ill-treatment, who did not act when heard about the allegations of torture and other forms of ill-treatment are also appropriately sanctioned and penalized,
- Ensure that provisions of deferment of announcement of the verdict and suspension of prison sentences are not applied for perpetrators of torture and other forms of ill-treatment,
- Repeal Articles 9,11 and 14 of Law no. 6722 which makes it possible for prison sentences to be handed down for “military offenses” to be suspended, to be converted into alternative sanctions or to be deferred.

### III. ISSUES RELEVANT TO ARTICLE 2<sup>14</sup>

5. Although the government claims to have “zero tolerance for torture,”<sup>15</sup> the number of applications made to the HRFT between 2016 and 2023 alone reveals that Turkey has failed to prevent torture and other forms of ill-treatment.

**Table 1: Number of people who applied to the HRFT in between 2016 and 2023**

Year of application	2016	2017	2018	2019	2020	2021	2022	2023	Total
Number of people tortured inside Turkey	427	564	505	822	561	871	1072	731	<b>5553</b>
Number of people subjected to grave and serious human rights violations	0	0	9	16	1	0	7	1	34
Number of people tortured outside Turkey	11	12	19	19	12	44	38	7	162
Number of relatives of torture survivors	47	40	51	51	31	57	84	42	403

As can be seen above, 5553 out of 6152 people who applied to the HRFT between 2016 and 2023 stated that they had been subjected to torture inside Turkey. In the same period, 599 people, who had been subjected to gross and serious human rights violations, torture and other ill-treatment abroad and relatives of torture survivors, applied to the HRFT for medical support and documentation of torture.

**Table 2: Proportional distribution of people who applied to the HRFT because of being subjected to torture or being a relative of a torture survivor, according to the date of most recent detention**

Year of last detention (n)	Previous years (1151)	2016 (820)	2017 (699)	2018 (577)	2019 (603)	2020 (457)	2021 (681)	2022 (752)	2023 (412)	Total (6152)
	%	%	%	%	%	%	%	%	%	%
Tortured inside Turkey*	93.2	93.4	92.3	89.9	89.6	91.7	88.1	87.2	89.6	90.8
Tortured outside Turkey	6.8	0.9	2.0	1.2	2.0	1.5	3.5	1.6	0.2	2.6
Relative of torture survivors	0.0	5.7	5.7	8.8	8.5	6.8	8.4	11.2	10.2	6.6

(\*Those who were subjected to gross and serious human rights violations are categorized together with those tortured inside Turkey)

14 This section will respond to the questions in paragraphs 2 - 21 of the LOIPR. However, as the Committee has noted in the LOIPR with reference to General Comment No. 2, Article 2 of UNCAT is by its very nature closely related to other articles and therefore the answers provided here may address issues under other articles in the LOIPR.

15 CAT/C/TUR/5, para. 47; See also *Reply from the authorities (08/08/2023) following a communication from NGOs (Truth Justice Memory Center (Hafıza Merkezi), Human Rights Association (İnsan Hakları Derneği) and Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı)) (07/08/2023) in the case of BATI AND OTHERS v. Turkey* (Application No. 33097/96), para. 3. [https://hudoc.exec.coe.int/ENG?i=DH-DD\(2023\)944E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2023)944E). (Accessed on 22 April 2024)



6. When the year of the last detention of 5553 people is analyzed, it can be seen that the rate of detentions between 2016 and 2023 does not fall below 85%.

**Table 3: Detention conditions of HRFT applicants who were subjected to torture inside Turkey**

Year of last detention (n)	Previous years (1073)	2016 (766)	2017 (645)	2018 (519)	2019 (540)	2020 (419)	2021 (599)	2022 (656)	2023 (369)	Total (5587)
	%	%	%	%	%	%	%	%	%	%
Registered detention	24.0	48.3	54.3	50.9	54.8	61.6	54.3	67.1	70.7	50.5
Prison	59.4	32.8	31.9	36.0	20.4	19.8	13.7	9.5	3.3	29.2
<b>Unregistered detention</b>	<b>7.9</b>	<b>11.1</b>	<b>7.8</b>	<b>4.6</b>	<b>4.8</b>	<b>6.7</b>	<b>15.0</b>	<b>23.2</b>	<b>24.9</b>	<b>11.3</b>
Demonstrations and assemblies	4.9	5.1	2.5	4.4	11.7	4.1	13.3	15.2	12.7	7.8
<b>Abduction</b>	<b>0.2</b>	<b>0.1</b>	<b>0.9</b>	<b>0.8</b>	<b>0.6</b>	<b>1.0</b>	<b>0.0</b>	<b>0.5</b>	<b>0.8</b>	<b>0.5</b>
House raids	1.9	1.4	0.6	1.5	2.2	5.7	2.3	3.2	6.2	2.5
Detention at living quarters	1.6	1.2	0.2	0.2	0.9	1.7	1.3	1.2	0.5	1.0
Removal center	0.1	0.0	0.2	0.2	0.4	0.5	1.2	0.0	0.3	0.3
Other	0.7	0.7	1.4	1.9	5.6	1.2	2.3	3.0	4.6	2.1

7. As can be seen above, there is an alarming increase in unregistered detentions. The seriousness of the situation will be better understood when it is taken into account that these figures include only those who were able to apply to the HRFT and that in Turkey's recent past, unregistered detentions have been used to intimidate the entire society. Unregistered detentions are also used to coerce dissidents, in particular university students, journalists and political activists, into cooperating with the police and intelligence services. For example, according to the applications made to the Human Rights Association (İHD), at least 140 people in 2016, at least 131 people in 2017, at least 160 people in 2018, at least 137 people in 2019, at least 188 people in 2020, at least 190 people in 2021, and at least 198 people in 2022 were subjected to abduction and other threats.<sup>16</sup>

***On allegations and/or acts of torture and other forms of ill-treatment in official and/or unofficial places of detention***<sup>17</sup>

8. An analysis of the last places of detention of applicants who stated that they were tortured inside Turkey reveals that units of provincial security directorates, detention vehicles, streets/public spaces, demonstrations and assemblies are common places of torture.

<sup>16</sup> The data presented here is compiled from the annual balance sheets on human rights violations published by İHD. For all balance sheets see <https://www.ihd.org.tr/category/c86-raporlar/c32-bilanar>. (Accessed on 22 April 2024)

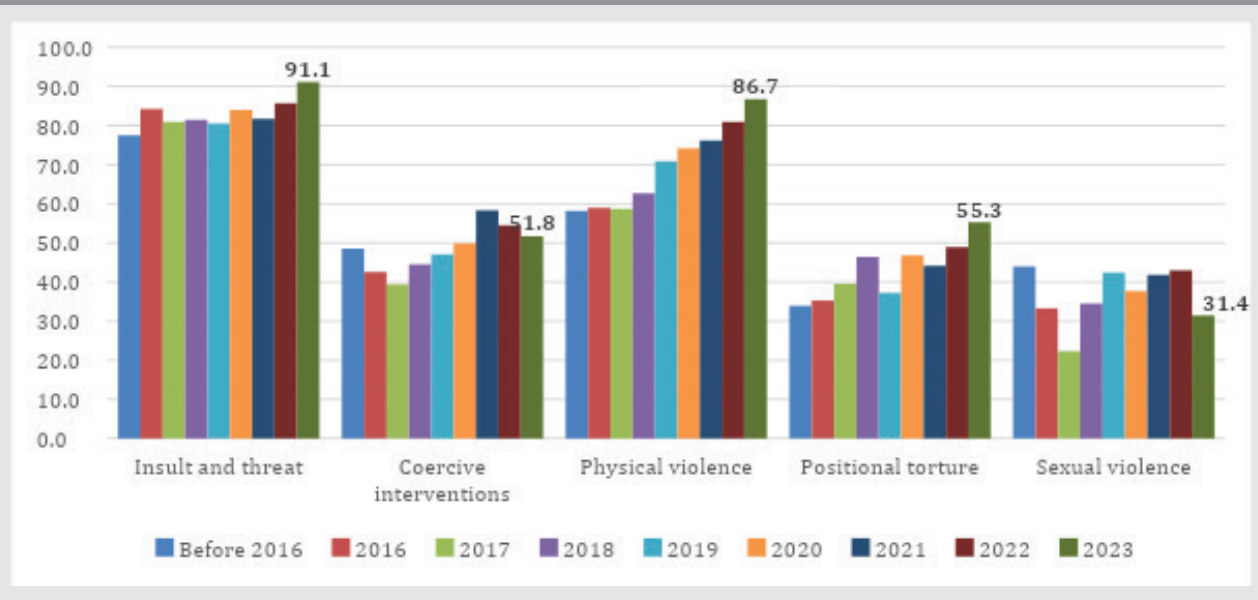
<sup>17</sup> The concept of "unofficial place of detention" is taken more broadly than in the list of issues (CAT/C/TUR/QPR/5, para. 8), in line with the Committee's decision in this regard (Communication No. 262/2005, CAT/C/37/D/262/2005, para. 8). Also see Nils Melzer (20 July 2017), *Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment* (A/72/178), para.36 ve 38. <https://digitallibrary.un.org/record/1302624?v=pdf>. (Accessed on 22 April 2024)

**Table 4: The places of torture as stated by those who were tortured inside Turkey and applied to the HRFT**

Year of last detention (n)	Previous years (1073)	2016 (766)	2017 (645)	2018 (519)	2019 (540)	2020 (419)	2021 (599)	2022 (656)	2023 (369)	Total (5587)
	%	%	%	%	%	%	%	%	%	%
<b>Security directorates</b>	<b>53.4</b>	<b>51.3</b>	<b>53.2</b>	<b>55.1</b>	<b>39.4</b>	<b>47.3</b>	<b>39.7</b>	<b>45.9</b>	<b>43.1</b>	<b>48.4</b>
Police stations	7.4	11.6	12.6	18.1	15.6	13.1	11.2	7.0	9.5	11.3
Gendarmerie command	6.2	1.3	2.5	1.0	1.7	1.2	2.3	0.6	2.2	2.5
Gendarmerie stations	4.0	1.7	3.3	2.1	4.4	3.3	1.3	1.8	1.1	2.7
<b>Inside detention vehicles</b>	<b>17.0</b>	<b>32.0</b>	<b>32.4</b>	<b>40.3</b>	<b>30.2</b>	<b>38.4</b>	<b>38.2</b>	<b>42.2</b>	<b>58.3</b>	<b>33.8</b>
<b>Streets/public spaces</b>	<b>21.4</b>	<b>33.4</b>	<b>36.4</b>	<b>38.7</b>	<b>44.3</b>	<b>46.5</b>	<b>53.5</b>	<b>69.7</b>	<b>77.2</b>	<b>43.3</b>
Detainee's own place	17.4	19.6	17.5	18.7	22.4	22.0	16.2	11.3	13.0	17.5
<b>Unspecified indoor</b>	<b>1.0</b>	<b>1.3</b>	<b>0.2</b>	<b>0.6</b>	<b>0.9</b>	<b>0.5</b>	<b>0.5</b>	<b>0.5</b>	<b>0.0</b>	<b>0.7</b>
Prison	0.8	0.7	1.2	1.2	0.0	0.5	0.5	0.3	0.0	0.6
Other	2.6	4.4	4.3	2.5	4.3	4.8	14.0	6.6	3.0	5.1
No knowledge/no recollection	1.8	0.1	0.5	0.4	0.2	0.0	0.2	0.0	0.0	0.5

As can be seen above, torture and other ill-treatment practices in official detention centers are applied systematically.

**Graph 1: Methods of torture to which applicants to the HRFT were subjected during detention by years**



9. Detainees are subjected to torture at provincial security directorates or police stations of district security directorates. The fact that 3334 out of 5553 applicants were subjected to torture in police stations shows that torture is a systematic and widespread practice in police units. For instance;

- On 4 May 2022, Murat Kesken, a trans woman who was subjected to verbal harassment and physical violence on the street in Beyoğlu district of Istanbul, was detained. According to the statements in

the criminal complaint filed by Kesken, the physical violence inflicted on Kesken continued inside the police station. Kesken was subjected to many blows, including to her face, and was also subjected to sexual harassment. Kesken was then forced to the ground and subjected to degrading treatment by being forced to lick the floor.<sup>18</sup> Kesken was forced to sign a paper stating “I do not wish to press charges” and was subsequently released after an administrative fine was imposed.<sup>19</sup>

10. Torture has become a systematic and widespread practice inside detention vehicles. It can be ascertained through the information provided by those who applied to the HRFT in 2021<sup>20</sup> and 2022<sup>21</sup> that torture which continued in other units, started in these vehicles. For instance;

- On 14 April 2019, lawyer Sertuğ Sürenoğlu was detained by President Erdoğan’s bodyguards after he protested traffic being blocked for a wedding at the Çırağan Palace in Istanbul to which President Erdoğan and his wife were to attend as marriage witnesses. According to the statement Sürenoğlu gave while filing a criminal complaint; after he was detained, he was taken to a jeep-like vehicle used by President Erdoğan’s bodyguards. Sürenoğlu, whose hands were cuffed behind his back, was then blindfolded and tortured<sup>22</sup> for two hours.<sup>23</sup>
- Osman Şiban and Servet Turgut, who lived in Yoğurtlu hamlet of Çığlıca village between Van and Şırnak, were detained by soldiers on 11 September 2020. According to the information provided in the report<sup>24</sup> about the incident; after having been detained, Şiban and Turgut were put into a military helicopter where they were subjected to physical violence. After having been brought to the Provincial Gendarmerie Command, Şiban and Turgut were thrown from the helicopter into the midst of a large number of soldiers who immediately started beating the detainees.<sup>25</sup> As a result of the torture they were subjected to, Şiban fell into a coma<sup>26</sup> and Turgut died in intensive care.<sup>27</sup>

18 It would be more appropriate to describe this example as gender-based sexual torture in detention. See *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol 2002 Edition)*, para. 282. <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0; The Hague Principles on Sexual Violence>, p. 16.

<https://4genderjustice.org/ftp-files/publications/The-Hague-Principles-on-Sexual-Violence.pdf>. (Accessed on 22 April 2024)

19 After she was released, Kesken went to a hospital and obtained a medical report regarding her injuries. On 16 May 2022, she filed a criminal complaint against the police chief in charge of Taksim Police Station and the watchman on duty at the scene for the crimes of “torture”, “sexual harassment” and “hate and discrimination.” According to information obtained from her lawyers, the Istanbul Chief Public Prosecutor’s Office, which initiated an investigation (Investigation no. 2022/93614) upon the criminal complaint, instructed the Beyoğlu District Security Directorate, to which the suspects are affiliated by their duty stations, to investigate the incident. The district security directorate officers informed the prosecutor’s office that the video footage of the incident had been deleted and that there were no witnesses to the incident. The investigating prosecutor who took the statements of the two watchmen involved in the incident did not take any action to identify the police chief in charge of the Taksim Police Station. Contrary to the provision in the first additional article of the Criminal Procedure Code, the investigating prosecutor, who conducted the investigation through the district police directorate with which the suspects were affiliated, decided that the statement of the person who witnessed all the events subject to the criminal complaint should be taken at the Taksim Police Station, where Murat Kesken was subjected to torture and other forms of ill-treatment. The investigation is not being carried out effectively and has been ongoing for nearly two years.

20 HRFT (April 2022), *2021 – HRFT Treatment Centers Report*, pp.68-69.

<https://en.tihv.org.tr/treatment-and-rehabilitation-reports/2021-hrft-treatment-centers-report>. (Accessed on 22 April 2024)

21 HRFT (August 2023), *2022 – Treatment Centres Report*, pp.69-70.

<https://en.tihv.org.tr/treatment-and-rehabilitation-reports/2022-treatment-centres-report>. (Accessed on 22 April 2024)

22 The police officers who detained Sürenoğlu stated in the incident report that Sürenoğlu “ran towards the President’s vehicle” and swore at him while running, and that “physical force was used against him to break his resistance.” The prosecutor’s office requested Sürenoğlu’s arrest based on this report, which Sürenoğlu said he was made to sign while he was being tortured. Sürenoğlu was released on house arrest, which was later lifted.

23 Alpay Antmen (16 April 2019), *İstanbul-da bir avukatın Cumhurbaşkanının korumalarınca darp edildiği iddiasına ilişkin soru önergesi* [Parliamentary question on the allegation that a lawyer was beaten by the President’s bodyguards in Istanbul], Docket no. 7/12902. <https://www2.tbmm.gov.tr/d27/7/7-12902s.pdf>. (Accessed on 22 April 2024)

24 Ahmet Şık and Yılmaz Ruhi Demir (October 2020), *How Did the Perpetrators’ Lie Turn into “the Truth” to Hide State’s Lynching*. It is presented to the Committee in Annex I.

25 Şık and Demir (2020), pp. 15-16.

26 According to information obtained from his lawyers, the investigation (Investigation no: 2020/13788) initiated by the Van Chief Public Prosecutor’s Office on suspicion of “torture” upon Osman Şiban’s criminal complaint is being dragged out. Most of the gendarmerie officers whose names are on the list of 500 people sent by the Provincial Gendarmerie Command to the prosecutor’s office have not yet been interviewed on the grounds that they are “out of the city.” In contrast, the case brought against Osman Şiban on charges of “membership in an armed organization” (Docket no. 2022/265) has been concluded. Mersin 2nd High Criminal Court sentenced Şiban to 7 years and 6 months in prison on the charges against him. Following an objection by Şiban’s lawyers, the file is still pending before the 2nd Criminal Chamber of the Adana Regional Court of Appeals. (Docket no. 2023/514)

27 On 21 September 2020, Van Governor’s Office issued a press statement and claimed that Turgut “resisted” and “disobeyed the stop warning and fell down in a rocky area while he was trying to escape,” while Şiban was “aiding and abetting” the militants thought to be in the area at the time. See Van Governor’s Office (2020), “21 Eylül 2020 tarihli Basın Duyurusu [Press Release dated September 21, 2020].” <http://www.van.gov.tr/van-valiligi-basin-duyurusu>. (Accessed on 22 April 2024)

- After the 79-day curfew in Cizre district of Şırnak was lifted on 2 March 2016, lawyer Filiz Ölmez who left her house was stopped by the police. Ölmez, who tried to take out her bar association ID card, was dragged into an armored vehicle by a police officer. After she was brought inside the vehicle, Ölmez was subjected to torture. On the same day, Ölmez went to the Cizre Chief Public Prosecutor's Office and filed a criminal complaint, stating that the police officer who dragged her into the vehicle choked her for a long time and that he hurled sexually explicit insults at her during this time.<sup>28</sup>

### ***On allegations and/or acts of torture and other forms ill-treatment of participants in peaceful demonstrations and marches***

11. The use of “excessive force” amounting to torture and ill-treatment by law enforcement officials intervening in peaceful assemblies and demonstrations is a long-standing and systematic problem in Turkey. Indeed, the implementation of the judgments of the European Court of Human Rights (ECtHR) concerning this problem is examined by the Committee of Ministers of the Council of Europe (CoE) under two different groups of cases, *Bati and others v. Turkey*<sup>29</sup> and *Oya Ataman v. Turkey*,<sup>30</sup> due to the multiplicity and diversity of the judgments. In its most recent action reports submitted to both groups, Turkey acknowledged that general measures to prevent further violations are yet to be implemented.<sup>31</sup> Moreover, as can be seen in the responses<sup>32</sup> submitted by the Ministry of Interior and the Ministry of Justice for individual applications before the Constitutional Court (CC), Article 16 of the Law No. 2559 on the Duties and Powers of the Police, which concerns the authority and limits of the “use of force and weapons”, is interpreted broadly to legitimize police violence.<sup>33</sup>

Law enforcement officers who are the perpetrators of torture to which people who exercise their constitutional rights are subjected on the streets, are protected by the armor of impunity provided by Turkey's failure to fulfill its obligation to effectively and impartially investigate allegations of torture. In this respect, the problems<sup>34</sup> that human rights organizations have repeatedly drawn attention to in

28 In the investigation initiated by the Cizre Chief Public Prosecutor's Office upon Filiz Ölmez's complaint (Investigation no. 2016/944), the suspect police officer was identified. However, the prosecutor's office heard the police officer also as a “witness” as he alleged that Filiz Ölmez had threatened him and insulted Recep Tayyip Erdoğan. On 3 May 2017, the investigating prosecutor concluded the investigation initiated upon Filiz Ölmez's complaint on suspicion of “insult” with a non-prosecution decision. On the same day, the prosecutor prepared a joint indictment (Indictment no. 2017/353) against Filiz Ölmez and the police officer subject to the investigation. The prosecutor charged Filiz Ölmez with “publicly insulting a public official because of his duty” and “threatening to kill.” The prosecutor argued that “in order for the crime of torture to occur, a person must be subjected to acts incompatible with human dignity and aiming at inflicting physical or mental suffering, affecting the ability to perceive and will, causing humiliation, and that these acts must be carried out systematically and within a certain period of time.” The prosecutor ignored the HRFT's report, which documented the torture and claimed that the actions of the suspect police officer did not meet the conditions described above and cited the forensic medical report which stated that the injuries found on Filiz Ölmez's body “can be treated with simple medical procedures.” Moving on from such reasoning, the prosecutor charged the suspect police officer with “intentional injury.” The case heard by the Şırnak 2nd Criminal Court of First Instance (Docket no. 2017/130) was concluded on 22 November 2018. The court sentenced Filiz Ölmez to 10 months for “publicly insulting a public official because of his/her duty” and to 5 months for “threatening.” The court imposed a judicial fine of 3.000 TL on the police officer for “intentional injury” and deferred the announcement of the verdict. On 1 July 2021, the 9th Penal Chamber of the Gaziantep Regional Court of Appeals upheld the sentences imposed on Ölmez. (Judgment no. 2021/2027)

29 *BATI AND OTHERS v. Turkey* | Application N°: 33097/96 | Date(s) of Judgment: 03/06/2004 | Judgment(s) became final: 03/09/2004 | Latest Decision: CM/DeI/Dec(2023)1475/H46-36. <https://hudoc.exec.coe.int/ENG?i=004-37206>. (Accessed on 22 April 2024)

30 *OYA ATAMAN v. Turkey* | Application N°: 74552/01 | Date(s) of Judgment: 05/12/2006 | Judgment(s) became final: 05/03/2007 | Latest Decision: CM/ResDH(2023)39 (Interim Resolution). <https://hudoc.exec.coe.int/ENG?i=004-37415>. (Accessed on 22 April 2024)

31 1459th meeting (March 2023) (DH) - Action Plan (17/01/2023) - *Communication from Türkiye concerning the case of OYA ATAMAN v. Turkey* (Application No. 74552/01), para. 317. [https://hudoc.exec.coe.int/ENG?i=DH-DD\(2023\)78E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2023)78E); 1475th meeting (September 2023) (DH) - Action Plan (04/07/2023) - *Communication from Türkiye concerning the case of BATI AND OTHERS v. Turkey* (Application No. 33097/96), para. 295. [https://hudoc.exec.coe.int/ENG?i=DH-DD\(2023\)816E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2023)816E). (Accessed on 22 April 2024)

32 The Ministry of Justice's response dated 31 May 2023 and numbered 63415402-3.15.1470.2023 and the Ministry of Interior's response dated 23 May 2023 and numbered E- 36155494- 641.01-84838.

33 Moreover, this provision is incorporated into the Law on the Organization, Duties and Powers of the Gendarmerie and Law No. 7245 on Neighborhood Watchmen.

34 1383rd meeting (29 September - 1 October 2020) (DH) - Rule 9.2 - *Communication from NGOs (Truth Justice Memory Center (Hafıza Merkezi), Human Rights Association (İnsan Hakları Derneği), and Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı)) (31/07/2020) concerning the BATI AND OTHERS group of cases v. Turkey* (Application No. 33097/96). available at [https://hudoc.exec.coe.int/ENG?i=DH-DD\(2020\)688E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2020)688E), para. 21; 1411th meeting (September 2021) (DH) - Rules 9.2 and 9.6 - Reply from the authorities (02/08/2021) to a communication from NGOs (Truth Justice Memory Center (Hafıza Merkezi), Human Rights Association (İnsan Hakları Derneği), and London Legal Group (27/07/2021) in the BATI AND OTHERS group of cases v. Turkey, available at [https://hudoc.exec.coe.int/ENG?i=DH-DD\(2021\)763E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2021)763E), para. 22; 1443rd meeting (September 2022) (DH) - Rules 9.2 and 9.6 - Communication from NGOs (Truth Justice Memory Center, Human Rights Foundation of Turkey, and Human Rights Association) (29/07/2022) and reply from the authorities (04/08/2022) in the case of BATI AND OTHERS v. Turkey, available at [https://hudoc.exec.coe.int/ENG?i=DH-DD\(2022\)829E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2022)829E), para.34. (Accessed on 22 April 2024)

their submissions to *Batı and others v. Turkey* group of cases continue to persist.<sup>35</sup> The persistence of systematic problems that have become chronic leads to an increasing number of participants in peaceful assemblies and demonstrations being subjected to torture every year, as can be seen in Table 4. The torture and other forms of ill-treatment to which the Saturday Mothers/People were subjected to for weeks<sup>36</sup> is one of the most obvious examples of this situation.

Recently, there has been an alarming increase in discrimination and hate speech against LGBTI+. All kinds of peaceful meetings and demonstrations organized by LGBTI+ to ensure their visibility and to protect and promote their rights are banned and subjected to interventions and obstructions by law enforcement forces. During these interventions, many people are detained arbitrarily and with excessive force amounting to torture and other forms of ill-treatment. According to the figures of the HRFT Documentation Center, at least 241 people, including 4 children and 7 lawyers, were detained and at least 2 people were injured as a result of the intervention of law enforcement forces using physical violence to peaceful meetings and demonstrations held throughout the country within the scope of Pride Month in 2023.<sup>37</sup> It must be underlined that practices of torture and other forms of ill-treatment towards LGBTI+ are based on discrimination and aim to punish LGBTI+.

### **On allegations and/or acts of torture and other forms of ill-treatment towards children**

12. Although Article 37 of the Convention on the Rights of the Child, to which Turkey is a party, states that “[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment,” 232 of the 5553 persons tortured in Turkey are between the ages of 0-18. As a recent example;
- A 14-year-old boy and his 10-year-old friend were informally detained in Lice district of Diyarbakır on 21 March 2023 by police officers who forced the children into an armored vehicle named “Ural.” Although the other child was released shortly after his age was discovered, the detention of the 14-year-old continued and he was subjected to psychological torture inside the vehicle. The 14-year-old was also subjected to physical violence after he was taken out of the vehicle on the side of the road about seven kilometers away from where he was detained.<sup>38</sup> The motion for the five suspected police officers to be tried for the crime of “torture” has been dismissed. The police officers are currently on trial at Diyarbakır 1st High Criminal Court on charges of “deprivation of liberty.”<sup>39</sup>

### **On allegations and/or acts of sexual torture and other forms of ill-treatment:**

13. The prevalence of sexual torture<sup>40</sup> among acts of torture and other forms of ill-treatment is a significant problem. The acts of sexual violence<sup>41</sup> reported by 1614 out of 5553 applicants who stated that they had been subjected to torture and other forms of ill-treatment were assessed to be sexual torture as per Article 1 of UNCAT.

An analysis of the date of the applicants’ last detention reveals that sexual violence was one of the most frequently used torture methods during the period in question.

35 See para. 40-41.

36 TIHV, İHD ve Hafıza Merkezi (20 October 2023), *Urgent Appeal: Saturday Mothers/People face continuous serious violations for the past six months as administrative authorities refuse to respect the judgments of the Constitutional Court*. <https://us14.campaign-archive.com/?u=3450248e326b08199aabb5a21&id=72ca86f3bd>; Mary Lawlor (26 February 2024), *Türkiye: continued judicial harassment against members of Saturday Mothers/People and violent police interference in their vigils (joint communication)*. <https://srdefenders.org/turkiye-continued-judicial-harassment-against-members-of-saturday-mothers-people-and-violent-police-interference-in-their-vigils-joint-communication/> (Accessed on 22 April 2024)

37 International Federation for Human Rights (6 July 2022), *Turkey: 373 LGBTIQ+ defenders detained during Istanbul Pride March*. <https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-373-lgbtiq-defenders-detained-during-istanbul-pride-march>; Human Rights Watch (27 June 2023), *Turkey: Mass Detentions at Pride Marches*. <https://www.hrw.org/news/2023/06/27/turkey-mass-detentions-pride-marches>. (Accessed on 22 April 2024)

38 Diyarbakır Bar Association (22 March 2023). “Lice İlçesinde 14 Yaşındaki Çocuğa Uygulanan İşkence, Tehdit Ve Hakarete İlişkin Suç Duyurusunda Bulunuldu [Criminal Complaint Filed Against Torture, Threats and Insults Inflicted on 14-Year-Old Child in Lice District].” <https://www.diyarbakirbarosu.org.tr/haberler/lice-ilcesinde-14-yasindaki-cocuga-uygulanan-iskence-tehdit-ve-hakarete-iliskin-suc-duyurusunda-bulunuldu>. (Accessed on 22 April 2024)

39 Diyarbakır Bar Association (3 May 2023). “Lice Asliye Ceza Mahkemesinden Görevsizlik Kararı [Lice Criminal Court of First Instance Decides No Jurisdiction].” <https://www.diyarbakirbarosu.org.tr/haberler/lice-asliye-ceza-mahkemesinden-gorevsizlik-karari>. (Accessed on 22 April 2024)

40 *Istanbul Protocol*, paras. 455-456.

41 *The Hague Principles on Sexual Violence*, p. 13.

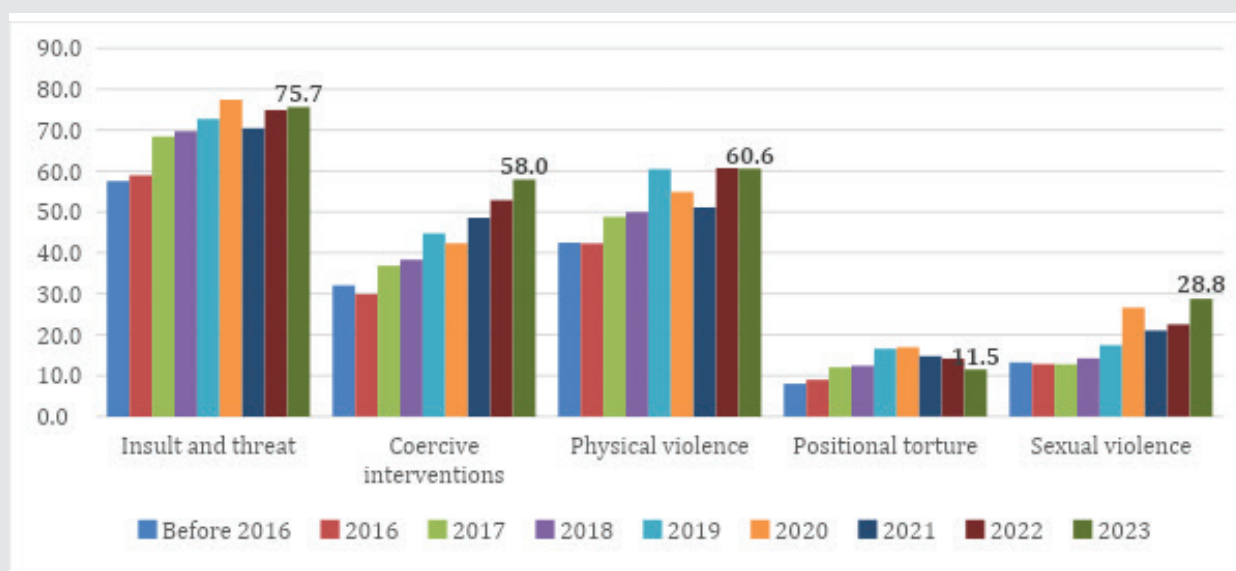
**Table 5: Methods of sexual torture to which HRFT applicants were subjected during detention**

Year of last detention (n)	Previous years (1073)	2016 (766)	2017 (645)	2018 (519)	2019 (540)	2020 (419)	2021 (599)	2022 (656)	2023 (369)
Method of sexual torture	%	%	%	%	%	%	%	%	%
Verbal sexual harassment	27.0	22.3	12.4	16.4	24.4	16.7	30.5	32.0	22.2
Sexual insults	32.3	15.9	12.1	27.9	36.3	34.1	37.2	37.8	25.5
Threat of sexual assault	11.6	4.6	2.3	5.2	5.7	4.5	3.3	4.0	1.9
Physical sexual harassment	14.6	7.3	5.9	4.4	2.2	3.1	6.8	7.0	6.2
Anal/vaginal search	2.2	0.8	1.4	0.8	0.6	0.2			
Naked search/Strip search	19.9	8.9	7.0	6.4	5.6	6.0	4.5	5.0	3.3
Rubbing oneself against the detainee	5.6	1.2	1.4	4.6	4.6	4.5	6.3	5.0	4.9
Rape	2.1	0.8	0.2	0.2	-	-	-	-	-
Other forms of sexual torture	4.2	11.6	5.7	0.6	0.0	0.7	0.2	1.1	0.3

2262 applicants who were subjected to torture and other forms of ill-treatment in detention between 2016-2023 stated that they were subjected to verbal sexual harassment and/or sexual insults during their detention, while 252 applicants stated that they were physically harassed. Moreover, although the government refused<sup>42</sup> to answer it,<sup>43</sup> 180 applicants stated that they had been threatened with sexual assault in detention during this period.

- Although prisons have always been places where torture and other forms of ill-treatment are common, there has been an extraordinary increase in practices of torture and other forms of ill-treatment against prisoners from 2015 to the present day.

**Graph 2: Methods of torture to which applicants to the HRFT were subjected in prison by years**



42 CAT/C/TUR/5, para.46

43 CAT/C/TUR/QPR/5, para. 11

2775 applicants who were released in 2016 and later stated that they were subjected to one or more methods of sexual torture in prison. According to these accounts, naked searches and physical sexual harassment stand out as the most common methods of sexual torture in prisons.

**Table 6: Methods of sexual torture to which HRFT applicants were subjected in prison**

Year of last detention (n)	Previous years (287)	2016 (234)	2017 (266)	2018 (274)	2019 (447)	2020 (248)	2021 (352)	2022 (395)	2023 (226)
Method of sexual torture	%	%	%	%	%	%	%	%	%
Verbal sexual harassment	13.9	10.7	13.5	13.1	16.8	19.0	20.5	21.3	18.1
Sexual insults	12.2	10.7	12.8	15.7	23.7	26.6	26.4	23.3	23.0
Threat of sexual assault	3.1	3.8	1.5	2.6	3.6	5.2	4.0	3.3	2.2
Physical sexual harassment	8.7	8.1	13.2	18.6	15.2	16.5	34.4	39.0	37.2
Anal/vaginal search	1.7	2.6	1.1	1.5	1.3	1.2	1.7	1.3	1.3
<b>Naked search/Strip search</b>	<b>27.5</b>	<b>29.5</b>	<b>38.7</b>	<b>39.8</b>	<b>38.9</b>	<b>35.9</b>	<b>45.2</b>	<b>47.1</b>	<b>41.2</b>
Rubbing oneself against the detainee	1.4	1.7	1.5	4.0	2.7	3.2	9.1	12.4	8.8
Rape	0.3	0.4	0.4	0.7	-	-	0.3	-	0.4
Other forms of sexual torture	4.9	3.8	4.9	0.0	0.4	0.4	0.9	0.3	0.4

**On the use of reverse handcuffs and other inappropriate handcuffing practices:**

15. Article 93 of the Criminal Procedure Code (CPC) stipulates that handcuffs may only be used in certain cases of necessity. The law does not specify which type of handcuffs can be used and how they should be applied. As far as it is known, the concept of “reverse handcuffing” is only mentioned in a circular<sup>44</sup> of the General Directorate of Security, in which it is stated that it can be used on the perpetrators of crimes likely to cause public outrage.

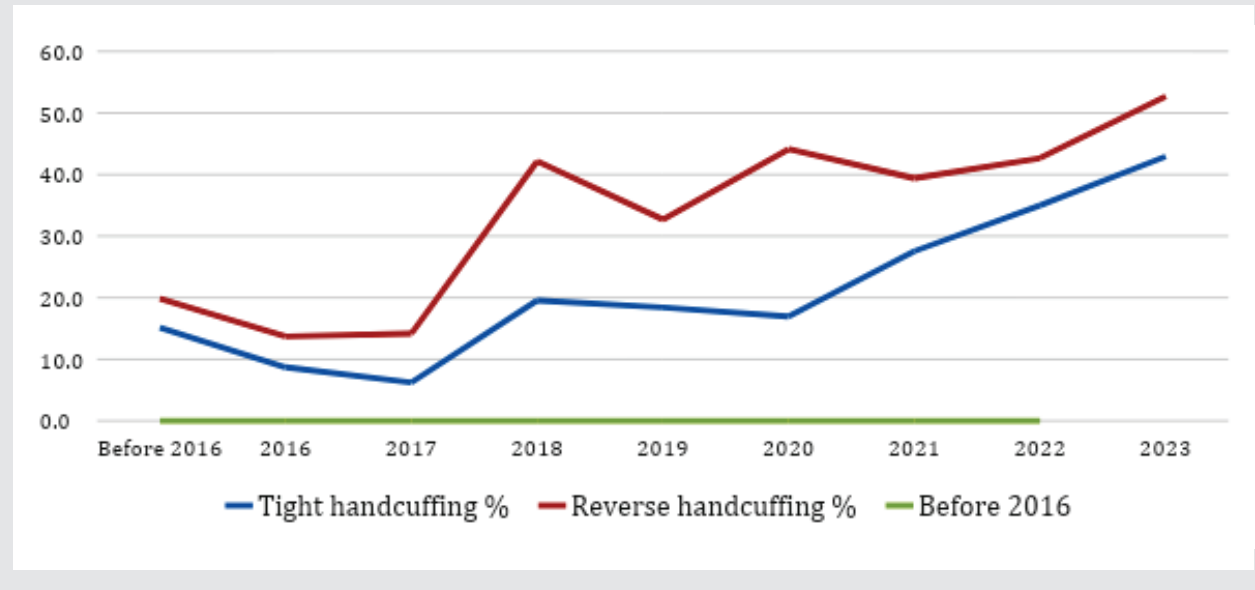
As noted in the Istanbul Protocol, handcuffing can lead to various health problems, the severity of which varies depending on the circumstances.<sup>45</sup> Moreover, reverse handcuffs force the shoulders and arms to stay in a position that is not suitable for human anatomy and prolonged exposure may cause damage to the vessels, nerves and tendons in the shoulders and arms due to compression and skin/soft tissue and nerve damage due to friction caused by the contact and pressure of the handcuff. Additionally, its use in violation of the presumption of innocence and in a degrading and humiliating manner causes psychological trauma.

It has been observed that 90% of the applicants who stated that they were subjected to reverse handcuffing during their detention were diagnosed with at least one physical ailment, including fractures and nerve injuries, while 70% of those who underwent psychological evaluation were diagnosed with at least one psychological disorder. Medical evaluations of the applicants demonstrate that reverse handcuffing and tight handcuffing is a method of torture and has almost become a routine practice.

44 Circular 2004/68 dated 01 April 2004

45 *Istanbul Protocol*, para. 448.

Graph 3: Applicants to the HRFT who stated that they were subjected to tight/reverse handcuffing



As can be seen above, the rate of applicants who stated that they were handcuffed behind their backs before 2016 was 19.9%, while this rate increased to 52.7% in 2023. The example of the Saturday Mothers/People is the most striking one in this regard.

- The Saturday Mothers/People, who have been peacefully demanding truth and justice for their forcibly disappeared relatives since 1995, were arbitrarily detained and subjected to torture and other forms of ill-treatment for 29 weeks between 4 April 2023 and 4 November 2023 in Galatasaray Square, where they tried to return after two different judgments by the CC. In 17 of these 29 weeks, the Saturday Mothers/People were subjected to reverse handcuffing for the sole purpose of punishment.<sup>46</sup>

#### **On allegations of arbitrary detention:**

16. Turkey is a party to the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), which protect individuals' right to liberty and security and provide safeguards against arbitrary arrest and detention. These guarantees are also provided in domestic law, in particular in the Constitution. Moreover, the right of everyone to challenge the lawfulness of their detention and arrest in a court of law is also guaranteed by law.<sup>47</sup>

In practice, however, the observance of these safeguards has often been avoided on various grounds, most notably during military coups and states of emergency (SoE) and under the pretext of "fight against terrorism." According to data provided by the Ministry of Justice, in 2021, 2022 and 2023 alone, criminal investigations were initiated against a total of 67.596 people based on the provisions of the Anti-Terror Law No. 3713, while 16.060 of these people were prosecuted.<sup>48</sup> Moreover, former Minister of Interior Süleyman Soylu stated in a speech that a total of 332.884 people were detained between 15 July 2016 and 20 June 2022 on the grounds that they were related to the terrorist organization/attempted coup,

46 HRFT, Hafıza Merkezi, Amnesty International Turkey and MLSA. *Cumartesi Anneleri/İnsanlar Haftalık Gözlem Raporları* [Saturday Mothers/People - Weekly Observation Reports].

<https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/cumartesi-anneleri-insanlari-haftalik-gozlem-raporlari>; HRFT, İHD and Human Rights Branch of Turkish Medical Association (15 August 2023), "Cumartesi Anneleri/İnsanları'na ters kelepçe işkence ve diğer kötü muamele yaşamının ihlalidir! [Reverse handcuffing of Saturday Mothers/People is a violation of the prohibition of torture and other forms of ill-treatment!]" <https://tihv.org.tr/basin-aciklamalari/cumartesi-anneleri-ters-kelepce>. (Accessed on 22 April 2024)

47 CPC (4 December 2004), Article 101/5, 104/2, 267 and 268.

<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5271&MevzuatTur=1&MevzuatTertip=5>. (Accessed on 16 April 2024)

48 Ministry of Justice, *Judicial Statistics 2021*, p.63.

[https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/9092022143819adalet\\_ist-2021.pdf](https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/9092022143819adalet_ist-2021.pdf); *Judicial Statistics 2022*, p.71.

[https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/29032023141410adalet\\_ist-2022cal%C4%B1sma100kapakl%C4%B1.pdf](https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/29032023141410adalet_ist-2022cal%C4%B1sma100kapakl%C4%B1.pdf); *Judicial Statistics 2023*, p.77.

[https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet\\_ist-2023CALISMALARI59.pdf](https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet_ist-2023CALISMALARI59.pdf). (Accessed on 17 April 2024)



101.000 of these people were arrested and judicial control measures were imposed on 104.000 of them.<sup>49</sup> The ECtHR made it explicitly clear in the *Alparslan Altan* judgment that the circumstances of the period mentioned by the former minister did not constitute a “carte blanche” for practices that would constitute a violation of Article 5 of the ECHR.<sup>50</sup> Similarly, the UN Human Rights Council Working Group on Arbitrary Detention, in its *Opinion on Cihangir Çenteli*,<sup>51</sup> noted a “significant increase” in cases of arbitrary detention reported to it from Turkey over the past three years and expressed “grave concern” at the pattern observed in these cases. The working group also noted that, under certain circumstances, widespread or systematic imprisonment or other serious deprivation of liberty in violation of fundamental rules of international law may constitute crime against humanity.<sup>52</sup> Furthermore, practices of arbitrary deprivation of liberty are more frequently observed in relation to specific individuals and groups. Although it is not possible to obtain official statistics to support this conclusion, it can be seen in the data compiled by the HRFT Documentation Center<sup>53</sup> for the years 2021-2023:<sup>54</sup>

- At least 1202 members and executives of opposition parties from inside and outside the parliament were detained. 78 people were arrested and 204 were released under judicial control measures, including 9 under house arrest.
- At least 520 people, members and executives of associations, foundations, trade unions, occupational organizations, initiatives and platforms, were detained. 106 people were arrested and 153 people were released with judicial control measures, including 10 under house arrest.
- At least 4507 people, including 48 children, were detained on the basis of the provisions of the Anti-Terror Law. 675 people, including 11 children, were arrested, while 366 people, including 5 under house arrest, were released on judicial control measures.

#### **On cases of enforced disappearances:**

#### **17. Cases of enforced disappearances since the Committee’s last concluding observations:**

As shared with the Committee in the following paragraphs,<sup>55</sup> Turkey’s “palpable lack of interest”<sup>56</sup> in carrying out effective legal processes in cases of enforced disappearances continues. As the UN Working Group on Enforced or Involuntary Disappearances pointed out, Turkey’s failure to “come to terms with the past”<sup>57</sup> has also paved the way for new violations, confirming the concerns of the Working Group.<sup>58</sup>

49 Sözcü (5 July 2022), “FETÖ’den 332 bin kişi gözüaltına alındı, 19 bini tutuklu [FETÖ affiliated 332 thousand people detained, 19 thousand of them arrested].”

<https://www.sozcu.com.tr/fetoden-gozaltina-332-bin-kisi-alindi-19-bini-tutuklu-wp7233107>. (Accessed on 17 April 2024)

50 ECtHR (16 April 2019), *Alparslan Altan v. Türkiye* (Application no. 12778/17), para. 147. <https://hudoc.echr.coe.int/fre?i=001-192804>. (Accessed on 17 April 2024)

51 The Working Group on Arbitrary Detention found that the dismissal and arrest of Cihangir Çenteli, a pilot in the Turkish Armed Forces (TAF) and a staff officer at the Military Academy, approximately three months after the failed coup attempt in 2016, was arbitrary and contrary to Articles 3, 9, 10 and 11 of the UN Universal Declaration of Human Rights and Articles 9 and 14 of the ICCPR, and therefore falls under Categories I and III. The Working Group further noted that the government had not responded to the allegations in the case communicated to it. Working Group on Arbitrary Detention (13 February 2024), *Opinion No. 66/2023 concerning Cihangir Çenteli (Türkiye)*, para.65.

<https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session98/a-hrc-wgad-66-2023-turkiye-aev.pdf>. (Accessed on 17 April 2024)

52 Working Group on Arbitrary Detention (13 February 2024), *Opinion No. 66/2023 concerning Cihangir Çenteli (Türkiye)*, para.63.

53 For more information about the HRFT Documentation Centre, which has been an important part of the HRFT’s documentation activities since its establishment, see <https://en.tihv.org.tr/documentation>. (Accessed on 20 April 2024)

54 HRFT (September 2022), *Türkiye İnsan Hakları Raporu 2021* [Turkey Human Rights Report 2021]. <https://tihv.org.tr/wp-content/uploads/2022/11/TiH-RAPOR-2021.pdf>. (Accessed on 20 April 2024)

55 See paragraph 75 for investigations and prosecutions into allegations of enforced disappearances.

56 Working Group on Arbitrary Detention (27 July 2016). Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey (A/HRC/33/51/Add.1), para. 34. <https://undocs.org/A/HRC/33/51/Add.1; CAT/C/TUR/CO/4>, para.21. (Accessed on 20 April 2024)

57 A/HRC/33/51/Add.1, para. 9.

58 A/HRC/33/51/Add.1, para. 62.

**Table 7: Outstanding cases before the Working Group<sup>59</sup>**

Reporting period	2015	2016	2017	2018	2019	2020	2021	2022	2023
Number of outstanding cases at the beginning of the reporting period	62	79	78	95	92	92	86	86	85
Number of outstanding cases at the end of the reporting period	79	78	94	92	92	86	85	85	84
Number of cases communicated to the government	202	201	222	227	232	234	235	240	240

Between 2015 and 2023, the Working Group communicated 39 new cases to the government. The number of cases pending before the Working Group increased significantly after 2015. Moreover, although the government claims to have “duly responded” to the Working Group’s communications, only 94 of the 240 cases communicated to the government have been clarified by the government.

**18. Attempted abductions and enforced disappearances since the Committee’s last concluding observations:**

Although the government claimed that “there are no findings of abductions or forced disappearances,”<sup>60</sup> abductions and enforced disappearances have increased alarmingly since the Committee’s last concluding observations. According to the data compiled by the HRFT and İHD, at least 58 cases of abduction and enforced disappearance attempts were recorded between 2017 and 2023.

**Table 8: Attempted abductions and enforced disappearances**

	2017	2018	2019	2020	2021	2022	2023
Cases of attempted abductions and enforced disappearances	11	28	7	2	1	4	5

In most of the abduction and enforced disappearance cases recorded during this period, the individuals were also subjected to torture and other forms of ill-treatment.

**19. The post-1980 era of enforced disappearances:**

There is still no official data published by the government on the widespread and systematic practice of enforced disappearances after the military coup of 12 September 1980 and in the SoE region.<sup>61</sup> The truth about enforced disappearances can only be discovered through investigation and prosecution files which are accessed as a result of the persistent efforts of human rights organizations, applications made to these organizations and collaborative efforts with bar associations.<sup>62</sup> As a result of this effort, Hafıza Merkezi<sup>63</sup> has obtained data on legal proceedings revealing that at least 363 people have been forcibly disappeared in Turkey.<sup>64</sup>

59 UN Working Group on Enforced or Involuntary Disappearances. “Annual and Thematic reports to the Human Rights Council.” <https://www.ohchr.org/en/special-procedures/wg-disappearances/annual-reports>. (Accessed on 20 April 2024)

60 CAT/C/TUR/5, para. 28.

61 Based on Law No. 2935 on the State of Emergency dated 25 October 1983 and first declared in 1987, the State of Emergency was extended by the Parliament and applied for 15 years. The State of Emergency was first declared in Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli, Mardin, Mardin, Siirt, Tunceli and Van on the grounds of “increasing terrorist incidents” and was later extended to 13 provinces, including Adıyaman, Bitlis, Muş, Batman and Şırnak.

62 HRFT (March 2016), *Alternative Report To the United Nations Committee Against Torture For Its Consideration of the 4th Periodic Report of Turkey*, para.41.

63 Hafıza Merkezi, founded in November 2011 by a group of lawyers, journalists, academics and human rights defenders, is an Istanbul-based human rights organization that focuses primarily on enforced disappearances, a gross violation of human rights, in order to contribute to coming to terms with these gross human rights violations. <https://hakikatadalehafiza.org/en>. (Accessed on 13 April 2024)

64 The figure hereby shared with the Committee only concerns those cases of which information regarding legal proceedings could be obtained. The number of people who were forcibly disappeared in Turkey is higher but not all of these cases are prosecuted.

Far from addressing the structural problems in this regard, the Government's response<sup>65</sup> reveals a persistent denial<sup>66</sup> of the reality of enforced disappearances as "a continuing crime or human right violation."<sup>67</sup> One of the structural problems that the government fails to mention or take steps to solve is that enforced disappearance is not regulated as a separate crime in line with the recommendations of the UN Working Group on Enforced or Involuntary Disappearances.<sup>68</sup> For this reason, the legal processes themselves reveal that impunity has become the rule in cases of enforced disappearances. In the aftermath of the 1980 military coup and in the 1990s, the manner in which most of the incidents reported in the SoE region occurred fits the definition<sup>69</sup> of enforced disappearances. However, the crime of enforced disappearance was not defined in the (abrogated) TPC no. 765 in force at the time. In the new TPC no. 5237, which was adopted in 2004 and entered into force in 2005, the concept of "international crime" was introduced into criminal law. Under the heading of "international crime," only "genocide," "crimes against humanity," "trafficking of migrants" and "human trafficking" are regulated. Since "crime against humanity" has significant differences from the Rome Statute and customary laws, the provisions in the TPC that could correspond to the crime of enforced disappearance are the crimes of "deprivation of personal liberty" and "intentional killing." The fact that enforced disappearance is not defined as a separate crime in accordance with the international definition of enforced disappearance, but is associated with crimes that may be most closely related to it, causes the specific characteristics of the act of enforced disappearance not to be taken into account. In cases where enforced disappearances are prosecuted, this leads to impunity, as can be seen in the cases that have been time-barred.

Turkey has still not signed and ratified the International Convention for the Protection of All Persons from Enforced Disappearance despite the fact that it has been consistently recommended to Turkey during the Universal Periodic Review cycles. However, Turkey merely "notes" these recommendations.<sup>70</sup>

65 CAT/C/TUR/5, para.28.

66 Istanbul Governor Davut Gül concretized the denial we drew the Committee's attention to regarding the reality of enforced disappearances with the following statements: "None of the people the Saturday Mothers claim to be missing have disappeared in the last 20-25 years. They disappeared before 2000. These are not today's problems. These are problems left over from the old Turkey times. They are not people who said 'my child went missing 3-5 years ago' or 'my child went missing last week.' They are people who went missing in the 90s." See *GazeteDüvar* (25 January 2024), İstanbul Valisi Gül: Yerlikaya'nın Cumartesi Anneleri'ne yaklaşımı daha insancıl [Istanbul Governor Gül: Yerlikaya's approach to the Saturday Mothers is more humane].

<https://www.gazeteduvar.com.tr/istanbul-valisi-davut-gul-ali-yerlikayanin-cumartesi-annelerine-yaklasimi-daha-insancil-haber-1664486>; A different manifestation of the aforementioned denial can be seen in Minister Soylu's response to the parliamentary question submitted by Istanbul MP Sezgin Tanrıkulu on 24 June 2021 to be answered by then Minister of Interior Süleyman Soylu. See Sezgin Tanrıkulu (24 June 2021), *1980 yılından bu yana zorla kaybetme ve gözaltında kaybolma suçlarının mağduru olan kişilere ve açılan davalara ilişkin soru önergesi* [Parliamentary question regarding the number lawsuits filed against victims of enforced disappearances and disappearances in custody since 1980]. <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c1-c907-037b-e050-007f01005610>. (Accessed on 3 April 2024)

67 Working Group on Enforced or Involuntary Disappearances (2010), *Report of the Working Group on Enforced or Involuntary Disappearances* (A/HRC/16/48), para.6. <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F16%2F48&Language=E> (Accessed on 3 April 2024)

68 Working Group on Enforced or Involuntary Disappearances (2010), *Report of the Working Group on Enforced or Involuntary Disappearances: Best practices on enforced disappearances in domestic criminal legislation* (A/HRC/16/48/Add.3). <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F16%2F48%2FAdd.3&Language=E>. (Accessed on 3 April 2024)

69 *International Convention for the Protection of All Persons from Enforced Disappearance*, Article 2. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>. (Accessed on 3 April 2024)

70 Responding on 4 October 2016 to Ankara MP Şenal Sarhan's parliamentary question dated 13 June 2016 on the issue, the then Minister of Foreign Affairs Mevlüt Çavuşoğlu replied that "our evaluations on becoming a party to the convention are ongoing." See Şenal Sarhan (13 June 2016), *Birleşmiş Milletler Herkesin Zorla Kaybetmelere Karşı Korunması Hakkındaki Sözleşme'ye ilişkin soru önergesi* [Parliamentary question on the United Nations Convention for the Protection of All Persons from Enforced Disappearances].

<https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c0-2c7c-037b-e050-007f01005610>; After this response, at least four parliamentary questions on the same subject between 2017 and 2020 have been left unanswered. See Sezgin Tanrıkulu (22 May 2017), *Zorla kaybetme ve gözaltında kayıp vakalarıyla ilgili resmî kayıtlara ve bu konudaki BM sözleşmesinin imzalanıp imzalanmayacağına ilişkin soru önergesi* [Parliamentary question on official records on enforced disappearances and disappearances in custody and whether the UN convention on this issue will be signed].

<https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c0-6e0c-037b-e050-007f01005610>; Sezgin Tanrıkulu (20 November 2017), *Zorla kaybetme ve gözaltında kayıp vakalarıyla ilgili resmî kayıtlara ve bu konudaki BM sözleşmesinin imzalanıp imzalanmayacağına ilişkin soru önergesi* [Parliamentary question on official records on enforced disappearances and disappearances in custody and whether the UN convention on this issue will be signed].

<https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c0-b654-037b-e050-007f01005610>; Bedia Özgökçe Ertan (28 February 2018), *1993'te İHD Elazığ üyesi iki kişinin gözaltına alındıktan sonra kaybolmasına ve zorla kaybetmelere karşı BM sözleşmesinin ne zaman imzalanacağına ilişkin soru önergesi* [Parliamentary question on the disappearance of two members of İHD Elazığ branch in 1993 after being detained and when the UN convention against enforced disappearances will be signed].

<https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c0-a054-037b-e050-007f01005610>; Semra Güzel (1 June 2020), *Zorla kaybetme vakalarıyla ilgili resmî kayıtlara ve bu konudaki BM sözleşmesinin imzalanıp imzalanmayacağına ilişkin soru önergesi* [Parliamentary question on official records on enforced disappearances and whether the UN convention on this issue will

Furthermore, according to the annual report<sup>71</sup> of the UN Working Group on Enforced or Involuntary Disappearances, the government has not yet responded to the General Allegation transmitted in 2022.<sup>72</sup>

### **On derogation of obligations in times of emergency:**

20. Turkey's notifications of derogation from its obligations under a number of articles of the ICCPR, made on 21 July 2016, were revoked as of 19 July 2018, when the SoE ended. However, contrary to the government's claims,<sup>73</sup> the SoE measures were not taken in compliance with Turkey's international obligations and the principles of "necessity and proportionality."<sup>74</sup> The practices which are essentially unrestricted and unchecked have been implemented in a manner inconsistent with the principles of Article 15 of the ECHR.<sup>75</sup>

The data published by the ECtHR is an important indicator of the numerous human rights violations that occurred during this period. In the fact sheet titled "Derogation in time of emergency," which contains violation judgments rendered during periods of derogation of obligations, many violation judgments concerning Turkey are also listed.<sup>76</sup> Similarly, the 2023 annual report of the ECtHR contains some violation judgments against Turkey on this matter.<sup>77</sup>

The fact that the proportion of cases from Turkey in the overall workload of the ECtHR started to increase as of 2016 is another striking indicator of the aforementioned situation. By the end of 2015, 8450 (13%)<sup>78</sup> of the 64.850 cases pending before the court were related to Turkey, which ranked third, while by the end of 2016 the number of cases reached to 12.600 (15.8%)<sup>79</sup> bringing Turkey to second place. Risen to first place by the end of 2022,<sup>80</sup> Turkey has accounted for 23.400 (34.2%) of the 68.450 cases pending before the court by the end of 2023.<sup>81</sup> It is obvious that one of the most important reasons for this dramatic numerical and proportional increase in the ratio of Turkey-related cases in the overall workload of the ECtHR since the Committee's last concluding observations is the numerous human rights violations caused by the regulations and practices during the SoE period.

### **On regulations and practices during the SoE period:**

21. The government issued 32 emergency decrees during the 24-month SoE period. More than a thousand amendments were made to at least 154 laws, including many that were not necessary or relevant to the reasons for the declaration of the SoE, such as the regulation on the National Lottery.<sup>82</sup> As the government itself has stated,<sup>83</sup> the emergency decrees were belatedly approved by the Turkish Grand National Assembly and became permanent after they were enacted into laws. The enactment of the emergency decrees into laws has led all of the emergency measures being in force in the ordinary period as well, making the SoE permanent.

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be signed]. <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c1-661e-037b-e050-007f01005610>. (Accessed on 3 April 2024)

71 Working Group on Enforced or Involuntary Disappearances (8 August 2023), *2023: Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/54/22)*.

<https://www.ohchr.org/en/documents/reports/ahrc5422-enforced-or-involuntary-disappearance-report-working-group-enforced-or>. (Accessed on 3 April 2024)

72 Working Group on Enforced or Involuntary Disappearances (May 2022), *General Allegation*.

<https://www.ohchr.org/sites/default/files/documents/issues/disappearances/allegations/2022-11-18/General-allegation-Turkiye-127.pdf>. (Accessed on 3 April 2024)

73 CAT/C/TUR/QPR/5, para.3.

74 CAT/C/TUR/5, para.10.

75 European Court of Human Rights (31 August 2023), *Guide on Article 15 of the European Convention on Human Rights - Derogation in time of emergency*. [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_15\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_15_eng). (Accessed on 4 April 2024)

76 European Court of Human Rights Press Unit (February 2022), *Factsheet – Derogation in time of emergency*.

[https://www.echr.coe.int/documents/d/echr/fs\\_derogation\\_eng](https://www.echr.coe.int/documents/d/echr/fs_derogation_eng). (Accessed on 4 April 2024)

77 European Court of Human Rights (2023), *Annual Report 2023*. <https://www.echr.coe.int/documents/d/echr/annual-report-2023-eng>. (Accessed on 4 April 2024)

78 European Court of Human Rights (2016), *Annual Report 2015*. [https://www.echr.coe.int/documents/d/echr/annual\\_report\\_2015\\_eng](https://www.echr.coe.int/documents/d/echr/annual_report_2015_eng). (Accessed on 4 April 2024)

79 European Court of Human Rights (2017), *Annual Report 2016*. [https://www.echr.coe.int/documents/d/echr/annual\\_report\\_2016\\_eng](https://www.echr.coe.int/documents/d/echr/annual_report_2016_eng). (Accessed on 4 April 2024)

80 European Court of Human Rights (2023), *Annual Report 2022*. [https://www.echr.coe.int/documents/d/echr/annual\\_report\\_2022\\_eng-2](https://www.echr.coe.int/documents/d/echr/annual_report_2022_eng-2). (Accessed on 4 April 2024)

81 European Court of Human Rights (2024), *Annual Report 2023*.

<https://www.echr.coe.int/documents/d/echr/annual-report-2023-eng>. (Accessed on 4 April 2024)

82 Human Rights Joint Platform (17 April 2018), *Updated Situation Report- State of Emergency in Turkey 21 July 2016 – 20 March 2018*. [http://www.ihop.org.tr/en/wp-content/uploads/2018/04/SoE\\_17042018.pdf](http://www.ihop.org.tr/en/wp-content/uploads/2018/04/SoE_17042018.pdf). (Accessed on 16 April 2024)

83 CAT/C/TUR/5, para.45

22. As can be seen in the government's response<sup>84</sup> to the Committee's question<sup>85</sup> on whether procedural safeguards which protect individuals from torture and other forms of ill-treatment were suspended, emergency decree no. 668 authorized public prosecutors to bar individuals from meeting with their lawyers for up to 5 days during SoE if they were detained over the suspicion of committing "Crimes against the Security of the State," "Crimes against the Constitutional Order and its Functioning," "Crimes against National Defense," "Crimes against State Secrets" and crimes covered by the Anti-Terror Law and crimes committed collectively.<sup>86</sup> This restriction on detainees' right to a legal counsel was later repealed via emergency decree no. 684.<sup>87</sup> However, as stated by the government itself,<sup>88</sup> this restriction was made permanent with an addition<sup>89</sup> to the CPC via emergency decree no. 676,<sup>90</sup> albeit with a reduced duration (24 hours). In other words, this restriction which was introduced for the SoE has been made permanent to be in force after the SoE was terminated.
23. Through emergency decree no. 676,<sup>91</sup> an addition was made to Article 59 of Law no. 5275 on the Execution of the Sentences and Security Measures which introduced numerous restrictions<sup>92</sup> on prisoners' right to a legal counsel on various grounds if they have been convicted for the offenses listed above. Through the same amendment, similar provisions were introduced also for remand prisoners.<sup>93</sup> This amendment made during the SoE through an emergency decree has also been made permanent.
24. Through an addition<sup>94</sup> made to the CPC through emergency decree no. 676,<sup>95</sup> the number of lawyers allowed to be present in the courtroom during the trials of those who have been charged with organized crime, has been limited to three. This amendment made during the SoE through an emergency decree has also been made permanent.
25. Emergency decree no. 694<sup>96</sup> amended the CPC<sup>97</sup> to increase the maximum period of extension of pre-trial detention from three years to five years for the above-mentioned crimes, which were previously regulated by emergency decree 668, paving the way for the extension of the pre-trial detention period for these crimes up to a total of seven years. This amendment, which is not limited to the SoE, has exacerbated the problem of abuse of pre-trial detention.
26. Emergency decree no 674<sup>98</sup> amended the Municipal Law no. 5393 in a way that is once again not limited to the SoE. An addition to Article 45 of the Law no. 5393 allows for the suspension of elected mayors for the suspicion of "aiding and abetting terrorism or terrorist organizations." Moreover, a supposedly

84 CAT/C/TUR/5, para.25

85 CAT/C/TUR/QPR/5, para.5.

86 Emergency Decree no. 668 (27 July 2016). Article 3(m). <https://www.resmigazete.gov.tr/eskiler/2016/07/20160727M2..htm>. (Accessed on 16 April 2024)

87 Emergency Decree no. 684 (23 January 2017). Article 11. <https://www.resmigazete.gov.tr/eskiler/2017/01/20170123-3.htm>. (Accessed on 16 April 2024)

88 CAT/C/TUR/5, para.21

89 CPC (4 December 2004), Article 154 (2).

90 Emergency Decree no. 676 (29 October 2016), Article 2. <https://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm>. (Accessed on 16 April 2024)

91 Emergency Decree no. 676 (29 October 2016), Article 6.

92 Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında 5275 Sayılı Kanun [Law No. 5275 on the Execution of the Sentences and Security Measures] (13 December 2004), Article 59(5): "Upon the request of the chief public prosecutor's office and the decision of the judge of execution, for a period of three months; the meetings may be recorded by technical device in audio or video format, an officer may be present at the meeting in order to monitor the meetings between the convict and the lawyer, the documents or document samples, files and records of the conversations between the convict and the lawyer may be confiscated or the days and hours of the meetings may be limited."; Article 59(7): "In the event that it is understood that the meeting held by the convict within the scope of the fifth paragraph is made for the purpose specified in the same paragraph, the meeting shall be terminated immediately and this matter shall be recorded in the minutes together with its justification. The parties shall be warned about this before the meeting starts."; Article 59(8): "In the event that a report is filed against the convict pursuant to the seventh paragraph, the convict may be banned from meeting with his lawyers for a period of six months by the judge of execution upon the request of the chief public prosecutor's office. The prohibition decision shall be immediately notified to the convict and to the relevant bar association for the appointment of a new lawyer. The chief public prosecutor's office may request the bar association presidency to change the lawyer appointed by the bar association."

93 *Law No. 5275 on the Execution of the Sentences and Security Measures*, Article 59(11): "The criminal judge of peace at the investigation stage and the court at the prosecution stage shall be authorised to decide on the remand prisoners in accordance with the provisions of this article."

94 CPC (4 December 2004), Article 149 (2) Additional Sentence

95 Emergency Decree no. 676 (29 October 2016), Article 1.

96 Emergency Decree no. 694 (25 August 2017) Article 141. <https://www.resmigazete.gov.tr/eskiler/2017/08/20170825-13.pdf>. (Accessed on 16 April 2024)

97 CPC (4 December 2004), Article 102.

98 Emergency Decree no. 674 (1 September 2016), Article 38. <https://www.resmigazete.gov.tr/eskiler/2016/09/20160901M2-2.htm>. (Accessed on 16 April 2024)

“temporary” article added to the law has effectively nullified the provision that mayors, deputy mayors and council members under investigation and prosecution pursuant to the Anti-Terror Law must be elected by the municipal council and authorized the Minister of Interior and governors to directly appoint trustees.<sup>99</sup> Thanks to these amendments, trustees were appointed in 99 municipalities during the SoE period alone.<sup>100</sup>

27. In addition to the problems brought about by these practices, only some of which are mentioned above, the rendering of the people who carry out such practices “unaccountable” has not only strengthened impunity, but has also led to the deepening of grievances and the continuation of the victimization of citizens. Contrary to the government’s claim,<sup>101</sup> Article 9 of the first emergency decree no. 667 titled “responsibility,”<sup>102</sup> which is also the definition of “impunity,” materialized this unaccountability. Although the government made no mention of this issue in its report to the Committee, the “impunity” embodied in the emergency decree no. 667 has been extended to civilians for the first time through emergency decree no. 696, in a way that is not limited to the SoE period.<sup>103</sup>
28. Immediately following the lifting of the SoE, on 25 July 2018, the Turkish Grand National Assembly adopted Law no. 7145 on Amendments to Certain Laws and Emergency Decrees,<sup>104</sup> which entered into force on 31 July 2018. By this law, some measures that had not been made permanent during the SoE have been made permanent, while other measures were made effective for another three years. The preamble to the law clearly states that these amendments were necessary as the SoE, which has lasted for two years, can no longer be extended.<sup>105</sup>

Additionally, the law included many regulations which were parallel to the SoE practices and extended these for another three years, such as increasing the duration of detention to 12 days in total by prolonging the time in detention for periods of four days by a judge’s decision,<sup>106</sup> and the authority to dismiss people from public office in a completely arbitrary manner<sup>107</sup> with the approval of the relevant minister following the proposal of the commission that will be established in all public institutions.<sup>108</sup>

Through this law,<sup>109</sup> Article 11/C of the Provincial Administration Law No. 5442 was amended to give governors the permanent authority to ban certain people from entering and leaving certain parts of cities for 15 days and to regulate or restrict the movement of people, gatherings and the movement of vehicles in certain places or at certain times.

Law no. 7145, which expired on 18 July 2021, was extended for one more year by Law no. 7333 Amending Certain Laws and Decree Laws adopted on the same day. Since Law no. 7333 expired on 31 July 2022, some of the provisions in this law have been repealed. As a result, for example, the detention period has been reduced from 12 days for “collective crimes” to a maximum of four days and “normal” disciplinary procedures have been reinstated for public dismissals. However, with the exception of these two repealed provisions, almost all regulations and practices of the SoE period have been normalized and perpetuated.

99 Emergency Decree no. 674 (1 September 2016), Article 40.

100 Human Rights Joint Platform (17 April 2018), pp. 62-64.

101 CAT/C/TUR/5, para.39

102 Emergency Decree no. 667 (23 July 2016), Article 9: “Persons who take decisions and perform duties in the scope of this emergency decree shall not be held legally, administratively, financially or criminally liable for these duties.”  
<https://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>. (Accessed on 16 April 2024)

103 Through its Article 121, emergency decree no. 696 (December 24, 2017), introduced permanent irresponsibility for civilians by adding to Article 37 of Law no. 6755 (November 8, 2016), which enacted emergency decree no. 668 (July 27, 2016) into law: “The provisions of the first paragraph shall also apply to persons who acted within the scope of the crushing of the coup attempt and terrorist acts carried out on 15/7/2016 and their continuation, regardless of whether or not they bear an official title or fulfill an official duty.” <https://www.resmigazete.gov.tr/eskiler/2017/12/20171224-22.htm>. (Accessed on 16 April 2024)

104 Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair 7145 sayılı Kanun [Law no. 7145 on Amendments to Certain Laws and Emergency Decrees] (25 July 2018). <https://www.resmigazete.gov.tr/eskiler/2018/07/20180731-1.htm>. (Accessed on 16 April 2024)

105 Justice and Development Party Group Deputy Chairpersons Çanakkale MP Bülent Turan, Tokat MP Özlem Zengin, Çankırı MP Muhammet Emin Akbaşoğlu and Denizli MP Cahit Özkan’s Bill on Amendments to Certain Laws and Emergency Decrees (2/1) and Justice Commission Report, p.4. <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d27/c001/tbmm27001008ss0001.pdf>. (Accessed on 16 April 2024)

106 Law no. 7145 on Amendments to Certain Laws and Emergency Decrees, Article 13.

107 Law no. 7145 on Amendments to Certain Laws and Emergency Decrees, Article 26.

108 Previously, the detention period was increased to 30 days with the emergency decree no. 667. Emergency decree no. 684 reduced the detention period to 14 days.

109 Law no. 7145 on Amendments to Certain Laws and Emergency Decrees, Article 1.

## Dismissed public officials

29. Through emergency decrees, the government has introduced far-reaching measures that have led to numerous human rights violations. Moreover, these measures have been widely applied in cases of “being affiliated (*iltisaklı olmak* in Turkish)” or “having connections (*irtibatlı olmak* in Turkish)” with a terrorist organization,<sup>110</sup> two concepts that were used for the first time in the legal system of Turkey to cover a wide range of people and institutions.

Apart from those whose dismissals have been overturned, a total of 125.678 public employees were dismissed from public service during the SoE on the basis of these vague concepts.<sup>111</sup> In addition to the emergency decrees, 4279 members of the judiciary were dismissed by decisions of the High Council of Judges and Prosecutors (HCJP) and 344 people were dismissed by decisions of the authorized bodies at the institutions they work for.

Contrary to the government’s claim,<sup>112</sup> dismissed public servants have been deprived of the opportunity to be employed in public institutions and related jobs for life, and have been subjected to multiple human rights violations.<sup>113</sup> The deprivation of the “right to have rights” can be defined as an attempt to condemn these individuals to civil death.

## Academics for Peace

Following the end of the Peace Process and the resumption of hostilities in 2015, a long-term repression campaign was launched to silence, intimidate, discredit and purge from universities the academics who signed the declaration “We will not be a party to this crime!”<sup>114</sup> published in January 2016 condemning the indiscriminate violence in Sur, Silvan, Nusaybin, Cizre, Silopi and many other districts and neighborhoods in Kurdish provinces.<sup>115</sup> Through emergency decrees, 406 signatory academics<sup>116</sup> were dismissed from their institutions, their passports were confiscated. They were banned from working in the public sector and working as academics for life.<sup>117</sup> In the field research conducted by HRFT in 2018-2019, it was found that 97% of Academics for Peace do not feel safe in Turkey and 93% think that they will continue to be subjected to reprisals even if they are reinstated. Moreover, due to the numerous human rights violations they were subjected to, 47.4% of the Academics for Peace were diagnosed with depression, 31% with anxiety disorder and 20.7% with post-traumatic stress disorder.<sup>118</sup>

On 26 July 2019, the CC ruled that the petition signed by 2210 academics is an exercise of freedom of expression.<sup>119</sup> Five years after the final and binding judgment of the country’s highest judicial body, the vast majority of Academics for Peace have still not been reinstated and violations against them continue.

## Closure of non-governmental organizations

30. Excluding those whose closure orders were overturned, a total of 1410 associations, 109 foundations and 149 other non-governmental organizations were closed down by emergency decrees.<sup>120</sup> As the Venice Commission has noted, “the closing down of private institutions was done without any individualized

110 For example, these concepts are used in Articles 2, 3, 4, 5 and 8 of the emergency decree no. 667.

111 Olağanüstü Hâl İşlemleri İnceleme Komisyonu [The Inquiry Commission on the State of Emergency Measures] (2022), *Faaliyet Raporu 2017-2022* [Activity Report 2017-2022]. [https://ohalkomisyonu.tccb.gov.tr/docs/OHAL\\_FaaliyetRaporu\\_20172022.pdf](https://ohalkomisyonu.tccb.gov.tr/docs/OHAL_FaaliyetRaporu_20172022.pdf). (Accessed on 28 March 2024)

112 CAT/C/TUR/5, para.74.

113 On 30 June 2022, the Constitutional Court ruled for the annulment of the rule allowing the revocation of the passports of those who were subjected to a measure of dismissal, those who were under criminal investigation or prosecution and their spouses (Decision Number: 2022/86). <https://normkararlarbilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararPDF/2022-86-nrm.pdf> (Accessed on 16 April 2024)

114 Academics for Peace (10 January 2016), *We will not be a party to this crime!* <https://barisicinakademisyenler.net/node/63>. (Accessed on 16 April 2024)

115 HRFT (24 August 2020), *Academics for Peace: Report on the Current Situation*. [https://tihvakademi.org/wp-content/uploads/2020/09/AtP\\_Current\\_Situation\\_August\\_2020.pdf](https://tihvakademi.org/wp-content/uploads/2020/09/AtP_Current_Situation_August_2020.pdf). (Accessed on 16 April 2024)

116 The total number of academics dismissed by emergency decrees is 6081.

117 Aslı Davas and Serdar Tekin (2021), *Kuşatma Altındaki Yurttaşlık Alanı: Susturma, Baskılama ve Suçlaştırma Pratikleri* [Civic Space Under Siege: Practices of Silencing, Suppression and Criminalization], p.26. <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/rapor-kusatma-altindaki-yurttaslik-alani/> (Accessed on 16 April 2024)

118 HRFT (11 January 2019), *Academics for Peace: A Brief History*. <https://www.tihvakademi.org/wp-content/uploads/2019/03/Barisicinakademisyenlervakasi.pdf>. (Accessed on 16 April 2024)

119 Constitutional Court, *Zübeyde Füsün Üstel and others* (Application no. 2018/17635). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/17635>. (Accessed on 16 April 2024)

120 The Inquiry Commission on the State of Emergency Measures (2022), *Activity Report 2017-2022*.

decisions, was not based on verifiable evidence, and that due process requirements were seemingly not fulfilled” and therefore constituted a broad form of punishment.<sup>121</sup>

### *Demonstrations and assemblies banned during the SoE*

31. The power to ban, postpone, permit, monitor and disperse indoor and outdoor assemblies and demonstrations, as stipulated in Article 11/1 m of the State of Emergency Law No. 2935, was exercised by all governors’ offices during the SoE without regard to Turkey’s obligations under international law. In addition to this law, governors have interpreted and frequently used the powers granted to them under Law no. 5442 and Law no. 2911 on Demonstrations and Assemblies.

The most extreme example of this trend was observed in Van. As a result of successive bans on demonstrations and events issued by the Van Governor’s Office, citizens were completely deprived of their right to assembly and demonstration between 21 November 2016 and 27 June 2022, with no interruption in between. Although the practice of uninterrupted bans by the Van Governor’s Office was terminated to coincide with the CC’s judgment regarding these bans,<sup>122</sup> decisions to impose bans for certain periods of time continue to be taken. A similar trend can be seen in the unlimited and indefinite bans on all LGBTI+ activities declared by the Ankara Governor’s Office during the SoE.<sup>123</sup>

### *The Inquiry Commission on the State of Emergency Measures*

The Inquiry Commission on the State of Emergency Measures which was established to review applications regarding the actions taken directly via emergency decrees during the SoE, started working on 22 May 2017. The commission, which was formed with a complete disregard for the recommendations of the Venice Commission was also criticized for its non-contentious functioning as it based all of its decisions on the files and information provided by public authorities.

A total of 127.292 applications to the Commission, whose mandate expired on 22 January 2023, were decided upon. The commission decided to accept 17.960 (14.1%) of the applications while rejecting 109.332 (85.9%). Of these decisions, 17.712 were related to dismissals from public office and 72 were related to the reopening of organizations that had been closed down. The Commission’s highly problematic functioning clearly shows that legal remedies have become almost non-existent for people and institutions adversely affected by the SoE.

### ***On the rule of law and the independence of the judiciary:***

32. Although the Government claims<sup>124</sup> that this issue is not within the Committee’s mandate, the Committee has long examined other countries in this respect.<sup>125</sup> Indeed, the Istanbul Protocol obliges judges and prosecutors to prevent and protect against torture and other forms of ill-treatment.<sup>126</sup> In order to fulfill the requirements of this duty, judges and prosecutors must have “all the necessary guarantees of independence from the authorities and other powerful interests in society.”<sup>127</sup>

121 Venice Commission (12 December 2016), *Opinion on Emergency Decree Laws nos. 667-676 Adopted Following the Failed Coup of 15 July 2016*, p.39. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-ad\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-ad(2016)037-e). (Accessed on 16 April 2024)

122 Constitutional Court, *Seyithan Acar and others* (Application no. 2020/32093). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/32093>. (Accessed on 16 April 2024)

123 In November 2017, the Ankara Governor’s Office imposed an unlimited and indefinite ban on all LGBTI+ activities on the basis of the SoE Law. This decision of the governor’s office was taken to court. While the court process was ongoing, the Ankara Governor’s Office issued a second ban on 3 October 2018 after the SoE was lifted. The second ban was based on Law no. 5442 on Provincial Administration and Law No. 2911 on Demonstrations and Assemblies. Although the Ankara 2nd Administrative Court lifted both bans on the grounds of “illegality,” it did not make any assessment of harm. The failure to assess the harm caused by the ban during the SoE was appealed at the Constitutional Court, but the application was rejected. After the Constitutional Court rejected the application, the lawyers took the ban decision to the ECtHR.

124 CAT/C/TUR/5, para. 67.

125 Committee Against Torture (19 January 2009), *Concluding observations of the Committee against Torture: Montenegro* (CAT/C/MNE/CO/1), para.8. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/C/MNE/CO/1&Lang=E>; Committee Against Torture (9 December 2009), *Concluding observations of the Committee against Torture : El Salvador* (CAT/C/SLV/CO/2), para.12. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/C/SLV/CO/2&Lang=E>; Committee Against Torture (29 March 2010), *Concluding observations of the Committee against Torture: Republic of Moldova* (CAT/C/MDA/CO/2), para.11. [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CAT%2FC%2FMDA%2FCO%2F2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CAT%2FC%2FMDA%2FCO%2F2&Lang=en). (Accessed on 21 April 2024)

126 *Istanbul Protocol*, para. 132-142.

127 International Commission of Jurists (6 October 2017), *The role of judges, lawyers, and prosecutors in preventing torture*. <https://www.icj.org/the-role-of-judges-in-preventing-torture/> (Accessed on 21 April 2024)



The systematic problems with the rule of law and the independence of the judiciary in Turkey continue to worsen.<sup>128</sup> The problems regarding the Council of Judges and Prosecutors (CJP) noted in the previous reporting period<sup>129</sup> have exacerbated in the meantime, as emphasized<sup>130</sup> by the CoE High Commissioner for Human Rights Dunja Mijatović.<sup>131</sup> The 2017 constitutional amendment reduced the number of CJP members from 22 to 13, leaving the selection of members entirely to the hands of the executive. The Minister of Justice and the undersecretary of the Minister of Justice are considered “natural members” of the council, with four members appointed by the President of the Republic and seven members appointed by a qualified majority in the Turkish Grand National Assembly.<sup>132</sup> In other words, the structural composition of the CJP has been organized in complete disregard of the Council of Europe’s recommendations.<sup>133</sup> Taking into account the fact that the president, as the head of the executive branch, no longer has to be *pouvoir neutre*, as the Venice Commission pointed out in its opinion before the constitutional amendment, the election of the members of the CJP by the executive means deliberate implementation of the problematic system foreseen and warned against by the Venice Commission at the time.<sup>134</sup> This is why the European Network of Councils of the Judiciary (ENCJ), which unanimously suspended<sup>135</sup> the observer status of the CJP on 8 December 2016, stated on 8 December 2020 that four years later, “the situation has not improved and has in fact deteriorated considerably.” ENCJ expressed that CJP which is expected to uphold the rule of law is “a Council in name only.”<sup>136</sup> This situation of the CJP has made the problem of partiality to political interference, which the Commissioner for Human Rights saw “signs”<sup>137</sup> of at the time, a reality today.

- Osman Kavala, who has not been released despite the ECtHR’s judgment,<sup>138</sup> was acquitted at the final hearing of the first trial of the Gezi Case on 18 February 2020.<sup>139</sup> However, on the basis of an investigation<sup>140</sup> in which he had previously been released ex officio, Kavala was arrested again on 19 February 2020 before he could leave the prison. After the acquittal of Kavala was interpreted as a conspiracy by President Erdoğan,<sup>141</sup> the judges of the Istanbul 30th High Criminal Court who handed down the acquittal verdict were targeted one by one by some media outlets.<sup>142</sup> Following

128 According to the latest data from the World Justice Project, which ranks 142 countries in terms of respect for the rule of law, Turkey ranks 117th with a score of 0.41 as of 2013. The seriousness of the situation can be better understood when it is considered that the regional average for 2023 is 0.50 and the global average is 0.55. World Justice Project (2023), *Rule of Law Index*. <https://worldjusticeproject.org/rule-of-law-index/country/2023/Turkiye/> (Accessed on 21 April 2024)

129 HRFT (March 2016), *Alternative Report To the United Nations Committee Against Torture For Its Consideration of the 4th Periodic Report of Turkey*, para.59.

130 Commissioner for Human Rights of Council of Europe Dunja Mijatović (19 February 2020), *Report Following Her Visit to Turkey From 1 to 5 July 2019*, para.14. <https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>. (Accessed on 21 April 2024)

131 In her most recent memorandum on Turkey, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, expressed deep regret that the CJP was not organized in line with Council of Europe standards, linking it to a “lack of political will.” Commissioner for Human Rights of Council of Europe Dunja Mijatović (5 March 2024). *Memorandum on freedom of expression and of the media, human rights defenders and civil society in Türkiye*, para.53. <https://rm.coe.int/memorandum-on-freedom-of-expression-and-of-the-media-human-rights-defe/1680aebf3d>. (Accessed on 21 April 2024)

132 Türkiye Cumhuriyeti Anayasası’nda Değişiklik Yapılmasına Dair 6771 sayılı Kanun [Law No. 6771 Amending the Constitution of the Republic of Turkey] (11 February 2017). <https://www.resmigazete.gov.tr/eskiler/2017/02/20170211-1.htm>. (Accessed on 21 April 2024)

133 Council of Europe (November 2011), *Recommendation CM/Rec(2010)12 on the independence, efficiency and responsibilities of judges*. <https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d>. (Accessed on 21 April 2024)

134 Venice Commission (13 March 2017), *Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017*, para.119. <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282017%29005-e>. (Accessed on 21 April 2024)

135 European Network of Councils for the Judiciary (8 December 2016), *ENCJ Votes to Suspend the Turkish High Council for Judges and Prosecutors*. <https://www.encj.eu/node/449>. (Accessed on 21 April 2024)

136 European Network of Councils for the Judiciary (8 December 2020), *ENCJ Board Statement on the Situation in Turkey*. <https://www.encj.eu/index.php/node/578>. (Accessed on 21 April 2024)

137 Dunja Mijatović (19 February 2020), p.11.

138 ECtHR (10 December 2019), *Kavala v. Turkey* (Application no. 28749/18). <https://hudoc.echr.coe.int/?i=001-199515>. (Accessed on 22 April 2024)

139 Docket no. 2019/74.

140 Investigation no. 2017/96115

141 BiaNet (19 February 2020), “President Erdoğan on Gezi Trial: They Attempt to Acquit Him with a Maneuver.” <https://bianet.org/haber/president-erdogan-on-gezi-trial-they-attempt-to-acquit-him-with-a-maneuver-220275>. (Accessed on 22 April 2024)

142 Yeni Akit (19 February 2020), “Galip Mehmet Perk kimdir? Gezi Parkı davası hakimleri kim? [Who is Galip Mehmet Perk? Who are the Gezi Park Case judges?]” <https://www.yeniakit.com.tr/haber/galip-mehmet-perk-kimdir-gezi-parki-davasi-hakimleri-kim-1076005.html>; “Ahmet Tank

these comments and news reports, it was announced that the 1st Chamber of the CJP launched an investigation against the judges, but the results of these proceedings were not shared with the public. A research conducted through open sources reveals that the judges who acquitted Kavala were subjected to reassignments in a way that could be considered a demotion. Galip Mehmet Perk who was appointed as the President of an Istanbul High Criminal Court on 31 October 2019,<sup>143</sup> was reassigned as a member of the Istanbul Regional Court of Appeals on 26 March 2021;<sup>144</sup> Ahmet Tark Çiftçiöğlü who was appointed as a member of the Istanbul 30th High Criminal Court on 29 July 2019<sup>145</sup> was reassigned to the Istanbul 9th Criminal Court of First Instance on 18 January 2021;<sup>146</sup> Talip Ergen who was appointed as a member of an Istanbul High Criminal Court on 19 September 2018<sup>147</sup> was reassigned to the Istanbul 22nd Criminal Court of First Instance on 18 January 2021.

### **On fundamental legal and procedural safeguards:**

#### *Problems regarding the right to be brought before a judge without delay*

33. The problem of the right to be brought before a judge without delay continues to worsen despite the Committee's recommendation.<sup>148</sup> The main source of this problem is the legislation itself.

As stipulated in Article 91(3) of the CPC, the maximum period of detention is four days "in cases of collective crimes." This provision itself constitutes a violation of the right of all detained persons to be brought before a judge without delay. On the other hand, the 2015 amendment<sup>149</sup> to Article 91 of the CPC, which the Committee had expressed concern about,<sup>150</sup> giving law enforcement officials greater powers to detain persons without judicial oversight, has not yet been annulled. The extension of the detention powers of law enforcement officials without any judicial oversight increases the risk of violations of the prohibition of torture and other forms of ill-treatment.

#### *Problems regarding the right to access to a lawyer and the right to communicate confidentially with a lawyer*

34. At least one third of the applicants to the HRFT between 2016 and 2023 stated that they did not have access to a lawyer during their detention. In other words and more specifically; in 2023, 393 applicants (65.7%); in 2022, 631 applicants (58.9%); in 2021, 458 applicants (52.6%); in 2020, 368 applicants

Çiftçiöğlü kimdir? Gezi davası mahkeme üyesi Ahmet Tark Çiftçiöğlü [Who is Ahmet Tark Çiftçiöğlü? Gezi Case court member Ahmet Tark Çiftçiöğlü]"

<https://www.yeniakit.com.tr/haber/ahmet-tarik-ciftcioglu-kimdir-gezi-davasi-mahkeme-uyesi-ahmet-tarik-ciftcioglu-1076024.html>; "Talip Ergen kimdir? Gezi davası hakimlerine son dakika soruşturma [Who is Talip Ergen? Breaking investigation against Gezi trial judges.]"

<https://www.yeniakit.com.tr/haber/talip-ergen-kimdir-gezi-davasi-hakimlerine-son-dakika-sorusturma-1076038.html>. (Accessed on 22 April 2024)

- 143 CJP (31 October 2019), *Hakimler ve Savcılar Kurulu Birinci Dairesi'nin 31/10/2019 Tarihli ve 1242 Sayılı Adli Yargı Kararnamesi* [Decree No. 1242 dated 31/10/2019 of the First Chamber of the Council of Judges and Prosecutors on the Judicial Justice.] [https://www.hsk.gov.tr/Eklentiler/files/31\\_10\\_2019-1242%20adli%20s%C4%B1ral%C4%B1.pdf](https://www.hsk.gov.tr/Eklentiler/files/31_10_2019-1242%20adli%20s%C4%B1ral%C4%B1.pdf). (Accessed on 22 April 2024)
- 144 CJP (26 March 2021), *Bölge Adliye Mahkemeleri Üyelerinin Müstemir Yetkilerinin Belirlenmesine İlişkin 26.03.2021 Tarihli ve 273 Sayılı Karar* [Resolution No. 273 dated 26.03.2021 on the Determination of the Powers of the Members of the Regional Courts of Appeal]. <https://www.hsk.gov.tr/Eklentiler/files/B%C3%B6lge%20Adliye%20Mahkemelerine%20%C4%B0li%C5%9Fkin%20M%C3%BCstemir%20Yetki%20Karar%C4%B1.pdf>. (Accessed on 22 April 2024)
- 145 CJP (29 July 2019), *Adli Yargı 1. Bölge Hâkimlerinin Müstemir Yetkilerinin Belirlenmesi, Yeniden İnceleme ve Tevziye İlişkin Taleplerin Değerlendirilmesine Yönelik 29/07/2019 tarihli ve 858 sayılı Karar* [Decision dated 29/07/2019 and numbered 858 on the Determination of the Plenary Authorities of the Judges of the 1st Regional Judiciary and the Evaluation of Requests for Re-Examination and Assignment]. <https://www.hsk.gov.tr/Eklentiler/Dosyalar/5759ec7e-11e6-4407-ac5d-02d2640db76d.pdf>. (Accessed on 22 April 2024)
- 146 CJP (18 January 2021), *Adli Yargı 1. Bölge Hâkimlerinin Müstemir Yetkilerinin Belirlenmesine İlişkin Hâkimler ve Savcılar Kurulu Birinci Dairesinin 18.01.2021 Tarihli ve 48 Sayılı Karar* [Decision No. 48 of the First Chamber of the Council of Judges and Prosecutors dated 18.01.2021 on the Determination of the Powers of the Judges of the 1st Judicial District]. [https://www.hsk.gov.tr/Eklentiler/files/1\\_B%C3%B6lge%20M%C3%BCstemir%20Yetki%20Karar%C4%B1.pdf](https://www.hsk.gov.tr/Eklentiler/files/1_B%C3%B6lge%20M%C3%BCstemir%20Yetki%20Karar%C4%B1.pdf). (Accessed on 22 April 2024)
- 147 CJP (19 September 2018), *Bazı Yer 1. Bölge Adli Yargı Hâkimlerinin Müstemir Yetkilerinin Belirlenmesi, Yeniden İnceleme ve Tevziye İlişkin Taleplerin Değerlendirilmesine Yönelik 19/09/2018 tarihli ve 1322 sayılı Karar* [Decision dated 19/09/2018 and numbered 1322 on the Determination of the Plenary Authorities of the Judges of the 1st District Judicial Jurisdiction in Certain Places and the Evaluation of Requests for Reexamination and Reassignment]. <https://www.hsk.gov.tr/Eklentiler/Dosyalar/d96f8154-870e-4335-95fc-43f540f83f9f.pdf>. (Accessed on 22 April 2024)
- 148 CAT/C/TUR/CO/4, para.20.
- 149 *Polis Vazife ve Salâhiyet Kanunu, Jandarma Teşkilat, Görev ve Yetkileri Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair 6638 sayılı Kanun* [Law No. 6638 Amending the Law on the Duties and Powers of the Police, the Law on the Organization, Duties and Authorities of the Gendarmerie and Certain Laws] (27 March 2015), Article 13. <https://www.resmigazete.gov.tr/eskiler/2015/04/20150404-26.pdf>. (Accessed on 22 April 2024)
- 150 CAT/C/TUR/CO/4, para.19.

(65.5%), in 2019, 494 applicants (58.9%); in 2018, 328 applicants (65%); in 2017, 356 applicants (63.3%) and in 2016, 242 applicants (55%) stated that they were able to meet with a lawyer during their detention.

As explained in detail above,<sup>151</sup> the right of detainees to access a lawyer has been regulated permanently by an addition to the CPC<sup>152</sup> through an emergency decree that was later enacted into law. Although the relevant article uses the term “may be restricted,” the practice of 24-hour lawyer restriction is not “rare” as the government claims,<sup>153</sup> but a common practice.<sup>154</sup> According to the data compiled by the HRFT Documentation Center, at least 552 detainees’ access to a lawyer was restricted for 24 hours between 2018 and 2023. Moreover, this restriction provides an environment for torture and other forms of ill-treatment and makes it difficult to document such acts. This issue needs to be considered in light of the fact, previously shared with the Committee,<sup>155</sup> that the restriction on lawyers’ access to investigation files continues to be another problem.

As explained in the following sections, practices that can be characterized as “unrecorded statements,” called “interviews (*mülakat* in Turkish)” or “conversations (*sohbet* in Turkish)” and aim at obtaining information from the detainee, are frequently observed during the 24-hour period when detainees are denied access to a lawyer.<sup>156</sup>

As mentioned above,<sup>157</sup> the addition permanently made to Article 59 of Law no. 5275 by an emergency decree violates the right of detained and/or imprisoned persons to meet with their lawyers in confidentiality. For instance;

- On 14 November 2016, the Diyarbakır Chief Public Prosecutor’s Office petitioned the Edirne High Security Prison ordering that all meetings of Selahattin Demirtaş<sup>158</sup> with his lawyers be recorded and that all documents exchanged between Demirtaş and his lawyer be confiscated, and that the meetings be terminated if deemed necessary.

#### *Problems regarding detainees’ right to access to a physician and medical evaluation processes*

**35.** The right of detainees to access a physician is not defined in legislation. Although Article 99 of the CPC contains the phrase “how the health control of detainees will be conducted,” this right is not regulated there. In that provision, it is merely stated that it “shall be specified in the regulation.” Article 9 of the By-Law on Apprehension, Detention and Statement-Taking titled “Health Check,” regulates the processes related to medical evaluations and reports.<sup>159</sup> The principles to be followed in the conduct of forensic medical services, including the medical evaluation of detainees, are set out in a 2005 circular of the Ministry of Health.<sup>160</sup>

The circular clearly states that the three-page “General Forensic Examination Report” form will be used when preparing the forensic report. It is also stated that in addition to information such as the name of the health institution, date, time, identity of the detained person, the physician who conducted the

151 See para. 22.

152 CPC (4 December 2004), Article 154 (2).

153 CAT/C/TUR/5, para.21

154 191 people, including lawyers, journalists and politicians, were detained on 25 April 2023 as part of a Diyarbakır-based investigation. The 191 detainees’ access to their lawyers was restricted for 24 hours. The Union of Turkish Bar Associations stated that this constituted a violation of the “right to defense” and the “right to a fair trial.” See The Union of Turkish Bar Associations (25 April 2023), “Savunma Hakkını Kısıtlayan Soruşturma Usullerinden Vazgeçilmelidir [Investigation Procedures Restricting the Right to Defense Must Be Abandoned].” <https://www.barobirlik.org.tr/Haberler/savunma-hakini-kisitlayan-sorusturma-usullerinden-vazgecilmelidir-83759>. (Accessed on 23 April 2024)

155 HRFT (March 2016), *Alternative Report To the United Nations Committee Against Torture For Its Consideration of the 4th Periodic Report of Turkey*, para.33.

156 See para. 83.

157 See para. 23.

158 Selahattin Demirtaş, former Co-Chair of the Peoples’ Democratic Party (HDP), was arrested on 4 November 2016. The ECtHR ruled that he was arrested “with the ulterior motive of suppressing pluralism and restricting freedom of political debate.” See ECtHR (22 December 2020), *Selahattin Demirtaş v. Turkey (no.2)* (Application no 14305/17). <https://hudoc.echr.coe.int/fre?i=001-207173>. (Accessed on 23 April 2024)

159 Ministry of Justice (1 June 2005), *Yakalama, Gözaltına Alma ve İfade Alma Yönetmeliği* [By-Law on Apprehension, Detention and Statement-Taking]. <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=8197&MevzuatTur=7&MevzuatTertip=5>. (Accessed on 24 April 2024)

160 Ministry of Health (22 September 2005), “Adli tabiplik hizmetlerinin yürütülmesinde uyulacak esaslar (Genelge no.2005/143) [Principles to be followed in the conduct of forensic services]” [https://hsgm.saglik.gov.tr/depo/Mevzuat/Genelgeler/2005-143\\_sayili\\_Adli\\_Tabiplik\\_Hizmetleri\\_Yurutulmesinde\\_Uyulacak\\_Esaslar.pdf](https://hsgm.saglik.gov.tr/depo/Mevzuat/Genelgeler/2005-143_sayili_Adli_Tabiplik_Hizmetleri_Yurutulmesinde_Uyulacak_Esaslar.pdf). (Accessed on 24 April 2024)

examination and issued the report, the examination conditions, the history of the incident, findings related to lesions, psychiatric examination and conclusion sections of the form “must be filled in.” Unfortunately, in practice, sections other than the conclusion are either not filled in or filled in superficially. In the conclusion sections, there is usually no information other than the stereotypical statement “no signs of battery or physical violence were observed,” which is used frequently in the absence of proper medical evaluation. Despite the persistence of such serious problems in medical evaluation and reporting processes, single-page examination forms have long been used instead of three-page examination report forms. It is not known to us when, by whom, on the basis of which legislation and on what grounds this change was made. Moreover, the same incomplete and erroneous approach is observed in the replaced report forms. To make matters worse, despite all these shortcomings and errors, the CC takes these reports seriously and refrains from issuing a violation decision on the prohibition of torture and other forms of ill-treatment. For instance;

- Despite the footage in the press<sup>161</sup> and the applicant’s well-founded allegations as well as complaints of physical and verbal violence in the case file, the CC found the claim of “violation of the prohibition of torture and other forms of ill-treatment” as “manifestly groundless” and found the application of *Maside Ocak Kışlakçı* “inadmissible.”<sup>162</sup> However, it has been observed that in all of the General Forensic Examination Reports in the file, the mandatory fields were left completely blank in such a way that it was not even possible to understand whether a medical examination was carried out or not and only the conclusion expressing that “no signs of battery or physical violence were observed” was written in conclusion sections.<sup>163</sup> Although the time between the examination and the issuance of the report appears to be 10 minutes and 50 seconds in the first report and 7 minutes and 29 seconds in the second report, an analysis of the medical examination duration of other persons seen by the same doctor shows that the time allocated for the examination was only 30 seconds in the first report and only 13 seconds in the second report.<sup>164</sup> Naturally, it is not possible to carry out any medical examination within such time frames.<sup>165</sup>

**Table 9: Evaluations on medical examinations of the applicants to the HRFT who were detained**

Year of last detention (n)	Previous years (258)	2016 (370)	2017 (350)	2018 (264)	2019 (296)	2020 (258)	2021 (326)	2022 (440)	2023 (261)
<b>Medical examinations</b>	%	%	%	%	%	%	%	%	%
Informed consent not obtained	87.5	86.7	92.3	63.6	87.5	84.6	91.7	80.2	74.4
Complaints were not heard	64.3	59.8	50.9	57.7	63.4	59.9	51.7	49.2	44.5
Patient history was not taken	70.8	67.9	69.2	76.2	78.8	78.4	76.2	67.8	60.1
Systematic examination was not carried out	73	73.5	71.1	85.8	86.4	91.8	88.4	71.1	72.7
Examination was not carried out	28.3	7.3	9.1	9.5	7.8	10.1	7.4	11.8	8.8

161 BBC Türkçe (25 August 2018), “Cumartesi Anneleri’nin 700. hafta oturumuna yasak [Saturday Mothers’ 700th week vigil banned].” <https://www.bbc.com/turkce/haberler-turkiye-45307188>. (Accessed on 24 April 2024)

162 Constitutional Court (16 November 2022), *Maside Ocak Kışlakçı* (Application no. 2019/21721). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/21721>. (Accessed on 24 April 2024)

163 There are two General Forensic Examination Reports (entry and exit) in the file: (i) with a serial code of *Maside Ocak* 15780 dated 25.8.2018, issued at 12:19:42 (ii) with a serial code of *Maside Ocak* 15846 dated 25.8.2018, issued at 16:36:40.

164 When the examination durations of the previous and the next ‘forensic examination’ reports by the same physician are taken into consideration, it can be easily seen by everyone that this procedure, which is carried out under the name of ‘forensic examination’, lasted only 30 seconds. Moreover, the fact that the “forensic examination” reports of many people who were detained on the same day were prepared in a similar manner and in incredibly short periods of time is an indication that the issuance of printed documents without medical evaluation has almost become a rule, and that the judicial bodies are also acting carelessly in this regard, despite the problem being so widespread and serious.

165 HRFT, which prepared the alternative report documenting the torture and ill-treatment to which the applicant was subjected, issued a detailed statement on this matter. See HRFT (20 March 2023), *AYM’nin 16.11.2022 Tarihli Kararı Hakkında Zorunlu Bir Açıklama* [A Necessary Explanation on the Constitutional Court’s Decision dated 16.11.2022]. <https://tihv.org.tr/basin-aciklamalari/aym-maside-ocak-karari/>. (Accessed on 24 April 2024)

36. The information provided by 2283 out of 5553 applicants to the HRFT between 2016 and 2023 shows that the mandatory medical evaluations to be carried out during all stages of deprivation of liberty, including during police custody and the medical evaluation reports that should be prepared based on these evaluations, are mostly in violation of the principles and rules of the Istanbul Protocol, as well as the principles set out in the circular of the Ministry of Health. More worryingly, it is observed that these evaluations are often not carried out at all.

The lack of medical examination at public health institutions in line with the principles and standards specified in the Istanbul Protocol leads to evidence of torture and other forms of ill-treatment not being properly documented. This in turn undermines the torture survivors' efforts to obtain legal remedies and thereby giving way to impunity. This reality demonstrates the need for medical assessment reports prepared by independent experts in accordance with the principles and standards set out in the Istanbul Protocol. However, the relevant article of the By-Law on Apprehension, Detention and Statement-Taking does not recognize the right to an independent medical assessment by a physician of one's own choice.<sup>166</sup> Yet, as stated in many parts of the Istanbul Protocol, detainees have the right to alternative medical assessment.<sup>167</sup> Furthermore, judicial authorities are expected to immediately launch an effective investigation when they detect the existence of incomplete and inaccurate medical reports that are in violation of even national legislation, take initiatives to obtain an independent second opinion on persons who claim to have been subjected to torture and other forms of ill-treatment and to immediately initiate investigations also against those who are complicit in rendering torture invisible. The fact that the reality is the opposite of this expectation is a particular indicator of the lack of effective investigations into allegations of torture and other forms of ill-treatment.

In clear violation of the right to privacy, the relevant article of the By-Law on Apprehension, Detention and Statement-Taking also foresees medical examination reports to be given to law enforcement officers.<sup>168</sup> What is more, the reports are not given to detainees and their lawyers. Under no circumstances should law enforcement officials have access to medical reports. The principle<sup>169</sup> clearly set out in the Istanbul Protocol is not respected in practice. This situation, which prevents torture survivors from receiving information about the evaluations, eliminates the confidentiality of the evaluation process and makes it impossible for physicians to make independent and free decisions while also delaying the process of objecting to incomplete and erroneous reports that do not comply with the Istanbul Protocol and obtaining an independent second opinion. For these reasons, direct mailing of reports to the relevant prosecutor's office would be more in line with the Istanbul Protocol.

37. The Istanbul Protocol establishes that security personnel of the health institution, not law enforcement officers, may be present during examinations and sets out the concrete principles of exceptions and conditions.<sup>170</sup> The By-Law on Apprehension, Detention and Statement-Taking stipulates that the presence of law enforcement officers in the examination room is an exception.<sup>171</sup> Nevertheless, due to the arbitrary approach of some physicians and the pressure of the law enforcement officers, this practice, which should be an exception, is turned into an ordinary one. Furthermore, the presence of law enforcement officers during examinations is not documented in writing as stipulated in the by-law.<sup>172</sup>

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166 *By-Law on Apprehension, Detention and Statement-Taking*, Article 9 Para.5: "Medical examination, control and treatment shall be performed by the forensic medical institution or public health institutions."

167 *Istanbul Protocol*, para. 312.

168 *By-Law on Apprehension, Detention and Statement-Taking* (1 June 2005). Article 9 Para.7: "One copy of the arrest or custody report shall be kept by the health institution that issued the report, the second copy shall be given to the detainee, and the third copy shall be given to the relevant law enforcement officer to be submitted to the investigation file."

169 *Istanbul Protocol*, para.200.

170 *Istanbul Protocol*, para. 313.

171 *By-Law on Apprehension, Detention and Statement-Taking* (1 June 2005). Article 9 Para.10: "It is essential that the physician and the person being examined remain alone and that the examination is carried out within the framework of the physician-patient relationship. However, the physician may request that the examination be carried out under the supervision of a law enforcement officer, citing personal security concerns. This request shall be fulfilled after being documented. In this case, upon the request of the detained person, the defense counsel may also be present during the examination, provided that it does not cause delay."

172 Article 9, paragraph 10 of the By-Law on Apprehension, Detention and Statement-Taking limits the detainee's right of access to a lawyer by making it conditional. This article of the by-law is contrary to Article 149/3 of the CPC, which stipulates that "At every stage of the investigation and prosecution phases, the right of the lawyer to meet with the suspect or defendant, to be present during the interrogation or interrogation and to provide legal assistance cannot be prevented or restricted." Since a by-law cannot be in conflict with a law, this restriction in the by-law should be considered null and void.

**Table 10: The presence of law enforcement officers during the medical examinations of applicants to HRFT**

Year of last detention (n)	Previous years (258)	2016 (370)	2017 (350)	2018 (264)	2019 (296)	2020 (258)	2021 (326)	2022 (440)	2023 (261)
<b>Presence of law enforcement officers</b>	%	%	%	%	%	%	%	%	%
Law enforcement officers were removed	23.2	42	48.1	41.4	39.6	50.4	51	43	53.8

As can be seen above, almost half of the applicants to the HRFT in between 2016 and 2023 stated that law enforcement officers were not removed during medical examinations. While medical evaluations during detention or arrest should be conducted in such a way that other persons cannot see or hear them in accordance with the principles set out in the Istanbul Protocol, the continued presence of the law enforcement officers in the medical examination settings undermines the privacy of the patient-physician relationship and the autonomy of the physician and creates an intimidating environment that prevents the documentation of torture and other forms of ill-treatment.

Although omitted from LOIPR, the “Tripartite Protocol,”<sup>173</sup> which the Committee included in the previous period’s LOIPR<sup>174</sup> and which was explained in the previous alternative report,<sup>175</sup> continues to be used as an instrument to justify the presence of law enforcement officers during medical examinations of pre-trial detainees and convicts.

38. In recent years, forcing detainees and prisoners to undergo medical examinations while handcuffed has reached such alarming proportions that it has become a “routine practice.”
- On 21 June 2022, 71-year-old human rights defender Mücella Yapıcı, who was arrested in connection with the Gezi Trial and held in Bakırköy Women’s Closed Prison, was taken to Istanbul Okmeydanı Oral and Dental Health Hospital where she was examined and had her teeth extracted while in handcuffs. Yapıcı filed a complaint against dentist M.K. who treated her against her will. Upon being requested for their opinion during these proceedings, the hospital administration admitted that the practice was “routine” by replying, “It is understood that the physician was treating the patient within the scope of routine treatment practices determined by the hospital and that there was no malicious intent.”
39. During the SoE period, medical examinations of detainees were carried under inappropriate conditions and in places such as police stations and gyms in accordance with the letter of the Ministry of Health in which the high number of detainees was used as a justification.<sup>176</sup> These practices continue, albeit to a lesser extent.

173 It was signed as an inter-ministerial agreement by the Ministries of Justice, Interior and Health on 6 January 2000 and last renewed on 26 January 2017. Ministry of Justice. “Ceza İnfaz Kurumlarının Yönetim, Dış Koruma, Hükümlü ve Tutukluların Sevk ve Nakilleri ile Sağlık Hizmetlerinin Yürütülmesi Hakkında Protokol [Protocol on the Administration, External Protection, Transfer and Transportation of Convicts and Prisoners and Health Services of Penal Enforcement Institutions].” <https://cte.adalet.gov.tr/Resimler/Dokuman/592019112913p47.pdf>. (Accessed on 24 April 2024)

174 UN Committee Against Torture (16 January 2013), *List of issues prior to the submission of the fourth periodic report of Turkey* (CAT/C/TUR/Q/4), para.5b.

175 HRFT (March 2016), *Alternative Report To the United Nations Committee Against Torture For Its Consideration of the 4th Periodic Report of Turkey*, para.40.

176 HRFT, İHD İstanbul Branch, İstanbul Chamber of Medicine and KESK İstanbul branches (16 August 2016), “Darbelere ve Diktalara Karşı, İnsana Dair Ahlakı İnşa Etmek Bir İnsanlık Erdemidir [Against Coups and Diktas, Building Human Morality is a Virtue of Humanity].” <https://istabip.org.tr/4337-darbelere-ve-diktalara-karsi-insana-dair-ahlaki-insa-etmek-bir-insanlik-erdemidir.html>. (Accessed on 24 April 2024)

**Table 11: The yearly distribution of applicants to the HRFT who underwent medical examinations outside medical settings**

Year of last detention (n)	Previous years (258)	2016 (370)	2017 (350)	2018 (264)	2019 (296)	2020 (258)	2021 (326)	2022 (440)	2023 (261)
	%	%	%	%	%	%	%	%	%
Medical examinations outside medical settings	2.2	12.5	6.6	3.3	5.1	1.3	1.3	5.2	0.8

It is impossible for physicians, who are subjected to pressures even in health institutions and have difficulty maintaining their independence, to document torture and other forms of ill-treatment by making assessments in accordance with the Istanbul Protocol outside health institutions and in units under the supervision of the law enforcement.

**On the system of administrative authorization:**

40. Law no. 6722 on the Amendment of the Turkish Armed Forces Personnel Law and Certain Laws is still in force.<sup>177</sup> With the addition made to Article 11 of Law no. 5442 through this law, investigations against Turkish Armed Forces (TAF) personnel and other public officials involved in activities in the name of “counter-terrorism” are subject to the authorization of the relevant administrative authorities for crimes they are alleged to have committed while carrying out these activities.<sup>178</sup> A similar amendment was made for temporary village guards and volunteer village guards with a “provisional” article added to Law no. 5442.<sup>179</sup> The same provisional article stipulates that the authorization system will also apply retroactively.<sup>180</sup>

With Law no. 6722, Article 47 of the Military Penal Code no. 1632 was amended together with its title, and the possibility of postponement of imprisonment sentences to be imposed for “military offenses” has been introduced.<sup>181</sup> Also, through Law no. 6722, Additional Article 8 of the Military Penal Code No. 1632 was amended and it has been stipulated that short-term imprisonment sentences can be converted into alternative sanctions regulated under Article 50 of the TPC.<sup>182</sup> Similarly, through Law no. 6722, an addition was made to Law no. 353 on the Establishment and Trial Procedure of Military Courts, making it possible to defer the announcement of the verdict for prison sentences to be imposed for “military offenses.”<sup>183</sup>

As a result, Law no. 6722 makes it virtually impossible to investigate allegations of torture and other forms of ill-treatment in which security officials are suspects by obscuring them with the “fight against terrorism” justification. Furthermore, by covering the period before the date of entry into force, it further strengthened the armor of impunity which protects perpetrators of torture and other forms of ill-treatment. Although the authorities claim<sup>184</sup> that no investigation authorization has been requested pursuant to this law, the accuracy of this claim cannot be confirmed as no statistics have been published in this regard.

177 CAT/C/TUR/QPR/5, para.14.

178 Türk Silâhlı Kuvvetleri Personel Kanunu İle Bazı Kanunlarda Değişiklik Yapılmasına Dair 6722 sayılı Kanun [Law No. 6722 on the Amendment of the Turkish Armed Forces Personnel Law and Certain Laws] (14 July 2016). Article 12, Para. 5 ve 6. <https://www.resmigazete.gov.tr/eskiler/2016/07/20160714-1.htm>. (Accessed on 24 April 2024)

179 Law No. 6722 on the Amendment of the Turkish Armed Forces Personnel Law and Certain Laws, Article 13.

180 Law No. 6722 on the Amendment of the Turkish Armed Forces Personnel Law and Certain Laws, Article 13: “PROVISIONAL ARTICLE 5- The provisions of the fifth and sixth subparagraphs of paragraph (J) of Article 11 shall also apply to the Turkish Armed Forces personnel, civil servants, temporary village guards and other public officials, including volunteer village guards, who were assigned in accordance with paragraph (D) of Article 11 and Article 1 of the Law on the Security Organization dated 4/6/1937 and numbered 3201 before the date of entry into force of this Article.”

181 Law No. 6722 on the Amendment of the Turkish Armed Forces Personnel Law and Certain Laws. Article 9.

182 Law No. 6722 on the Amendment of the Turkish Armed Forces Personnel Law and Certain Laws. Article 11.

183 Law No. 6722 on the Amendment of the Turkish Armed Forces Personnel Law and Certain Laws. Article 14.

184 CAT/C/TUR/5, para.56.

### *Loophole regarding the investigation of the offense of torture*

41. With an addition<sup>185</sup> made in 2003 to Article 2 of Law no. 4483 on the Prosecution of Civil Servants and Other Public Officials, investigations and prosecutions under Articles 243 (torture and torture aggravated by its consequences) and 245 (torment)<sup>186</sup> of the former Penal Code no. 765 were no longer subject to authorization. Although the former Penal Code no. 765 was repealed in 2005 and the new Penal Code no. 5237 entered into force, the fact that there is no specific provision in Law No. 4483 on the investigation and prosecution of acts of torture and other forms of ill-treatment in the new Penal Code creates a loophole.<sup>187</sup> This loophole allows judicial authorities to make different interpretations, as the CC pointed out in its recent *Aras Şahin* judgment.<sup>188</sup>

Considering that the crime of “torture”, which is criminalized under Articles 94 and 95 of the TCC, can only be committed by public officials by definition, in the presence of such allegations, prosecutors should investigate them ex officio and even “personally and primarily”<sup>189</sup> without requesting any authorization. However, in practice, applications regarding allegations of torture are often handled within the scope of crimes such as “intentional injury” (Article 86 of the TPC) or “exceeding the limit of the authority to use force” (Article 256 of the TPC), rather than within the scope of the articles of the penal code criminalizing torture, and are therefore being subjected to investigation authorization with an erroneous approach despite the CC’s judgments on this subject.<sup>190</sup> For instance;

- The lawyers of Saturday Mothers/People filed 31 criminal complaints against police chiefs and police officers who had detained them. The prosecutors who initiated investigations following the criminal complaints sent 26 of the investigation files to the Istanbul Governor’s Office and requested administrative authorization. Governor Davut Gül denied authorization in 25 of these requests. In only one of the appeals against Governor Gül’s decision did the Regional Administrative Court decide to lift the decision to authorize an investigation.<sup>191</sup>

### **On statute of limitations:**

42. According to paragraph 6 of Article 94 of the TPC, the statute of limitations is not applicable for the crime of torture. However, since this provision does not cover crimes committed before 30 April 2013, when the relevant paragraph was added to the article of the law, crimes committed before that date are therefore subject to statute of limitations.<sup>192</sup>

The legal processes initiated following the criminal complaints filed in relation to acts of torture and deaths in detention during the military coup period of 12 September 1980, during which hundreds of thousands of people were tortured and killed in detention, were concluded one by one in 2014 based on the decision of the 1st Penal Chamber of the Court of Cassation dated 4 December 2013 stating that “the 20-year statute of limitations from 1980 to 2004 has expired.”<sup>193</sup> Moreover, a significant number of suspects and perpetrators have advanced in their careers to higher positions. Thus, the statute of limitations has been used in the past as a means of providing impunity for gross human rights violations, including torture.

185 4483 sayılı Memurlar ve Diğer Kamu Görevlilerinin Yargılanması Hakkında Kanun [Law No. 4483 on the Prosecution of Civil Servants and Other Public Officials] (2 December 1999), Article 2 Addition: “The provisions of this Law shall not apply to investigations and prosecutions under Articles 243 and 245 of the Turkish Criminal Code No. 765 and the fourth paragraph of Article 154 of the Code of Criminal Procedure No. 1412.” <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=4483&MevzuatTur=1&MevzuatTertip=5>. (Accessed on 24 April 2024)

186 Torture, aggravated torture and cruelty are criminalized under Articles 94, 95 and 96 of the TPC no. 5237, respectively.

187 See para.4.

188 Constitutional Court (11 May 2023), *Aras Şahin* (Application no. 2020/365), para.12. <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/365>. (Accessed on 24 April 2024)

189 CPC (4 December 2004), Additional Article 1: “Public prosecutors shall personally and primarily conduct investigations into allegations against law enforcement officers for the crimes of murder, intentional injury, torture, exceeding the limit of the authority to use force, establishing an organization to commit crimes and crimes committed within the framework of the activities of an illegal organization. Lawsuits filed against law enforcement officers for these offenses shall be considered as urgent matters. The judicial review of such cases shall also be carried out with priority.”

190 Also see paras. 77-79.

191 A detailed list showing the practice of subjecting the criminal complaints of the Saturday Mothers/People to administrative authorization is shared with the Committee in Annex II.

192 İnsan Hakları ve İfade Özgürlüğü Bağlamında Bazı Kanunlarda Değişiklik Yapılmasına Dair 6459 sayılı Kanun [Law No. 6459 Amending Certain Laws in the Context of Human Rights and Freedom of Expression] (11 April 2013), Article 9. <https://www.resmigazete.gov.tr/eskiler/2013/04/20130430-1.htm>. (Accessed on 25 April 2024)

193 1st Penal Chamber of the Court of Cassation ( 4 December 2023), Docket no. 2013/2656, Decision no. 2013/7378.



Thus, the Committee of Ministers of the CoE considers this situation regarding the statute of limitations as a “systematic problem” and regularly examines it under the *Bati and others* group of cases. At its last meeting, the Committee of Ministers drew attention to this problem and called on the government to “redouble their efforts to ensure that the proceedings are concluded in a Convention-compliant manner before they become time-barred.”<sup>194</sup>

The problem discussed here stems from the fact that there is no exception to the prohibition against *ex post facto* laws in line with the principle of “no punishment without law (*nulla poena sine lege*).” While there is no appropriate legislation to exempt the crime of torture from the *ex post facto* prohibition, international human rights law makes it possible to prosecute an individual who violates a *jus cogens* norm such as the prohibition of torture.<sup>195</sup>

### **On the National Preventive Mechanism:**

43. The problems previously shared<sup>196</sup> with the Committee regarding the Human Rights and Equality Institution of Turkey (HREIT), which operates under the pretense of being a National Preventive Mechanism (NPM), have not been addressed in line with the concerns and recommendations of the Committee<sup>197</sup> and the recommendations<sup>198</sup> of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and have reached even more worrying levels. While the existing concerns<sup>199</sup> about HREIT, particularly regarding its independence and competence, have not yet been addressed, the amendments introduced by the emergency decree no. 703,<sup>200</sup> which entered into force on 9 July 2018, have further pushed the institution away from the principles set out in the Optional Protocol (OPCAT), the Paris Principles, and the Guiding Principles of the SPT.<sup>201</sup>

According to the law, the institution currently consists of a “board and a chairmanship.”<sup>202</sup> Until the amendment introduced by emergency decree no. 703, eight members of the 11-member board were elected by the Council of Ministers and three by the President. However, emergency decree no. 703 amended<sup>203</sup> Article 10 of Law No. 6701 in a way that 11 members of the board, including the chairperson and the second chairperson, are now appointed by the President of the Republic. Following this amendment, which completely binds the institution to the executive, all claims of “independence”<sup>204</sup> are now completely unfounded.

Another important amendment made by emergency decree no. 703 concerns the competence of the institution and the principle of pluralistic representation. The fourth and fifth subparagraphs of paragraph 4 of Article 10 of Law no. 6701, which set out the conditions for membership to the board by defining the certain experience required and by underlining the pluralistic representation, have been removed. In other words, competence is no longer a requirement for board membership and contrary to claims, there is no legal obligation to ensure “pluralistic representation.”<sup>205</sup>

194 Committee of Ministers (21 September 2023). H46-36 *Bati and Others group v. Turkey* (Application No. 33097/96) Supervision of the execution of the European Court’s judgments. [https://search.coe.int/cm/pages/result\\_details.aspx?objectId=0900001680ac9e74](https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680ac9e74). (Accessed on 25 April 2024)

195 ICCPR (16 December 1966), Article 15/2

196 HRFT (March 2016), *Alternative Report To the United Nations Committee Against Torture For Its Consideration of the 4th Periodic Report of Turkey*, paras.46-58.

197 CAT/C/TUR/CO/4, paras.27-28.

198 The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) (12 December 2019). *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Turkey* (CAT/OP/TUR/1). <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/OP/TUR/1&Lang=E>. (Accessed on 6 May 2024).

199 CAT/OP/TUR/1, paras. 18-43.

200 *Anayasada Yapılan Değişikliklere Uyum Sağlanması Amacıyla Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılması Hakkında 703 sayılı Kanun Hükmünde Kararname* [Decree Law No. 703 on Amendments to Certain Laws and Decree Laws in order to Harmonize with the Amendments to the Constitution] (9 July 2018). Article 149. <https://www.resmigazete.gov.tr/eskiler/2018/07/20180709M3-1.pdf>. (Accessed on 6 May 2024)

201 SPT (9 December 2010). *Guidelines on national preventive mechanisms*. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/OP/12/5&Lang=E>. (Accessed on 6 May 2024)

202 *6701 sayılı Türkiye İnsan Hakları ve Eşitlik Kurumu Kanunu* [Law no. 6701 on the Human Rights and Equality Institution of Turkey] (20 April 2016). Article 8(2). <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6701&MevzuatTur=1&MevzuatTertip=5>. (Accessed on 6 May 2024)

203 *Law no. 6701 on the Human Rights and Equality Institution of Turkey* (20 April 2016). Article 10(2): “The Board is composed of eleven members appointed by the President, one of whom is the Chairperson and one of whom is the Second Chairperson.”

204 CAT/C/TUR/5, para.59.

205 CAT/C/TUR/5, para.61.

44. HREIT directly harms the efforts to prevent and eradicate torture and other forms of ill-treatment. In its guidelines on the role of NPMs, the Office of the United Nations High Commissioner for Human Rights (OHCHR) emphasizes that NPMs are “preventive” and “do not undertake investigations or adjudicate on complaints concerning torture or ill-treatment.”<sup>206</sup> However, in complete defiance of this rule and, moreover, the principles of the OPCAT HREIT undertakes investigations into allegations of torture and other forms of ill-treatment and adjudicates on “violations” or “no violations”<sup>207</sup> by acting on the authority granted to it by law.<sup>208</sup> Addressing allegations of torture and other forms of ill-treatment with methods that do not comply with the Istanbul Protocol and other relevant international standards, instead of paving the way for effective investigations, hinders the effective and prompt investigation of allegations by prosecutors’ offices.

Aside from the fact that the institution undertakes “investigations,” the number of applications made to the institution and the number of “decisions” issued regarding these investigations are also striking. Although there is no systematic consistency in the presentation of these data, it is emphasized that an increasing number of applications are received each year. According to these numbers, one violation decision was issued in 598 applications received in 2018, one violation decision was issued in 965 applications received in 2019, one violation decision was issued in 679 applications received in 2020, two violation decisions were issued in 529 applications received in 2021, five violation decisions were issued in 956 applications received in 2022 and five violation decisions were issued in 981 applications received in 2023.<sup>209</sup>

As explained above, the accreditation of HREIT, which is extremely far from international principles and standards, even with B status, and the fact that it continues to operate in this way, harms the long-standing struggle against torture in Turkey.

#### **On threats against human rights defenders:**

45. Contrary to the government’s claim,<sup>210</sup> this issue is within the Committee’s mandate<sup>211</sup> as persistent and systematic attacks on civic space inevitably lead to its shrinking, which in turn renders it unable to fulfill its crucial functions in preventing torture and other forms of ill-treatment.

As the CoE Commissioner for Human Rights has noted, in the years following the lifting of the SoE, “the situation has steadily deteriorated.”<sup>212</sup> This finding has been confirmed by different institutions.<sup>213</sup> Indeed, the pressure on civil society organizations gradually increased through legislative amendments as well as judicial harassment. For example, in 2018, an amendment<sup>214</sup> to the Regulation on Associations obliged associations to register all their members in the Ministry of Interior’s Associations Information System.

206 OHCHR (2018). *Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide*, p. 5. <https://www.ohchr.org/en/publications/training-and-education-publications/preventing-torture-role-national-preventive>. (Accessed on 6 May 2024)

207 HREIT. “Kurul Kararları [Board Decisions].” <https://www.tihек.gov.tr/kategori/pages/kararlar>. (Accessed on 6 May 2024)

208 Law no. 6701 on the Human Rights and Equality Institution of Turkey, Article 9(1-i): “Within the scope of the national prevention mechanism, examining, investigating, deciding on and following up the results of the applications of persons deprived of their liberty or taken under protection.”

209 The data compiled as of 30 April 2023 is taken as the basis due to the problematic access to and classification of the HREIT data.

210 CAT/C/TUR/5, para.93.

211 The Committee has also evaluated other countries in this respect and made recommendations in this regard. For example; Committee Against Torture (11 December 2023), *Concluding observations on the third periodic report of Burundi* (CAT/C/BDI/CO/3), paras.20-21. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FBDI%2FCO%2F3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FBDI%2FCO%2F3&Lang=en); Committee Against Torture (24 July 2019), *Concluding observations on the seventh periodic report of Mexico* (CAT/C/MEX/CO/7), paras.62-63. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/C/MEX/CO/7&Lang=E>; Committee Against Torture (27 January 2016), *Concluding observations on the fourth periodic report of Azerbaijan* (CAT/C/AZE/CO/4), paras.10-11. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/C/AZE/CO/4&Lang=E>. (Accessed on 28 April 2024)

212 Commissioner for Human Rights of Council of Europe Dunja Mijatović (19 February 2020), *Report Following Her Visit to Turkey From 1 to 5 July 2019*. para.129.

213 Civicus, which monitors civic space around the world and classifies the state of civic space in each country under the categories of “open”, “restricted”, “blocked”, “repressed” and “closed”, has categorized the state of civic space in Turkey as “repressed” for the 2019-2023 period. Civicus Monitor, <https://monitor.civicus.org>; Also see Freedom House, *Freedom in the World*. <https://freedomhouse.org/report/freedom-world>. (Accessed on 26 April 2024)

214 Ministry of Interior (1 October 2018), *Dernekler Yönetmeliğinde Değişiklik Yapılmasına Dair Yönetmelik* [By-Law Amending the Regulation on Associations]. <https://www.resmigazete.gov.tr/eskiler/2018/10/20181001-1.htm>. (Accessed on 26 April 2024)

Before the Council of State annulled<sup>215</sup> this obligation, it was added<sup>216</sup> to the Law on Associations.<sup>217</sup> Another example is the Law no. 7262 on the Prevention of Financing the Proliferation of Weapons of Mass Destruction which was adopted on 27 December 2020 “in a rushed manner.”<sup>218</sup> Law no. 7262, which introduced 13 amendments to the Law on Associations, is still being used as a tool of repression despite the Venice Commission’s recommendations<sup>219</sup> and the fact that the Financial Action Task Force (FATF) “gray listed” Turkey also for this reason.<sup>220</sup>

**Table 12: Judicial harassment of human rights defenders<sup>221</sup>**

#	2019	2020	2021	2022 <sup>222</sup>	2023
<b>Detained HRDs</b>	76	304	285	126	113
<b>Arrested HRDs</b>	30	90	74	27	5
<b>Prosecuted HRDs</b>	126 HRDs in 15 cases	41 HRDs in 20 cases	70 HRDs in 27 cases	1143 HRDs in 105 cases	264 HRDs in 39 cases
<b>Sentences imposed on HRDs</b>	147 years and 3 months for 23 HRDs tried in 2 different cases	52 years and 9 months for 11 HRDs tried in 8 different cases	41 years and 3 months for 8 HRDs tried in 7 different cases	266 years 5 months and 10 days for 33 HRDs tried in 18 cases and aggravated life imprisonment for Osman Kavala	N/A

46. As can be seen above, human rights defenders have been subjected to systematic judicial harassment. Although each example is more serious than the other, it is unfortunately not possible to present all of them. However, current information on some of the human rights defenders named in the LOIPR is as follows:

- **Taner Kılıç:** On 31 May 2022, the ECtHR ruled that Taner Kılıç’s detention was a violation of his right to liberty and security and freedom of expression.<sup>223</sup> On 17 October 2022, the Court of Cassation overturned Kılıç’s prison sentence on the grounds that it was imposed without adequate investigation.

215 Civil Society Development Center. *Cancellation Decision of the Council of State for Notification of Association Member and Employee Information*. <https://www.stgm.org.tr/en/blog/cancellation-decision-council-state-notification-association-member-and-employee-information>. (Accessed on 26 April 2024)

216 Law no. 5253 on Associations ( 23 November 2004). “Provisional Article 1: Associations shall notify the name, surname, date of birth and identification number of their members to the associations unit where their headquarters is located within six months as of the entry into force of this article. The provision of subparagraph (s) of the first paragraph of Article 32 shall apply to association executives who fail to fulfill this notification.” <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5253&MevzuatTur=1&MevzuatTertip=5>. (Accessed on 26 April 2024)

217 CoE Commissioner for Human Rights Dunja Mijatović (19 February 2020), *Report Following Her Visit to Turkey From 1 to 5 July 2019*, para.133.

218 Venice Commission (6 July 2021). *Opinion on the compatibility with international human rights standards of Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction recently passed by Turkey’s National Assembly, amending, inter alia, the Law on Associations no. 2860*, para.84. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)023cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)023cor-e). (Accessed on 26 April 2024)

219 Venice Commission (6 July 2021). para.90.

220 Reuters (21 October 2021). *Finance watchdog ‘grey lists’ Turkey in threat to investment*.

<https://www.reuters.com/business/finance-watchdog-grey-lists-turkey-threat-investment-2021-10-21>. (Accessed on 26 April 2024)

221 The data in this table is compiled from the HRFT’s Annual Human Rights Reports. <https://tihv.org.tr/yillik-insan-haklari-raporlari>. (Accessed on 26 April 2024)

222 The data presented here are taken from the HRFT’s report titled *Repression, Obstacles and Challenges Faced by Human Rights Defenders in Turkey in 2022*.

<https://en.tihv.org.tr/alternative-shadow-reports/repression-obstacles-and-challenges-faced-by-human-rights-defenders-in-turkey-in-2022>. (Accessed on 28 April 2024)

223 ECtHR (31 May 2022), *Taner Kılıç v. Türkiye (no.2)* (Application no. 208/18). <https://hudoc.echr.coe.int/eng?i=001-217625>. (Accessed on 28 April 2024)

Kılıç was acquitted on 6 June 2023 in the case<sup>224</sup> in which he stood trial with other human rights defenders.<sup>225</sup>

- Osman Kavala: Arrested on 1 November 2017, Osman Kavala is still deprived of his freedom despite the ECtHR's judgment.<sup>226</sup> Kavala was acquitted at the Gezi Trial's final hearing on 25 April 2022 on the grounds that there was no "conclusive and sufficient evidence" for the charge of "political or military espionage", which was the justification for his imprisonment for 2 years, 1 month and 16 days. However, the court sentenced Kavala to aggravated life imprisonment for "attempting, by force and violence, to overthrow the government of the Republic of Turkey or to partially or completely prevent it from performing its duties" and ordered his immediate arrest. The Grand Chamber of the ECtHR, which examined the case after the Committee of Ministers's decision,<sup>227</sup> ruled that Turkey violated Article 46 of the ECHR by failing to implement the ECtHR judgment.<sup>228</sup> Despite this judgment, the Court of Cassation upheld Kavala's prison sentence on 28 September 2023. In its latest action plan submitted to the Committee of Ministers, the government claimed that Kavala's situation concerning the ECtHR judgment had changed, noting that Kavala has been arrested following his conviction.<sup>229</sup>
- Eren Keskin: As of writing of this report, the total number of lawsuits (criminal and civil) filed against Eren Keskin is 128. In 120 of these cases, prison sentences and/or judicial fines have been imposed. Keskin has been sentenced to a total of 26 years, 9 months and 20 days in prison in four different cases. These cases are pending before the courts of appeal or the Court of Cassation. Additionally, Keskin has been sentenced to a total judicial fine of 431.921 TL as a result of lawsuits filed under Articles 18 and 21 of the Press Law no. 5187. Keskin was obliged to pay TL 184.000 of this amount so that it would not be converted into a prison sentence. Keskin is currently on trial in two different cases pursuant to Article 301 of the TPC and Law no. 2911.
- Selçuk Kozağaçlı: The trial of 22 lawyers, including Selçuk Kozağaçlı, was concluded on 11 November 2022. The court sentenced Kozağaçlı to 12 years in prison for "membership in a terrorist organization" and 1 year in prison for "making propaganda for a terrorist organization." The 3rd Penal Chamber of the Court of Cassation upheld the prison sentence on 21 February 2024.

47. HRFT staff and volunteers were also subjected to judicial harassment, contrary to the obligation imposed on states by the Committee through its General Comment No. 3.<sup>230</sup>

- Prof. Dr. Şebnem Korur Fincancı, former president of the HRFT and current board member and chairperson of the Central Council of the Turkish Medical Association (TTB), was arrested on 27 October 2022 following her comments on a television channel and released on 11 January 2023 after 76 days of arbitrary detention. Fincancı was sentenced to 2 years, 8 months and 15 days in prison for "making propaganda for a terrorist organization" on the grounds of her comments which were within the scope of freedom of expression. The appeal against the prison sentence is dismissed by the 2nd Criminal Chamber of the Istanbul Regional Court of Appeals. The case is pending before the Court of Cassation.<sup>231</sup> Citing the same comments, TAF filed a lawsuit for moral damages against Prof. Dr. Şebnem Korur Fincancı, claiming that their "personal rights were violated." The lawsuit is still ongoing.

224 Amnesty International (20 October 2017), *Turkey: The Taner Kılıç prosecution*.

<https://www.amnesty.org/en/documents/eur44/7331/2017/en/>. (Accessed on 28 April 2024)

225 Amnesty International (6 June 2023), *Türkiye: Justice prevails as four human rights defenders finally acquitted*.

<https://www.amnesty.org/en/latest/news/2023/06/justice-prevails-as-four-human-rights-defenders-finally-acquitted/>. (Accessed on 28 April 2024)

226 ECtHR (10 December 2019), *Kavala v. Turkey* (Application no. 28749/18).

227 CoE Committee of Ministers (2 February 2022), *Interim Resolution CM/ResDH(2022)21*.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a56447](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a56447). (Accessed on 28 April 2024)

228 ECtHR Grand Chamber (11 July 2022). *Proceedings under Article 46 § 4 in the Case of Kavala v. Türkiye* (Application no. 28749/18).

<https://hudoc.echr.coe.int/?i=001-218516>. (Accessed on 28 April 2024)

229 Action Plan (15/04/2024) - Communication from Türkiye concerning the case of *Kavala v. Türkiye* (Application no. 28749/18). [https://hudoc.exec.coe.int/?i=DH-DD\(2024\)432E](https://hudoc.exec.coe.int/?i=DH-DD(2024)432E). (Accessed on 28 April 2024)

230 Committee Against Torture (13 December 2012). *General comment No. 3 (2012) on the implementation of article 14 by States parties* (CAT/C/GC/3), para. 15. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc3-general-comment-no-3-2012-implementation>. (Accessed on 9 May 2024)

231 Joint Communication by the Working Group on Arbitrary Detention and Special Procedures (3 November 2022). *Information concerning the arrest and detention of Dr. Şebnem Korur Fincancı, a leading forensic medical practitioner and anti-torture and human rights expert by the Turkish authorities in connection with her exercise of free expression*.

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=2765>. (Accessed on 9 May 2024)

- Öztürk Türkdoğan, a founding member of the HRFT and former Co-Chair of IHD, was subjected to judicial harassment with three different lawsuits filed against him during the reporting period. Türkdoğan was acquitted of the charges of “membership in an armed organization,” “insulting a public official” and “insulting the Turkish nation,” all of which were based on his human rights activism.
- Bilal Yıldız, an employee of the HRFT Istanbul Representative Office, was arrested on 11 June 2022 in connection with the activities of the Migration Monitoring Association (GÖÇİZDER) and released on 5 January 2023 after 209 days of arbitrary detention. Yıldız was acquitted of the charge of “membership in an armed organization” on 9 February 2024 which was brought against him on the grounds of his human rights activism.<sup>232</sup>
- HRFT Secretary General Coşkun Üsterci, HRFT Izmir Representative Office Treatment Secretary Aytül Uçar, HRFT Van Representative Office physician Dr. Hüseyin Yaviç, HRFT Van Representative Sevim Çiçek and HRFT Van Representative Office physician Dr. Ayfer Bostan were subjected to judicial harassment through different lawsuits filed against them for “defying Law no. 2911” on the grounds of peaceful protests they participated in as part of their human rights activism. They have all been acquitted.
- Günseli Kaya, a member of the Founders’ Board of the HRFT, was acquitted in 2022 in the lawsuit filed against her for “membership in an armed organization” on the grounds of her speech in a documentary produced by the Health and Social Service Workers’ Union (SES).
- Dr. Serdar Küni, former physician of the HRFT Cizre Reference Centre, was sentenced to 4 years and 2 months for “acting on behalf of an illegal organization without being a member of it” on 16 November 2020. The Court of Appeal upheld the prison sentence and the case is pending before the Court of Cassation.<sup>233</sup>
- On 7 April 2022, an investigation was initiated against HRFT President Metin Bakkalcı for “membership in an armed organization” on the grounds of his speech in a documentary prepared by SES. The investigation was concluded in 2024 with a decision of non-prosecution.

#### *Press freedom*

48. The HRFT Documentation Center recorded that between 2015 and 2019, at least 1118 media workers were detained, 281 media workers were arrested and 311 media workers were sentenced to a total of 1592 years and 7 months in prison on various grounds.<sup>234</sup> The situation has not improved between 2019 and 2023.

232 Joint Communication by UN Special Procedures (16 September 2022). *Information received regarding arrest, detention, criminal prosecution, and subsequent treatment of Bilal Yıldız in state custody, in connection with his activities in support of displaced people, particularly Kurdish and other minorities, in Türkiye.*  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27443>. (Accessed on 9 May 2024)

233 Joint Communication by the Working Group on Arbitrary Detention and Special Procedures (23 June 2017). *Information received concerning alleged arbitrary detention and conviction of Dr. Serdar Küni for actions that pertain to his duty as a doctor to provide equal and appropriate medical treatment to everyone.*  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23180>. (Accessed on 9 May 2024)

234 Davas and Tekin (2021), p.27.

**Table 13: Judicial harassment of journalists**

#	2019	2020	2021	2022	2023
<b>Detained journalists</b>	86	72	54	63	84
<b>Arrested journalists</b>	14	25	2	30	19
<b>Prosecuted journalists</b>	336 journalists and media workers in 123 different cases	239 journalists and media workers in 129 different cases	250 journalists and media workers in 120 different cases	252 journalists and media workers in 107 different cases	252 journalists and media workers in 107 different cases
<b>Sentences imposed on journalists</b>	350 years, 6 months and 3 days of imprisonment for 89 journalists and media workers	173 years, 11 months and 7 days of imprisonment for 41 journalists and media workers	87 years 1 month and 14 days of imprisonment for 41 journalists and media workers	50 years and 6 months of imprisonment for 28 journalists and media workers	18 years, 8 months and 25 days imprisonment for 13 journalists and media workers
<b>Imprisoned journalists</b>	111	86	46	64	41

Furthermore, 222 journalists and media workers were subjected to physical violence between 2019 and 2023. In at least 97 of these incidents, the perpetrators were law enforcement officers.<sup>235</sup>

## RECOMMENDATIONS REGARDING ARTICLE 2

### The state party should:

- Unambiguously reaffirm the absolute prohibition of torture and publicly condemn practices of torture, accompanied by a clear warning that anyone committing such acts or otherwise complicit or acquiescent in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties, as also recommended by the Committee in the last concluding observations (para. 12d),
- Take all measures to ensure that responsibility during deprivation of liberty rests with the public authorities rather than the detained person,
- Ensure that procedural safeguards against torture and other forms of ill-treatment are upheld from the moment of deprivation of liberty, whether formal or informal, when the person is de facto or de jure under the full control of law enforcement officials,
- Re-adopt and implement effective measures to ensure prompt information and notification regarding the rights of persons in detention,
- Repeal Article 91/4 of the CPC, which authorizes law enforcement officials to detain persons without judicial oversight during their detention, and guarantee the right of all detained persons to be brought before a judge without delay from the moment they are deprived of their liberty,

<sup>235</sup> BiaNet, BIA Media Monitoring Reports, <https://bianet.org/proje/bia-media-monitoring-reports-289599>. (Accessed on 28 April 2024)

- Repeal Article 154 (2) of the Criminal Procedure Code, which stipulates a 24-hour lawyer restriction, and Article 153 (2), which restricts the lawyer's authority to examine the contents of the file or take samples from documents, as well as Article 150 (3), which regulates the restriction on compulsory defense counsel, and Articles 59 (5), (7), (8) on the Execution of Sentences and Security Measures, which violate the right of detained and/or imprisoned persons to meet with their lawyers in confidentiality, and guarantee the right to access to a lawyer in accordance with the procedure,
- As included in the 2022 edition of the Istanbul Protocol, to ensure consistent accountability within state bodies, formally recognize the Istanbul Protocol standards through legislative and administrative actions, provide adequate financial and human resources to sustain the progressive implementation of the Istanbul Protocol standards and provide the conditions for effective implementation of the Istanbul Protocol standards (*Istanbul Protocol*, paras. 649-650),
- Through legislation, provide an environment in which all medical evaluations can be conducted independently, scientifically and ethically in accordance with the Istanbul Protocol,
- Ensure the proper and thorough use of the three-page "General Forensic Examination Report" form included in a 2005 circular of the Ministry of Health,
- Recognize the right to seek a second medical examination or opinion,
- Ensure that public forensic and health institutions respect the right of individuals to be assessed by one or more non-public health professionals of their choice at any time during or after detention (*Istanbul Protocol*, paras. 670) and that such assessments by non-public clinicians are admissible in court and should be considered on an equal footing with assessments of public health professionals (*Istanbul Protocol*, paras. 660),
- Affirm and facilitate active dialogue with non-governmental organizations, platforms and professional associations on collective efforts to take action against torture, including the implementation of the Istanbul Protocol (*Istanbul Protocol*, paras. 653),
- Put an end to practices of medical examination in handcuffs,
- Repeal Article 38 (4) of the "Tripartite Protocol", which has been used for 24 years as a tool to legitimize the presence of law enforcement officers during examinations of prisoners and detainees, and revise its other articles in light of the Nelson Mandela Rules and CPT standards,
- Amend Law No. 2911 on Demonstrations and Assemblies and related regulations to bring the right to protest in line with international standards, with a particular emphasis on ending arbitrary restrictions on assemblies and demonstrations,
- Adopt legislation that criminalizes the intentional use of force against peaceful protesters during assemblies and demonstrations as torture and other ill-treatment,
- Prohibit the use of weapons with proven lethality in all protests, whether spontaneous, simultaneous, unauthorized or restricted,
- Refrain in all circumstances from the use of kinetic, biological and chemical agents, in particular tear gas and rubber bullets, during peaceful protests,
- Amend Law No. 6638, known as the "Domestic Security Package," to eliminate the risks it entails, especially in terms of torture and violations of the right to life,
- Amend Law No. 2559 on the Duties and Powers of the Police to uphold the right to life and the right not to be subjected to torture in cases of the use of force,
- Develop a comprehensive program to fulfill the obligation of preventing torture and ill-treatment of children,
- Apply higher standards for classifying treatment and punishment as cruel, inhuman and degrading when children are concerned,
- Recognize that strip searches and invasive body searches amount to torture when they are carried out for a prohibited purpose or for any reason based on discrimination and when they cause severe pain and suffering,

- Outlaw the use of reverse handcuffs without any exception,
- Limit the use of handcuffs only to the necessary conditions set out in the law and recognize that it constitutes torture if it is inflicted for any reason based on discrimination and in such a way as to cause severe pain and suffering,
- Put an end to arbitrary detentions and arrests under the pretext of “fight against terrorism,” which have significantly increased since the Committee’s last concluding observations,
- Develop and implement an action plan towards preventing abductions and enforced disappearances, which have increased significantly since the Committee’s last concluding observations,
- Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance,
- Sign and ratify the Rome Statute,
- Repeal all legal regulations that have been made permanent during the SoE period in a way that is beyond the scope and duration of the SoE,
- Develop and implement a comprehensive action plan to ensure the right to redress for all individuals and institutions that have been subjected to multiple human rights violations caused by the wide-ranging measures taken via emergency decrees,
- Ensure that judges and prosecutors are able to exercise their duties in an independent, objective and impartial manner,
- Amend Law No. 6087 on the Council of Judges and Prosecutors, in particular to end the influence of executive power on the CJP,
- Repeal Article 12 (paras. 5 and 6) of Law No. 6722, which makes the initiation of investigations against Turkish Armed Forces personnel and other public officials, temporary village guards and volunteer village guards for crimes allegedly committed while carrying out activities under the name of “fight against terrorism,” including the time before the date of entry into force, subject to the authorization of relevant administrative authorities,
- Ensure that there is no retroactive statute of limitations for investigations into allegations of torture and other forms of ill-treatment,
- Abolish statute of limitations on investigations into gross human rights violations, in particular extrajudicial killings and enforced disappearances,
- Amend Law no. 6701 on HREIT to comply with Paris Principles and ensure its financial, structural and functional independence and guarantee the competency of its board members,
- Establish a National Prevention Mechanism separate from HREIT or amend the HREIT statute, to comply with OPCAT,
- Revoke the mandate to investigate allegations of torture and other ill-treatment as a function of the National Preventive Mechanism,
- Immediately authorize publishing of complete observation reports by CPT based on its visits to Turkey,
- Ensure the effective protection of journalists, human rights defenders and medical doctors against threats and attacks to which they may be exposed on account of their activities and refrain from detaining and prosecuting journalists and human rights defenders as a means of intimidating them or discouraging them from freely reporting on human right issues, as also recommended by the Committee in the last concluding observations (para.44b),
- Take all effective measures to ensure that lawyers are not prosecuted or subjected to any other form of sanction or intimidation in the exercise of their profession,
- Stop stigmatizing and intimidating people under the guise of fighting terrorism,



## IV. ISSUES RELEVANT TO ARTICLE 3

49. In 2012, the government started building six “Reception and Accommodation Centers” and one “Removal Center” in Erzurum with the support of the European Union (EU), while negotiations on the “Readmission Agreement” signed between EU and Turkey on 16 December 2013 were ongoing.<sup>236</sup> The number and capacity of Removal Centers have been increased through various projects<sup>237</sup> implemented through the Instrument for Pre-Accession Assistance.<sup>238</sup> At the time of the writing of this report, there are a total of 28 Removal Centers in 24 different cities.<sup>239</sup> Since their establishment, Removal Centers have been places of deprivation of liberty where numerous human rights violations have been recorded. In its judgment delivered in the case of four people who were sent to the EU-funded Gaziantep Removal Center, built in 2014, the ECtHR ruled that the conditions in the facility amounted to a violation of the “prohibition of torture.”<sup>240</sup> The judgment is yet to be implemented.<sup>241</sup>

### *Unlawful deportations*

50. The violations identified in the ECtHR’s judgment have taken on a systematic character over time. Asylum-seekers/refugees/migrants are detained in Removal Centers without administrative or judicial review or for long periods of time with little possibility of redress.<sup>242</sup> Especially since September-October 2023, a significant number of foreigners held under administrative detention in Removal Centers have been forcibly deported within the seven-day period for filing a lawsuit against the deportation decision taken against them, or after the lawsuit has been filed and the institution has been notified of the lawsuit, in defiance of Article 53/3 of Law No. 6458 on Foreigners and International Protection, which in fact provides a highly effective procedural guarantee.<sup>243</sup> The Union of Turkish Bar Associations, the Ankara Bar Association and the Izmir Bar Association have made successive press statements demanding an end to the unlawful deportation practices in view of the fact that the aforementioned practices continue even in spite of the injunctions issued by the CC.<sup>244</sup>

236 Presidency of Migration Management, “Göç İdaresi Başkanlığının Biten Projeleri [Finished Projects of the Presidency of Migration Management].” <https://www.goc.gov.tr/goc-projeleri56>. (Accessed on 30 April 2024)

237 Presidency of Migration Management, “Finished Projects of the Presidency of Migration Management”; Directorate for EU Affairs (22 March 2022). “Supporting Removal Centres’ Capacities and Fostering Alternatives to Administrative Detention.” [https://www.ab.gov.tr/supporting-removal-centres-capacities-and-fostering-alternatives-to-administrative-detention\\_52377\\_en.html](https://www.ab.gov.tr/supporting-removal-centres-capacities-and-fostering-alternatives-to-administrative-detention_52377_en.html); Directorate for EU Affairs (22 March 2022). “Supporting DGMM in the Management, Reception and Hosting of Irregular Migrants.” [https://www.ab.gov.tr/supporting-dgmm-in-the-management-reception-and-hosting-of-irregular-migrants\\_52376\\_en.html](https://www.ab.gov.tr/supporting-dgmm-in-the-management-reception-and-hosting-of-irregular-migrants_52376_en.html). (Accessed on 30 April 2024)

238 Directorate for EU Affairs Financial Cooperation and Project Implementation Department. “IPA Nedir? [What is IPA?]” <https://ipa.gov.tr/ipa-nedir/>; Financial Cooperation and Project Implementation Department. *IPA Book: Türkiye - EU Financial Cooperation Projects*.” <https://www.ab.gov.tr/siteimages/abyayinpdf/EN%20-%20IPA.pdf>. (Accessed on 30 April 2024)

239 Presidency of Migration Management. “Geri Gönderme Merkezleri İletişim [Removal Centers Contact].” <https://www.goc.gov.tr/geri-gonderme-merkezleri-iletisim>. (Accessed on 30 April 2024)

240 ECtHR (17 October 2019), *G.B. and others v. Turkey* (Application no. 4633/15). <https://hudoc.echr.coe.int/?i=001-196612>. (Accessed on 30 April 2024)

241 CoE Committee of Ministers (8 December 2021). Resolution CM/ResDH(2021)419. <https://hudoc.exec.coe.int/eng?i=001-215303>. (Accessed on 30 April 2024)

242 The deprivation of liberty practices observed in Removal Centers fall under category IV arbitrary detention as defined by the UNHRC Working Group on Arbitrary Detention. Working Group on Arbitrary Detention. *About arbitrary detention*. <https://www.ohchr.org/en/about-arbitrary-detention>. (Accessed on 30 April 2024)

243 6458 sayılı *Yabancılar ve Uluslararası Koruma Kanunu* [Law 6458 on Foreigners and International Protection] Article 53/3: “The foreigner or his/her legal representative or lawyer may appeal against the deportation decision to the administrative court within seven days of the notification of the decision. The person who applies to the court shall also notify the authority that issued the deportation decision of his/her application. Applications to the court shall be finalized within fifteen days. The decision of the court shall be final. Without prejudice to the consent of the foreigner, the foreigner shall not be deported within the period for filing a lawsuit or, in case of an application to the court, until the conclusion of the proceedings.” <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6458&MevzuatTur=1&MevzuatTertip=5>. (Accessed on 30 April 2024)

244 Union of Turkish Bar Associations (22 October 2023). “Yabancı Müvekkillerin Haklarında Kesinleşmiş Bir Karar Olmaksızın Sınır Dışı Edilmelerine İlişkin Açıklama [Statement on the Deportation of Foreign Clients in the absence of a Finalized Judgment].” <https://www.barobirlik.org.tr/Haberler/yabanci-muvekkillerinhaklarinda-kesinlesmis-bir-karar-olmaksizin-sinir-disi-edilmelerine-iliskin-ac-84217>; Izmir Bar Association (12 October 2023). Letter to the Presidency of Migration Management dated October 12 and numbered E-58106323-099[070/11074]-15446. [https://www.izmirbarosu.org.tr/Upload/files/goc\\_idaresi.pdf](https://www.izmirbarosu.org.tr/Upload/files/goc_idaresi.pdf); Ankara Bar Association (27 October 2023). “Hukuka Aykırı Sınır Dışı Etme İşlemleri Durdurulmalıdır! [Unlawful Deportations Must Stop!]”

The Izmir Bar Association also reported that asylum seekers/refugees/migrants were subjected to torture and other forms of ill-treatment and forced to sign “voluntary return” forms.<sup>245</sup>

#### *Untraceability of persons who were detained and handed over to the Presidency of Migration Management*

51. Another type of violation recently observed in relation to Removal Centers is the failure of lawyers and relatives of individuals to be present at the centers where they are said to have been sent after being detained by law enforcement officers. 12 lawyers, who could not reach their clients despite all their efforts, brought up this issue on social media.<sup>246</sup> In response to the lawyers, the Presidency of Migration Management claimed that the statements in question “targeted public order and security efforts and the fight against terrorism” and were “disinformation.”<sup>247</sup>

### RECOMMENDATIONS REGARDING ARTICLE 3

#### **The state party should:**

- Consider lifting the geographical limitation to the 1951 Convention by withdrawing its reservations, as also recommended by the Committee in the last concluding observations (para. 24b),
- Ensure that in practice no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal, foreseeable risk of being subjected to torture, as also recommended by the Committee in the last concluding observations (para. 24c),
- Formulate clear guidelines and related training on the identification of torture victims among asylum seekers, as also recommended by the Committee in the last concluding observations (para. 24e)

<https://ankarabarasu.org.tr/duyuru/c8c11908-74a9-11ee-9958-000c29c9dfce>. (Accessed on 30 April 2024)

245 Also see Human Rights Watch (18 November 2022). “No One Asked Me Why I Left Afghanistan”: Pushbacks and Deportations of Afghans from Turkey.

<https://www.hrw.org/report/2022/11/18/no-one-asked-me-why-i-left-afghanistan/pushbacks-and-deportations-afghans-turkey>. (Accessed on 30 April 2024)

246 “Kamuoyuna Duyuru: Göç idaresine sevk edilen müvekkilimiz nerede? [Public Statement: Where is our client who was referred to the immigration authorities?]” (13 February 2024). <https://twitter.com/YILMAZHalim/status/1757368675433095567/photo/1>. (Accessed on 30 April 2024)

247 Presidency of Migration Management (17 February 2024). “Geri Gönderme Merkezlerine Gönderilen Yabancılara İlişkin Gerçek Dışı Haberler Hakkında Basın Açıklaması [Press Release on False News Regarding Foreigners Sent to Removal Centers.]” <https://www.goc.gov.tr/geri-gonderme-merkezlerine-gonderilen-yabancilara-iliskin-gercek-disi-haberler-hakkinda-basin-aciklamasi>. (Accessed on 30 April 2024)

## V. ISSUES RELEVANT TO ARTICLE 10

### *On Istanbul Protocol training programs:*

52. In the Human Rights Action Plan published by the Ministry of Justice on 2 March 2021, it was announced that Istanbul Protocol training programs will be organized for physicians only.<sup>248</sup>

In this context, the Ministry of Health held a two-day meeting called “Istanbul Protocol in-service training of trainers” on 30-31 March 2022 with around 90 forensic medicine experts employed at the ministry. The forensic medicine experts who attended the meeting were informed after the meeting that they are to provide one-day training for the physicians working in their provinces. Following two one-day meetings called “Pilot Trainings,” one-day training programs called “Istanbul Protocol Trainings” began to be organized following a letter sent by the ministry to provincial health directorates. All physicians are attempted to be reached through these one-day training programs organized in different provinces.<sup>249</sup>

The Association of Forensic Medicine Specialists (ATUD) sent a letter to the Ministry of Health on 20 September 2023, warning that the Istanbul Protocol trainings as planned by the ministry would be inadequate. ATUD suggested that the Istanbul Protocol trainings should be planned with the participation of relevant institutions and organizations which have experience in preparation of such trainings and that their contributions should be sought. ATUD expressed its willingness to assume responsibility and requested a meeting with the ministry.<sup>250</sup> Not only were the warnings ignored, but requests for meetings were also left unanswered.

Additionally, it is observed that the training materials prepared by the HRFT, the TTB and ATUD were used in these so-called “training” meetings without even informing these institutions, including the HRFT,<sup>251</sup> which was one of the four non-governmental organizations that contributed to the preparation of the Istanbul Protocol as well as the work which resulted in the 2022 edition of the Istanbul Protocol.

Furthermore, there is no information on whether there is a methodology in place to evaluate these one-day “trainings” in terms of their academic quality or if these programs have been evaluated in terms of their impact.<sup>252</sup> This situation makes one think that these “trainings” were carried out in order to fulfill the requirements of some kind of “homework.”

248 Ministry of Justice (March 2021). *İnsan Hakları Eylem Planı* [Human Rights Action Plan], p.73: “Objective 6.2(d): Training will be provided to forensic medicine specialists and doctors to ensure compliance of forensic examination and reporting procedures with the Istanbul Protocol and international standards.” <https://insanhaklarieylemplani.adalet.gov.tr/resimler/eylemplani.pdf>. (Accessed on 1 May 2024)

249 Gaziantep Provincial Directorate of Health (27 December 2023). “İstanbul Protokolü Eğitimi’nin 2. Oturumu Gerçekleştirildi [The 2nd Session of Istanbul Protocol Training was held].” <https://gaziantepism.saglik.gov.tr/TR-297670/istanbul-protokolu-egitiminin-2-oturumu-gerceklestirildi.html#>; Isparta Provincial Directorate of Health (25 January 2024). “İstanbul protokolü eğitimi [Istanbul protocol training].” <https://ispartaism.saglik.gov.tr/TR-301048/istanbul-protokolu-egitimi.html>; Çanakkale Provincial Directorate of Health (21 February 2024). “İstanbul Protokolü Eğitim Raporu [Istanbul Protocol Training Report].” <https://canakkaleism.saglik.gov.tr/TR-303744/istanbul-protokolu-egitim-raporu.html#>; Kastamonu Provincial Directorate of Health (1 December 2023). “Adli Muayene ve Raporlama İşlemlerinin İstanbul Protokolü ve uluslararası standartlara uyum sağlaması amacıyla ‘İstanbul Protokolü Eğitimi’ düzenlendi [‘Istanbul Protocol Training’ was organized to ensure compliance of Forensic Examination and Reporting Procedures with the Istanbul Protocol and international standards].” <https://kastamonuism.saglik.gov.tr/TR-295370/adli-muayene-ve-raporlama-islemlerinin-istanbul--protokolu-ve-uluslararası-standartlara-uyum-saglamasi-amaciyla-istanbul-protokolu-egitimi-duzenlendi.html#>. (Accessed on 1 May 2024)

250 Association of Forensic Medicine Specialists (20 September 2023). “İstanbul Protokolü Eğitimleri Hakkında [About Istanbul Protocol Trainings].” <https://atud.org.tr/istanbul-protokolu-egitimleri-hakkinda/>. (Accessed on 1 May 2024)

251 The 2022 edition of the Istanbul Protocol has been translated into Turkish by the HRFT in accordance with the agreement with the United Nations Publications Board. The HRFT, which has previously created the framework and materials for Istanbul Protocol trainings in Turkey and around the world, and participated in every stage of national and international trainings, has started to update the training contents, training materials and training module after publication of the 2022 edition of the Istanbul Protocol.

252 CAT/C/TUR/QPR/5, para.28(c).

On the other hand, there is no information available in open sources which shows that structured Istanbul Protocol training programmes for judges and prosecutors, administrative supervisors of places of detention and law enforcement officials have taken place since the Committee's last concluding observations.

## RECOMMENDATIONS REGARDING ARTICLE 10

### **The state party should:**

- Develop and implement structured training programs to ensure that all relevant officials, including judges and prosecutors, administrative inspectors of places of detention, law enforcement officials and prison and immigration officials, are fully aware of UNCAT and other relevant human rights instruments and that violations will not be tolerated, will be investigated, and that those responsible will be prosecuted and, if found guilty, appropriately punished,
- Establish monitoring programs to evaluate the impact of structured training programs,
- Ensure the development of a methodology for Istanbul Protocol trainings with the participation of experts on the Istanbul Protocol in a way that will allow the program to be evaluated in terms of academic quality in terms of both the method and target determination of the program and the control of knowledge, behaviour and skills, with due attention to the 2022 edition,
- Develop a supervision system for Istanbul Protocol trainings with the participation of civilian experts,
- Develop a program to include Istanbul Protocol trainings in the curricula of law faculties, with due attention to the 2022 edition,
- Increase its efforts to systematically provide training to all law enforcement officers on the use of force, especially in the context of demonstrations, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, as also recommended by the Committee in the last concluding observations (para. 16b),

## VI. ISSUES RELEVANT TO ARTICLE 11

### *On the problem of overcrowding in prisons:*

53. It has been observed that the problem of overcrowding in prisons has been getting worse since 2005. Together with the physical conditions of prisons such as the architecture and the locations of prisons, overcrowding in prisons continues to be the source of many human rights violations in prisons. What is more the Committee's recommendation<sup>253</sup> to address the problem of overcrowding in prisons has not been taken into account.

**Table 14: Distribution of prison population in Turkey by years according to SPACE I<sup>254</sup>**

Year	Prison population	Prison population rate	Average of CoE members
2015	173.372	220.2	129.0
2016	188.793	239.8	122.1
2017	N/A <sup>255</sup>	N/A	N/A
2018	N/A <sup>256</sup>	N/A	N/A
2019	263.963	321.9	119.8
2020	291.310	350.3	116.7
2021	268.672	321.3	105.0
2022	300.782	351.5	108.2
2023	341.497	395.8	N/A <sup>257</sup>

Unfortunately, the government's response<sup>258</sup> does not answer the Committee's question.<sup>259</sup> As can be seen above, the problem of overcrowding in prisons is indeed worsening.

253 CAT/C/TUR/CO/4, para.31.

254 SPACE - Council of Europe Annual Penal Statistics (25 April 2017). *SPACE I - Prison Populations Survey 2015*, p.49. [https://wp.unil.ch/space/files/2017/04/SPACE\\_I\\_2015\\_FinalReport\\_161215\\_REV170425.pdf](https://wp.unil.ch/space/files/2017/04/SPACE_I_2015_FinalReport_161215_REV170425.pdf); SPACE - Council of Europe Annual Penal Statistics (7 February 2019). *SPACE I - Prison Populations Survey 2016*, p.53. [https://wp.unil.ch/space/files/2019/02/SPACE-I-2016-Final-Report\\_Updated\\_190207.1.pdf](https://wp.unil.ch/space/files/2019/02/SPACE-I-2016-Final-Report_Updated_190207.1.pdf); SPACE - Council of Europe Annual Penal Statistics (15 December 2019). *Space I 2019 - Prison Populations*, p.30. [https://wp.unil.ch/space/files/2023/05/200405\\_FinalReport\\_SPACE\\_I\\_2019.pdf](https://wp.unil.ch/space/files/2023/05/200405_FinalReport_SPACE_I_2019.pdf); SPACE - Council of Europe Annual Penal Statistics (15 December 2020). *Space I 2020 - Prison Populations*, p.33. [https://wp.unil.ch/space/files/2021/04/210330\\_FinalReport\\_SPACE\\_I\\_2020.pdf](https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf); SPACE - Council of Europe Annual Penal Statistics (15 December 2021). *Space I 2021 - Prison Populations*, p. 32. [https://wp.unil.ch/space/files/2024/01/SPACE-I\\_2021\\_FinalReport.pdf](https://wp.unil.ch/space/files/2024/01/SPACE-I_2021_FinalReport.pdf); SPACE - Council of Europe Annual Penal Statistics (15 December 2022). *Space I 2022 - Prison Populations*, p. 31. [https://wp.unil.ch/space/files/2024/01/240111\\_SPACE-I\\_2022\\_FinalReport.pdf](https://wp.unil.ch/space/files/2024/01/240111_SPACE-I_2022_FinalReport.pdf); SPACE - Council of Europe Annual Penal Statistics, *Prison stock on 1st January 2023*. <https://wp.unil.ch/space/space-i/prison-stock-on-1-january/prison-stock-on-1st-january-2023/>. (Accessed on 1 May 2024)

255 SPACE I has not published its report for 2017.

256 SPACE I identified inconsistencies in the data submitted by Turkey. Since the inconsistency in the data could not be resolved in time, Turkey requested to be exempted from the 2018 report and the report did not include Turkey's data. See SPACE - Council of Europe Annual Penal Statistics (20 December 2018). *Space I 2018 - Prison Populations*, p.9. [https://wp.unil.ch/space/files/2019/06/FinalReportSPACEI2018\\_190611-1.pdf](https://wp.unil.ch/space/files/2019/06/FinalReportSPACEI2018_190611-1.pdf). (Accessed on 1 May 2024)

257 It is unknown as the SPACE I 2023 report has not yet been published.

258 CAT/C/TUR/5, para.150.

259 CAT/C/TUR/QPR/5, para.29.

Table 15: Overcrowding in prisons according to official data<sup>260</sup>

	2016	2017	2018	2019	2020	2021	2022	2023	2024 <sup>261</sup>
<b>Number of penal institutions</b>	382	386	389	362	370	384	399	403	403
<b>Population of penal institutions</b>	200.727	232.340	264.842	291.546	266.831	297.860	341.294	322.780	329.151
<b>Capacity</b>	202.675	208.830	213.862	230.210	245.200	270.068	289.974	295.702	295.328
<b>Number of prisoners over capacity<sup>262</sup></b>	-1948	23.510	50.980	61.336	21.631	27.792	51.320	27.078	33.823

Although inconsistent with the data reported to the CoE, the data published by the General Directorate of Prisons and Detention Houses also confirms the existence of the problem and demonstrates its extent. Furthermore, given that the number of people entering prisons each year from 2021 onwards is higher than the number of people being released, it is not difficult to foresee that the problem of overcrowding in prisons will worsen.<sup>263</sup>

54. In a statement on 25 March 2020, UN High Commissioner for Human Rights Michelle Bachelet called on governments to “take urgent action against COVID-19, which is rampaging through places of detention” and called for the immediate release of “every person detained without sufficient legal basis, including political prisoners and others detained simply for expressing critical or dissenting views.”<sup>264</sup> The government not only ignored the High Commissioner’s call, but also discriminatorily implemented the alternatives to imprisonment recommended<sup>265</sup> by the Special Rapporteur on Torture, even under pandemic conditions. In violation of the principle of equality and the prohibition of discrimination, journalists, academics, lawyers, human rights defenders, human rights defenders and political prisoners in general, who are in prisons for exercising their freedom of expression, were not included in the “pandemic-specific leave,”<sup>266</sup> which began to be implemented with the “Provisional Article 9” added to the Law No. 5275 on 15 April 2020. As of 3 February 2022, only 95,213 detainees/inmates have been released through this regulation, which was introduced on the grounds of the necessity created by the pandemic.<sup>267</sup>

260 The table presented for the Committee’s consideration was created by combining data published by the General Directorate of Prisons and Detention Houses and the General Directorate of Judicial Records and Statistics. General Directorate of Judicial Records and Statistics (29 September 2022). *Ceza İnfaz Kurumu İstatistikleri 2022* [Statistics on Penal Institutions]. <https://adlisicil.adalet.gov.tr/Home/SayfaDetay/cte-istatistikleri-bulteni29092022032841>; General Directorate of Prisons and Detention Houses (1 March 2024). “Genel Bilgi [General Information].” <https://cte.adalet.gov.tr/Home/SayfaDetay/cik-genel-bilgi>; General Directorate of Prisons and Detention Houses (15 April 2024). “Ceza İnfaz Kurumunda Bulunan Tutuklu/Hükümlü Mevcutları [Detainees/Inmates in Penal Institution].” <https://cte.adalet.gov.tr/Resimler/Dokuman/15042024112504istatistik-1.pdf>. (Accessed on 1 May 2024)

261 General Directorate of Prisons and Detention Houses (1 May 2024). “Genel Bilgi [General Information].” <https://cte.adalet.gov.tr/Home/SayfaDetay/cik-genel-bilgi>; General Directorate of Prisons and Detention Houses (2 May 2024). “Ceza İnfaz Kurumunda Bulunan Tutuklu/Hükümlü Mevcutları [Detainees/Inmates in Penal Institution].” <https://cte.adalet.gov.tr/Resimler/Dokuman/6052024163106istatistik-1.pdf>. (Accessed on 21 May 2024)

262 Unfortunately, the data does not include the number of “pre-trial detainees”, i.e. “detainees whose sentences have not yet been finalized, but whose sentences have been executed in advance.” See *Space I 2022 - Prison Populations*, p.25.

263 According to the latest data published, the number of people entering prisons in 2022 was 301.410, while the number of people leaving prisons was 264.844. See General Directorate of Judicial Records and Statistics (29 September 2022), *Ceza İnfaz Kurumu İstatistikleri 2022* [Statistics on Penal Institutions].

264 Office of the High Commissioner for Human Rights (25 March 2020). “Urgent action needed to prevent COVID-19 “rampaging through places of detention” – Bachelet.” <https://www.ohchr.org/en/statements/2020/03/urgent-action-needed-prevent-covid-19-rampaging-through-places-detention>. (Accessed on 1 May 2024)

265 The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Nils Melzer (18 December 2017). *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), para.40. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/37/50/Add.1&Lang=E>. (Accessed on 1 May 2024)

266 CAT/C/TUR/5, para.150.

267 *Space I 2022 - Prison Populations*, p.25.

Another amendment, which followed the 2020 amendment and was similarly discriminatory<sup>268</sup> is “Provisional Article 10” added to the Law no. 5275 in 2023.<sup>269</sup> While nearly 110,000 prisoners<sup>270</sup> were released as a result of this amendment, people who are in prison for exercising their freedom of expression and political prisoners were excluded, as was the case in 2020. This amendment also stipulated the “type of offense” as a precondition for benefiting from rights such as probation or being placed in open prisons. On the other hand, with the imprecise phrase “The Execution Judge may decide” in the second paragraph of this amendment, the execution judge has been granted a discretionary power that is not defined by law and a situation where there is no legal foreseeability has been created.

However, these arrangements, including the one mentioned by the government in its report, have only partly provided “temporary” solutions to the problem of overcrowding in prisons, which has been shown above to have become chronic. Indeed, after the amendment on execution of sentences in 2023, the number of prisoners increased from 251,101 on 1 September 2023 to 329,151 on 2 May 2024, according to the Ministry of Justice. In other words, in only eight months, the number of prisoners increased by 78,050. On the one hand, it demonstrates that the physical conditions in prisons have worsened and that the deprivation of rights has continued to increase and on the other hand, it is a special indicator of a social problem in Turkey.

### **On new type of prisons:**

55. According to figures of the General Directorate of Prisons and Detention Houses, 184 new penal institutions have been opened between 2016 and 2023.<sup>271</sup> However, as shared with the Committee above, even the 12 penal institutions scheduled to open in 2024 will not solve the problem of overcrowding in prisons. Moreover, newly opened prisons aggravate existing human rights violations by giving rise to new ones.

Among the newly opened prisons, there are 43 new types of prisons called “S Type Prisons”, “Y Type Prisons” and “High Security Prisons”, which, as far as is known, have a total capacity of approximately 19,000.<sup>272</sup> The most defining feature of these prisons, which were built especially since 2021, besides their architectural structures, is that most of the prisoners are kept in solitary cells and very few in three-person rooms, thus further aggravating the conditions of isolation. As far as is known, prisoners in these prisons spend at least 22.5 hours a day in their cells and practices that almost reach the level of solitary confinement are being normalized. Despite the clear provisions in the law,<sup>273</sup> in the new high security prisons, all prisoners without any distinction are kept in solitary cells with no ventilation. Therefore, the practices in the new high security prisons are completely unlawful.

### **On alternatives to imprisonment:**

56. Alternatives to imprisonment are regulated in various laws.<sup>274</sup>

268 CISST (31 July 2023). *2023 Yılı İnfaz Düzenlemesine Dair Görüşlerimiz* [Our Views on the 2023 Execution Regulation] [https://cisst.org.tr/basin\\_duyurulari/2023-yili-inafaz-duzenlemesine-dair-goruslerimiz/](https://cisst.org.tr/basin_duyurulari/2023-yili-inafaz-duzenlemesine-dair-goruslerimiz/). (Accessed on 1 May 2024)

269 *06/02/2023 Tarihinde Meydana Gelen Depremlerin Yol Açtığı Ekonomik Kayıpların Telifisi İçin Ek Motorlu Taşıtlar Vergisi İhdası ile Bazı Kanunlarda ve 375 Sayılı Kanun Hükmünde Kararıyla Değişiklik Yapılması Hakkında 7565 Sayılı Kanun* [Law No. 7565 on the Amendment of Certain Laws and Decree Law No. 375 on the Amendment of Certain Laws and Decree Law No. 375 on the Additional Motor Vehicles Tax for the Compensation of Economic Losses Caused by Earthquakes Occurred on 06/02/2023] (15 July 2023). <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=7456&MevzuatTur=1&MevzuatTertip=5>. (Accessed on 1 May 2024)

270 According to the data of the General Directorate of Prisons and Detention Houses, the number of detainees and convicts decreased from 360,722 on 3 July 2023 to 251,101 on 1 September 2023, which corresponds to the date after the regulation. General Directorate of Prisons and Detention Houses (6 July 2023). “Ceza İnfaz Kurumlarında Bulunan Tutuklu ve Hükümlülerin Öğrenim Durumlarına Göre Dağılımları [Distribution of Prisoners and Convicts in Penal Institutions according to their Educational Background].” <https://cte.adalet.gov.tr/Resimler/Dokuman/6072023083825istatistik-4.pdf>; General Directorate of Prisons and Detention Houses (6 September 2023). “Ceza İnfaz Kurumlarında Bulunan Tutuklu ve Hükümlülerin Öğrenim Durumlarına Göre Dağılımları [Distribution of Prisoners and Convicts in Penal Institutions according to their Educational Background].” <https://cte.adalet.gov.tr/Resimler/Dokuman/6092023085140istatistik-4.pdf>. (Accessed on 1 May 2024)

271 General Directorate of Prisons and Detention Houses (1 March 2024). “Genel Bilgi [General Information].”

272 General Directorate of Prisons and Detention Houses. “Ceza İnfaz Kurumları Tipleri [Types of Penal Institutions].” <https://cte.adalet.gov.tr/Home/haritaliste>. (Accessed on 1 May 2024)

273 Law no. 5275, Articles 9 and 25.

274 CAT/C/TUR/QPR/5, para.29.

**Table 16: Legislation on alternatives to imprisonment**

Alternative to imprisonment	The law under which it is regulated	Relevant article
Execution of sentence by probation	Law no. 5275 on the Execution of the Sentences and Security Measures	105/A
Community service	Law no. 5275 on the Execution of the Sentences and Security Measures	106/3
Probation after conditional release	Law no. 5275 on the Execution of the Sentences and Security Measures	107/7-8-9
Probation for repeat offenders	Law no. 5275 on the Execution of the Sentences and Security Measures	108/4 ve 108/6
Execution of sentence at home	Law no. 5275 on the Execution of the Sentences and Security Measures	110/2-3-4
Alternative sanctions to short-term imprisonment	Turkish Penal Code	50
Probation during the deferral period	Turkish Penal Code	51
Deprivation of exercising certain rights	Turkish Penal Code	53/5
Probation with treatment	Turkish Penal Code	191
Effective remorse	Turkish Penal Code	221/5
Judicial control measures	Criminal Procedure Code	109
Deferral of the announcement of the verdict	Criminal Procedure Code	231
Supervision of minors	Criminal Procedure Code	36

According to SPACE II which is the most recent available data, as of 31 January 2023, there are 370,426 people on probation in Turkey.<sup>275</sup> When this figure is added to the number of detainees and convicts in prisons, the number of people imprisoned or under direct supervision in Turkey reaches 699,507. This means that, leaving aside other indirect means of supervision, approximately one out of every 123 people in Turkey is under direct supervision.

#### **On torture and other forms of ill-treatment in prisons:**

57. Imprisonment itself is a painful and traumatic process. Prisoners cannot be subjected to any further punishment other than the execution of their sentences. Any act (including inadequate health care/restricted access to health care) causing severe pain or suffering, whether physical or mental, other than incarceration, constitutes torture and other forms of ill-treatment.<sup>276</sup>

During the reporting period, an extraordinary increase has been observed in torture and other forms of ill-treatment in prisons as well as other violations.

275 SPACE - Council of Europe Annual Penal Statistics, *Probation stock on 31 January 2023*.

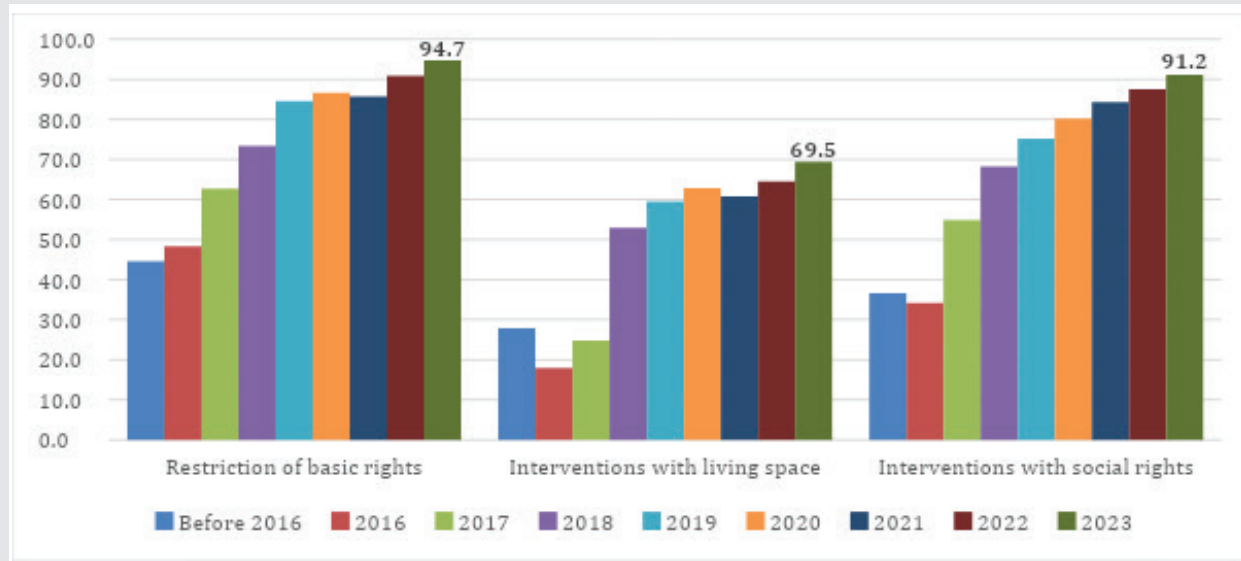
<https://wp.unil.ch/space/space-ii/probation-stock-on-1-january-2/probation-stock-on-31-january-2023/>. (Accessed on 1 May 2024)

276 ECtHR Grand Chamber (26 October 2000). *Kudla v. Poland* (Application no. 30210/96), para.94.

<https://hudoc.echr.coe.int/eng-press?i=001-58920>. (Accessed on 1 May 2024)



Graph 4: Violations to which HRFT applicants were subjected in prison by years



In violation of Article 59<sup>277</sup> of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), prisoners in Turkey are sent to prisons far away from where they live, which leads to violations of rights that can be considered as torture and other ill-treatment at the first stage. Furthermore, beatings, all kinds of arbitrary treatment and arbitrary disciplinary sanctions (i.e. solitary confinement<sup>278</sup> and exile) on various grounds have reached unprecedented levels.

Table 17: Yearly distribution of applicants subjected to torture and other forms of ill-treatment in prison

Year of release (n)	Previous years (287)	2016 (234)	2017 (266)	2018 (274)	2019 (447)	2020 (248)	2021 (352)	2022 (395)	2023 (226)
<b>Torture/Violation</b>	%	%	%	%	%	%	%	%	%
Insult and threat	57.5	59.0	68.4	69.7	72.7	77.4	70.5	74.9	75.7
Coercive interventions	32.1	29.9	36.8	38.3	44.7	42.3	48.6	52.9	58.0
Physical violence	42.5	42.3	48.9	50.0	60.4	54.8	51.1	60.8	60.6
Positional torture	8.0	9.0	12.0	12.4	16.6	16.9	14.8	14.2	11.5
Physical agents	13.2	12.8	12.8	14.2	17.4	26.6	21.0	22.5	28.8
Chemical agents	3.1	1.3	0.8	0.7	2.0	1.2	1.1	4.1	5.8
Sexual violence	35.9	36.3	47.4	47.1	51.5	51.2	57.4	54.7	52.7
Restriction of basic rights	44.6	48.3	62.8	73.4	<b>84.6</b>	<b>86.7</b>	<b>85.8</b>	<b>90.9</b>	<b>94.7</b>
Interventions with living space	27.9	17.9	24.8	52.9	<b>59.5</b>	<b>62.9</b>	<b>60.8</b>	<b>64.6</b>	<b>69.5</b>
Interventions with social rights	36.6	34.2	54.9	68.2	<b>75.2</b>	<b>80.2</b>	<b>84.4</b>	<b>87.6</b>	<b>91.2</b>

277 The United Nations Standard Minimum Rules for the Treatment of Prisoners - Nelson Mandela Rules (17 December 2015), Article 59. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/70/175&Lang=E>. (Accessed on 1 May 2024)

278 Since 2006, CISST, which has been working to protect the rights and freedoms of prisoners and to record violations in prisons, has been receiving applications directly from prisons via letters. In this context, between 1 January 2016 and 1 March 2024, 786 people reported to CISST that they were subjected to solitary confinement. 133 of these prisoners stated that they were subjected to solitary confinement only because they are LGBTI+.

2729 out of 5553 applicants stated that they were subjected to the torture methods listed in the table above. These figures demonstrate that torture in prisons has increased in all categories after 2016.

**Table 18: Yearly distribution of the restrictions on basic rights that the HRFT applicants stated that they were subjected to in prison**

Year of release (n)	Previous years (287)	2016 (234)	2017 (266)	2018 (274)	2019 (447)	2020 (248)	2021 (352)	2022 (395)	2023 (226)
Basic rights	%	%	%	%	%	%	%	%	%
Solitary confinement	16.4	19.2	21.4	24.1	32.0	33.5	32.7	32.7	35.4
Restricting access to food and water	30.3	27.8	33.5	44.2	57.0	67.3	69.0	78.7	81.4
Preventing access to health services	26.1	23.1	30.1	59.5	76.3	73.4	71.3	74.4	78.8
Failure to provide hygienic conditions	19.5	18.4	21.4	43.1	49.9	54.4	54.3	60.0	65.5
Insufficient living space	3.5	2.1	3.4	4.4	3.1	6.5	12.2	42.3	43.4

The most common forms of torture and other forms of ill-treatment to which the applicants were subjected in prisons in the reporting period were restriction of basic (79.8%) and social rights (73.6%) and physical interventions, especially insults (71.4%) and beatings (54.4%). For instance;

- Arrested on 29 October 2022 along with 10 of his colleagues, journalist Hakan Yalçın was brought to Sincan High Security Prison no. 1 and kept in solitary confinement until 16 May 2023, when the first hearing of the case was held.<sup>279</sup>
- Journalist Ahmet Şık, who was arrested on 30 December 2016 due to his social media posts and news reports and taken to Metris Prison no.2, was not given water for three days on the pretext that “the canteen was closed.”
- Yasin Eneç, who was transferred from Tekirdağ T Type Prison no. 2 to Tekirdağ F Type Prison no. 2 against his will on 27 November 2020, was subjected to beatings because he rejected strip search before he was admitted to the prison. Eneç was subjected to disciplinary proceedings and was placed in solitary confinement. IHD lawyers who met with Eneç observed that Eneç had bruises on his face and body, bloodshot eyes, stitches in his head and was having difficulty walking. The investigation initiated upon the criminal complaint filed by IHD lawyers was concluded with a decision of non-prosecution on 9 February 2022 on the grounds that “sufficient evidence could not be obtained.”<sup>280</sup>

#### **On violations of the right to health in prisons:**

**58.** According to the established jurisprudence of the ECtHR, states party to the ECHR are obliged to protect the health and well-being of all prisoners, in particular by ensuring access to health care and failure to fulfill this obligation may constitute a violation of the prohibition of torture and ill-treatment.<sup>281</sup> The European Committee for the Prevention of Torture (CPT) has also warned that inadequate health care can lead to degrading and humiliating treatment.<sup>282</sup>

279 Docket no. 2023/24.

280 Decision no. 2022/128.

281 ECtHR Grand Chamber (26 October 2000). *Kudla v. Poland* (Application no. 30210/96), para.94. Also see ECtHR (2 November 2006). *Seriffs v. Greece* (Application no. 27695/03). <https://hudoc.echr.coe.int/eng?i=001-77815>; ECtHR (7 November 2006). *Holmiov v. Moldova* (Application no. 30649/05). <https://hudoc.echr.coe.int/eng?i=001-77850>; ECtHR (12 July 2007). *Testa v. Croatia* (Application no. 20877/04). <https://hudoc.echr.coe.int/eng?i=001-81641>; ECtHR (29 November 2007). *Hummatov v. Azerbaijan* (Application no. 9852/03 and 13413/04). <https://hudoc.echr.coe.int/eng?i=001-83588>; ECtHR (5 March 2013). *Gülay Çetin v. Turkey* (Application no. 44084/10). <https://hudoc.echr.coe.int/eng?i=001-116946>. (Accessed on 3 May 2024)

282 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (4 June 1993). *3rd General Report on the CPT's activities*, para.30. <https://rm.coe.int/1680696a40>. (Accessed on 3 May 2024)

However, violations of prisoners' right to health have been a long-standing problem. Prisoners' access to health services, including the right to visit the prison infirmary, is restricted, prisoners are handcuffed while being taken to the Forensic Medicine Institution, courthouse and hospital, prisoners are transferred to health institutions with "cell-type vehicles" and are subjected to ill-treatment, humiliating/degrading practices during transfers and treatment. When they can access health services, their privacy is not respected on the grounds of the "Tripartite Protocol."<sup>283</sup> Moreover, the health problems of prisoners who can access health services are not solved in a timely and effective manner. It has also been observed recently that the majority of prisoners who have difficulty in continuing their treatment are exiled to different prisons.

**Table 19: Proportional distribution of the diagnosis of the HRFT applicants according to length of their imprisonment**

Length of imprisonment (n)	Under 1 year (654)	1-5 years (897)	5-10 years (547)	10-20 years (146)	20 years and more (125)
Diagnosis group	%	%	%	%	%
Cancer	2.4	2.0	1.8	4.1	<b>8.0</b>
Cardiovascular system diseases	12.1	9.7	10.6	14.4	<b>46.4</b>
Blood diseases	4.9	8.5	12.4	12.3	<b>38.4</b>
Pulmonary diseases	13.3	11.1	16.5	5.5	<b>27.2</b>
Digestive system diseases	32.9	37.9	44.6	32.2	<b>85.6</b>
Endocrine system diseases	11.6	12.8	16.8	13.7	<b>47.2</b>
Eye diseases	26.0	28.4	30.7	20.5	<b>80.0</b>
Musculoskeletal diseases	49.2	38.5	37.1	28.8	<b>76.0</b>

Restriction of fundamental rights, prevention of access to health services,<sup>284</sup> delays in diagnosis and treatment, lack of adequate health services lead to the emergence and aggravation of chronic diseases in prisoners and the occurrence of these diseases increases as the duration of imprisonment increases. Indeed, the occurrence of cancer and chronic diseases in long-term prisoners is two times higher than the population average.<sup>285</sup> People who applied to the HRFT after being imprisoned for 20 years or more are observed to have higher diagnostic and treatment needs and require longer treatment.

The lack of access to adequate and effective health care for ill prisoners who cannot be treated in prisons and cannot survive without the support of others, leads to violations of the right to life. In the determination of diseases, the reports of any university or educational research hospital are not accepted as the Forensic Medicine Institution, which is not independent and whose medical evaluations are controversial, is accepted as the sole competent authority. Thus, the right of prisoners to receive independent and qualified medical evaluation reports is denied.

283 Para. 43. Article 38 of the Tripartite Protocol reads "1) In hospitals located in places where there is a penal execution institution directorate, guarded examination rooms with measures against escape shall be established. [...] 4) Until the establishment of guarded examination rooms for detainees and convicts in hospitals, the gendarmerie shall be present in these rooms or in places where emergency interventions and procedures are carried out and shall take protection measures at a distance where they cannot hear the conversations between the doctor and the patient." There is no information on "guarded rooms" since 2000, when the Protocol was first issued.

284 2285 prisoners who applied to CISST between 1 January 2016 - 1 March 2024 stated that they could not access regular treatment; 637 prisoners stated that they could not access the medication they need on a regular basis. 552 prisoners who applied to CISST between the same dates and stated that they were taken to hospital infirmary stated that they were not referred to hospital despite their request and need; 541 prisoners stated that they were taken to the infirmary very late.

285 The latest 2018 Cancer Data published by the Ministry of Health is taken as a reference. Ministry of Health (2022). *Türkiye Kanseri İstatistikleri 2018* [Turkey Cancer Statistics 2018]. [https://hsgm.saglik.gov.tr/depo/birimler/kanser-db/Dokumanlar/Istatistikler/Kanser\\_Rapor\\_2018.pdf](https://hsgm.saglik.gov.tr/depo/birimler/kanser-db/Dokumanlar/Istatistikler/Kanser_Rapor_2018.pdf). (Accessed on 3 May 2024)

On the other hand, even if there are reports that their illnesses are “life threatening,” the execution of prison sentences given to ill prisoners is arbitrarily not postponed on the basis of the phrase added to the Law no. 5275 on 28 June 2014, which foresees an assessment of “threat to public safety.”<sup>286</sup> The circular<sup>287</sup> issued by the Ministry of Justice on 2 January 2023 allegedly to solve this problem is not sufficient to solve such a systematic problem arising from the legislation and the problem is getting worse every day. As far as IHD has been able to determine, as of 29 April 2022, there are at least 1517 ill prisoners in Turkey, 651 of whom are critically ill.<sup>288</sup>

### **On violations of the right to life in prisons:**

59. According to the case-law of the ECtHR, states have an obligation to protect the right to life of all persons deprived of their liberty, including prisoners.<sup>289</sup> Despite this obligation, violations of the right to life continue in prisons. As far as the HRFT Documentation Center was able to determine, at least 48 prisoners died in prisons in 2022, at least 20 prisoners died in 2023 and at least 5 prisoners died in 2024 due to various reasons such as illness, suicide, violence and neglect.

There are no effective investigations into deaths in prisons, of which prisoners’ families, lawyers and rights defenders are a part. Consequently, procedural obligations to protect the right to life are not upheld either. Even if the prisoner really committed suicide, due to the lack of an effective investigation, it is not clarified whether his/her bio-psycho-social well-being was regularly monitored, whether there was a risk of suicide, what measures were taken, what were the reasons for suicide, whether he/she was subjected to torture or other forms of ill-treatment before the suicide. For instance;

- Ferhan Yılmaz, who was imprisoned in Silivri L Type Prison no. 5, died on 10 April 2022. His family claimed that Yılmaz was beaten to death. In a press statement dated 13 April 2022, the Ministry of Justice claimed that the images<sup>290</sup> released to the press were “disinformation.”<sup>291</sup> Although the Silivri Chief Public Prosecutor’s Office did not hear witnesses who testified that Yılmaz died as a result of torture and despite conflicting medical reports, it issued a decision of non-prosecution on 4 July 2022.<sup>292</sup> On 2 September 2022, the Silivri Criminal Judgeship of Peace dismissed the lawyers’ appeal against the decision of non-prosecution.<sup>293</sup> The case is pending before the CC.<sup>294</sup>
- Garibe Gezer, who was imprisoned in Kocaeli F Type Prison no. 1, died under suspicious circumstances on 9 December 2021. The Kandira Chief Public Prosecutor’s Office initiated an investigation into the suspicious death of Garibe Gezer.<sup>295</sup> The prosecutor who conducted an investigation against Gezer before her death was appointed as the prosecutor for this one as well. On 10 December 2021, restriction orders were imposed on the investigation into Gezer’s complaint and the investigation into the suspicious death of Gezer. The prosecutor’s office concluded the investigation into Gezer’s allegations of torture and ill-treatment with a non-prosecution decision on 28 December 2021.<sup>296</sup> The investigation into Gezer’s death was concluded with a decision of non-prosecution on 22 November

286 Law no. 5275, Article 16 (6): “The execution of the sentence of a prisoner who is unable to maintain his life alone under the conditions of the penal execution institution due to a severe illness or disability he has suffered and who is considered not to pose a grave and concrete danger to public safety may be postponed until he recovers according to the procedure set out in the third paragraph.”

287 Ministry of Justice (2 January 2023). “Genelge no. 20/1.”

<https://rayp.adalet.gov.tr/resimler/1/dosya/surekli-hastalik-sakatlik-ve-kocama-sebebiyle-kisilerin-cezalarinin-hafifletilmesi-veya-kaldirilmesi-hakkinda-islemler03-01-20239-38-am.pdf>. (Accessed on 3 May 2024)

288 İHD (29 April 2022). *Yaşam Hakkı Korunsun, Hasta Mahpuslar Serbest Bırakılsın!* [Protect the Right to Life, Release Sick Prisoners!] <https://www.ihd.org.tr/yasam-hakki-korunsun-hasta-mahpuslar-serbest-birakilsin/>. (Accessed on 3 May 2024)

289 ECtHR (9 December 2008). *Dzieciak v. Poland* (Application no. 77766/01). <https://hudoc.echr.coe.int/eng?i=001-90165>; ECtHR (4 May 2017). *Mustafayev v. Azerbaijan* (Application no. 47095/09). <https://hudoc.echr.coe.int/eng?i=001-173365>; ECtHR (16 November 2006). *Huyly v. Turkey* (Application no. 52955/9). <https://hudoc.echr.coe.int/eng?i=001-78036>; ECtHR (13 June 2002). *Anguelova v. Bulgaria* (Application no. 38361/97). <https://hudoc.echr.coe.int/eng?i=001-60505>. (Accessed on 3 May 2024)

290 Evrensel Daily (13 April 2022). *Ferhan Yılmaz’ın yoğun bakım görüntüsüne Evrensel ulaştı: İşkence izleri açık* [Evrensel accessed the intensive care video of Ferhan Yılmaz: Clear signs of torture].

<https://www.evrensel.net/haber/459290/ferhan-yilmazin-yogun-bakim-goruntusune-evrensel-ulasti-iskence-izleri-aci>. (Accessed on 3 May 2024)

291 Ministry of Justice (13 April 2022). “Silivri 5 No’lu L Tipi Kapalı Ceza İnfaz Kurumundaki hükümlü Ferhan YILMAZ’ın vefatına ilişkin Silivri Cumhuriyet Başsavcılığı Basın Açıklaması [Press Release by Silivri Chief Public Prosecutor’s Office on the death of Ferhan YILMAZ, a convict in Silivri L Type Closed Penal Institution no. 5].” [https://twitter.com/adalet\\_bakanlik/status/1514266678116462592](https://twitter.com/adalet_bakanlik/status/1514266678116462592). (Accessed on 3 May 2024)

292 Investigation no: 2022/4157. Decision no: 2022/3683.

293 Decision no: 2022/3464

294 Application no: 2022/91750

295 Investigation no. 2021/3408

296 Decision no. 2021/2735

2022.<sup>297</sup> On 9 March 2023, the Kocaeli 3rd Criminal Judgeship of Peace dismissed the appeal against the decision of non-prosecution.<sup>298</sup> The case is pending before the CC.

- After the suspicious death of Garibe Gezer, Duygu Koral died on 20 March 2023 in the same prison under suspicious circumstances. The investigation into Duygu Koral's suspicious death<sup>299</sup> was concluded by the Kandira Chief Public Prosecutor's Office with a decision of non-prosecution. The appeal against the prosecutor's decision of non-prosecution was accepted and the investigation was ordered to be expanded. The file is still pending at the prosecutor's office.
- Yılmaz Ekinci, who was imprisoned in the Aydın E Type Closed Prison, died under suspicious circumstances on 13 January 2022. Initially, it was claimed that Ekinci had committed "suicide." After the release of video footage<sup>300</sup> supporting serious and credible allegations that Ekinci had died as a result of torture and ill-treatment, five prison guards were charged with "malpractice." At the fourth hearing, the Aydın 1st Criminal Court of First Instance acquitted the prison guards.

### **On practices of isolation in prisons:**

60. Implemented since 2000 and causing serious damage to the physical and mental integrity of prisoners, single person or small group isolation practices are a systematic problem that has been turned into a routine practice as they are now implemented as the default regime in the new type of prisons.<sup>301</sup>

Despite the CPT's principle,<sup>302</sup> emphasized since the 1990s, that prisoners should spend at least eight hours or more a day outside their cells engaging in purposeful and varied activities, the Ministry of Justice's circular of 22 January 2007 allows detainees and prisoners to socialize in groups of no more than 10 people for a maximum of 10 hours a week.<sup>303</sup> Even more worrying is that even this circular, which is in force, is not implemented.

A special isolation regime is in place at the İmralı F Type High Security Prison. The recommendations in the CPT's reports published after its visits in 2016<sup>304</sup> and 2019<sup>305</sup> have still not been implemented. Family and lawyer visitation bans have been in place for long enough to be considered uninterrupted.<sup>306</sup> During their visit to Turkey from 20 to 29 September 2022, the CPT visited the İmralı Prison, noting that particular attention was paid to "communal activities and prisoners' contacts with the outside world," but the report on the visit has not yet been published.<sup>307</sup> The CPT, which last visited Turkey on February 13-22, 2024, did not visit the İmralı Prison, but in their statement they stated that they had discussed it with the authorities.<sup>308</sup> The report on this visit has not yet been published either.

### **On the arbitrary denial of prisoners' release:**

61. Article 89 of the Law no. 5275 was amended in 2020 along with its title.<sup>309</sup> This amendment became the

297 Decision no. 2022/2041

298 Decision no. 2022/5700

299 Investigation no. 2023/1202

300 Mesopotamia News Agency (15 July 2022). "Aydın Cezaevi'ndeki Şüpheli Ölümü Anlattı: İntihar Süsü Verdiler [Suspicious Death in Aydın Prison: They Made It Look Like Suicide]." <https://youtu.be/XYoXw86NgBc?si=j8KMYuJioouxTfI>. (Accessed on 3 May 2024)

301 See para.55.

302 CPT (13 April 1992). *2nd General Report on the CPT's activities*, para. 47. <https://rm.coe.int/1680696a3f>. (Accessed on 3 May 2024)

303 Ministry of Justice (22 January 2007). "Ceza İnfaz Kurumlarının Tahsisi, Nakil İşlemleri ve Diğer Hükümler (Genelge No. 45/1) [Allocation of Penal Institutions, Transfer Procedures and Other Provisions (Circular No. 45/1)]." [https://cte.adalet.gov.tr/Resimler/Dokuman/1982019114516cik\\_nakil.pdf](https://cte.adalet.gov.tr/Resimler/Dokuman/1982019114516cik_nakil.pdf). (Accessed on 3 May 2024)

304 CPT (20 March 2018). *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 to 29 April 2016* ([CPT/Inf (2018) 11]), para.15. <https://rm.coe.int/168079457a>. (Accessed on 3 May 2024)

305 CPT (5 August 2020). *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 17 May 2019*, paras.46, 51, 52. <https://rm.coe.int/16809f20a1>. (Accessed on 3 May 2024)

306 Family consultations were held only once in the years 2019-2020, the last one on 3 March 2020. Lawyer visits could only take place five times in 2019, the last on 7 August 2019. Similarly, phone calls are also restricted.

307 CPT (3 October 2022). "A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an ad hoc visit to Türkiye from 20 to 29 September 2022." <https://www.coe.int/en/web/cpt/-/the-council-of-europe-anti-torture-committee-cpt-visits-turkiye>. (Accessed on 3 May 2024)

308 CPT (23 February 2024). "A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment carried out an ad hoc visit to Türkiye from 13 to 22 February 2024." <https://www.coe.int/en/web/cpt/-/the-council-of-europe-anti-torture-committee-cpt-visits-t%C3%BCrkiye>. (Accessed on 3 May 2024)

309 *Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun ile Bazı Kanunlarda Değişiklik Yapılmasına Dair 7242 Sayılı Kanun* [Law No. 7242 Amending the Law on the Execution of Criminal and Security Measures and Certain Laws] (14 April 2020), Article 36. <https://www>

basis of the “By-Law on Observation and Classification Centers and Evaluation of Convicts,”<sup>310</sup> which entered into force on 29 December 2020. “The Administration and Observation Board” established through this by-law has been authorized to evaluate the suitability of convicts for release. This board, which evaluates the “good behavior” of convicts every six months, is chaired by “the chief public prosecutor or the public prosecutor [to be] designated by the chief public prosecutor”<sup>311</sup> and consists of the director of the institution, the second director in charge of observation and classification, an administrative officer, a prison doctor, a psychiatrist, a psychologist and a staff member from the psychosocial assistance service, a teacher, a chief correction and protection officer, and an officer selected by the director of the institution from among the technical staff.<sup>312</sup> In other words, the observation board consists of people who are employed in the prison, who communicate directly with prisoners, who are suspects in allegations of torture and other forms of ill-treatment against prisoners, who oversee prisoners’ communication with the outside world, who conduct disciplinary investigations and impose disciplinary sanctions on prisoners. Therefore, due to their position, it is not possible for them to make an impartial and independent evaluation of prisoners. Furthermore, the presence of physicians and mental health professionals in these committees harms the treatment and care services and is highly unethical.

Despite the fact that there are no legal practitioners other than the prison prosecutor, these committees act like a court and evaluate whether the prisoners are in “good behavior” or not and decide whether prisoners are eligible for conditional release and probation or not. Moreover, these committees make abstract and subjective interpretations when deciding whether prisoners are in “good behavior” or not and demand statements of remorse from political prisoners. Hundreds of political prisoners are deprived of their rights to probation and conditional release by these boards without any explanation. Although the full extent of the problem cannot be known since the authorities do not publish any data, it is known that, especially since 2023, the decisions of these boards have prevented the release of a large number of people who have completed the time required for the execution of their life sentences. Additionally, according to the data published by IHD on 1 June 2024, as of end of 2023, at least 426 prisoners have been denied parole since the regulation entered into force and these committees were set up.<sup>313</sup>

### **On prison conditions:**

62. Allowing prisoners to socialize and engage in a variety of purposeful activities is crucial for their well-being. Despite this principle and the established jurisprudence of the ECtHR on this issue,<sup>314</sup> there is no legal provision to guarantee the availability of these opportunities. On the contrary, conditions have been exacerbated by the pandemic measures implemented in prisons in defiance of the CPT’s warnings and principles.<sup>315</sup> Moreover, although the pandemic measures announced on 30 June 2021 have been lifted on 9 April 2022,<sup>316</sup> the suspension of communal activities, which must be implemented with respect for rights even during the pandemic,<sup>317</sup> have not yet been fully lifted.<sup>318</sup>

[resmigazete.gov.tr/eskiler/2020/04/20200415-16.htm](https://resmigazete.gov.tr/eskiler/2020/04/20200415-16.htm). (Accessed on 3 May 2024)

310 *Gözlem ve Sınıflandırma Merkezleri ile Hükümlülerin Değerlendirmesine Dair Yönetmelik* [By-Law on Observation and Classification Centers and Evaluation of Convicts], Article 2

<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=36118&MevzuatTur=7&MevzuatTertip=5>. (Accessed on 3 May 2024)

311 *By-Law on Observation and Classification Centers and Evaluation of Convicts*, Article 13(2).

312 *By-Law on Observation and Classification Centers and Evaluation of Convicts*, Article 13(1).

313 İHD (1 June 2024). *2023 Yılı Türkiye Hapishanelerinde Hak İzleme Raporu* [2023 Prison Monitoring Report]

<https://www.ihd.org.tr/2023-yili-turkiye-hapishanelerinde-hak-izleme-raporu>. (Accessed on 5 June 2024)

314 ECtHR (8 July 2014). *Harakchiev and Tolunov v Bulgaria* (Application no. 15018/11 and 61199/12).

<https://hudoc.echr.coe.int/eng?i=001-145442>; ECtHR (18 March 2014). *Öcalan v. Turkey (no.2)* (Application no. 24069/03, 197/04, 6201/06 and 10464/07). <https://hudoc.echr.coe.int/eng?i=001-142087>; ECtHR (2 June 2020). *N.T. v. Russia* (Application no. 14727/11).

<https://hudoc.echr.coe.int/eng?i=001-202633>; ECtHR (7 June 2010). *Onoufriou v. Cyprus* (Application no. 24407/04).

<https://hudoc.echr.coe.int/eng?i=001-96547>; ECtHR (7 June 2011). *Csüllög v. Hungary* (Application no. 30042/08).

<https://hudoc.echr.coe.int/eng?i=001-104963>; ECtHR (9 October 2012). *X v. Turkey* (Application no. 24626/09).

<https://hudoc.echr.coe.int/eng?i=001-113876>. (Accessed on 4 May 2024)

315 CPT (20 March 2020). *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic*. <https://rm.coe.int/16809cfa4b>. (Accessed on 4 May 2024)

316 Presidency of the Republic of Turkey (8 April 2022). “COVID-19 Kapsamında Kamu Çalışanlarına Yönelik Tedbirler (Genelge no. 2022/2) [Measures for Public Employees in the context of COVID-19 (Circular no. 2022/2)]”

<https://www.resmigazete.gov.tr/eskiler/2022/04/20220409-10.pdf>. (Accessed on 4 May 2024)

317 CPT (20 March 2020). *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic*, Principle 8.

318 Association of Lawyers for Freedom (27 April 2024). *Türkiye Hapishaneleri 2023 Yılı Hak İhlali Raporu* [Prisons in Turkey 2023 Rights Violation Report].

<https://ozgurlukicin hukukcular.org/tr/detay/ozgurluk-icin-hukukcular-dernegi--turkiye-hapishaneleri-2023-yili-hak-ihlali-raporu>. (Accessed on 4 May 2024)

## Violations of the right to respect for private life

63. The ECtHR ruled that the continuous video surveillance of a person deprived of his or her liberty is a serious interference<sup>319</sup> with the right to respect for private life and would constitute a violation of the “right to respect for private and family life” unless it is provided for by law in such a way as to demonstrate that it is necessary and legitimate in a democratic society.<sup>320</sup>

It is regulated by law that certain places in prisons such as corridors, visiting areas and infirmaries, which are also used by people other than prisoners, can be surveilled by cameras.<sup>321</sup> However, it is reported by prisoners that since 2016, cameras have been installed in the ventilation of cells and wards in such a way that they can see prisoners’ living spaces 24/7.<sup>322</sup>

## Prevention of contact with the outside world

64. The CPT has explicitly set out that all persons deprived of their liberty should have regular contact with the outside world<sup>323</sup> and that it is “very important for prisoners to maintain reasonably good contact with the outside world” and that “promotion of contact with the outside world” should be the guiding principle.<sup>324</sup>

Periodical and non-periodical publications are among the most important communication tools that allow prisoners to communicate with the outside world. However, the number of books that prisoners can keep in their cells and wards is left to the discretion of the administration and observation boards.<sup>325</sup> Also, prisoners are required to pay for the periodicals and non-periodicals they want to read and are obliged to buy them from places contracted by the prison administrations.<sup>326</sup> This situation prevents access to publications for prisoners who have no income other than the money deposited by their families. Moreover, the publications requested by prisoners are often not available in places with which prisons have contracts. Moreover, with an amendment<sup>327</sup> to Article 62 of Law no. 5275, only newspapers that can receive advertisements through the Press Advertisement Agency can be allowed in prisons. This means that critical newspapers that cannot receive advertisements from the Press Advertisement Agency are de facto barred access to prisons.<sup>328</sup>

Letters and faxes are the most important means of exercising the right to communicate with the outside world other than family visits. Blocking of letters and loss of letters, which have increased recently, violate prisoners’ right to respect for their family and private lives and their right to communication, as well as increasing the isolation of prisoners. In violation of the prohibition of discrimination, letters written in Kurdish are not given to prisoners or not sent to the receiver on the grounds that there is no translator. Furthermore, prisoners are asked to pay exorbitant translation fees.<sup>329</sup>

Recently, there has been an increase in security investigations against the people whom prisoners want to register as visitors. In violation of the right to respect for their private lives, people who are registered as visitors are investigated by law enforcement officers upon the request of prison administrations and law

319 ECtHR (June 2004). *Van der Graaf v. the Netherland* (Application no. 8704/03). <https://hudoc.echr.coe.int/eng?i=002-4332>. (Accessed on 4 May 2024)

320 ECtHR (6 December 2016). *Vasilică Mocanu v. Romania* (Application no. 43545/13). <https://hudoc.echr.coe.int/eng?i=001-169702>. (Accessed on 4 May 2024)

321 Law no. 5275, Article 8

322 Association of Lawyers for Freedom, *Prisons in Turkey 2023 Rights Violation Report*.

323 CPT (May 2021). *30th General Report of the CPT*, para.68. <https://rm.coe.int/1680a25e6b>. (Accessed on 4 May 2024)

324 CPT (13 April 1992). *2nd General Report on the CPT's activities*, para. 51.

325 *Ceza İnfaz Kurumlarında Bulundurulabilecek Eşya ve Maddeler Hakkında Yönetmelik* [Regulation on Items and Substances that may be kept in Penal Execution Institutions] (17 June 2005), Article 8: “The number of periodical or non-periodical publications that can be kept in rooms, wards and annexes at the same time, except for the holy book of the religion to which the convicts belong and the textbooks necessary for their education, is determined by the administration and observation board, taking into account the infrastructure and security of the institution.” <https://www.mevzuat.gov.tr/File/GeneratePdf?mevzuatNo=8344&mevzuatTur=KurumVeKurulusYonetmeligi&mevzuatTertip=5>. (Accessed on 5 May 2024)

326 *Law no. 5275*, Article 62: “The convicted person has the right to benefit from periodical and non-periodical publications, by paying for them, provided that they are not prohibited by the courts.”

327 *Law no. 5275*, Article 62 (4): “Newspapers that do not have the right to publish official announcements and advertisements through the Press Advertisement Agency shall not be admitted to penal institutions. However, the temporary suspension of announcements and advertisements is excluded from this provision. The Ministry of Justice is authorized to allow newspapers and magazines published in foreign languages to be admitted to penal institutions.”

328 European Centre for Press and Media Freedom (ECPMF) and others (16 March 2020). *Turkey: Call to end advertising ban on Evrensel*. <https://www.ecpmf.eu/turkey-call-to-end-advertising-ban-on-evrensel>. (Accessed on 5 May 2024)

329 Association of Lawyers for Freedom, *Prisons in Turkey 2023 Rights Violation Report*.

enforcement officers are often sent to their homes and workplaces. Moreover, if there is an investigation against these individuals, even if there is no finalized conviction, they are deemed “unsuitable” in violation of the presumption of innocence and are not allowed to visit.

Article 74/G of the By-Law on the Administration of Penal and Execution Institutions and the Execution of Criminal and Security Measures regulates the video chat of prisoners with their families. However, in practice, there is no equality in access to this opportunity. To begin with, the high cost of video calls compared to phone calls prevents prisoners from enjoying this right. Furthermore, Article 74/Ĝ of the same bylaw makes a distinction between prisoners in terms of offenses related to organized crimes and leaves it to the discretion of the administrative and observation boards whether prisoners convicted of these crimes can benefit from this opportunity or not.

#### Foreign prisoners

65. There has been an increase in the number of foreign prisoners due to the recent immigration influx. The number of foreign prisoners which was 5932<sup>330</sup> as of 1 November 2017 increased to 11.345 by 1 September 2023.<sup>331</sup> Foreign prisoners face serious problems in prisons, especially in accessing justice and health services due to language barriers and not having a migrant status.

#### On aggravated life imprisonment:

66. Despite the Committee’s recommendation,<sup>332</sup> the CPT’s recommendations in each of its reports since 2009,<sup>333</sup> and even the ECtHR’s established case law,<sup>334</sup> the government has stated that it will not amend Article 47 of the TPC which regulates “aggravated life imprisonment” and Article 25 of Law no. 5275 which regulates “execution of aggravated life imprisonment.”<sup>335</sup>

**Table 20: Number of prisoners sentenced to life imprisonment according to SPACE I figures**

Year	Number of prisoners	Prison population rate	Average of CoE members
2016	7.303	6.0	3.1
2017	N/A	N/A	N/A
2018	N/A	N/A	N/A
2019	7.880	N/A	2.5
2020	8.463	3.4	2.7
2021	9.147	4.0	3.3
2022	10.236	3.9	3.3

As can be seen above, the number of prisoners sentenced to life in prison increased by 40% between 2016 and 2022. Unfortunately, neither SPACE I statistics<sup>336</sup> nor official statistics provide information on

330 Hilal Başak Demirtaş and Aylin Çelikçi (January 2024). *Türkiye’de Yabancı Mahpus Olmak* [Being a Foreign Prisoner in Turkey], p.19. <https://cisst.org.tr/kitaplar/turkiyede-yabanci-mahpus-olmak>. (Accessed on 22 May 2024)

331 *Ibid*, p. 15.

332 CAT/C/TUR/CO/4, para.36.

333 CPT (31 March 2011). *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 17 June 2009*, para. 112. <https://rm.coe.int/168069828e>. (Accessed on 4 May 2024)

334 ECtHR Grand Chamber (9 July 2013), *Vinter and others v. United Kingdom* (Application no. 66069/09, 130/10 and 3896/10). <https://hudoc.echr.coe.int/eng?i=001-122664>; ECtHR (18 March 2014). *Öcalan v. Turkey (no.2)* (Application no. 24069/03, 197/04, 6201/06 and 10464/07); ECtHR (20 May 2015). *László Magyar v. Hungary* (Application no. 73593/10). <https://hudoc.echr.coe.int/eng?i=001-144109>; ECtHR (4 October 2016). *T.P. and A.T. v. Hungary* (Application no. 37871/14 and 73986/14). <https://hudoc.echr.coe.int/eng?i=001-166491>; ECtHR (12 February 2019). *Boltan v. Turkey* (Application no. 33056/16). <https://hudoc.echr.coe.int/fre?i=001-189765>. (Accessed on 4 May 2024)

335 CAT/C/TUR/5, paras. 160-162.

336 SPACE - Council of Europe Annual Penal Statistics (7 February 2019). *SPACE I - Prison Populations Survey 2016*, pp.88-92; SPACE - Council of Europe Annual Penal Statistics (15 December 2019). *Space I 2019 - Prison Populations*, pp.52-55; SPACE - Council of Europe Annual Penal Statistics (15 December 2020). *Space I 2020 - Prison Populations*, pp.53-56; SPACE - Council of Europe Annual Penal Statistics (15 December 2021). *Space I 2021 - Prison Populations*, pp. 53-55; SPACE - Council of Europe Annual Penal Statistics (15 December 2022). *Space I 2022 - Prison Populations*, pp. 53-55.



“aggravated life imprisonment.” However, at least four<sup>337</sup> of the 17 provisions of the TPC that prescribe aggravated life imprisonment are open to “political interpretation.”<sup>338</sup> For example, in 2023 alone, 250 people were sentenced to aggravated life in prison under one of these provisions, “violating the Constitution (TPC 309).”<sup>339</sup> As per the law, these persons will not be eligible for any form of conditional release.<sup>340</sup> The fact that the execution regime for persons sentenced to aggravated life imprisonment does not comply with international standards<sup>341</sup> requires that the treatment to which they are subjected be considered within the scope of torture and ill-treatment.

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337 Referred TPC articles: Article 302 (Disrupting the unity and territorial integrity of the state), Article 309 (Violating the Constitution), Article 311 (Offense against the Legislative Body), Article 312 (Offense against the Government).

338 ECtHR (10 December 2019), *Kavala v. Turkey* (Application no. 28749/18). Also see para. 32.

339 Ministry of Justice (March 2024). Judicial Statistics, p. 103.

[https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet\\_ist-2023CALISMALARI59.pdf](https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet_ist-2023CALISMALARI59.pdf). (Accessed on 4 May 2024)

340 Law no. 5275, Article 107 (16): “In case of conviction to aggravated life imprisonment due to the commission of one of the crimes under the Second Book, Fourth Part, Fourth Chapter titled “Crimes against the Security of the State”, Fifth Chapter titled “Crimes against the Constitutional Order and the Functioning of this Order”, Sixth Chapter titled “Crimes against National Defense” of the Turkish Penal Code No. 5237 within the framework of the activities of an organization, the provisions on conditional release shall not apply.”

341 Council of Europe Committee of Ministers (9 October 2003). *Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners*. <https://rm.coe.int/16805ded44>. (Accessed on 4 May 2024)

## RECOMMENDATIONS REGARDING ARTICLE 11

### The state party should:

- Although many prisoners have been released for various reasons in recent years, considering the rapidly increasing number of prisoners, alternative to detention as a penal sanction should be developed and implemented in order to prevent overcrowding in prisons,
- Suspend the use of the so-called S-type, Y-type and High Security Prisons, based on the isolation regime that has recently reached the level of torture and other forms of ill-treatment, and initiate work on a new prison regime that can fulfill the requirements of the Nelson Mandela Rules, including architectural changes,
- Ensure that prisoners are able to spend a reasonable part of the day, at least 8 hours, outside their cells,
- Align legislation and practice on solitary confinement with minimum standards, in particular Rules 43 and 46 of the Nelson Mandela Rules,
- Establish appropriate gender-specific conditions of detention with regard to women, girls, and lesbian, gay, bisexual, transgender and intersexual persons in compliance with Bangkok Rules,
- Develop and use community-based penalties for mothers of young children and to avoid the use of prison custody; and recognise that custody for pregnant women and mothers of young children should only ever be used as a last resort for those women convicted of the most serious offences and who represent a danger to the community, as recommended by Council of Europe's Parliamentary Assembly (Recommendation 1469 (2000), para 5 (i) and (iii)),
- Develop alternatives to detention with a view to ending the imprisonment of minors,
- Ensure that all persons deprived of their liberty receive timely and appropriate medical care without being subjected to ill-treatment or humiliating or degrading treatment,
- Take all precautions in the examination of prisoners in accordance with medical ethical standards,
- Make legislative amendments to ensure that the examination of ill prisoners is carried out with a clinical approach at every stage and that their medical appropriateness is ensured,
- Remove the "public safety" requirement in paragraph 6 of Article 16 of the Law on the Execution of Sentences and Security Measures used for the postponement of the execution of sentences due to health conditions and establish objective criteria for the release of seriously ill prisoners based on medical evidence and independent medical evaluation procedures,
- Immediately release prisoners who are medically determined to be unfit for detention and ensure that the sentence is suspended until the person is fully recovered,
- Autonomize the Forensic Medicine Institution and end its privileged status,
- Ensure the effective implementation of the right to appeal against the decisions of prosecutors' offices and execution judgeships,
- Ensure that allegations of deliberate denial of health care to persons deprived of their liberty are independently and promptly investigated and that all prison officials responsible for such conduct are subject to prosecution or disciplinary proceedings,
- Revoke regulations that arbitrarily prevent the release of prisoners by the Administrative and Observation Boards that act as a court of law,
- Prisoners' right to contact with the outside world must be guaranteed,
- Commute aggravated life sentences and repealing article 47 of the Criminal Code, as well as section 25, paragraph 1, of the Law on the Execution of Sentences and Security Measures, as recommended by the Committee in its last concluding observations (para.36),
- Establish comprehensive and effective monitoring mechanisms for all places of detention in line with the principles of the OPCAT, with legally guaranteed financial and operational independence,
- Adopt formal regulations explicitly authorizing human rights non-governmental organizations, medical professionals and members of local bar associations to undertake independent visits to places of detention, as recommended by the Committee in its last concluding observations (para.38),

## VII. ISSUES RELEVANT TO ARTICLES 12 AND 13

### ***On recent allegations of torture and other forms of ill-treatment in the reports of the Ankara Bar Association:***

67. Contrary to the government's claims,<sup>342</sup> allegations of torture and other ill-treatment are not investigated in a timely, effective and impartial manner.<sup>343</sup> An example of this is the cases reported and followed up by Turkey's second largest bar association.

The Ankara Bar Association shared with the public a detailed report on six cases of torture that took place in various units of the Ankara Provincial Security Directorate in 2019 and 2022. Despite the Bar Association's efforts, some of these investigations were closed with decisions of non-prosecution while the fate of others are unknown.

- The report dated 28 May 2019 describes in detail the torture and ill-treatment to which six people were subjected at the Financial Crimes Investigation Bureau of the Ankara Provincial Security Directorate. These people who were interviewed by the lawyers of the bar association on 27 May 2019, were reportedly dismissed from public service by emergency decrees. They were subjected to intense beatings with truncheons and also subjected to sexually explicit insults and swearing. They also stated that they were threatened with rape via insertion of an objects into the anus. The fate of the investigation is unknown to us.<sup>344</sup>
- The report dated 26 January 2022 describes in detail the torture and ill-treatment to which two persons interviewed on 25 January were subjected at the Counter-Terrorism Bureau of the Ankara Provincial Security Directorate. They were subjected to intense beatings with truncheons and also subjected to sexually explicit insults and swearing. They also stated that they were threatened with rape via insertion of an objects into the anus. The fate of the investigation is unknown to us.<sup>345</sup>
- The report dated 2 March 2022 describes in detail the torture and ill-treatment to which a person interviewed on 8 February, who had been in detention for six days as of the date of the interview, was subjected at the Counter-Terrorism Bureau of the Ankara Provincial Security Directorate. The person was subjected to intense beatings and was also subjected to sexually explicit insults and swearing. The person also stated that he/she was threatened with rape via insertion of an objects into the anus. The fate of the investigation is unknown to us.<sup>346</sup>
- The report dated 8 March 2022 describes in detail the torture and ill-treatment to which a person interviewed on 7 March was subjected at the Narcotics Bureau of the Ankara Provincial Security Directorate. The person who reportedly has diabetes, was subjected to physical violence as well as to sexual insults and swearing. The investigation initiated following the criminal complaint resulted in non-prosecution.<sup>347</sup>

342 Committee Against Torture (11 November 2016). *Information received from Turkey on follow-up to the concluding observations* (CAT/C/TUR/CO/4/Add.1), para.18. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/C/TUR/CO/4/Add.1%20&Lang=E>. (Accessed on: 22 May 2024); CAT/C/TUR/5, paras.36-43.

343 CAT/C/TUR/CO/4, para.10 (a).

344 Ankara Bar Association (28 May 2019). *Ankara İl Emniyet Müdürlüğü Mali Suçlar Soruşturma Bürosundaki işkence iddialarına ilişkin Ankara Barosu Avukat Hakları Merkezi, Cezaevi Kurulu ve İnsan Hakları Merkezi tarafından yapılan görüşme incelemelere ilişkin rapor* [Report on the interviews conducted by the Ankara Bar Association Lawyers' Rights Center, Prison Board and Human Rights Center regarding the allegations of torture in the Financial Crimes Investigation Bureau of the Ankara Provincial Security Directorate] [https://web.archive.org/web/20211018063824/http://www.ankarabarusu.org.tr/HaberDuyuru.aspx?BASIN\\_ACIKLAMASI=3099](https://web.archive.org/web/20211018063824/http://www.ankarabarusu.org.tr/HaberDuyuru.aspx?BASIN_ACIKLAMASI=3099). (Accessed on 21 May 2024)

345 Ankara Bar Association (26 January 2022). *Ankara İl Emniyet Müdürlüğü Terörle Mücadele Şube Müdürlüğündeki işkence iddialarına Dair Rapor* [Report on Allegations of Torture at the Counter-Terrorism Bureau of the Ankara Provincial Security Directorate]. [https://ankarabarusu.org.tr/upload/diger/raporlar/26.01.2022\\_tarihli\\_ihm\\_rapor.pdf](https://ankarabarusu.org.tr/upload/diger/raporlar/26.01.2022_tarihli_ihm_rapor.pdf). (Accessed on 21 May 2024)

346 Ankara Bar Association (2 March 2022). *Ankara İl Emniyet Müdürlüğü Terörle Mücadele Şube Müdürlüğündeki işkence iddialarına Dair Rapor* [Report on Allegations of Torture at the Counter-Terrorism Bureau of the Ankara Provincial Security Directorate]. [https://ankarabarusu.org.tr/upload/diger/raporlar/02.03.2022\\_tarihli\\_ihm\\_rapor.pdf](https://ankarabarusu.org.tr/upload/diger/raporlar/02.03.2022_tarihli_ihm_rapor.pdf). (Accessed on 21 May 2024)

347 Ankara Bar Association (8 March 2022). *Ankara İl Emniyet Müdürlüğü Narkotik Şube Müdürlüğündeki işkence iddialarına Dair Rapor* [Report on Allegations of Torture at the Narcotics Bureau of the Ankara Provincial Security Directorate]. [https://ankarabarusu.org.tr/upload/diger/raporlar/08.03.2022\\_tarihli\\_ihm\\_rapor.pdf](https://ankarabarusu.org.tr/upload/diger/raporlar/08.03.2022_tarihli_ihm_rapor.pdf). (Accessed on 21 May 2024)

- The report dated 4 April 2022 describes in detail the torture and ill-treatment to which a person interviewed on 6 March, who had been in detention for three days as of the date of the interview, was subjected at the Counter-Terrorism Bureau of the Ankara Provincial Security Directorate. The person who reportedly has a heart condition, was subjected to intense beatings and was also subjected to sexually explicit insults and swearing. The person also stated that he/she was threatened with rape via insertion of an objects into the anus. The investigation initiated following the criminal complaint resulted in non-prosecution.<sup>348</sup>
- The report dated 4 April 2022 describes in detail the torture and ill-treatment to which the person interviewed on 7 March was subjected at the Ankara Sincan Police Station. The person who was subjected to intense beatings and was also subjected to sexually explicit insults and swearing. The fate of the investigation is unknown to us.<sup>349</sup>

### **On allegations of torture and other gross human rights violations related to security operations in the Southeast:**

68. Curfews<sup>350</sup> which began to be declared as of 16 August 2015 were imposed for long periods of time without an end date and were in effect 24 hours a day without interruption.<sup>351</sup> Due to the unjustified use of lethal force by security forces during military operations in these regions, violations of the right to life occurred.<sup>352</sup> However, there is no precise data on the number of people who lost their lives in these operations.<sup>353</sup> The lawyers noted that the investigations into these deaths have not been carried out effectively and that most of the investigations have been concluded with decisions of non-prosecution. Furthermore, the standards established by the ECtHR on the use of lethal force by state authorities, starting with the *McCann and others v. the United Kingdom* judgment,<sup>354</sup> were not taken into account by the prosecutors' offices at the investigation stage and by the CC at the individual application stage. At both stages, there is not even a reference to the case law of the ECtHR.

In its jurisprudence setting out its approach and standards for how investigations should be conducted when the use of force by state actors results in the deprivation of life of persons, the ECtHR obliges a strict test of necessity. Under this strict necessity test, a force can only be considered "absolutely necessary" if it is "strictly proportionate" to achieve a legitimate aim. The ECtHR objectively assesses

348 Ankara Bar Association (4 April 2022). *Ankara İl Emniyet Müdürlüğü Terörle Mücadele Şube Müdürlüğündeki İşkence İddialarına Dair Rapor* [Report on Allegations of Torture at the Counter-Terrorism Bureau of the Ankara Provincial Security Directorate]. [https://ankarabarasu.org.tr/upload/diger/raporlar/04.04.2022\\_tarihli\\_ihm\\_rapor1.pdf](https://ankarabarasu.org.tr/upload/diger/raporlar/04.04.2022_tarihli_ihm_rapor1.pdf). (Accessed on 21 May 2024)

349 Ankara Bar Association (4 April 2022). *Ankara Sincan Polis Merkezi Amirliği'ndeki İşkence İddialarına Dair Rapor* [Report on Allegations of Torture at the Ankara Sincan Police Station]. [https://ankarabarasu.org.tr/upload/diger/raporlar/04.04.2022\\_tarihli\\_ihm\\_rapor.pdf](https://ankarabarasu.org.tr/upload/diger/raporlar/04.04.2022_tarihli_ihm_rapor.pdf). (Accessed on 21 May 2024)

350 Although curfews are declared by governors' offices on the basis of Article 11/c of Law No. 5442 on Provincial Administration, the Venice Commission has found that this regulation is contrary to Article 13 of the Constitution and Turkey's international obligations regarding fundamental rights, in particular the ECHR. Venice Commission (13 June 2016), *Turkey - Opinion on the Legal Framework governing Curfews*. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)010-e). (Accessed on 6 May 2024)

351 According to the data of the HRFT Documentation Center, from 16 August 2015, the first date on which curfews were imposed indefinitely and/or all day long (24 hours), until 1 January 2020, there have been at least 381 formally identifiable curfews in a total of 11 provinces and at least 51 districts. For information notes and fact-finding reports prepared by the HRFT, see. <https://tihv.org.tr/sokaga-cikma-yasaklari>. (Accessed on 6 May 2024)

352 The Association for Human Rights and Solidarity for the Oppressed (MAZLUMDER) (4-6 March 2016). *Cizre: Investigation and Monitoring Report on Developments During The Round-The-Clock Curfew Imposed on The Town Between 14 December 2015 and 2 March 2016*. [https://www.mazlumder.org/fotograf/yayinresimleri/dokuman/MAZLUMDER\\_CIZRE\\_REPORT\\_20162.pdf](https://www.mazlumder.org/fotograf/yayinresimleri/dokuman/MAZLUMDER_CIZRE_REPORT_20162.pdf); İHD, HRFT, SES, Diyarbakır Bar Association and Gündem Çocuk Association (31 March 2016). *79 Günlük Sokağa Çıkma Yasağı: Cizre Gözlem Raporu* [79 Days of Curfew: Cizre Observation Report]. <https://tihv.org.tr/sokaga-cikma-yasaklari/79-gunluk-sokaga-cikma-yasagi-ardindan-cizre-ortak-gozlem-raporu/>; Human Rights Watch (11 July 2016). *Turkey: State Blocks Probes of Southeast Killings*. <https://www.hrw.org/news/2016/07/11/turkey-state-blocks-probes-southeast-killings>; Also see CoE Human Rights Commissioner Nils Muižnieks (2 December 2016), *Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey*. [https://rm.coe.int/ref/CommDH\(2016\)39](https://rm.coe.int/ref/CommDH(2016)39); Office of the United Nations High Commissioner for Human Rights (February 2017). *Report on the human rights situation in South-East Turkey July 2015 to December 2016*. [https://www.ohchr.org/sites/default/files/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf). (Accessed on 6 May 2024)

353 The CoE Commissioner for Human Rights, Nils Muižnieks, stated in his Memorandum that he had explicitly requested from the Turkish authorities the official number of civilians killed during security operations, but that the information provided to him in May and October 2016 did not include any record of dead or wounded civilians, only the number of casualties inflicted by security forces and the number of terrorists "neutralized" (para.53). A February 2017 report by the Office of the United Nations High Commissioner for Human Rights states that approximately 2,000 people were killed. (para.2).

354 ECtHR Grand Chamber (27 September 1995). *McCann and others v. United Kingdom* (Application no.18984/91). <https://hudoc.echr.coe.int/?i=001-57943>. (Accessed on 6 May 2024)

whether the force used was strictly proportionate and leaves no margin of appreciation to states. This strict proportionality review “is not limited to the acts of the state agents who actually exercise the power; it also requires taking into account all the circumstances of the case, including issues such as the planning and supervision of these actions.”

Following the final dismissal of appeals against decisions of non-prosecution issued by prosecutors’ offices in cases of deaths during curfews, individual applications have been lodged with the CC. As far as it can be ascertained, the CC issued its judgment in 66 of the individual applications in which it was alleged that there was no effective investigation into violations of the right to life. 57 of these applications are related to the curfews imposed in Cizre district of Şırnak province on two different occasions (between 4 and 12 September 2015 and between 14 December 2015 and 3 March 2016). In only four of these 57 applications did the CC find a violation of the procedural aspect of the right to life.<sup>355</sup>

As it can be deduced from the judgments of the CC, prosecutors determined that the individuals were “members of a terrorist organization” and that the act of killing was in self-defense relying on three main pieces of evidence and decided not to prosecute: (i) the presence of gunshot residue on the bodies or clothing of individuals, (ii) anonymous and open witness statements indicating that the individuals were members of a terrorist organization, (iii) the announcement of the deaths of individuals on news websites considered to be associated with a terrorist organization. An analysis of the judgments shows that the CC adopted the same approach.

#### *Investigation into the deaths of Maşallah Edin and Zeynep Taşkın*

69. In a few investigations into violations of the right to life during curfews, permanent search warrants have been issued. However, the CC’s *Fatım Garan and Süleyman Garan* judgment shows that permanent search warrants are issued at a stage when all the evidence has not been fully collected.<sup>356</sup> In practice, once permanent search warrants have been issued, investigations do not advance until the statute of limitations has expired. As pointed out by the CC in one of its judgments in which it found a violation,<sup>357</sup> after a permanent search warrant, no further action is taken other than the notification of the Chief Public Prosecutor’s Office at certain time intervals by law enforcement officers that the search for the perpetrators continues under this warrant.

In the investigation into the deaths of Maşallah Edin and Zeynep Taşkın, mentioned in the LOIPR,<sup>358</sup> it was learned from lawyers that the investigation<sup>359</sup> conducted by the Cizre Chief Public Prosecutor’s Office to identify the perpetrator(s) of the killing of Edin and Taşkın has been merged with another investigation file opened in 2014.<sup>360</sup> Since there is a confidentiality order in the 2014 file, the contents of the file are not known.

#### *Armor of impunity provided to members of the security forces in cases of gross human rights violations*

70. The impunity for gross human rights violations allegedly committed by security forces remains to be a fundamental problem. An example that illustrates this important problem in its normative dimension is the trial regarding the killing of Ahmet Kaymaz and Uğur Kaymaz during a security operation, which the Committee also asked the government about.<sup>361</sup> The acquittal verdict given by the Eskişehir 1st High Criminal Court in the case against public officials in relation to the killing of Ahmet Kaymaz and Uğur Kaymaz during a security operation was upheld by the 1st Penal Chamber of the Court of Cassation, thus the verdict of acquittal became final. In the individual application to the ECtHR, it was ruled that both the substantive and procedural aspects of the right to life under Article 2 of the ECHR had been violated.<sup>362</sup>

355 Constitutional Court (2 November 2023). *Dündar Akdoğan and others* (Application no. 2017/40247). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/40247>; Constitutional Court (16 March 2023). *Fatım Garan and Süleyman Garan* (Application no. 2019/1603). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/1603>; Constitutional Court (16 November 2023). *Besna Çağlı and others* (Application no. 2019/13460). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/13460>; Constitutional Court (2 November 2023). *Deham Arslan and others* (Application no. 2019/34442). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/34442>. (Accessed on 6 May 2024)

356 Constitutional Court (16 March 2023). *Fatım Garan and Süleyman Garan* (Application no. 2019/1603).

357 Constitutional Court (6 October 2015), *Hüseyin Caruş* (Application no. 2013/7812). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/7812>. (Accessed on 6 May 2024)

358 CAT/C/TUR/QPR/5, para.38.

359 Investigation no: 2015/2649.

360 Investigation no: 2014/1481.

361 CAT/C/TUR/QPR/5, para.38.

362 ECtHR (25 February 2014). *Makbule Kaymaz and others v. Turkey* (Application no. 651/10). <https://hudoc.echr.coe.int/tur/?i=001-212796>. (Accessed on 6 May 2024)

Following the ECtHR's judgment, a renewal of the proceedings was requested on 21 January 2015 on the grounds of the ECtHR's findings and pursuant to Article 311 of the CPC. The request was rejected on the grounds that it did not meet the legal requirements; the appeal against the rejection was dismissed by the Eskişehir 2nd High Criminal Court. Thereupon, an individual application was lodged with the CC. The CC found the application to be manifestly ill-founded and ruled it inadmissible.<sup>363</sup>

The CC's decision has revealed an important structural problem. In the decision, the CC stated that the ECtHR's finding that a criminal sentence was imposed in violation of the ECHR and its annexed protocols is listed as a reason for renewal of the trial in Article 311 of the CPC, but Article 314 of the CPC, which lists limited grounds for renewal of the trial against the defendants, does not contain any mention of the ECtHR's violation decisions.<sup>364</sup> As a result of this assessment, the CC concluded that allowing the retrial of police officers acquitted by the domestic courts was contrary to the interests of the police officers and that the retrial of those acquitted was not possible under Article 314 of the CPC.<sup>365</sup> The CC's Makbule Kaymaz judgment has made it clear that Article 311 of the CPC is not applicable in cases where public officials have been acquitted and the ECtHR has issued a judgment of violation. In other words, in such cases, there can be no retrial of public officials. Considering that the armor of impunity provided to public officials is a structural problem, it is clear that the violation judgments of the ECtHR will have no transformative effect.

### ***On investigations and prosecutions for excessive use of force:***

71. The authority of the police to use force and weapons is regulated by the broadly interpreted<sup>366</sup> Article 16 of the Law no. 2559. This article, amended in 2007 and 2015, lacks the safeguards set out in international standards, which stipulate that the use of lethal force should be a last resort and only when absolutely necessary to protect life.

The authority of the police to use weapons has been expanded by the 2015 amendment commonly known as the "Domestic Security Package."<sup>367</sup> However, the Committee's question<sup>368</sup> about this amendment was left unanswered by the government, despite the grave consequences of the change.<sup>369</sup> The case of Kemal Kurkut, who was shot dead by the police, is an illustrative example in this respect.

- On 21 March 2017, Kemal Kurkut, who had come to Diyarbakır to attend the Newroz celebrations, was shot dead by the police at a checkpoint while entering the celebration area. After journalist Abdurrahman Gök<sup>370</sup> reported on the incident, a police officer was charged with "killing with probable intent." In the indictment dated 2 October 2017, the prosecutor requested life imprisonment for the police officer. The trial started on 14 December 2017 at the Diyarbakır 7th High Criminal Court which concluded the trial on 17 November 2020 and acquitted the defendant police officer on the grounds of "insufficient evidence."<sup>371</sup> The 1st Penal Chamber of the Diyarbakır Regional Court of Appeals, which examined the appeal, referred to Article 16 of the Law no. 2559 and ruled that the killing of Kurkut was within the legal framework. The appeals court reasoned that the prosecution of the police officer was "unlawful" as his authority to use weapons was not considered and therefore instead of acquittal, the first degree court should rule for "no grounds for sentencing." On 17 January 2023, the first degree court ruled accordingly.

### ***Alleged disobedience of "stop" warning and use of lethal force***

363 Constitutional Court (17 April 2019). *Makbule Kaymaz* (Application no. 2015/9441). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2015/9441>. (Accessed on 6 May 2024)

364 Constitutional Court (17 April 2019). *Makbule Kaymaz*, para.46.

365 Constitutional Court (17 April 2019). *Makbule Kaymaz*, para.48.

366 See para. 11.

367 *Law no. 2559 on the Duties and Powers of the Police*, Article 16(d): "The [police] are authorized to use weapons against those who attack or attempt to attack themselves or others, workplaces, dwellings, public buildings, schools, dormitories, places of worship, vehicles and open or closed areas where people are individually or collectively with Molotov, explosive, flammable, inflammable, caustic, suffocating, injurious and similar weapons, in order to neutralize the attack and to the extent necessary to neutralize it."

368 CAT/C/TUR/QPR/5, para.41.

369 CAT/C/TUR/5, para. 190.

370 According to journalist Abdurrahman Gök's statement, upon realizing that he had taken the photographs, the police demanded his camera's memory card, which could not be confiscated at the time because Gök reflexively removed it after taking the photographs. Gök has been and is being subjected to many pressures, including judicial harassment, after these photographs were published. See. Expression Interrupted. "Abdurrahman Gök." <https://expressioninterrupted.com/tr/abdurrahman-gok>. (Accessed on 6 May 2024)

371 Faili Belli. "Kemal Kurkut Davası [Kemal Kurkut Case]." <https://www.failibelli.org/dava/kemal-kurkut-davasi/>. (Accessed on 6 May 2024)

72. The data collected by İHD for the last five years on the use of lethal force by security forces for alleged disobedience of the “Stop” warnings (on the street or in meetings and demonstrations) illustrates the gravity of the problem.<sup>372</sup>

**Table 21: Cases of use of lethal force for alleged failure to obey a “stop” warning**

Year	Deaths	Injuries
2018	15 (One child)	9
2019	9 (One child)	15
2020	14 (Two children)	12 (Two children)
2021	9	24
2022	20 (One child)	27

Moreover, Hafıza Merkezi, which monitors such cases, has noted that a culture of impunity prevails in the cases monitored, with perpetrators receiving either no punishment at all or reduced sentences.<sup>373</sup> For instance;

- On 14 April 2017, police officers opened fire at a car on the grounds that it did not obey a stop warning at the exit of the City Forest in Gazi Neighborhood of Istanbul. Barış Kerem and Oğuzhan Erkul who were in the car were killed, while three other children were injured. As a result of the investigation, four police officers were charged with “causing death and injury to more than one person with conscious negligence.” The trial held at the Istanbul 1st High Criminal Court was concluded on 5 February 2021. Each police officer was sentenced to six years imprisonment, which was converted into a fine of 24.300 TRY to be paid in 24 monthly installments. On 24 March 2022, the 19th Penal Chamber of the Istanbul Regional Court of Appeals, which examined the appeals, decided to dismiss the appeals. The verdict is finalized as it is not subject to the Court of Cassation review due to the length of the sentence.

### **On investigations and prosecutions into deaths in custody:**

73. Unfortunately, the government’s response<sup>374</sup> to the question<sup>375</sup> regarding deaths in custody does not reflect the truth. According to İHD figures, at least 24 people have died in custody since the Committee’s last concluding observations.<sup>376</sup> Similarly, the HRFT Documentation Center recorded that at least 16 people died in custody between 2018 and 2024.<sup>377</sup> It is extremely worrying that six people died in custody in 2023 alone as a result of the weakening of basic legal and procedural safeguards.<sup>378</sup> For instance;

372 The data presented here is compiled from the annual balance sheets on human rights violations published by the İHD.

373 For the cases monitored on this issue, see <https://www.failibelli.org> (Accessed on 7 May 2024)

374 CAT/C/TUR/5, para. 225.

375 CAT/C/TUR/QPR/5, para.51.

376 İHD (14 April 2017). *2016 Yılı Türkiye İnsan Hakları İhlalleri: Fiili Otoriter Başkanlık Dönemi* [2016 Human Rights Violations in Turkey: De facto Authoritarian Presidency].

<https://www.ihd.org.tr/2016-yili-turkiye-insan-haklari-ihlalleri-fiili-otoriter-baskanlik-donemi>; İHD (6 April 2018). *2017 Türkiye İnsan Hakları İhlalleri Bilançosu* [2017 Human Rights Violations in Turkey].

<https://www.ihd.org.tr/2017-turkiye-insan-haklari-ihlalleri-bilancosu>; İHD (19 April 2019). *2018 Yıllık İnsan Hakları Raporu* [2018 Annual Report on Human Rights Violations in Turkey], p.5. <https://www.ihd.org.tr/ihd-2018-yillik-insan-haklari-raporu>; İHD (6 October 2022). *2021 Yılı Türkiye İnsan Hakları İhlalleri Bilançosu* [2021 Human Rights Violations in Turkey].

<https://www.ihd.org.tr/2021-yili-turkiye-insan-haklari-ihlalleri-raporu>; İHD (26 September 2023). *2022 Yılı Türkiye İnsan Hakları İhlalleri Bilançosu* [2022 Human Rights Violations in Turkey]. <https://www.ihd.org.tr/2022-yili-hak-ihlalleri-raporu>. (Accessed on 7 May 2024)

377 HRFT (November 2019). *2018 - Yıllık İnsan Hakları Raporu* [2018 - Annual Human Rights Report], p.27.

<https://tihv.org.tr/yillik-insan-haklari-raporlari/2018-yillik-insan-haklari-raporu>; HRFT (June 2021), *2020 - Yıllık İnsan Hakları Raporu* [2020 - Annual Human Rights Report], p.21; HRFT (September 2022), *Türkiye İnsan Hakları Raporu 2021* [2021 - Annual Human Rights Report], p.38; HRFT ve İHD (10 December 2022). *Verilerle 2022 Yılında Türkiye’de İnsan Hakları İhlalleri* [2022 Human Rights Violations in Turkey in Numbers].

<https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/verilerle-2022-yilinda-turkiyede-insan-haklari-ihlalleri>; HRFT and İHD (10 December 2023). *Verilerle 2023 Yılında Türkiye’de İnsan Hakları İhlalleri* [2023 Human Rights Violations in Turkey in Numbers].

<https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/verilerle-2023-yilinda-insan-haklari-ihlalleri>. (Accessed on 7 May 2024)

378 See paras.33-40.

- Ahmet Güreşçi was detained with his brother in Hatay five days after the earthquakes on 6 February 2023 over suspicion of “looting.” According to the statements of his brother, the Güreşçi brothers were taken to the Altınözü Gendarmerie Station where they were subjected to torture and other forms of ill-treatment. Ahmet Güreşçi collapsed after being beaten with truncheons and died there. The investigation file contains a written record dated February 14 stating that on February 11, the day the Güreşçi brothers were brought to the gendarmerie station, the cameras stopped recording at 10.00 am and started again at 09.30 a.m. the next day, and that there was no camera system in the warehouse where the Güreşçi brothers were kept. It was also recorded by the law enforcement officers that the report on the forensic examination of the Güreşçi brothers after they were detained could not be obtained due to “overcrowding at the Altınözü State Hospital and system malfunctions at the hospital.” Although the report on the autopsy of Ahmet Güreşçi, which was conducted on February 12, concluded that there were numerous lesions consistent with blunt trauma on Güreşçi’s body and that there were findings suggestive of cerebral hemorrhage, the file was sent to the Istanbul Forensic Medicine Institution’s First Forensic Medicine Specialized Department Board for the cause of death to be determined. The fate of the investigation, which remains under confidentiality, is unknown to us.
- Ahmet Bugrur, who was detained on 23 February 2023 in front of a mosque in Doğubayazıt district of Ağrı on the allegations of arguing with an imam, died at the Doğubayazıt District Security Directorate where he was taken. After establishing that Ahmet Bugrur had committed suicide, the Ağrı Bar Association concluded that “the Doğubayazıt District Security Directorate violated the state’s positive obligations to protect the right to life of the person, as it was negligent and failed to prevent this incident when it had the opportunity to do so.”<sup>379</sup> A lawsuit<sup>380</sup> has been filed against a police officer for “misuse of public duty through negligence.” On 21 May 2024, the Doğubayazıt 3rd Criminal Court of First Instance acquitted the police officer on the grounds that the elements of the offense he was charged with did not occur.
- On 11 March 2023, two of the eight Syrian citizens who were detained while trying to enter Turkey through Syria and whose names are unknown, died. Ahmet Şık, Istanbul MP of the Workers’ Party of Turkey, who submitted a parliamentary question on 20 March 2023 following the reports, alleged in his parliamentary question that “the refugees were beaten, put into a car and taken to a place where they were tortured with sticks, batons and electric cables; diesel oil was poured on them as they were being tortured and they were forced to drink diesel oil; they were stripped naked and beaten with iron sticks.”<sup>381</sup> An investigation was launched by the Reyhanlı Chief Public Prosecutor’s Office against six soldiers on suspicion of “intentional killing.”<sup>382</sup> Three soldiers were reportedly arrested and three others were released under judicial control measures. The acts subject to the investigation were considered within the scope of “military offenses” and the investigation file was transferred to the Hatay Chief Public Prosecutor’s Office.<sup>383</sup> It is known that a case has been filed against the soldiers in a high criminal court, but there is no information on the course and outcome of the case.

*Gökhan Açıkkolu who died in custody*

- 74.** Gökhan Açıkkolu was detained on 23 July 2016 in Ümraniye district of İstanbul and taken to the Counter-Terrorism Bureau of the İstanbul Security Directorate. Açıkkollu, who suffers from diabetes and panic attacks, suffered three seizures due to the torture he was subjected to during his detention and was taken to the hospital and then brought back to the holding cell. Açıkkollu died in custody on 5 August 2016.

Although the medical examinations and documents issued during the custody did not comply with the principles and standards set out in the Istanbul Protocol, the documents recorded that Açıkkolu was “subjected to insults, threats and physical violence” and identified bruises of various colors and sizes on different parts of his body, including the face, back of the head, neck, shoulders, right side of the chest

379 Ağrı Bar Association (11 April 2023). “Ahmet Bugrur İntihar Vakası Gözlem Raporu [Observation Report on the Suicide Incident of Ahmet Bugrur].” <https://www.agribarosu.org.tr/Detay.aspx?ID=uKc05DPVzhJK4/pznKYhDg==>. (Accessed on 7 May 2024)

380 Docket no. 2024/12

381 Ahmet Şık (20 March 2023). *Suriye sınırında bazı mültecilerin kolluk kuvvetleri tarafından kötü muameleye maruz kaldığı iddiasına ilişkin soru önergesi* [Parliamentary question on the allegation that some refugees were subjected to ill-treatment by law enforcement officers at the Syrian border]. <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/37493ed8-87ad-4342-8424-018709b555d2>. (Accessed on 7 May 2024). Ahmet Şık’s parliamentary question to be answered by Interior Minister Süleyman Soylu was deemed “null and void as the legislative period has expired” and left unanswered.

382 Investigation no. 2023/2299

383 Investigation no. 2023/34740



and back. In his psychiatric evaluation, it is understood that he developed increased alertness after verbal and physical ill-treatment, had re-experiences, had nightmares, woke up shaking at night, sweating, trembling, shortness of breath, felt fear of death, described anticipatory anxiety and was diagnosed with Panic Disorder and Acute Stress Disorder.

It was reported that Açıkkolu had fallen ill at 04.00 am on 5 August, that forensic experts who had been in custody with him performed CPR for 40 minutes, but that he could not be revived and was taken to a hospital at 05.30 am, where he died after 45 minutes of CPR. In the report of the Forensic Medicine Institution 1st Forensic Medicine Specialized Board dated 23 November 2016, it was stated that “the autopsy revealed fractures in the left 3rd, 4th, 5th, 6th, 7th ribs following an oblique line and bleeding at the level of the 5th intercostal space which may have been caused by the resuscitation procedures, that death occurred as a result of acute myocardial infarction (heart attack), and that there was no traumatic effect on his death.” The autopsy also revealed areas of hemorrhage in the neck and back, both visible to the naked eye and confirmed by microscopy.

The medical examinations conducted in detention and the findings described in the autopsy indicate that Açıkkolu was subjected to torture prior to his death. Although it is known that Açıkkolu’s existing illnesses are an important risk factor and can trigger a heart attack due to stress, conditions of detention and trauma, the Forensic Medicine Institute report did not evaluate the effect of these factors on his death, did not evaluate the cause and timing of the traumas detected in the neck and back, even though they did not directly cause death. This approach which resulted in limited information about the death violated the principles of the Minnesota Protocol. Indeed, in the evaluation report prepared by Prof. Dr. Şebnem Korur Fincancı dated 18 January 2017, it was stated that the mental and physical traumas (Y.07.3 torture) to which Açıkkolu was subjected in custody should be accepted as one of the triggering factors since he also had diabetes.

Although Açıkkolu’s medical examination records and witness statements supported the suspicion of torture, the Istanbul Chief Public Prosecutor’s Office issued a decision of non-prosecution on 20 December 2016, without conducting an effective investigation, on the grounds that “there was no intent or negligence on the part of anyone involved in the incident, and that the act did not occur as a result of anyone’s instigation.” The appeal against the decision of non-prosecution was accepted by a Criminal Judgeship of Peace and the investigation has been reopened. The fate of the investigation, however, remains unknown to us.

### ***On investigations and prosecutions into allegations of enforced disappearances:***

**75.** An analysis of 363 cases of enforced disappearances shows that for only 85 forcibly disappeared persons criminal proceedings have been initiated in relation to these cases.<sup>384</sup> In other words, the vast majority of investigations into enforced disappearances have not proceeded to the prosecution stage.

An examination of the cases of enforced disappearances that did not materialize into lawsuits reveals that prosecutors passed the 20-year statute of limitations with inaction. After 20 years without any action, the investigation files are now being closed with decisions of non-prosecution due to the statute of limitations. As of January 2018, the Constitutional Court started issuing categorical inadmissibility decisions citing prescription periods for applications filed at the end of the appeal processes.<sup>385</sup>

Following some political developments in 2007, a series of indictments were prepared between 2009 and 2014 and 11 different cases were initiated for 78 forcibly disappeared persons shortly before the statute of limitations expired.<sup>386</sup> Two of these cases were subsequently merged.<sup>387</sup> Since enforced disappearance is not criminalized in criminal legislation in Turkey, the state officials tried in these cases were charged with the offense of “intentional killing.”

By 2015, courts began to acquit defendants on the grounds that there is insufficient evidence to convict them of the charges or started dismissing the cases on the grounds that the statute of limitations had

<sup>384</sup> See para. 19.

<sup>385</sup> The list of these judgments of the Constitutional Court is shared with the Committee in Annex III. The last time the Constitutional Court published its judgment on its official database was on 10 October 2019 in the *Senay Melik* application. Since then, the Constitutional Court has been issuing summary judgments and serving them only to the applicants. The fact that the Constitutional Court decisions on enforced disappearances are not published as such, not only hinders the monitoring activities of civil society in particular, but also makes it impossible for the public to obtain information about enforced disappearances in a transparent manner.

<sup>386</sup> Before the political developments in 2007, only four cases had been filed regarding six forcibly disappeared persons.

<sup>387</sup> A detailed list of cases filed in relation to enforced disappearances is shared with the Committee in Annex IV.

expired. Acquittals have been upheld by both appeals courts and the Court of Cassation. In only one case was the lower court's decision of acquittal overturned on appeal. However, in the retrial, the lower court again issued a verdict of acquittal. The fact that cases of enforced disappearances are consistently concluded with acquittals shows that the problem of impunity persists.

In an individual application filed after the finalization of the judgments on enforced disappearances, the CC ruled that the procedural aspect of the right to life had been violated.<sup>388</sup> On 28 April 1995, in the case of the enforced disappearance of Nezir Tekçi, who was detained by soldiers in Yukarı Ölçek hamlet of Yüksekova district of Hakkari and was never heard from again, a retrial started after the CC's judgment. At the first hearing of the case on 17 July 2023, the lawyers of the Tekçi family stated that the case had been dragged towards the statute of limitations and therefore the deficiencies identified by the CC should be rectified immediately and demanded the arrest of the defendants. The Court rejected the requests for the arrest of the defendants and ruled that the defendants be tried under judicial control measures. The Court accepted the defendants' request to be excused from the hearings. The trial continues.<sup>389</sup>

Currently, only two of the 10 cases are ongoing. However, one of these two cases was dismissed due to the expiration of the 30-year statute of limitations.<sup>390</sup> Considering that the most severe period of enforced disappearances was between 1992 and 1996, there is a risk that "decisions of dismissal due to statute of limitations" will be issued one after another in the coming days.<sup>391</sup>

### **On the implementation of the judgments of the ECtHR:**

76. The number of judgments finding a violation of Article 3 ECHR issued by the ECtHR between 2012 and 2019 is higher than the number shared by the government in response<sup>392</sup> to the Committee's question.<sup>393</sup> The ECtHR considers Article 3 of the ECHR together with Article 1 of the Convention and holds that states have positive obligations under Article 3. The Court examines the fulfillment of these obligations with respect to the "substantive"<sup>394</sup> and "procedural" aspects. In its reply to the Committee, the government focuses on cases in which the ECtHR has found a violation on substantial aspects, but here too there is a lack of information. As such, the information provided by the government focuses only on the "prohibition of torture." Even assuming that the Government adopted the ECtHR's own classification,<sup>395</sup> the figure is still misleading. This is because the ECtHR also examines "inhuman or degrading treatment" in terms of its substantive aspect.

A thorough search<sup>396</sup> of the Court's HUDOC database<sup>397</sup> reveals that between 2012 and 2019, the number

388 Constitutional Court Plenary (1 December 2022) *Asya Göres and others* (Application no. 2018/15851). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/15851>. (Accessed on 7 May 2024)

389 Faili Belli. "Yüksekova (Nezir Tekçi) Davası [Yüksekova (Nezir Tekçi) Case]." <https://www.failibelli.org/dava/nezir-tekci-davasi>. (Accessed on 7 May 2024)

390 This person is Ayten Öztürk, who was forcibly disappeared in Dersim, and there is also a violation decision of the Constitutional Court on the grounds of lack of effective investigation: Constitutional Court (21 April 2016). *Hıdır Öztürk and Dilif Öztürk* (Application no. 2013/7832). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/7832?Dil=tr>. Also see Faili Belli. "JİTEM, Musa Anter ve Ayten Öztürk Davası İzleme Raporu – 21 Eylül 2022 (Karar Duruşması) [JİTEM, Musa Anter and Ayten Öztürk Trial Monitoring Report – 21 September 2022 (Sentencing Hearing)]" <https://www.failibelli.org/jitem-musa-anter-ve-ayten-ozturk-davasi-izleme-raporu-21-eylul-2022-karar-durusmasi>. (Accessed on 7 May 2024)

391 HRFT (March 2016), *Alternative Report To the United Nations Committee Against Torture For Its Consideration of the 4th Periodic Report of Turkey*, para.45.

392 CAT/C/TUR/5, para.51.

393 CAT/C/TUR/QPR/5, para.12.

394 In some of its previous judgments, the Court has also used the term "material" instead of "substantive." See for instance *Taşarsu v. Turkey* (Application no. 14958/07). <https://hudoc.echr.coe.int/?i=001-115306>; *Çelik v. Turkey* (no. 3) (Application no. 36487/07). <https://hudoc.echr.coe.int/?i=001-114460>. (Accessed on 23 May 2024)

395 In the overall statistics provided by the ECtHR, Article 3 is divided into three headings: "prohibition of torture", "inhuman or degrading treatment" and "lack of effective investigation." The first two headings correspond to substantive limb of the article while the third heading corresponds to procedural limb of the article. See Bkz. *Violations by Article and State 1959 - 2022*. [https://www.echr.coe.int/documents/d/echr/stats\\_violation\\_1959\\_2022\\_eng](https://www.echr.coe.int/documents/d/echr/stats_violation_1959_2022_eng). (Accessed on 7 May 2024)

396 In the online search, following parameters were applied: In the menu on the left side of the database; under the heading of "Case-Law", "Grand Chamber" and "Chamber" judgments were selected; under the heading of "Filter", "English", "French", "Türkiye and "Violation (3)" were selected. As the website allows a maximum of 500 results to be exported in one go, "English" (399) and "French" (397) were exported separately and the excels provided by HUDOC were later merged together. In the merged excel, the judgments were ordered by the judgment date.

397 "The HUDOC database provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), the European Commission of Human Rights (decisions and reports) and the Committee of Ministers (resolutions)." See <https://www.echr.coe.int/en/hudoc-database> (Accessed on 23 May 2024)

of cases in which the ECtHR found a violation of Article 3 against Turkey on substantive grounds was 91.<sup>398</sup> This figure includes judgments in which the ECtHR found violations of Article 3 in conjunction with Article 13. These figures rise to 103 when the decisions issued between 2020 and 2023 are also included.<sup>399</sup>

It is not only in this respect that the information shared by the government is inaccurate. In its reply to the Committee, the government only shared “substantive” violations, albeit incompletely. However, it is clear from the ECtHR’s established case-law<sup>400</sup> on Article 3 ECHR that the Court attaches great importance to the procedural aspect of Article 3 ECHR, as the fight against impunity is vital to prevent torture and other forms of ill-treatment.<sup>401</sup> Between 2012 - 2019, the ECtHR has found violations of Article 3 under its procedural limb in 93 applications. Once the figures since 2020 are included, the number of violations under Article 3’s procedural limb rises to 108. In other words, during the period in question, the ECtHR delivered an average of nine judgments each year finding Turkey to have violated the procedural aspects of Article 3 of the ECHR.

These numbers show that violations of the prohibition of torture in Turkey are systematic. Moreover, the government does not share with the Committee any information on the implementation of these judgments. Turkey’s failure to implement the ECtHR’s rulings on violations of the prohibition of torture exacerbates the existing systematic problem by paving the way for new violations. The problem of non-implementation of ECtHR judgments has reached such a level that even the ECtHR judgments mentioned in the government’s response have not been implemented, with the exception of the *Ebcin v. Turkey* judgment<sup>402</sup> in which no public official was involved. These cases have been closed with non-prosecution decisions issued on the grounds of statute of limitations without the obligation of effective investigation being fulfilled.<sup>403</sup>

#### **On the Law Enforcement Monitoring Commission:**

77. The Law Enforcement Monitoring Commission, which the government announced its establishment on 20 May 2016<sup>404</sup> in response to the Committee’s recommendation<sup>405</sup> to “establish an independent body, independent of the police hierarchy, tasked with investigating complaints against law enforcement officers”, is not “an investigative body independent of the police hierarchy”, as the government claims.<sup>406</sup> More importantly, the Law Enforcement Monitoring Commission is not an investigation authority.

Law no. 6713 on the Establishment of the Law Enforcement Monitoring Commission defines the duties and powers of the Law Enforcement Monitoring Commission in a limited manner as “to request disciplinary investigations to be conducted against law enforcement officers by the competent authorities, when necessary, due to crimes they are alleged to have committed or actions, attitudes or behaviors that require disciplinary punishment.”<sup>407</sup> The CC also established that the commission does not have the authority to directly investigate law enforcement officers.<sup>408</sup>

In the context of the fight against torture and other forms of ill-treatment, it is of utmost importance to stop considering and, moreover, accepting the Law Enforcement Monitoring Commission as a body corresponding to the Committee’s recommendation, when it is so clear that it is not an investigation authority.

398 The detailed list of judgments between 2012 and 2019 is shared with the Committee in Annex V.

399 A detailed list of judgments between 2020 and 2023 is shared with the Committee in Annex V.

400 *Aksoy v. Turkey* (Application no. 21987/93), para. 98. <https://hudoc.echr.coe.int/fre?i=001-58003>; Also see *Assenov and others v. Bulgaria* (Application no. 24760/94), para. 103 in *Reports 1998-VIII*. <https://hudoc.echr.coe.int/?i=001-3208>. (Accessed on 23 May 2024)

401 *Okkali v. Turkey* (Application no. 52067/99), para. 65. <https://hudoc.echr.coe.int/?i=001-77522>. (Accessed on 23 May 2024)

402 ECtHR (1 February 2011). *Ebcin v. Turkey* (Application no. 19506/05). <https://hudoc.exec.coe.int/?i=004-37104>. (Accessed on 7 May 2024)

403 The Committee of Ministers closed the supervision of the execution of the judgments in *Afet Süreyya Eren v. Turkey* (Application no. 36617/07) and *Ateşoğlu v. Turkey* (Application no. 53645/10) “with deep regret” as the cases cannot be reopened due to the prescription periods. Bkz. 1355 meeting (DH) September 2019 - H46-24 Batı and Others group v. Turkey (Application No. 33097/96). [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2019\)1355/H46-24E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2019)1355/H46-24E). (Accessed on 7 May 2024)

404 CAT/C/TUR/CO/4/Add.1, para.8.

405 CAT/C/TUR/CO/4, para.10(e).

406 CAT/C/TUR/5, para.52 - 55.

407 6713 sayılı Kolluk Gözetim Komisyonu Kurulması Hakkında Kanun [Law No. 6713 on the Establishment of Law Enforcement Monitoring Commission] (20 May 2016), Article 4 (1-b). <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6713&MevzuatTur=1&MevzuatTertip=5>. (Accessed on 7 May 2024)

408 Constitutional Court (12 April 2017). *E.2016/140, K.2017/92*, para.14. <https://normkararlarbilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararPDF/2017-92-nrm.pdf>. (Accessed on 7 May 2024)

78. Although the above described situation renders questions about the independence of the Law Enforcement Monitoring Commission meaningless, the Committee's questions<sup>409</sup> require some clarification.

Law No. 6713 aims to establish the Law Enforcement Monitoring Commission in order to record and monitor in a centralized system the actions and proceedings taken or required to be taken by administrative authorities due to alleged crimes committed by law enforcement officials or actions, attitudes or behaviors that require disciplinary punishment, and to determine the procedures and principles regarding other administrative measures regarding the law enforcement complaint system.

The law defines the "complaint system", which is included in the LOIPR, as "the entirety of the actions, procedures and practices undertaken by administrative authorities in relation to alleged crimes committed by law enforcement officials or their actions, attitudes or behaviors that require disciplinary punishment."<sup>410</sup> In the annual reports published by the Law Enforcement Monitoring Commission, it is stated that this system consists of "the Chairman and Members of the Law Enforcement Monitoring Commission; the Secretariat of the Law Enforcement Monitoring Commission; Chief Inspectors and Civil Inspectors; Law Enforcement Complaints Offices and Law Enforcement Units."<sup>411</sup>

Regulation on the implementation of Law no. 6713, which entered into force on 7 August 2019, establishes the first stage of the law enforcement complaint system as filing an application with administrative authorities.<sup>412</sup> The Regulation lists law enforcement complaint offices within the provincial administrative board directorate in provinces and the directorate of registry offices in districts, as well as law enforcement complaint units within the central and provincial organizations of affiliated institutions (General Directorate of Security, Gendarmerie General Command and Coast Guard Command) as the authorities to receive applications at the first stage.<sup>413</sup> As can be seen in this regulation, law enforcement complaint bureaus and law enforcement complaint units, which are at the first stage of the law enforcement complaint system, are structures that are in an organizational and hierarchical dependency relationship.

Considering that the main objective of the Committee is the prevention of torture, the expectation that complaints about torture and other forms of ill-treatment allegedly committed by law enforcement officials should be made to such structures, which are in an organizationally and hierarchically dependent relationship with law enforcement officials, constitutes an extremely important obstacle to the effective investigation into allegations of torture.

The Regulation stipulates that, as the second stage of the law enforcement complaint system, the first action to be taken upon any denunciation or complaint alleging a crime will be an assessment as to whether the elements required in the complaints are present. This assessment is to be carried out by the local administrative authorities for the personnel working in the provinces and by the relevant personnel units for the personnel working in the central organizations of the affiliated institutions.<sup>414</sup> In other words, all persons involved in the second stage of the law enforcement complaint system are also persons in a relationship of institutional and hierarchical dependency.

The law<sup>415</sup> and the regulation<sup>416</sup> specify the initiation of a "disciplinary investigation" as the next stage of the law enforcement complaint system if it is concluded or understood that the act learned about directly or as a result of an inquiry is one of the crimes related to torture and other forms of ill-treatment. The Law stipulates, inter alia, that preliminary examinations and/or disciplinary investigations into

409 CAT/C/TUR/QPR/5, para.7, 13 ve 42.

410 Law No. 6713, Article 2f.

411 Law Enforcement Monitoring Commission (January 2021). *2020 Yılı Faaliyet Raporu* [2020 Annual Report], p.13. [http://www.kollukgozetim.gov.tr/kurumlar/kollukgozetim.gov.tr/Mevzuat/2020\\_faaliyet\\_raporu.pdf](http://www.kollukgozetim.gov.tr/kurumlar/kollukgozetim.gov.tr/Mevzuat/2020_faaliyet_raporu.pdf); Law Enforcement Monitoring Commission (January 2022). *2021 Yılı Faaliyet Raporu* [2021 Annual Report], p.14. [http://kollukgozetim.gov.tr/kurumlar/kollukgozetim.gov.tr/Mevzuat/2021\\_faaliyet\\_raporu.pdf](http://kollukgozetim.gov.tr/kurumlar/kollukgozetim.gov.tr/Mevzuat/2021_faaliyet_raporu.pdf); Law Enforcement Monitoring Commission (January 2023). *2022 Yılı Faaliyet Raporu* [2022 Annual Report], p. 20. <http://kollukgozetim.gov.tr/kurumlar/kollukgozetim.gov.tr/Mevzuat/KGK-2022-YILI-FAALIYET-RAPORU- BASKI 20-ADET .pdf>. (Accessed on 7 May 2024)

412 *6713 Sayılı Kolluk Gözetim Komisyonu Kurulması Hakkında Kanunun Uygulanmasına Dair Yönetmelik* [Regulation on the implementation of Law no. 6713] (7 August 2019), Article 61(1). <https://www.mevzuat.gov.tr/MevzuatMetin/21.5.1401.pdf>. (Accessed on 7 May 2024)

413 *Regulation on the implementation of Law no. 6713*, Article 75(1) and 76(1).

414 *Regulation on the implementation of Law no. 6713*, Article 63(1).

415 *Regulation on the implementation of Law no. 6713*, Article 4(2).

416 *Regulation on the implementation of Law no. 6713*, Article 13(1).

allegations of torture shall be conducted by civil inspectors; where the circumstances of the case so require, inspectors from affiliated institutions may be assigned to work together with the civil inspectors conducting the preliminary examination and/or disciplinary investigation; and in the event that preliminary examinations and/or disciplinary investigations into such crimes are conducted by governorships or district governorships, these procedures shall be carried out, to the extent possible, by officials in the civil administration service class.<sup>417</sup>

The Regulation defines<sup>418</sup> disciplinary investigation as “the investigation and examination activity carried out or commissioned by disciplinary supervisors to determine the responsibilities of law enforcement officers arising from disciplinary law”, and clearly states that the inspectors assigned to carry out this “investigation and examination activity” will “work under the orders of the Chairman of the Board upon the order and approval of the Ministerial Authority.”<sup>419</sup>

Furthermore, the Law on the Adoption of the Decree Law no. 7068 dated 31/1/2018 on the Disciplinary Provisions of the General Law Enforcement Force,<sup>420</sup> which was adopted after the entry into force of Law no. 6713, states that the provisions of Law No. 6713 regarding disciplinary investigation procedures are reserved; the powers of disciplinary supervisors regarding the investigation and the composition and powers of the disciplinary boards of the Police Force, Gendarmerie or Coast Guard Command are regulated in a relationship of institutional and hierarchical dependency.<sup>421</sup>

All these regulations reveal that proceedings under the name of administrative/disciplinary investigations that may be initiated in relation to torture and other ill-treatment crimes allegedly committed by law enforcement officers are and will be carried out mainly by persons within the Ministry of Interior, who are not independent both institutionally and hierarchically, as has been the case for many years.<sup>422</sup>

All the above information demonstrates that the problem of “institutional or hierarchical connections between those conducting the investigation and the alleged perpetrators” is quite evident.<sup>423</sup>

#### *“Effectiveness” of the law enforcement complaints system*

**79.** The Committee’s question on the “rapidity” and “effectiveness” of the law enforcement complaints system<sup>424</sup> is a question that cannot be answered in the affirmative, particularly in relation to allegations of torture and other forms of ill-treatment. All the legal regulations mentioned in the preceding paragraphs define the entire law enforcement complaints system in a relationship of institutional and hierarchical dependency.

In the light of all this information, the point to be considered is not whether such disciplinary investigations carried out by units and individuals in complete institutional and hierarchical dependence, without respecting the basic principles required for the investigation of allegations of torture and other ill-treatment, are effective or not, but that these procedures hinder the independent investigation processes that should be carried out effectively in relation to allegations of torture and other ill-treatment and are therefore detrimental to the fight against impunity.

Nevertheless, official figures demonstrate that this system is not “effective.”

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417 Law no. 6713, Article 8(1-b).

418 Regulation on the implementation of Law no. 6713, Article 3(1-ğ)

419 Regulation on the implementation of Law no. 6713, Article 49(1).

420 This law constitutes another example of the perpetuation of the SoE measures.

421 7068 sayılı Genel Kolluk Disiplin Hükümleri Hakkında Kanun Hükmünde Kararnamenin Kabul Edilmesine Dair Kanun [Law No. 7068 on the Adoption of the Emergency Decree on General Law Enforcement Disciplinary Provisions] (8 March 2018), Articles 13,14,15,16. <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.7068.pdf>. (Accessed on 7 May 2024)

422 See Law No. 657 dated 14/7/1965 on Civil Servants; Law No. 3152 dated 14/2/1985 on the Organization and Duties of the Ministry of Interior; Law No. 4483 dated 2/12/1999 on the Prosecution of Civil Servants and Other Public Officials.

423 CAT/C/TUR/QPR/5, para.13.

424 CAT/C/TUR/QPR/5, para.42.

**Table 22: Statistics on law enforcement complaint system**

		2020 <sup>425</sup>	2021 <sup>426</sup>	2022 <sup>427</sup>	2023
Total Number of Personnel		53.081	73.107	77.756	-
Torture	Number of relevant personnel	27	37	50	-
	Number of personnel penalized	0	0	0	-
Ill-treatment	Number of relevant personnel	557	953	851	-
	Number of personnel penalized	15	46	27	-

Considering the number of applicants to the HRFT for being subjected to torture and other forms of ill-treatment, the figures above show how harmful such processes under the name of disciplinary investigations are in terms of combating impunity in the context of torture and other forms of ill-treatment. Moreover, the publication of some numbers as “decisions” regarding such disciplinary proceedings, which do not fulfill the basic principles, in particular the independence of investigations into allegations of torture and other ill-treatment, directly undermines the fight against impunity, as it leads to the truth being obscured.

### **On countercharges:**

80. The government’s response<sup>428</sup> to the question<sup>429</sup> on countercharges demonstrates that the attitude of denial regarding this phenomenon, which was noted previously,<sup>430</sup> continues.

However, in order to prevent the investigation of acts of torture, which should be effectively investigated, countercharges are brought against torture survivors on various accusations, including those pointed out by the Committee, in order to intimidate them. Even though the authorities have persistently refused to provide disaggregated data in an attempt to render this problem invisible, even a cursory glance at the Judicial Statistics<sup>431</sup> regarding the charges mentioned by the Committee, shows that there is a significant disparity between the charges related to torture and other forms of ill-treatment and the countercharges.

The data obtained from these statistics for the period of 2016-2021 will be used to compare the two categories: (i) the crimes of “torture” (TPC Article 94), “aggravated torture due to its consequences” (TPC Article 95) and “torment” (TPC Article 96), “exceeding the limit of the authority to use force” (TPC Article 256) which should be referred to in cases expected to be filed against public officials and (ii) “prevention of public duty” (TPC Article 265) which is often used to intimidate torture survivors.<sup>432</sup>

425 Law Enforcement Monitoring Commission (January 2021). *2020 Annual Report*, p.28.

426 Law Enforcement Monitoring Commission (January 2022). *2021 Annual Report*, p.34.

427 Law Enforcement Monitoring Commission (January 2023). *2022 Annual Report*, p.49.

428 CAT/C/TUR/5, para.169.

429 CAT/C/TUR/QPR/5, paras.1 and 34.

430 HRFT (March 2016), *Alternative Report To the United Nations Committee Against Torture For Its Consideration of the 4th Periodic Report of Turkey* para.11.

431 Adli Sicil ve İstatistik Genel Müdürlüğü [General Directorate of Judicial Registry and Statistics]. “Adalet İstatistikleri Yayın Arşivi [Judicial Statistics Archive].” <https://adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arsivi>. (Accessed on 8 May 2024)

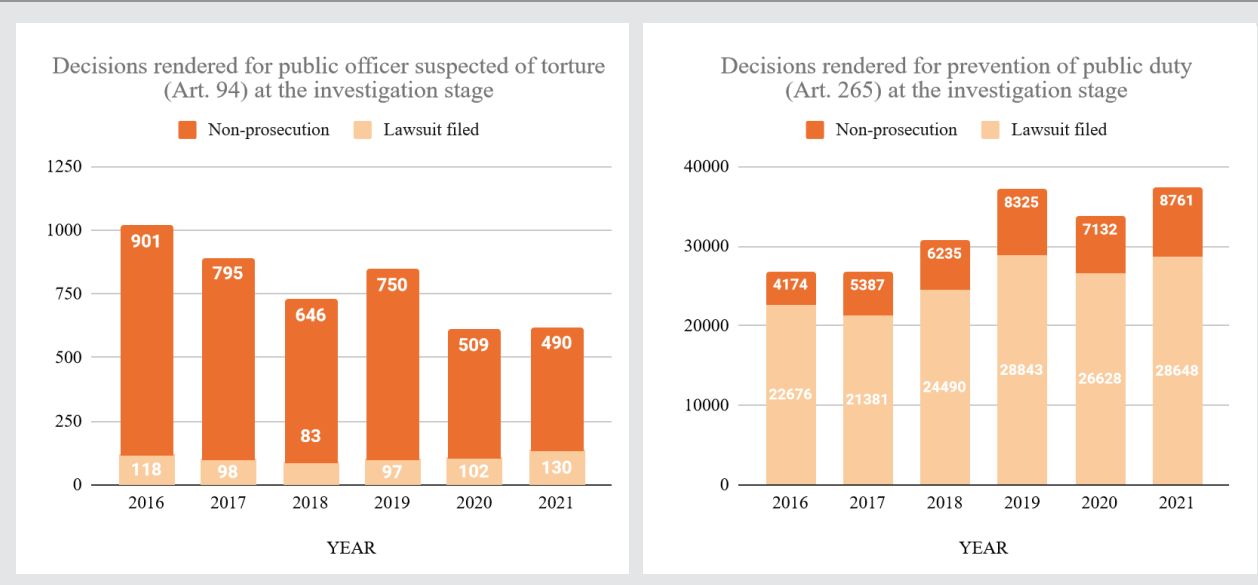
432 Instead of making the data shared with the public easier to understand, the General Directorate of Judicial Registry and Statistics has taken the opposite direction and presented the data for the years 2022 and 2023 in a less disaggregated manner. For example, articles 256 and 265 of the TPC are not presented separately, but collectively under the section heading “Crimes against the Reliability and Functioning of Public Administration.” Moreover, “torture” (TPC 94) and “torture aggravated by its consequences” (TPC 95) are presented together with the crime of “torment” (TPC 96), which is not in line with the definition in the Convention, and thus the crime of torture is rendered invisible in a way that does not allow for any interpretation. Data for these years could not be used as they do not allow for a meaningful interpretation with the data set shared with the Committee.

**Table 23: Countercharges - Investigation stage**

Year	Non-prosecution						Lawsuit filed					Total number of decisions <sup>433</sup>				
	Art. 94	Art. 95	Art. 96	Art. 256	Art. 265	Art. 94	Art. 95	Art. 96	Art. 256	Art. 265	Art. 94	Art. 95	Art. 96	Art. 256	Art. 265	
2016	901	2	332	1714	4174	118	10	485	1387	22,676	1343	16	979	3162	28,882	
2017	795	0	9	963	5387	98	0	536	1256	21,381	1181	10	1173	2290	28,221	
2018	646	6	383	1048	6235	83	0	683	1351	24,490	952	6	1235	2489	32,158	
2019	750	42	580	1257	8325	97	7	829	1870	28,843	1098	51	1617	3180	38,582	
2020	509	1	404	1433	7132	102	2	712	1908	26,628	887	4	1305	3415	34,972	
2021	490	0	457	1649	8761	130	5	731	2188	28,648	805	5	1374	3894	38,319	

The figures above demonstrate that prosecutors' offices tend to dismiss allegations of torture and other ill-treatment with non-prosecution decisions, despite their obligation to conduct effective investigations.

**Graph 5: Comparison of the offense of "torture" with the offense of "prevention of public duty" - Investigation phase**



However, as can be seen more clearly in Graph 5, the opposite trend is observed in the investigations conducted on the articles of law used as countercharges.

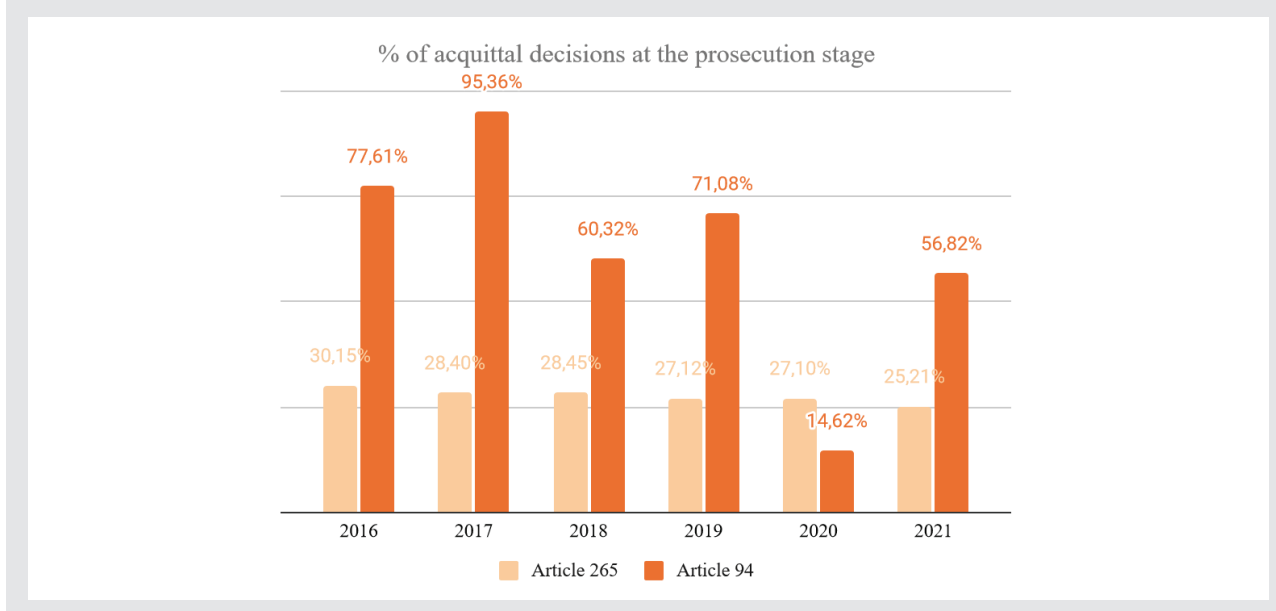
<sup>433</sup> In order to simplify the presentation of the data, the so-called "other decisions" taken by prosecutors' offices during the investigation phase, such as decisions of lack of jurisdiction, lack of competence, merger and transfer to another office, are not included as a separate category.

Table 24: Countercharges - Prosecution phase

Year	Acquittals					Prison sentences					Total number of sentencing decisions <sup>434</sup>				
	Art. 94	Art. 95	Art. 96	Art. 256	Art. 265	Art. 94	Art. 95	Art. 96	Art. 256	Art. 265	Art. 94	Art. 95	Art. 96	Art. 256	Art. 265
2016	52	0	215	188	7378	11	0	177	0	5536	15	0	404	3	17,095
2017	144	0	161	86	7059	7	0	179	2	5701	7	0	365	10	17,793
2018	38	0	282	100	8614	10	0	261	14	7002	25	0	585	39	21,663
2019	59	10	413	84	8847	13	4	265	1	8006	24	4	571	3	23,774
2020	25	4	192	60	6189	52	0	171	0	5705	146	0	416	7	16,648
2021	50	0	402	83	9452	19	1	309	1	9609	38	1	674	3	28,047

The figures above demonstrate that when it comes to countercharges, the courts tend to follow a similar trend to that of the prosecutors' offices recorded for the investigation phase.

Graph 6: Acquittal rates for "torture" and "prevention of public duty"



As can be seen in Graph 6, courts are highly inclined to acquit public officials charged with "torture." However, courts are not inclined to acquit people charged with the crime of "prevention of public duty," which seems to be directed particularly against those who have been subjected to torture and other forms of ill-treatment during peaceful protests and demonstrations.

This comparison reinforces the observation that countercharges are systematically used as a means of intimidation and deterrence against filing complaints against perpetrators of torture.

434 In order to simplify the presentation of the data, other binding sentences issued by the courts during the prosecution phase, referred to as "other sentencing decisions" are not included as a separate category.



**The state party should:**

- Ensure prompt, impartial, independent and effective investigations into allegations of torture and other ill-treatment in official and/or unofficial places of detention or against participants in peaceful demonstrations and marches, in accordance with the Istanbul Protocol,
- Take effective measures to ensure that allegations of torture and other forms of ill-treatment are investigated ex officio by prosecutors,
- Ensure that alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, to commit reprisals against the alleged victim or to obstruct the investigation, as also recommended by the Committee in its last concluding observations (para. 10b),
- Strengthen the effectiveness and independence of the prosecutor's office by increasing the number, competence and training of prosecutors,
- Ensure that prosecutors and judicial authorities, regardless of institutional affiliation, read and consider all medical reports documenting torture and other forms of ill-treatment prepared by competent medical personnel and forensic physicians who are familiar with how to apply the Istanbul Protocol and Principles,
- Ensure effective investigations (including reinitiating the investigations resulted with non-prosecution in the past) into serious allegations of violations of right to life and prohibition of torture that occurred in the context curfews and conflicts in from July 2015 and in the aftermath of the failed coup attempt in 2016 and under the SoE, as per Article 2 of UNCAT which states that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."
- Given the prevalence of serious allegations of violations of the right to life and prohibition of torture in the context of curfews and clashes since July 2015 and in the aftermath of the failed coup attempt in 2016 and during the SoE, prepare and implement a comprehensive Action Plan to ensure that impartial, independent and effective investigations are launched in accordance with the Minnesota Protocol and the Istanbul Protocol,
- Ensure that alleged perpetrators of and accomplices to torture, including persons in positions of command, are duly prosecuted and, if found guilty, given penalties commensurate with the grave nature of their acts, as also recommended by the Committee in its last concluding observations (para. 12b),
- Provide effective remedies and redress to victims, including fair and adequate compensation, and as full rehabilitation as possible, as also recommended by the Committee in its last concluding observations (para. 12c),
- Ensure that prompt, impartial, and effective investigations are undertaken into all allegations relating to the excessive use of force by law enforcement officers and ensure that the perpetrators are prosecuted and the victims adequately compensated, as also recommended by the Committee in its last concluding observations (para. 16a),
- Ensure impartial, independent and effective investigations into recent deaths in custody,
- Ensure impartial, independent and effective investigations into recent deaths in prisons,
- Ensure impartial, independent and effective investigations into recent allegations of enforced disappearances,
- Prepare and implement a comprehensive Action Plan for the appropriate initiation of impartial, independent and effective investigations into the widespread and systematic practice of enforced disappearances after the military coup of 12 September 1980 and in the 1990s in the SoE region, including those cited by the ECtHR as well as those identified by the United Nations Working Group on Enforced and Involuntary Disappearances, bearing in mind the risk that the remaining cases will be dropped in the next few years due to statute of limitations,

- 
- Ensure the rigorous implementation of ECtHR judgments,
  - As supervised by the Committee of Ministers, take legal measures to identify and impose criminal sanctions on persons who commit acts in contradiction with the judgments of the ECtHR,
  - Implement the recommendations of the Committee of Ministers of the Council of Europe on the involvement of civil society, victims of torture and their families in the drafting of the necessary regulations,
  - Legislate for the establishment of an independent investigative body in light of the principles set out in Chapter III of the Istanbul Protocol, as the Law Enforcement Monitoring Commission, which is not an investigative body under its own law, does not meet the Committee's repeated recommendation to establish an independent body to investigate complaints against law enforcement officials,
  - In order to eliminate the risk of interference by possible perpetrators in an investigation process, establish complaint mechanisms with guaranteed independence in relation to law enforcement officials suspected of torture and other forms of ill-treatment,
  - Protect persons alleged to have been subjected to torture or ill-treatment, witnesses and their families from all forms of violence, intimidation or reprisals, including the threat of "countercharges" to intimidate them into reporting torture,
-

## VIII. ISSUES RELEVANT TO ARTICLE 14

### *On redress and rehabilitation:*

81. In its response<sup>435</sup> to questions in the LOIPR<sup>436</sup>, the government only provided some data on Law no. 5233 on the Compensation of Losses Arising from Terrorism and the Fight Against Terrorism, but did not provide any other explanation or data.

This law, enacted 20 years ago, has nothing to do with ensuring the right to redress and comprehensive rehabilitation specifically for torture and other ill-treatment survivors, as is evident from its name, purpose and scope. Therefore the practice of referring to this law regarding the right to redress and rehabilitation must be stopped.

On the other hand, although not mentioned in the government's report, the "Presidential Decree on Supporting Victims of Crime"<sup>437</sup> entered into force on 10 June 2020, four months before the government submitted its fifth periodic report. The Decree regulates "the principles regarding the services and assistance provided to victims of crime and the duties, powers and responsibilities related to the fulfillment of these services."<sup>438</sup> "Referring victims in need of treatment or rehabilitation" is among the "services to be provided to vulnerable groups."<sup>439</sup> However, both this decree<sup>440</sup> and the "Regulation on Judicial Support and Victim Services" issued on the basis of this decree and entered into force on 30 June 2021, mention "torture" only once<sup>441</sup> namely in the section concerning certain services to be provided to victims of "crimes of torture aggravated by its consequences."

The decree narrows down the subjects of rights and ignores the harm of crime itself and its consequences. For this reason, the term "help" is preferred and there is no mention of rights as a result of being harmed as a result of the crime, especially concerning crimes in which the state is the perpetrator, such as torture and other serious human rights violations. Yet, in the case of torture survivors, human rights law instruments have long established invaluable standards for crimes perpetrated by public officials, in particular Article 14 of UNCAT and the Committee's General Comment no. 3<sup>442</sup> and the UN General Assembly Resolution of 12 February 2016<sup>443</sup> based on this comment.

As the Committee emphasized in the context of "obstacles to the right to redress" in its Comment No. 3, an important component of the right to redress for victims of crime, particularly in respect of acts or omissions, such as torture, in which public officials are the main perpetrators, is the explicit recognition by the state concerned that the redress provided or granted to a victim is the consequence of a violation of the Convention by act or omission. That is why the Committee underlines that the provision of development measures or humanitarian assistance cannot substitute for the redress of the rights of victims of torture and ill-treatment.<sup>444</sup>

In conclusion, this decree is based on an approach that does not respect the minimum standards that the international community has accumulated over the years, such as comprehensive reparation and

435 CAT/C/TUR/5, para. 195-198.

436 CAT/C/TUR/QPR/5, para.44 ve 45.

437 *Suç Mağdurlarının Desteklenmesine Dair Cumhurbaşkanlığı Kararnamesi* (Kararname no. 63) [Presidential Decree on Supporting Victims of Crime (Decree no. 63) (10 June 2020). <https://www.mevzuat.gov.tr/MevzuatMetin/19.5.63.pdf>. (Accessed on 9 May 2024)

438 *Presidential Decree no. 63*, Article 1.

439 *Presidential Decree no. 63*, Article 7(3-d).

440 *Presidential Decree no. 63*, Article 6(1).

441 Adli Destek ve Mağdur Hizmetleri Yönetmeliği [Regulation on Judicial Help and Victim Services] (30 June 2021), Article 63(1). <https://www.mevzuat.gov.tr/File/GeneratePdf?mevzuatNo=38565&mevzuatTur=KurumVeKurulusYonetmeliği&mevzuatTertip=5>. (Accessed on 9 May 2023)

442 Committee Against Torture (13 December 2012). *General comment No. 3 (2012) on the implementation of article 14 by States parties* (CAT/C/GC/3). <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcg3-general-comment-no-3-2012-implementation>. (Accessed on 9 May 2023)

443 UN General Assembly (12 February 2016). *UN General Assembly Decision no. 70/146*.

<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/70/146&Lang=E>. (Accessed on 23 May 2023)

444 CAT/C/GC/3, para.37.

remedies, including redress and rehabilitation for torture survivors, does not define entitlement with objective criteria, and evaluates public liability for torture and other gross violations of human rights in terms of standards of charity.

82. During the reporting period, the concept of redress and comprehensive reparation, including “restitution, compensation, rehabilitation, satisfaction and the right to truth and guarantees of non-repetition” was not adopted and relevant legal mechanisms were not put in place. In fact, the revised edition<sup>445</sup> of “Guidelines on Approach Towards Victims” which was initially published in March 2016<sup>446</sup> by the Victim Rights Department of the Ministry of Justice, is a concrete example of this negative trend.

Chapter 4 of the March 2016 edition titled “Approach to Victims Belonging to Vulnerable Groups,”<sup>447</sup> consisted of 12 sub-sections, including a section on “Approach to Victims of Torture.” However, “Approach to Victims of Torture” section of the 2016 edition was removed from the revised edition of the guidelines thereby reducing the number subsections in this chapter to 11.<sup>448</sup> By removing this section, an attempt was made to ensure the “invisibility of torture.” Furthermore, the concept of torture is only mentioned in one place, in subsection 3.2.8. titled “Victims of Terrorism Offenses,”<sup>449</sup> with the words “Persons who have been killed, injured, abducted, tortured or threatened as a result of a terrorist attack are some of the direct victims of terrorism,”<sup>450</sup> in an attempt to completely remove from the minds that acts such as torture are mainly perpetrated by public officials and that their prevention is the primary responsibility of states.

The issue of redress is not considered in a holistic manner and is addressed only in its material dimension. There are two ways to recover damages, either from individuals on the basis of their personal responsibility or from the administration on the basis of neglect of duty. Both legal actions are based solely on the principle of compensation for material and moral damage. Pursuant to Article 13 of the Administrative Procedure Law no. 2577, the time limit for filing a lawsuit for compensation is set as one year from the date of learning of the administrative action that caused the violation of rights, five years from the date of the administrative action in any case, and 30 days after the application to the relevant administration is rejected or left unanswered for 30 days. On the other hand, the absence of specific provisions on compensation for damages arising from torture and other forms of ill-treatment often results in courts not awarding compensation to torture survivors. The number of compensation lawsuits filed in favor of torture survivors and the number of cases in which compensation was awarded, as well as the number of cases in which compensation paid as a result of ECtHR judgments and administrative lawsuits, as permitted by domestic law, was reimbursed from the public officials who committed the crimes, remain unknown to us.

83. There are no effective rehabilitation activities offered by the state for torture survivors and their relatives.

As the perpetrator is a public official, the torture survivor is likely to avoid rehabilitation services provided by a state institution. There are therefore various non-governmental organizations that provide rehabilitation programs, such as the HRFT, which has five treatment and rehabilitation centers. The Foundation for Society and Legal Studies (TOHAV) and the Center Social Support, Rehabilitation and Re-adaptation for Victims of Torture, War and Violence (SOHRAM) provide treatment and rehabilitation services to torture survivors with limited resources. However, the government does not take any responsibility for referring torture and other ill-treatment survivors to these institutions. What is more, as explained above,<sup>451</sup> employees of one of these organizations, the HRFT, are subjected to reprisals through judicial harassment.

445 Adalet Bakanlığı Adli Destek ve Mağdur Hizmetleri Dairesi Başkanlığı (April 2021). *Mağdura Yaklaşım Kılavuzu* [Guidelines on Approach Towards Victims]. <https://magdur.adalet.gov.tr/Home/SayfaDetay/magdura-yaklasim-kilavuzu>. (Accessed on 9 May 2023)

446 Adalet Bakanlığı Mağdur Hakları Daire Başkanlığı [Ministry of Justice Department of Judicial Support and Victim Services] (March 2016). *Mağdura Yaklaşım Kılavuzu* [Guidelines on Approach Towards Victims]. [https://www.medikalakademi.com.tr/?get\\_group\\_doc=22/1458823956-magdura\\_yaklasim\\_kilavuzu.pdf](https://www.medikalakademi.com.tr/?get_group_doc=22/1458823956-magdura_yaklasim_kilavuzu.pdf). (Accessed on 9 May 2023)

447 *Guidelines on Approach Towards Victims* (March 2016), pp. 29-54.

448 *Guidelines on Approach Towards Victims* (April 2021), pp. 21-57.

449 *Guidelines on Approach Towards Victims* (April 2021), pp.46-49.

450 *Guidelines on Approach Towards Victims* (April 2021), p.46

451 See para.47.

## RECOMMENDATIONS REGARDING ARTICLE 14

### The state party should:

- Enact a dedicated law covering all necessary measures to implement the “right to redress” in light of the Committee’s General Comment No. 3 on the implementation of Article 14 of the Convention, which details the nature and scope of states parties’ obligations under this article,
- Ensure that all victims of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible, as also recommended by the Committee in its last concluding observations (para. 40),
- Abolish statute of limitation to indemnification cases under article 13 of Law no 2577 as it constrains the time for filing a lawsuit for compensation,
- Take all necessary measures to provide the possible conditions for available, appropriate and promptly accessible rehabilitation services for survivors of torture and other forms of ill treatment from a service provider of their own choice,
- Ensure that civil society organisations or related civil bodies providing rehabilitation service to torture survivors conduct their work in an enabling legal and administrative environment as the survivor’s participation in the selection of the service provider is essential,
- Ensure that no reprisals or intimidation are directed to civil society organisations including professionally independent and adequate health care providers,

## IX. ISSUES RELEVANT TO ARTICLE 15

### *On unrecorded and forced interrogation practices:*

84. The government did not answer the questions<sup>452</sup> on forced and unrecorded confessions/interrogations and even asked the Committee to substantiate its questions on this issue with “concrete evidence and data.”<sup>453</sup>

The gradual weakening of basic legal and procedural safeguards has led to the widespread use of unrecorded and often forced interrogations, which have come to be known as “interviews (*mülakat* in Turkish)” and “conversations (*sohbet* in Turkish)” among law enforcement officials. In these unrecorded interrogation practices, which are observed to be increasing, the detainee is forced to confess and/or testify by coercion through threats of varying nature or promises of reward. It is also observed that during these unrecorded practices, the detainees are often offered to turn “spies for the state.”

Between 2018 and 2022 alone, the HRFT Documentation Center recorded at least 77 cases where individuals were forced to give unrecorded statements through “interviews.” These cases include instances in which 15, 16 and 17-year-old children were forced to give statements and confessions through various threats and/or promises. When the details of these cases are examined, it is seen that the vast majority of them occurred while access to a lawyer was restricted.<sup>454</sup> As mentioned in the reports of the Ankara Bar Association,<sup>455</sup> the existence of “Interview Rooms” in detention centers indicates that these practices are extremely common. These unlawful practices have become so commonplace that they are found in court decisions and considered lawful practice of appeals courts.<sup>456</sup>

### RECOMMENDATIONS REGARDING ARTICLE 15

#### **The state party should:**

- Prevent the increasing use of unregistered and often forced interrogations, which have come to be known as “interviews” and “conversations,”
- Guarantee the prohibition of unrecorded interrogations called “interviews” and “conversations” through legislation,

### RECOMMENDATIONS ON OTHER ISSUES OF CONCERN

#### **The state party should:**

- Provide statistical data disaggregated by gender identity and sexual orientation, age, ethnicity and minority status, geographical location and nationality relevant to the monitoring of the UNCAT and compile comprehensive data on complaints, investigations, prosecution and convictions of cases of torture and other forms of ill treatment and the outcomes of all such legal proceedings and information on the right to redress including rehabilitation and compensation,

452 CAT/C/TUR/QPR/5, paras.46 and 47.

453 CAT/C/TUR/5, para. 202.

454 See para.22.

455 See para.67.

456 Şanlıurfa 6th High Criminal Court, Docket no. 2017/295 and Reasoned Judgment no. 2018/46