

# IMPUNITY:

## AN UNCHANGING RULE IN TURKEY





**Human Rights Defenders e.V** is a non-profit and independent civil society organization campaigning to defend human rights and to help people facing persecution all around the world and with a special focus on Turkey. HRD is preparing reports concerning human rights violations, establishing contacts to other Human Rights NGO's and stakeholders, State Officials and regional as well as international organizations. HRD is also giving legal advice to victims, initiating litigation procedures on behalf of the victims and preparing official petitions and communications to the relevant UN Human Rights Mechanisms.

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# CHAPTER-I

**INTRODUCTION**

**SCOPE & METHODOLOGY**

**DEFINITIONS**

## INTRODUCTION

According to Black's Law Dictionary, impunity is the exemption, or protection from, penalty or punishment.<sup>1</sup> In the context of human rights law, impunity arises when those responsible for acts that amount to serious human rights violations are not brought to account.<sup>2</sup> When this occurs, impunity is caused or facilitated, notably by the lack of a diligent reaction by institutions or state agents to serious human rights violations.<sup>3</sup> Mostly / broadly speaking, a legal regulation, the interpretation of gaps in laws in favour of perpetrators, the failure to implement laws, the lack of the political will to hold perpetrators of human rights violations accountable, cause impunity.

In Turkey, impunity is neither a new problem nor an aberration, but, rather, it is the norm when a rights violation is committed against individuals by state officials.

This is crystalized in a statement attributed to the then Prime Minister, Süleyman Demirel, which might be paraphrased as: The button of a soldier's uniform is the State's seal; I would never allow it to be ripped off.<sup>4</sup>

## SCOPE & METHODOLOGY

In this report, we examine whether the Turkish State complies with its negative and positive obligations in regard to torture, enforced disappearance, extrajudicial, summary or arbitrary execution, and arbitrary detention, or if there is a practice of impunity with regard to these crimes. While doing this, we have firstly provided brief information, including definitions of these crimes, which are summarised from the relevant reports of international and national institutions that are documenting the situation in Turkey.

We have also provided some information on Turkey's two dark eras, in terms of human rights: the 1980s and the 1990s.

Then, we touch briefly on the current legislation that produces impunity, and analyse such legislation under international law, and present some statistics showing the performance of the judiciary in preventing and prosecuting torture complaints.

Finally, we draw conclusions about whether the situation has improved since the UN Special Rapporteur's 2015 report, and put forth some recommendations to the Turkish Government, the International Institutions, and to international NGOs.

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1 Black's Law Dictionary, <https://thelawdictionary.org/impunity/#:~:text=What%20is%20IMPUNITY%3F,protection%20from%20penalty%20or%20punishment>.

2 Directorate General of Human Rights and Rule of Law (COE), Eradicating impunity for serious human rights violations, (2011), 6.

3 Ibid., 7.

4 Milliyet Daily, 1 March, 1998, <https://www.milliyet.com.tr/siyaset/devlete-uzanan-el-kirilir-5367739>

## DEFINITIONS

### Torture

Torture is prohibited by international treaties and customary international law.<sup>5</sup> Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) defines torture as being<sup>6</sup>

*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.*

### Extrajudicial executions (including summary and arbitrary executions)

The term 'extra-judicial execution' refers to killings committed outside the judicial or legal process, and, at the same time, killings that are illegal under the relevant national and international laws. It is also defined elsewhere as "killings committed outside the judicial process by, or with the consent of, public officials, other than as necessary measures of law enforcement to protect life or as acts of armed conflict carried out in conformity with the rules of international humanitarian law."<sup>7</sup> These are absolutely prohibited without exception.<sup>8</sup>

*Arbitrary execution* is the arbitrary deprivation of life as a result of the killing of persons carried out by the order of a government, or with its complicity or tolerance or acquiescence, without any judicial or legal process. Accordingly, in certain circumstances, an arbitrary execution can also amount to an extra-judicial execution.<sup>9</sup>

*Summary execution* is the arbitrary deprivation of life as a result of a sentence imposed by the means of summary procedures in which the due process of law and, in particular, the minimum procedural guarantees as set out in Article 14 of the Covenant, are either curtailed, distorted or not followed.<sup>10</sup>

5 African Charter on Human and Peoples' Rights, Article 5; Arab Charter on Human Rights, Article 8; United Nations Convention on the Rights of the Child, Article 37; United Nations Convention on Persons with Disabilities, Article 15; Rome Statute for the International Criminal Court, Article 8 § 2(a); European Convention on Human Rights, Article 3; ICCPR, Article 7; American Convention on Human Rights, Article 5.

6 A/RES/39/46, 10 December 1984, found here: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

7 Rodley, N, *The Treatment of Prisoners under International Law*, 2nd ed., Oxford, 1999, p. 182.

8 Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, Principle 1.

9 E/EC.4/1983/16, para. 66.

10 According to the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, extrajudicial killings include:

(i) political assassinations, (ii) deaths resulting from torture or ill-treatment in prison or detention, (iii) deaths resulting from enforced disappearances, (iv) deaths resulting from the excessive use of force by law-enforcement personnel, (v) executions without due process, and (vi) acts of genocide.

## Arbitrary Detention

The right to the liberty and security of a person protects any person from being subjected to arbitrary arrest or detention.<sup>11</sup> The prohibition is absolute and is recognized by customary international law.<sup>12</sup> Arbitrariness may arise from the deprivation of liberty, not in accordance with procedures, or on grounds that are established by the law, or in violation of fair trial rights.<sup>13</sup> Such laws must, in themselves, be in accordance with international law.<sup>14</sup> Furthermore, “the appropriateness of the conditions prevailing in detention to the purpose of detention is sometimes a factor in determining whether detention is arbitrary”.<sup>15</sup>

## Enforced Disappearance

The *International Convention for the Protection of All Persons from Enforced Disappearance* (CED) defines ‘enforced disappearance’ as the arrest, detention, abduction, or any other form of deprivation of liberty, by agents of the State or by persons, or groups of persons, acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty, or by the concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.<sup>16</sup>

This is absolutely prohibited under international law, with no justifications or exceptions.<sup>17</sup> It increases the risk of torture but is also recognised as a form of torture for both the disappeared or “any individual who has suffered harm as the direct result of an enforced disappearance”.<sup>18</sup> It is, by definition, a form of arbitrary detention<sup>19</sup>.

Article 5 of the Convention also states that the widespread and systematic practice of enforced disappearance constitutes a crime against humanity. Article 7 of the Rome Statute recognises and prohibits enforced disappearance as a crime under international law.<sup>20</sup>

11 Article 9 (1), ICCPR; see also Article 6 of the African Charter on Human and Peoples’ Rights; Article 37(b) of the Convention on the Rights of the Child; Article 17(2a) of the Convention on Enforced Disappearance; Articles 7(2) and 7(3) of the American Convention; Article 14(2) of the Arab Charter.

12 HRC, General Comment 24 (52), CCPR/C/21/Rev.1/Add.6 (1994), paras. 8 and 10; HRC, General Comment 24, para.11; A/HRC/22/44, §§37-76.

13 A/HRC/22/44 (2012) §38.

14 HRC, A v Australia, CCPR/C/59/D/560/1993 (1997) §9.5; European Court: Bozano v France (9990/82), (1986) §54; Kemmache v France (No. 3) (17621/91), (1994) §37; Lukanov v Bulgaria (21915/93), (1997) §41; Baranowski v Poland (28358/95), (2000) §§50-52; Medvedyev and Others v France (3394/03), GC (2010) §§79-80.

15 HRC, General Comment 35, §59.

16 Article 2, CED

17 Article 1, CED

18 Article 24, CED; Quinteros v Uruguay, Inter-American Court (1983), §14; Kurt v Turkey (24276/94), European Court (1998) §134; Blake v Guatemala, Inter-American Court, (1998), §116.

19 A/HRC/13/42 (2010), §§17 and 20.

20 Rome Statute of the International Criminal Court, Article 7. 1. (i)

# CHAPTER-II

**The Dark Eras  
of the 1980s and 1990s**



## AFTERMATH OF THE MILITARY COUP OF 1980

In the wake of the 12 September, 1980, coup, an estimated one million people were detained, thousands were tortured, many died in custody or were forcibly disappeared, over 100,000 people were tried in military courts in proceedings that violated fair trial principles, and 50 people were sentenced to the death penalty and hanged.<sup>21</sup>

A provision in the 1982 Constitution gave immunity from any form of prosecution for all crimes committed by the leaders of the military coup, all military officials, public officials and authorities from 12 September, 1980, to 9 November, 1983, after a general election had taken place. Although this provision<sup>22</sup> was revoked in 2010, and a criminal case was filed against the two surviving leaders of the 1980 coup, the ex- leader Gen Kenan Evren and Gen Tahsin Şahinkaya, and they were both sentenced to life-time incarceration in 2014<sup>23</sup>, both defendants died without serving a single day of their sentences. Nobody has been prosecuted for the horrific torture practices that took place in military prisons between 1980 and 1983.

## THE ARMED CONFLICT OF the 1990s

Between the years 1990 and 1996, torture was systematically practised throughout the country. The mass violations of human rights in the mainly Kurdish-populated Southeast and Eastern regions of Turkey in the 1990s took the form of enforced disappearances and killings by unknown perpetrators, which the state authorities showed no willingness to investigate. Village where around one million people live were evacuated and destroyed by the security forces during the conflict with the PKK.<sup>24</sup>

Enforced disappearances became a pattern in human rights violations against Kurdish civilians.<sup>25</sup> A coalition consisting of various human rights NGO has collected the names of more than 1,300 persons who were allegedly disappeared by state agents between the late 1980s and 2002 (the year the emergency rule was lifted), mostly in the Kurdish region.<sup>26</sup>

During this period, de-facto impunity had been the rule for all of those violations without exception. Although, in the 2000s, during the democratization period, a hope for justice arose, after the AKP Government founded a political alliance with the Nationalist Movement Party, as well as an alliance within the bureaucracy and the Council of Judges and Prosecutors, all investigations and criminal cases with regard to 1990s' human rights violations have ended with decisions for acquittal, dismissal or non-prosecution.

21 Amnesty International, TURKEY: The Entrenched Culture of Impunity Must End (2007), 2.

22 Provisional Article - 15: No allegation of criminal, financial or legal responsibility shall be made, nor shall an application be filed with a court for this purpose in respect of any decisions or measures whatsoever taken by: the Council of National Security formed under Act No. 2356 which will have exercised legislative and executive power on behalf of the Turkish Nation from 12 September 1980 to the date of the formation of the Bureau of the Turkish Grand National Assembly which is to convene following the first general elections; the governments formed during the term of office of the Council, or the Consultative Assembly, which has exercised its functions under Act No. 2485 on the Constituent Assembly. The provisions of the above paragraphs shall also apply in respect of persons who have taken decisions, and adopted or implemented measures, as part of the implementation of such decisions and measures by the administration, or by the competent organs, authorities and officials. No allegation of unconstitutionality shall be made in respect of decisions or measures taken under laws or decrees having the force of law that were enacted during this period or under Act No. 2324 on the Constitutional Order.

23 Turkey gives life sentences to surviving 1980 coup leaders  
<https://www.bbc.com/news/world-europe-27913560>

24 Amnesty International, TURKEY: The Entrenched Culture of Impunity Must End (2007), 2.

25 Hafiza Merkezi & ECCHR, Monitoring Report (15 January 2016), para.7 [https://hakikatadalethafiza.org/wp-content/uploads/2016/03/Rule-9-2-Communication-on-TurkeyJan.-2016-HM\\_ECCHR.pdf](https://hakikatadalethafiza.org/wp-content/uploads/2016/03/Rule-9-2-Communication-on-TurkeyJan.-2016-HM_ECCHR.pdf)

26 Ibid.

Hafiza Merkezi (Truth Justice Memory Center), which is the Turkey’s most credible NGO with regard to extra-judicial killing and enforced disappearance incidents, compiled the data on judicial processes with regard to the extra-judicial killing or enforced disappearance of 363 individuals. 81 of those became criminal cases, while investigations about 282 victims ended with non-prosecution decisions. 15 trials were opened about the 81 victims, of those trials, but only two continue, the rest have ended with acquittal or dismissal decisions due to the statute of limitation.

It is significant that almost all of these cases changed their course after the Government endorsed list won the 2014 election for the Council of Peace and Judges.<sup>27</sup> After, the coalition called the Unity in the Judiciary, which consists of judges and prosecutors endorsed by the ruling party (the AKP), the Nationalist Movement Party and the left-wing ultra-nationalist Workers’ Party, all ongoing cases with regard to 1990s human rights violations were transferred to provinces other than those in which the alleged crimes were committed, then the cases ended with decisions for acquittal or dismissal.

Name of Case	Summary	Result
The Trial against Cemal Temizöz and others	21 people were tortured, forcibly disappeared or extra-judicially killed in 1993 in the Şırnak Province. <sup>28</sup>	The indictment was filed in 2009 after the ECtHR had ordered that this should be done. The case was transferred to Eskisehir from Diyarbakir for so-called security reasons. On 5 November, 2015, the case ended with acquittal and dismissal decisions due to the statute of limitation. <sup>29</sup>
The Trial on the murder of Musa Anter and Ayten Öztürk (The Main Jitem Case)	This trial was about the murder of the journalist and author Musa Anter, in 1992, the abduction and murder of Ayten Öztürk in 1994 and state-sponsored murder, sabotage and bombing carried out by JITEM (the Intelligence Service of the Turkish Gendarmerie)	Three indictments were filed in 2010 (The Main Jitem Case), 2013 (Musa Anter) and 2019 (Ayten Öztürk). The case was transferred to Ankara from Diyarbakir for so-called security reasons. The trial (2015/64) continues in the Ankara 6th Heavy Penal Court.
The Trial of Jitem Ankara	19 people, including Abdulmecit Baskin, who was head of the Ankara-Altindag Registry Office, were forcibly disappeared or extra-judicially killed in Ankara between 1993 and 1996.	Two indictments were filed, in 2011 and 2013, after the ECtHR had ordered that this should be done in 2002, 2004 and 2006. On 13 December, 2019, the case ended with an acquittal decision (Ankara 1st Heavy Penal Court, 2014/163) <sup>30</sup>

27 Platform for Peace and Justice, Non-Independence and Impartiality of Turkish Judiciary, paras. 12-27 <http://www.platformpj.org/wp-content/uploads/non-independence-1.pdf>

28 <https://www.failibelli.org/en/dava/the-temizoz-case/>

29 <https://www.reuters.com/article/us-turkey-trial-kurds-idUSKCN0SU33D20151105>

30 <http://bianet.org/english/law/217100-ankara-jitem-case-ends-in-acquittal-as-well>

Name of Case	Summary	Result
The Trial on the enforced disappearance of Nezir Tekçi	The enforced disappearance of Nezir Tekçi after he was arrested by soldiers.	The indictment was filed in 2011. The case was transferred to Eskisehir from Hakkari for so-called security reasons. Eskisehir 1st Heavy Penal Court acquitted all of the defendants in 2015. <sup>31</sup>
The Trial against Musa Çitil and others	13 people were tortured, forcibly disappeared or extra-judicially killed in the Derik district of Mardin Province between 1992 and 1994.	The indictment was filed in 2012. The case was transferred to Çorum from Mardin for so-called security reasons. Çorum 2nd Heavy Penal Court acquitted the defendant, Musa Citil, on 21 May, 2014. The Court of Cassation and the Turkish Constitutional Court upheld the acquittal. Musa Citil was promoted to Deputy Chief Commander of the Turkish Gendarmerie Forces. <sup>32</sup>
The Trial against Mete Sayar (The Village of Görümlü)	The murder and enforced disappearance of 6 people in Görümlü village in the Şırnak Province in 1993.	The indictment was filed in 2013. The case was transferred to Ankara from Şırnak for so-called security reasons. Ankara 9th Heavy Penal Court acquitted all of the defendants on 6 July, 2015. <sup>33</sup>
The Trial of Lice	In 1993, 14 civilians lost their lives during a military operation in the district of Lice in the Diyarbakir Province. This operation was led by the Gendarmerie Regiment's Commander, Esref Hatipoglu. Many houses and workplaces were also damaged, and hundreds were forcibly displaced.	The indictment was filed in 2013 after the ECtHR had ordered that this should be done in 2004. The case was transferred to Izmir from Diyarbakir for so-called security reasons. Izmir 1 <sup>st</sup> Heavy Penal Court acquitted all of the defendants on 7 <sup>th</sup> December, 2018 (2015/58). <sup>34</sup>

31 <https://www.failibelli.org/en/dava/the-nezir-tekci-case/>

32 <https://www.failibelli.org/en/dava/the-musa-citil-case/>

33 <https://www.failibelli.org/en/dava/the-mete-sayar-gorumlu-case/>

34 <https://www.failibelli.org/en/dava/lice-trial/>

Name of Case	Summary	Result
The Trial against Naim Kurt	In 1993, about 60 villagers from the evacuated and burnt down village of Kızılağaç, in the Muş Province. went back there to get what remained of their belongings, but they were detained by the Kızılağaç Gendarmerie Command and taken to the Muş Province Gendarmerie Regiment Command Post. While some of the detainees were released after being subjected to torture for three days, Mahmut Acar, Ali Can Öner, Yakup Tetik and Mehmet Emin Bingöl remained in detention in the Regiment's Command Post. On 6 November, 1993, their bodies were found near a water trench not far from the Muş Province Gendarmerie Regiment's Command Post.	The indictment was filed in 2013  Muş 1st Heavy Penal Court acquitted Naim Kurt on 22 December, 2014. <a href="https://www.failibelli.org/en/dava/naim-kurt-trial/">https://www.failibelli.org/en/dava/naim-kurt-trial/</a>
The Trial of Vartinis	Nine persons, all members of the same family, were killed in the Vartinis (Altınova) hamlet in the Muş Province on 3 October, 1993, when their house was set on fire following allegations that they had aided and abetted a terrorist organization	The indictment was filed in 2013.  The case was transferred to Kirikkale from Muş for so-called security reasons.  Kirikkale 1 <sup>st</sup> Heavy Penal Court acquitted all of the defendants on 1 March 2016. <sup>35</sup>

Name of Case	Summary	Result
The Trial against Yavuz Ertürk	In 1993, during a military operation carried out in the villages of the Province of Muş, 11 people who were detained were never heard from again. On November 5, 2004, a mass grave was found in which 11 individuals were buried.	The indictment was filed in 2013 after the ECtHR had ordered that this should be done in 2001.  The case was transferred to Ankara from Diyarbakir for so-called security reasons.  In 2018, the case ended with a decision for acquittal and dismissal due to the statute of limitation. (Ankara 7 <sup>th</sup> Heavy Penal Court, 2014/139. <sup>36</sup> )
The Trial of Jitem Kızıltepe	On the grounds of the enforced disappearance, or extrajudicial killing, of 22 persons in the Kızıltepe district of the Mardin Province between the years 1992-1996.	The indictment was filed in 2014.  The case was transferred to Ankara from Mardin for so-called security reasons.  On 9 September, 2019, the Court dismissed the case against İzzettin Yiğit, Yusuf Çakar, Abdurrahman Öztürk, Mehmet Ali Yiğit, Abdülbaki Yiğit, Abdülvahap Yiğit, Mehmet Nuri Yiğit, Tacettin Yiğit due to the statute of limitation. The other defendants were acquitted for the other crimes of disappearance or killing, and for forming a criminal organisation to commit those crimes, due to lack of evidence. <sup>37</sup> (Ankara 5 <sup>th</sup> Heavy Penal Court, 2014/367)
The Trial of Jitem Dargeçit	The case concerning the enforced disappearance of eight persons, including three children, in the Dargeçit district of the Mardin Province between 29 October 1995, and 8 March 1996. <sup>38</sup>	Two indictments were filed in 2014 and 2015 after the ECtHR ordered that this must be done in 2004.  The case was transferred to Adıyaman from Mardin for so-called security reasons, and goes on in the Adıyaman 1 <sup>st</sup> Heavy Penal Court.
The Investigation of Roboski	On 28 December, 2011, Turkish fighter jets hit 34 civilians by taking them for terrorists in the village of Roboski in the Şırnak Province.  Investigation ended up with a non-prosecution decision.	The investigation on death of 34 civilians ended with a non-prosecution decision.

36 <https://www.failibelli.org/en/dava/yavuz-erturk-trial/>

37 <https://www.failibelli.org/en/dava/kiziltepe-jitem-trial/>

38 <https://www.failibelli.org/en/dava/dargecit-jitem-trial/>

Under Article 112 of Law no. 765, as of 2020, the statute of limitation has expired for almost all of those crimes committed between 1990 and 1996. Justice has therefore not been served, the perpetrators have evaded the consequences of their crimes. What is worse, the impunity they were offered and enjoyed encouraged others to commit similar crimes.

# CHAPTER-III

**Reports (2013-2015)  
of the UN Special  
Rapporteur on Extrajudicial,  
Summary or Arbitrary  
Executions**

## Reports (2013-2015) of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary executions

The (then) Special Rapporteur, Christof Heyns, after having undertaken an official visit to Turkey in 2012, presented a (mission) report and follow-up report to the Human Rights Council in 2013<sup>39</sup> and 2015<sup>40</sup>.

In the 2013 report, the Special Rapporteur found quite a number of problems, of which the most important are as follows:

- (i) Article 17 of the Constitution, which stipulates the right to life, does not provide sufficient safeguards, and it bears the risk that the interpretation of Article 17 is very broad, resulting in an inadequate understanding of the conditions under which life may be taken;
- (ii) Legal frameworks for the use of force by law enforcement agents, and for counter-terrorism, are vague, and therefore may potentially go beyond the powers permitted under international law, including the right to life;
- (iii) Impunity is the main challenge concerning the right to life in Turkey. This is widely believed to be the result of a lack of the political will to hold State officials, in particular, accountable;
- (iv) Delays in judicial proceedings continue to constitute one of Turkey's longstanding challenges, and this has clear implications for accountability. The application of the statute of limitations for unlawful killing offences further aggravates the climate of impunity;
- (v) The low conviction rate of public officials in Turkey is another disincentive for the lodging of complaints;
- (vi) The foregoing barriers are reinforced by the fact that, in many cases, where a public official becomes the subject of investigation, that person is allowed to remain on active duty. Furthermore, in some cases, officials who have been involved in, or are suspected of having been involved in, serious human rights violations, are promoted, rather than prosecuted or convicted;
- (vii) The practice of reprisal frustrates the seeking of justice;
- (viii) Prosecutorial and judicial discretion about how to shape the legal proceedings also plays into the absence of accountability for unlawful killings;
- (ix) There is an overly close connection between judges and prosecutors, as well as between the judiciary and the executive, and this casts doubt on the independence and impartiality of the judiciary in Turkey. It also has clear implications for accountability in the context of the right to life;
- (x) There are significant doubts on the independence of the Turkish Human Rights Institution (THRI).

39 Christof Heyns, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mission to Turkey, 18 March 2013, A/HRC/23/47/Add.2, <https://www.refworld.org/docid/51b98f4f4.html>

40 Christof Heyns, Follow-up to country recommendations: Turkey, 6 May 2015, A/HRC/29/37/Add.4, <https://www.refworld.org/docid/5577e7114.html>



The Special Rapporteur concluded his report with thirty-two recommendations<sup>41</sup> which demand

- (i) Amendments on Article 17 of the Constitution (the right to life) and the legal framework on the use of force for law enforcement agents and for counter-terrorism to be aligned with international law,
- (ii) Reforms to ensure the independence, impartiality, and effectiveness of the judiciary, National Forensic Institution, the THRI,
- (iii) Creation of a National Preventive Mechanism under the Optional Protocol to the Convention against Torture,
- (iv) Enactment of legislation on hate crimes, in accordance with international standards,
- (v) Creation of an independent body to investigate political killings,
- (vi) Abolition of the statute of limitations for all violations of the right to life,
- (vii) Creation of independence and impartial Law Enforcement Oversight Commission with adequate sources,
- (viii) Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court.

In the follow-up report of 2015, the Special Rapporteur said that, due to the ineffectiveness of investigations and the lengths of proceedings, "the fight against impunity remained a serious challenge in Turkey...Vulnerable groups remain particularly at risk. The lack of fully independent mechanisms for accountability and the great challenges experienced in the judicial system feed into the practice as well as the perception of impunity in the country".<sup>42</sup>

The Rapporteur established that only nine of his 38 recommendations had been even partially implemented by Turkey in the course of two years, the remainder -29 recommendations- had either not been implemented (22), or "*sufficient information has not been provided to enable an assessment of progress (7)*".

Similarly, the European Commission stated, in its 2015 Turkey Report, that: "*No comprehensive plan was developed to address the issue of missing persons, including thorough independent investigations into alleged past cases of extrajudicial killing by security and law enforcement officers or the PKK. Mass graves discovered in the south-east were not adequately investigated. The recommendations of the UN Special Rapporteur about the lack of prosecutions for extrajudicial, summary or arbitrary executions, were not addressed. The statute of limitations for cases of missing persons and extrajudicial killings, dating from the 1990s, remained in force. As a result, several cases were dropped in 2014 and 2015. Only twelve cases involving past crimes continued. Turkey should consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute.*"<sup>43</sup>

41 Fn:38, paras. 95-132.

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

43 European Commission, Turkey 2015 Report, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 10.11.2015, SWD(2015) 216 final, p. 25.

# CHAPTER-IV

## THE AFTERMATH OF THE COUP ATTEMPT OF 2016

## THE AFTERMATH OF THE COUP ATTEMPT OF 2016

After the coup attempt of 15<sup>th</sup> July, 2016, the Turkish Government declared a State of Emergency which lasted two years. This State of Emergency became a breaking point in terms of fundamental rights in Turkey. The Government enacted thirty-two decree laws, of which three (Nos. 667,668,696) offered full-dress impunity for public servants and civilians - which will be elaborated upon in the following chapters.

In addition to the impunity clauses enacted by the decree laws, members of the Cabinet, deputies of the ruling party and pro-government preachers<sup>44</sup> had been inciting hatred against the dissidents and encouraging torture and ill-treatment. So, indeed, the Turkish Government blatantly broadcasted images of tortured people through the state-run news agency, Anadolu Ajansı, and the tv channel, TRT. What is worse, ordinary people also posted videos of slaughtered privates and military cadets, who had not injured anyone and whose only liability was obeying orders given by their superiors.

For instance, speaking at a rally in the Black Sea province of Zonguldak on April 4, 2017, President Erdoğan said, "We will eradicate this cancer [the Gülen movement] from the body of this country and the state. They will not enjoy the right to life. ... Our fight against them will continue until the end. We will not leave them wounded."<sup>45</sup> Mehmet Metiner, a ruling party MP, who also serves as the Chair of the parliamentary sub-committee on prisons, once stated that the commission would not investigate allegations of torture against Gülen supporters in prisons.<sup>46</sup> Addressing AKP supporters, the former Economy Minister, Nihat Zeybekçi, said, "We will punish them in such a way that they will say, 'I wish I were dead'. They will not see a human face and they will not hear a human voice. They will die like sewer rats in cells of 1.5-2 square meters."

The Emergency Decree Laws offering absolute criminal, civil and disciplinary impunity for any kind of act carried out to suppress a coup attempt or a terrorist act, along with restrictions imposed on the rights of suspects and the powers of lawyers<sup>47</sup>, have made obsolete almost all safeguards against torture and ill-treatment. Under these provisions, public prosecutors across Turkey have rendered non-prosecution decisions on criminal complaints that were filed for alleged murder, extrajudicial-killing and torture incidents. The Trabzon Prosecuting Office and the Istanbul Prosecuting Office are two significant examples of this, as explained below.

## REPORTS FROM INTERNATIONAL INSTITUTIONS

Credible reports from international organizations, international and national NGOs, Bar Associations, have also constantly underlined the practice of impunity.

44 Nurettin Yıldız said the Religious Affairs High Commission, a body of the Religious Affairs Directorate responsible for issuing fatwas, must advise the Turkish government not to feed the jailed followers of Gülen in state prisons. "The Religious Affairs High Commission must speak up about this [the Gülen movement] group. If it is not able to speak against it, it must declare the basic criteria [for punishing them]. For example, how the Qu'ran punishes those involved in terror in Surah al-Ma'idah. It says 'Kill them, execute them, order their opposing hands and feet be cut off or exile them.' There are no prison terms. The Religious Affairs Directorate and its high commission must direct the government [for punishing Gülen followers]. This Muslim nation will have to feed those people [Gülen followers] for more than 20 years in prison. Thousands of people will be more of a burden to the state than a town is."

<https://www.turkishminute.com/2016/12/27/video-controversial-pro-erdogan-cleric-demands-fatwa-state-execute-gulen-followers/>

45 TRT Haber. Cumhurbaşkanı Erdoğan'dan İKBY'ye bayrak tepkisi, 4 April 2017. <http://www.trthaber.com/haber/gundem/cumhurbaskani-Erdoğandan-ikbyye-bayrak-tepkisi-307472.html>

46 Cumhuriyet. AKP'li Metiner'den vahim sözler: İşkence'ye inceleme yok, 3 October 2016. [http://www.cumhuriyet.com.tr/haber/turkiye/608880/AKP\\_li\\_Metiner\\_den\\_vahim\\_sozler\\_iskenceye\\_inceleme\\_yok.html](http://www.cumhuriyet.com.tr/haber/turkiye/608880/AKP_li_Metiner_den_vahim_sozler_iskenceye_inceleme_yok.html)

47 Extradition to Turkey: One-way Ticket to Torture and Unfair Trial, paras. 45-63 [https://arrestedlawyers.files.wordpress.com/2020/02/extradition-to-turkey-one-way-ticket-to-torture-unfair-trial\\_.pdf](https://arrestedlawyers.files.wordpress.com/2020/02/extradition-to-turkey-one-way-ticket-to-torture-unfair-trial_.pdf)

## The Report by the United Nations Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, dated 18 December, 2017.

“... the Special Rapporteur notes with concern that there seemed to be a serious disconnect between declared government policy and its implementation in practice... **Most notably, despite persistent allegations of widespread torture and other forms of ill-treatment, made in relation both to the immediate aftermath of the failed coup of 15 July 2016 and to the escalating violence in the South-East of the country, formal investigations and prosecutions in respect of such allegations appear to be extremely rare, thus creating a strong perception of de facto impunity for acts of torture and other forms of ill-treatment...**” reported<sup>48</sup> Nils Melzer, who is the UN Nations Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

## The Office of the United Nations High Commissioner for Human Rights

In their report, dated 12<sup>th</sup> November, 2019, we read the following:

- Several stakeholders observed an escalation of torture and violence against detainees while, at the same time, security personnel who may have committed crimes on behalf of the government, enjoyed immunity from prosecution both during and after the attempted coup.
- They recommended abrogating any provision that grants retroactive immunity from any legal, administrative, financial and criminal liability with respect to the perpetration of acts of torture or other ill-treatment, particularly Emergency Decree-Laws Nos. (667, Art. 9§1), (668, Art. 37) and (696, Art. 121), and related Articles of Law No. 4483.
- The Commissioner urged Turkey to tackle the numerous root causes of impunity in Turkey.<sup>49</sup>

In the report dated March, 2018, we see the following:<sup>50</sup>

- OHCHR had received credible reports that a number of police officers who refused to participate in arbitrary arrests, torture and other repressive acts under the State of Emergency were dismissed, and/or arrested, on charges of supporting terrorism.
- OHCHR documented the use of different forms of torture and ill-treatment in custody, including severe beatings, threats of sexual assault and actual sexual assault, electric shocks and waterboarding.
- Based on accounts collected by the OHCHR, the acts of torture and ill-treatment generally appeared to be aimed at extracting confessions or forcing detainees to denounce other individuals. It was also reported that many of the detainees retracted forced confessions during subsequent court appearances.

48 Report of the Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment on his mission to Turkey, 18 December 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/362/52/PDF/G1736252.pdf?OpenElement>

49 <https://undocs.org/A/HRC/WG.6/35/TUR/3>

50 [https://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf)

## The UN Working Group on Arbitrary Detention

Since 2016, the UN Working Group on Arbitrary Detention has delivered ten opinions on Turkey's post-coup attempt purge. In all of these opinions, the WGAD opined that within the investigations with which derogations from the ICCPR are involved, Turkey had infringed the right to liberty (Article 9 ICCPR) of the detainees in such a way as to form a Category V<sup>51</sup> violation<sup>52</sup> which means *Turkey had committed a violation of the right to liberty on the grounds of discrimination that is based on nationality, religion, ethnic or social origin, political or other opinions, or any other status.*

In all these cases, the UN WGAD urged Turkey to carry out an investigation against those responsible for these arbitrary detentions. However, Turkey has not complied with these decisions.

## The UN Working Group on the Universal Periodic Review

The Summary of Stakeholders' submissions on Turkey which was published by the UN Working Group in the Universal Periodic Review shows that several stakeholders observed an escalation in torture and violence towards detainees while, at the same time, security personnel, who may have committed crimes on behalf of the government, enjoyed immunity from prosecution during and after the attempted coup.<sup>53</sup>

## The Council of Europe Commissioner for Human Rights (7 October, 2016)

"As regards on-going criminal proceedings, among the most immediate human rights concerns are consistent reports of allegations of torture and ill-treatment... The Commissioner further urges the authorities to authorize the publication of the forthcoming report of the CPT as soon as it is adopted and communicated by the latter. In the opinion of the Commissioner, this would be the best way to dispel, once and for all, any doubts regarding torture and ill-treatment."<sup>54</sup>

## CPT - European Committee for the Prevention of Torture

CPT has visited Turkey four times since 2016.<sup>55</sup> According to the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), its findings from visits to prisons in Turkey in 2016 will not be published due to the lack of government approval.<sup>56</sup> Reports on the subsequent three visits have not been published either, due to Turkey's veto.

51 Office of the United Nations' High Commissioner for Human Rights, 'Revised Fact Sheet No. 26' (8 February, 2019) 6, <<https://www.ohchr.org/Documents/Issues/Detention/FactSheet26.pdf>> accessed 3 March, 2019.

52 UN Working Group on Arbitrary Detention, Hamza Yaman (78/2018, Turkey), Mestan Yayman (42/2018 Turkey), Ahmet Caliskan (43/2018, Turkey), Muharrem Gençtürk (44/2018, Turkey), Mesut Kaçmaz, Meral Kaçmaz and two minors (11/2018, Pakistan and Turkey), Ercan Demir (79/2019, Turkey), [Melike Göksan and Mehmet Fatih Göksan \(53/2019, Turkey\)](#), [Mustafa Ceyhan \(10/2019, Azerbaijan and Turkey\)](#), Rebi Metin Görgeç (1/2017, Turkey): 'In these complaints, the UN-WGAD concluded that Turkey had violated Articles 2, 7, 9, 14, 16, 19, 21, 22, 26 ICCPR, on the grounds of discrimination based on nationality, religion, ethnic or social origin, political or other opinions, or any other status.'

53 The Working Group in the Universal Periodic Review, the Summary of Stakeholders' submissions on Turkey (A/HRC/WG.6/35/TUR/3), 20-31 January 2020, para. 26

54 Memorandum on the human rights implications of the measures taken under the State of Emergency in Turkey, dated 7 October, 2016, <https://rm.coe.int/16806db6f1>

55 Between 06/05/2019 and 17/05/2019 (ad hoc visit), Between 04/04/2018 and 13/04/2018 (ad hoc visit), Between 10/05/2017 and 23/05/2017 (periodic visit), Between 29/08/2016 and 06/09/2016 (ad hoc visit).

56 *Hurriyet Daily News*. European Anti-Torture Committee says Ankara does not allow report on Turkey to be published. <http://www.hurriyetdailynews.com/european-anti-torture-committee-says-ankara-does-not-allow-report-on-turkey-to-be-published-112277>

## European Commission

The European Commission's reports (2016-2019) on Turkey have raised credible allegations of torture and ill-treatment.<sup>57</sup> The 2019 report stated the following:<sup>58</sup>

- Allegations of torture and ill treatment remain a serious concern. The repeated extensions of the State of Emergency led to profound human rights violations, and the Government failed to take steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses. The removal of crucial safeguards by means of emergency decrees has increased the risk of impunity for perpetrators of such crimes, and has led to allegations of an increase in the number of cases of torture and ill-treatment in custody.
- The handling of complaints of torture and ill-treatment is also reported to be ineffective, and allegedly entails a risk of reprisal. The NHREI, which should act as the national preventive mechanism, does not meet the key requirements under the Optional Protocol to the UN Convention Against Torture and is not yet effectively processing cases referred to it.

## The United States' State Department

The US State Department, in its Country Report on Human Rights Practices, has consistently reported torture, ill-treatment, arbitrary detention, the misuse of terrorism laws and forced disappearances, in relation to Turkey, since 2016.

**In their 2016 report<sup>59</sup>, it was reported that:**

"Following the coup attempt in July, detainees regularly reported problems including prison overcrowding and lack of access to legal representation and medical treatment. Thousands of detainees taken into custody in the initial aftermath of the July 15 coup attempt were held in stadia, meeting rooms, and other sites, without cameras, where some were allegedly subject to mistreatment or abuse.<sup>60</sup>

**Amnesty International (AI)** alleged that some detainees in Ankara and Istanbul were tortured and reported widespread use of stress positions, denial of food and water, detention in unsanitary conditions, in addition to beatings and rapes. On July 25, AI reported that an anonymous witness at the Ankara police headquarters' gym described the following: "...650-800 male soldiers were being held in the Ankara police headquarters sports hall. At least 300 of the detainees showed signs of having been beaten. Some detainees had visible bruises, cuts, or broken bones. Around 40 were so badly injured they could not walk. Two were unable to stand. One woman, who was also detained in a separate facility there, had bruising on her face and torso." Bar Association representatives corroborated the allegations, and, in some cases, before-and-after photos appeared to show evidence of beatings by the security forces. Authorities restricted lawyers' access to the detainees, as allowed under decrees passed during the State of Emergency.<sup>61</sup>

57 European Commission, 2016, 2018 Turkey reports, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2016/20161109\\_report\\_turkey.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf).  
<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf>.

58 European Commission, 2019 Turkey report, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

59 US Department of State. 'Country Reports on Human Rights Practices for 2016;' Turkey, dated 3 March, 2017. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dclid=265482>  
Stockholm Center for Freedom. Suspicious Deaths and Suicides in Turkey, March 2017. [https://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey\\_22.03.2017.pdf](https://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey_22.03.2017.pdf)

60 US Department of State. 'Country Reports on Human Rights Practices for 2016;' Turkey, 3 March, 2017.

61 <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/turkey/>



In the 2017 and 2018 reports<sup>62,63</sup> the following were reported:

The most significant human rights issues included the alleged torture of detainees in official custody; allegations of forced disappearance; arbitrary arrest and detention under the State of Emergency of tens of thousands, including Members of Parliament and two Turkish-national employees of the U.S. Mission to Turkey, for alleged ties to terrorist groups or peaceful legitimate speech; executive interference with the independence of the judiciary, affecting the right to a fair trial and due process; political prisoners, including numerous elected officials; severe restriction of freedoms of expression and the media, including the imprisonment of scores of journalists, closing media outlets, and the criminalization of criticism of government policies or officials; blocking websites and content; severe restriction of freedoms of assembly and association; interference with freedom of movement; and incidents of violence against LGBTI persons and other minorities. **The government continued to take limited steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses; impunity for such abuses was a problem.**

In the 2019 report<sup>64</sup>, the following were mentioned:

Significant human rights issues, including arbitrary killings; the suspicious deaths of persons in custody; forced disappearances; torture; arbitrary arrest and the detention of tens of thousands of persons, have been reported. The government has taken limited steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses; impunity remains a problem.

### Human Rights Watch

In the report dated 25 October, 2016, by Human Rights Watch, entitled **"A Blank Check: Turkey's Post-Coup Suspension of Safeguards Against Torture"**, 13 cases of alleged abuse committed by the Turkish Police against persons in their custody, including stress positions, sleep deprivation, severe beatings, sexual abuse and rape threats, since the coup attempt, were detailed.<sup>65</sup> Human Rights Watch (HRW) reported that the government's decrees under the State of Emergency facilitated torture by removing those safeguards that protected detainees from mistreatment. The report described a pattern of denial of access to legal aid and detainees' medical reports, which, it claimed, prevented the substantiation of allegations of physical abuse. **A provision in the emergency decrees absolved government officials of any responsibility for abuses in connection with duties carried out in the context of the decrees.**<sup>66</sup>

"Cases of torture and ill-treatment in police custody were widely reported through 2017, especially by individuals detained under the anti-terror law, marking a reverse in long-standing progress, despite the government's stated zero tolerance for torture policy. There were widespread reports of police beating detainees, subjecting them to prolonged stress positions and threats of rape, threats to lawyers, and interference with medical examinations... There were credible reports of unidentified perpetrators, believed to be state agents, abducting men, in at least six cases, and holding them in undisclosed places of detention in circumstances that amounted to possible enforced disappearances. At least one surfaced in official custody and three others were released after periods of two to three months. The men had all been dismissed from civil service jobs for Gülenist connections."<sup>67</sup>

62 <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/turkey/>

63 <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/turkey/>

64 <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>

65 Human Rights Watch. 'Turkey: Emergency decrees facilitate torture,' dated 25 October, 2016. <https://www.hrw.org/news/2016/10/25/turkey-emergency-decrees-facilitate-torture>

66 <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/turkey/>

67 Human Rights Watch. World Report 2018. <https://www.hrw.org/world-report/2018/country-chapters/turkey>

Although President Erdoğan's government publicly asserts that it has a zero tolerance of torture, **there remains a climate of impunity for the torture and mistreatment of detainees.** Human Rights Watch is not aware of any serious measures that have been taken to investigate credible allegations of torture, much less to hold the perpetrators to account. Mass dismissals and prosecutions of judges and prosecutors over alleged Gülenist links, and tighter executive control over the judiciary, make **it increasingly unlikely that prosecutors and judges who are concerned about their own job security, will risk investigating such crimes.**<sup>68</sup>

HRW's 2018 report mentions the following:

- Cases of torture and ill-treatment in police custody were widely reported throughout 2017, especially by individuals who were detained under the anti-terror law, marking a reversal of long-standing progress, despite the government's stated zero tolerance of torture policy. **There were widespread reports of police beating detainees, subjecting them to prolonged stress positions and threats of rape, threats to lawyers, and interference with medical examinations.**
- There were credible reports of unidentified perpetrators, believed to be state agents, abducting men in at least six cases, and holding them in undisclosed places of detention in circumstances that amounted to possible enforced disappearances.<sup>69</sup>

HRW's 2019 report reported on the following:

- Continued allegations of torture, ill-treatment, and cruel and inhumane, or degrading treatment in police custody and in prisons, and **the lack of any meaningful investigation into them, remained a deep concern.** These issues were raised by the UN Special Rapporteur on Torture in a February statement.
- There have been no effective investigations into the 2017 abductions, allegedly by state agents, of at least six men who were held in undisclosed places of detention before their release, months later, in circumstances that amount to possible enforced disappearance.<sup>70</sup>

HRW's 2020 report stated the following:

- That there was an increase in the number of allegations of torture, ill-treatment, and cruel and inhumane, or degrading treatment in police custody and in prisons over the past four years, and this has set back Turkey's earlier progress in this area. Those targeted include Kurds, Leftists, and alleged followers of Fethullah Gülen.
- **Prosecutors do not conduct meaningful investigations into such allegations, and there is a pervasive culture of impunity for those members of the security forces and public officials who are implicated.**<sup>71</sup>

## Stockholm Centre For Freedom

In a report entitled "Mass Torture and Ill-Treatment in Turkey", the Sweden based human rights organization, the Stockholm Center for Freedom, reported 29 cases of torture incidents, including rape, sexual abuse, severe beatings, sleep deprivation, stress positions, subjecting individuals to cold pressurized water, deprivation of food and water, threats to kill and rape.<sup>72</sup>

68 Human Rights Watch. In Custody, Police Torture and Abductions in Turkey, October, 2017. <https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey>

69 <https://www.hrw.org/world-report/2018/country-chapters/turkey>

70 <https://www.hrw.org/world-report/2019/country-chapters/turkey>

71 <https://www.hrw.org/world-report/2020/country-chapters/turkey>

72 Stockholm Center For Freedom. Mass Torture and Ill-Treatment in Turkey, June. 2017. [https://stockholmcf.org/wp-content/uploads/2017/06/Mass-Torture-And-Ill-Treatment-In-Turkey\\_06.06.2017.pdf](https://stockholmcf.org/wp-content/uploads/2017/06/Mass-Torture-And-Ill-Treatment-In-Turkey_06.06.2017.pdf)



"Torture, abuse and ill treatment of detainees and prisoners in Turkey has become the norm, rather than the exception, under the repressive regime of President Recep Tayyip Erdoğan..."<sup>73</sup> said the report.

The SCF also reported the death of Gokhan Açikkollu, who was a history teacher and who died after enduring 13 days of torture and abuse in police detention in İstanbul.<sup>74</sup> According to the SCF, 54 people were reported to have lost their lives, most of them under suspicious circumstances, while locked up during the ongoing State of Emergency rule.<sup>75</sup>

### Platform for Peace and Justice

A report from the Platform for Peace and Justice found that: "With significant human rights violation claims, the prisons of Turkey are places which are closed to inspections by both national and international civil rights organizations and cannot be efficiently scrutinized by the UN and EU institutions. Even the reports about these prisons which have managed to be prepared after restricted inspections, are not allowed to be made public. **Because of the oppression in the country, neither detainees nor their lawyers are able to pursue the violations committed in these prisons by means of either judicial or administrative remedies, and, for the same reasons, they cannot make these violations known to the public.**"<sup>76</sup>

## RECENT CASES OF IMPUNITY

### Police Officers who were Convicted of Torture and Murder were Promoted

It was revealed that four police officers, including a senior officer, who were convicted of the torture and killing of a man in 2010, had avoided dismissal and had subsequently been promoted.

Police officers Oktay Kapsız, Ramazan Adıgüzel, Murat Ertürk and Abdülcélil Karadağ were convicted to life imprisonment for their murder of Murat Konuş who was found to have been subjected to torture and who died of his injuries whilst in police custody. While the Turkish Government promoted all the four police officers in question, Oktay Kapsız's promotion is particularly significant. Kapsız was appointed to be Chief of Police in the Çukurca district of Hakkari Province. The Çukurca governor, Murat Öztürk, awarded Kapsız a certificate of appreciation at a ceremony, photos of which were published on the official website of the governorship. The District Mayor, Ensar Dünder, also shared, in his official account, a photo in which he is seen presenting Kapsız with a plaque, as well as a hand-woven carpet, in acknowledgement of his services.<sup>77</sup>

### Promotion of Musa Çitil

Musa Çitil was Chief Commander of the gendarmerie forces in the Derik district of Mardin Province between 1992 and 1994, where 13 individuals had become the victims of extrajudicial killing and enforced disappearance during the same period.

73 Stockholm Center For Freedom. Mass Torture and Ill-Treatment in Turkey, June, 2017.

74 Stockholm Center For Freedom. *Tortured to Death*, November, 2017, [https://stockholmcf.org/wp-content/uploads/2017/11/Tortured-to-death-holding-gokhan-acikkollus-killers-to-account\\_report\\_21.11.2017.pdf](https://stockholmcf.org/wp-content/uploads/2017/11/Tortured-to-death-holding-gokhan-acikkollus-killers-to-account_report_21.11.2017.pdf)

75 Stockholm Center for Freedom. Suspicious Deaths and Suicides In Turkey, March, 2017. [https://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey\\_22.03.2017.pdf](https://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey_22.03.2017.pdf)

76 Platform for Peace and Justice. A Comprehensive Report on The Prison Conditions In Turkey: In Prison 2017. <http://www.platformpj.org/report-comprehensive-report-prison-conditions-turkey-prison-2017/>

77 Turkish police officer convicted of torture awarded in ceremony, <https://www.duvarenglish.com/domestic/2019/12/27/turkish-police-officer-convicted-of-torture-awarded-in-ceremony/>

An indictment was filed in 2012 against Musa Çitil. He was charged with premeditated murder and torture. The case was transferred to Çorum from Mardin for so-called security reasons. The Çorum 2nd Heavy Penal Court acquitted the defendant, Musa Çitil, on 21 May, 2014. The Court of Cassation and the Turkish Constitutional Court upheld the acquittal.

Musa Çitil has never been subjected to any disciplinary proceeding and was promoted to be Deputy Chief Commander of the Turkish Gendarmerie Forces in 2017.

### Cases of Enforced Disappearances since 2016

The crime of enforced disappearance is not a new nightmare in Turkey. 'During the 1990s, enforced disappearances became part of a pattern of human rights violations against Kurdish civilians.'<sup>78</sup> A coalition, consisting of various human rights NGOs, has collected the names of more than 1,300 persons who were 'disappeared' by state agents between the late 1980s and 2002 (the year the emergency rule was lifted), mostly in the Kurdish region.<sup>79</sup> Although, this crime disappeared during 2000s, after the attempted coup of 2016 it re-emerged, and more than 25 enforced disappearance incidents have been reported since 2016. Sunay Elmas, Mustafa Özgür Gültekin, Hüseyin Kötüce, Turgut Çapan, Mesut Geçer, Önder Asan, Ayhan Oran, Mustafa Özben, Cemil Koçak, Murat Okumuş, Fatih Kılıç, Durmuş Ali Çetin, Cengiz Usta, Ümit Horzum, Hıdır Çelik, Enver Kılıç, Zabit Kişi<sup>80</sup>, Orçun Şenyücel, Hasan Kala, Ahmet Ertürk, Yasin Ugan, Özgür Kaya, Gökhan Türkmen, Salim Zeybek, Erkan Irmak, Fahri Mert, Mustafa Yılmaz, Ayten Öztürk<sup>81</sup>, Yusuf Bilge Tunç have become the victims of enforced or involuntary disappearances in Turkey.<sup>82</sup>

On 26 February, 2020, the Ankara Bar Association published a report<sup>83</sup> establishing several breaches of the relevant national and international laws regarding the enforced disappearance of seven individuals in 2019, and the conduct of the police and the judiciary in relation to these incidents.<sup>84</sup> In addition, a coalition, consisting of nine media outlets from different countries, documented the Turkish Government's illegal rendition and abduction operation and the black sites of the Turkish National Intelligence Agency (NIA/MIT), where victims have been tortured for months at a time.<sup>85</sup>

On 20 April, 2020, Human Rights Watch published its report on 16 cases of enforced disappearance that have taken place in Turkey since 2017.<sup>86</sup> "Flagrantly flouting its legal obligations, Turkey has consistently failed to investigate credible evidence of enforced disappearances," said Hugh Williamson, the Europe and Central Asia Director at Human Rights Watch. "The authorities should urgently investigate Türkmen's allegations that he was abducted, tortured, and pressurised to remain silent, and to ensure that he and his family are protected

78 Hafiza Merkezi & ECCHR, Monitoring Report (15 January 2016), para.7 [https://hakikatadalethafiza.org/wp-content/uploads/2016/03/Rule-9-2-Communication-on-Turkey-Jan.-2016-HM\\_ECCHR.pdf](https://hakikatadalethafiza.org/wp-content/uploads/2016/03/Rule-9-2-Communication-on-Turkey-Jan.-2016-HM_ECCHR.pdf)

79 Ibid., para. 14.

80 Extradition to Turkey: One-way Ticket to Torture and Unfair Trial, para.109 <https://boldmedya.com/en/2019/07/01/zabit-kisi-who-was-tortured-for-108-days-i-no-longer-findodd-the-ones-who-committed-suicide/>

81 <https://boldmedya.com/en/2019/06/21/ayten-ozturk-who-survived-the-secret-torture-center-in-ankara-i-was-tortured-for-6-months/>  
<http://bianet.org/english/print/209800-joint-statement-by-rights-organizations-investigate-allegationsof-torture>

82 <https://arrestedlawyers.files.wordpress.com/2019/07/factsheet.pdf>

83 [http://www.ankarabarasu.org.tr/upload/HD/Donem65/2020/diger/20200213\\_ihmrapor.pdf](http://www.ankarabarasu.org.tr/upload/HD/Donem65/2020/diger/20200213_ihmrapor.pdf)

84 <http://www.ankarabarassociation.org/HaberDuyuru.aspx?Announcement&=1922>

85 <https://correctiv.org/en/top-stories-en/2018/12/06/black-sites/>

86 Turkey: Enforced Disappearances, Torture, <https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture>

against reprisals for speaking out.”

Gökhan Türkmen, 43, spoke for the first time during a February 10, 2020 court hearing about his abduction, enforced disappearance, and torture. Gökhan Türkmen alleged in a court hearing on February 10, 2020, that he was abducted by state actors on February 7, 2019, was held in an unknown place of detention and tortured for nine months, before being transferred to police custody and jailed. He also alleges that he was visited in prison and threatened by officials identifying themselves as intelligence officers, who wanted him to retract his allegations. He also said that officials had visited him in prison and threatened him and his family. The authorities have an obligation to pursue a prompt and thorough investigation into these claims and to ensure that Türkmen and his family are not subjected to further reprisals and threats for speaking out about his enforced disappearance and torture.

Lastly, Mustafa Yeneroglu, who was Chair of the Turkish Parliament’s Human Rights Inquiry Committee between 2 November, 2015, and 1 October, 2017, said the following:

*“When I was the Chairman of the Human Rights Inquiry Committee, the cases of abductions started. Then I talked to the relevant authorities and, at that time, I said: ‘if these people do not appear within three weeks, I will carry out my part, and will raise this issue on a different platform.’ Then we resolved this issue, within 3-4 weeks all of these people resurfaced there in police stations. I know very well how this happened, how it developed, and by whom all this was done. If I did not know, I would not speak so confidently. Oh, I know what it will cost me, because of the threats that I have received.”<sup>87</sup>*

Despite all of this evidence, and the official complaints filed by the victims or their families, the Turkish authorities have not initiated any judicial or administrative investigations into these incidents.

### **The Case of the Extra-Judicial Killings of Military Cadets and Privates**

Burak Dinler (private), Murat Tekin (cadet), Mustafa Çelik (petty officer), Ragip Enes Katran (cadet), Kurtulus Kaya (private), who were brought to the Istanbul Bosphorus Bridge by their commander during the coup attempt of 2016, were murdered by civilians at the scene after turning themselves in to the police. One of their commanders was also murdered, and seven other cadets were wounded by stabbing.

According to the autopsy reports, the slaughtered cadets died due to stab wounds, blunt force injuries and bowstring injuries. The wounded seven were also stabbed and exposed to blunt force injuries.

Upon complaints from the families of the victims and the seven wounded victims, the Istanbul Public Prosecutor’s Office initiated an investigation (2017/126504). In the investigation, the suspects were determined by the use of videos and the posts that they shared in their social media accounts. In the videos, they were bragging about killing the victims. However, the Istanbul Public Prosecutor’s Office rendered a non-prosecution decision (2018/134277) in regard of the suspects on the grounds of three decree laws (Nos. 667, 668, 696) which were later approved by the Parliament and that have since acquired the status of ordinary law.<sup>88</sup>

<sup>87</sup> <https://twitter.com/OthersInfo/status/1260639194864467969?s=20>

<sup>88</sup> Emergency Decree Law No.667, Art. 9§1, Emergency Decree Law No. 668, Art. 37, Emergency Decree Law No. 696, Art. 121, which were approved by the Parliament with Law Nos. 6749, 6755 and 7079.

Likewise, on 5 January, 2017, the Trabzon Chief Public Prosecutor's Office rendered a non-prosecution decision, under Article 9 of Emergency Decree Law no. 667, regarding a complaint filed by an alleged torture victim.<sup>89</sup>

### The Case of Gökhan Açıkkollu

The Turkish teacher, Gökhan Açıkkollu, was detained on 24 July, 2016, under the scope of an investigation into the coup attempt, and remained in police custody for 13 days, during which time he was subjected to both physical and psychological torture. He was never officially interrogated, and the police did not even take a statement from him. On the 13th day of police custody, he died, in his cell, due to torture he was subjected to.<sup>90</sup>

Professor Şebnem Korur Fincancı, an expert in forensic medicine who is the head of the Human Rights Foundation of Turkey and an executive in the Turkish Medical Association, examined the doctors' reports, autopsy report and statements regarding the death of Açıkkollu and prepared her own conclusions. In her 14-page assessment, published on January 18, 2017, which was also included in the investigation file, she concluded that the cause of death should be recorded as torture.<sup>91</sup>

Many people who witnessed what Açıkkollu had gone through while in custody are currently in Silivri Prison. One of them is a lawyer, Engin Emrah Biçer. In his petition to the prison management, dated September 20, 2016, he wrote: "I was in custody for 14 days together with Gökhan Açıkkollu, who was detained under a different file. He was beaten to death in custody. At least 15 people were witnesses to this. The evidence is firm. I would like to learn if there is an investigation into this case, and I would like to be informed of its file number if there is such an investigation."<sup>92</sup>

The lawyer of an imprisoned expert in forensic medicine (Gürol Berber) reached out to Açıkkollu's wife, and said that his client would like to be a witness in court to provide information declaring that Açıkkollu died as a result of torture. Another witness is an imprisoned journalist (Ercan Gün). According to the information given by the family, he agreed to be a witness if a lawsuit were opened. It is noteworthy that the prosecutor, Burhan Görgülü, who investigated Açıkkollu's death, did not interview any of the witnesses, particularly the lawyer, Biçer, despite the fact that his petition was included in the investigation file.<sup>93</sup>

However, the Istanbul Chief Public Prosecutor's Office delivered a non-prosecution decision after 3-years of investigation. (Investigation No: 2017/10439, Decision No: 2020/4015)

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89 Extradition to Turkey: One-way Ticket to Torture and Unfair Trial, para.73 [https://arrestedlawyers.files.wordpress.com/2020/02/extradition-to-turkey-one-way-ticket-to-torture-unfair-trial\\_.pdf](https://arrestedlawyers.files.wordpress.com/2020/02/extradition-to-turkey-one-way-ticket-to-torture-unfair-trial_.pdf)

90 Tortured to Death: Açıkkollu [https://stockholmcf.org/wp-content/uploads/2017/11/Tortured-to-death-holding-gokhan-acikkollus-killers-to-account\\_report\\_21.11.2017.pdf](https://stockholmcf.org/wp-content/uploads/2017/11/Tortured-to-death-holding-gokhan-acikkollus-killers-to-account_report_21.11.2017.pdf)

91 Ibid.

92 Ibid.

93 Ibid.

## The Torture Incidents Took Place in Notorious Ankara Police Headquarter

On 28<sup>th</sup> May, 2019<sup>94</sup>, and 20 December, 2019<sup>95</sup>, the Ankara Bar Association published two reports documenting the ongoing torture and sexual abuse of suspects that was taking place in the Ankara Police HQ. Victims were former Turkish diplomats<sup>96</sup> and the Ministry of Justice staff<sup>97</sup> who were purged with Emergency Decrees. In both incidents, the Ankara Bar Association immediately informed Ankara Public Prosecutor's Office and requested that immediate steps to end the ongoing torture be taken.

In addition, a coalition of NGOs consisting of the Ankara Medical Chamber (ATO), the Human Rights Association, the Lawyers Association for Freedom, the Contemporary Lawyers' Association, the Rights Initiative Association, the Revolutionary 78'ers' Federation, the Human Rights Agenda Association, the SES Ankara Branch, and the Human Rights Foundation of Turkey (TIHV), [made a joint statement](#) regarding the torture and ill-treatment incidents that had taken place in Turkey, and in Ankara, in particular. "There has been an increase in kidnapping, torture and ill-treatment in custody, with the aim of exerting pressure on people, punishing, intimidating and forcing them to confess, which started, in particular, with the State of Emergency process, and which has increased in recent years. **In the case of Ankara, these practices have unfortunately become systematic.**" said the statement.<sup>98</sup>

However, neither the Prosecutor's office nor the the Government officials take any steps to stop the torture and/or to investigate the incidents.

## Torture Incident Took Place in Şanlıurfa (Halfeti): Reports of Gaziantep Bar Association, Şanlıurfa Bar Association and TOHAV

Gaziantep and Sanliurfa Bar Associations, and TOHAV (Society & Law Research Association) have published separate reports documenting torture, sexual abuse and the illegal interrogation of individuals detained in the district of Halfeti, in the Sanliurfa Province.<sup>99</sup> As with the other incidents, no steps have been taken by the respective provincial authorities to stop or investigate the incidents.

In a 2019 report by the Human Rights Association (IHD) the following are documented with reference to the above mentioned torture incident: ***'The fact that an effective investigation has not yet been carried out against torture offenders and those responsible indicates that the impunity policy is applied without compromise in any case.'***<sup>100</sup>

94 <https://arrestedlawyers.files.wordpress.com/2020/01/joint-report-ankara-bar-28-may-2019.pdf>  
<https://arrestedlawyers.org/2019/11/25/report-on-criminal-liabilities-with-regard-to-torture-incident-took-place-in-ankara-police-headquarters-between-20-and-28-may-2019/>

95 <https://twitter.com/ankarabarosuihm/status/1210646342286159872?s=20>  
<https://arrestedlawyers.files.wordpress.com/2020/01/report-by-ankara-bar-association-human-rights-commission-1.pdf>

96 Diplomats 'tortured' in Turkish jail, <https://www.thetimes.co.uk/article/diplomats-tortured-in-turkish-jail-tz3r0lb7t>  
Turkish lawyers' group says foreign ministry staff tortured in custody, <https://www.reuters.com/article/us-turkey-security-torture/turkish-lawyers-group-says-foreign-ministry-staff-tortured-in-custody-idUSKCN15Y26O>

97 Opposition MP says at least 46 people tortured in police custody in Turkish capital  
<https://ahvalnews.com/torture/opposition-mp-says-least-46-people-tortured-police-custody-turkish-capital>

98 <https://hakinisiyatifi.org/torture-is-a-crime-against-humanity-without-exception-and-is-strictly-prohibited.html>,  
<https://arrestedlawyers.org/2020/01/01/human-rights-ngos-torture-and-ill-treatment-in-custody-have-become-systematic-practice-of-ankara-police/>

99 <http://www.tohav.org/Content/UserFiles/ListItem/Docs/katalog1427tohav-report-on-torture-in-urfa.pdf>  
<https://bianet.org/english/human-rights/209087-report-on-halfeti-by-urfa-bar-association-the-detained-subjected-to-sexual-torture>  
<https://boldmedya.com/en/2019/06/10/gaziantep-bar-associations-report-on-torture-claims-in-halfeti-district-of-sanliurfa/>

100 2019 Yılı Doğu Ve Güneydoğu Anadolu Bölgesi İnsan Hakları İhlalleri Raporu  
[https://www.ihd.org.tr/wp-content/uploads/2020/02/20200207\\_2019YilInsanHaklariIhlalleriRaporu-Raporu.pdf](https://www.ihd.org.tr/wp-content/uploads/2020/02/20200207_2019YilInsanHaklariIhlalleriRaporu-Raporu.pdf)

## The Case of Sertuğ Sürenoğlu

The incident took place on 14 April, 2019, when a lawyer, Sertuğ Sürenoğlu, asked police why traffic was blocked around the city's Çırağan Palace, where Erdoğan was in attendance for a high profile wedding. After his question, Lawyer Sürenoğlu was arbitrarily detained and subjected to torture for hours by President Erdoğan's security details.<sup>101</sup> Images of his black and blue face were broadcasted in the national media. Several bar associations filed criminal complaints about President Erdoğan's security details. However, while the victim of torture had been subjected to house arrest, a non-prosecution decision was given in relation to those police officers who had tortured him, because the Governor of Istanbul refused to issue permission to investigate the incident.

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101 Istanbul Governor's Office dismissed the investigation into the police officers responsible for ill-treatment  
<https://arrestedlawyers.org/2019/08/21/istanbul-governors-office-dismissed-the-investigation-into-the-police-officers-responsible-for-ill-treatment/>

# CHAPTER-V

## NATIONAL LEGAL FRAMEWORK, OBSERVATIONS AND ANALYSIS



## NATIONAL LEGAL FRAMEWORK

Article 17 of the Constitution of the Republic of Turkey prohibits torture in a non-derogable way.<sup>102</sup> The offence of torture is stipulated in Article 94 of the Turkish Penal Code, which reads as follows:

- (1) A public officer who performs any act towards a person that is incompatible with human dignity, and which causes that person to suffer physically or mentally, or affects the person's capacity to perceive or his ability to act of his own will or insults them, shall be sentenced to a penalty of imprisonment for a term of three to twelve years.
- (2) If the offence is committed against:
  - a) a child, a person who is physically or mentally incapable of defending himself or pregnant women; or
  - b) a public officer or an advocate on account of the performance of his duty, a penalty of imprisonment for a term of eight to fifteen years shall be imposed.
- (3) If the act is conducted in the manner of sexual harassment, the offender shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years,
- (4) Any other person who participates in the commission of this offence shall be sentenced in a manner equivalent to that of the public officer.
- (5) If the offence is committed by way of omission, there shall be no reduction in the sentence.
- (6) No statute of limitation shall apply to this offence.

## LAWS PROVIDING IMPUNITY

### a) Law no. 2937 on the State Intelligence Services and the National Intelligence Agency

Under the Turkish Code of Criminal Procedure and Law no. 4483 on the Prosecution of Civil Servants and Other Public Officials, public prosecutors shall, ipso facto, investigate offences such as murder, torture, enforced disappearances. However, under Law no. 2937 on the State Intelligence Services and the National Intelligence Agency (NIA/MIT), personnel of the NIA/MIT and those commissioned for duty by the President of the Republic, have full immunity from criminal proceedings unless an authorization of prosecution is issued by the President of the National Intelligence Agency.<sup>103</sup> Likewise, the President of the National Intelligence Agency may only be prosecuted if the President of the Republic issues an authorization for prosecution.

This legislation was passed in 2011, since then, it has been alleged the National Intelligence Agency and its personnel have been involved in a high number of crimes, including enforced disappearance, torture, smuggling of arms, wide-scale unlawful profiling, and so on.

<sup>102</sup> Article 17 - No one shall be subjected to torture or mal-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.

<sup>103</sup> Turkey: Spy Agency Law Opens Door to Abuse, <https://www.hrw.org/news/2014/04/29/turkey-spy-agency-law-opens-door-abuse>



There are credible reports that enforced disappearance incidents that have taken place since 2015 were carried out by MIT/NIA agents, and the victims were interrogated under torture at black sites belonging to MIT/NIA.<sup>104 105 106</sup>

Due to Law no. 2937, these allegations have not been investigated. What is worse, incidents of enforced disappearances continue with impunity. The latest victim is Yusuf Bilge Tunç, who has been missing since 6 August, 2019.<sup>107</sup>

### b) Laws on Senior Military Commanders and Security Forces

Under Article 15/A of Law no:353 (dated 11 February, 2014), the Chief of the General Staff and Chief of Staff of the Land, Sea and Air Forces, may only be prosecuted if the President of the Republic issues an authorization for prosecution.

In addition, Law No. 6722 (amending Law no. 5442 on Provincial Administration) which was adopted on 23 June, 2016, has created an atmosphere of "systematic impunity" for the security forces.<sup>108</sup> The law requires the authorization of the political authorities for the investigation of soldiers or public officials who are suspected of having committed crimes in the context of counter-terrorism operations.<sup>109</sup> According to the Special Rapporteur on torture and other cruel, inhumane and degrading treatment or punishment, the law grants counter-terrorism forces immunity from prosecution for acts carried out in the course of their operations, thus rendering investigations into allegations of torture and ill-treatment by the security forces involved more difficult, if not impossible.<sup>110</sup>

These two laws are amongst the main reasons for the total destruction of several cities<sup>111</sup> and for gross human rights violations in Turkey's South-Eastern region during military operations against the PKK in 2015 and 2016.<sup>112</sup>

### c) Decree Laws Nos. 667, 668, 696

After the declaration of the State of Emergency in 2016, the very first Emergency Decree (dated 21 July, 2016; no. 667, Art. 9 § 1) stipulated that "legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and who fulfil their duties within the scope of this Decree Law".

104 Extradition to Turkey: One-way Ticket to Torture and Unfair Trial, para.108  
<https://boldmedya.com/en/2019/06/21/ayten-ozturk-who-survived-the-secret-torture-center-inankara-i-was-tortured-for-6-months/>  
<http://bianet.org/english/print/209800-joint-statement-by-rights-organizations-investigate-allegationsof-torture>

105 <https://arrestedlawyers.files.wordpress.com/2019/07/factsheet.pdf>

106 <https://correctiv.org/en/top-stories-en/2018/12/06/black-sites/>

107 Where is Yusuf Bilge Tunç? <https://stockholmcf.org/where-is-yusuf-bilge-tunc/>

108 OHCHR, Report on the human rights situation in South-East Turkey July 2015 to December 2016, [https://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](https://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf)

109 Ibid.

110 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20976&LangID=E>

111 See: Satellite images: <https://www.ohchr.org/SiteCollectionImages/Countries/TR/TRPhotos.zip>

112 UN report details massive destruction and serious rights violations since July 2015 in southeast Turkey  
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21342>

Later, Emergency Decree no. 668 (Art. 37) further expanded upon this principle of impunity, specifying that there will be no criminal, legal, administrative or financial responsibility for those making decisions, implementing actions or measures, or assuming duties, as per judiciary or administrative measures for suppressing coup attempts or terror incidents, as well as individuals taking decisions or fulfilling duties as per State of Emergency Executive Decrees.<sup>113 114</sup>

By Emergency Decree no. 696 (Art. 121), the impunity provided to public servants under Emergency Decrees nos. 667-668, was also extended to civilians. More precisely, it was stipulated that those civilians acting to suppress the coup attempt of 15/7/2016 and the ensuing events, will have no legal, administrative, financial or criminal responsibility. What is more, all these three decrees were approved by the Parliament and have become ordinary laws (Laws Nos. 6749, 6755 and 7079).<sup>115</sup>

On top of this, the Turkish Constitutional Court dismissed two cases that were lodged for the annulment of the impunity clause that was enacted with Decree Law no. 667 and Law no. 6749. TCC concluded that such impunity clauses were necessary in order to encourage public servants so that they could perform their duties effectively so as to overcome the threats that had arisen from the State of Emergency.<sup>116</sup> Actions for the annulment of two other impunity clauses are yet to be considered by the TCC.

**Observations: Reluctance of the Turkish Judiciary in Relation to Torture Cases**

Within the scope of this report, we examined official statistics on torture cases for the years 2013 and 2018 in relation to the Turkish Ministry of Justice.<sup>117</sup>

Statistic on Article 94 of the Turkish Penal Code (Offence of Torture) <sup>118</sup>				
	Investigation Phase		Prosecution (Trial) Phase	
Year	The Number of Non-Prosecution Decision	The Number of Decision to Prosecute / Indict	The Number of Acquittals	The Number of Decisions for Incarceration
2013	1111	210	86	20
2014	1004	246	88	8
2015	868	293	65	14
2016	901	118	52	11
2017	795	98	144	7
2018	646	83	38	10
<b>Total</b>	<b>5295</b>	<b>1048</b>	<b>473</b>	<b>70</b>

113 Turkey’s Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights (April 29, 2019). Institute for European Studies, 2019, <https://ssrn.com/abstract=3567095>

114 Did Turkey’s Recent Emergency Decrees Derogate from the Absolute Rights?, VerfBlog, 2019/9/28, <https://verfassungsblog.de/did-turkeys-recent-emergency-decrees-derogate-from-the-absolute-rights/>

115 Ibid.

116 Docket No: 2016/2025, Decision No: 2016/93

117 2019 Statistics have not yet been released.

118 Judicial Statistics 2018-2017-2016-2015-2014-2013, (publications nos: 13-12-11-10-9-8), Republic of Turkey, Ministry of justice General Directorate of Judicial Record and Statistics.

The statistics show the reluctance of Turkish prosecutors to push charges on torture complaints, given that only 20% of complaints resulted in a criminal charge. Statistics regarding the trial phase indicate a much worse pattern. Only 70 of 1048 charges resulted in a decision for incarceration. The remainder of the charges either resulted in an acquittal or a suspended punishment, or in the dismissal of the case due to the statute of limitation.

These statistics concur with following conclusions which were made by the UN Special Rapporteur, the European Commission, the US State Department, Human Rights Watch and other credible organisations:

- (i) there seemed to be a serious disconnect between declared government policy (zero-tolerance to torture) and its implementation in practice<sup>119</sup>,
- (ii) formal investigations and prosecutions in respect of torture and ill-treatment allegations appear to be extremely rare, thus creating a strong perception of *de facto* impunity<sup>120</sup>,
- (iii) the number of investigations carried out into allegations of torture was '*grossly disproportionate to the alleged frequency of violations*',<sup>121</sup>
- (iv) the Government failed to take steps to investigate, prosecute, and punish members of the security forces and other officials who were accused of human rights abuses<sup>122</sup>
- (v) the Government continued to take limited steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses; impunity for such abuses was a problem,<sup>123</sup>
- (vi) there have been no effective investigations into abductions, which were allegedly carried out by state agents, of at least six men who were held in undisclosed places of detention before their release, months later, in circumstances that amount to their being possible enforced disappearances.<sup>124</sup>

### The Independence and Impartiality of the Judiciary

Turkey's top judicial body, the Council of Judges and Prosecutors (HSYK/CJP), was reshaped by the AKP Government twice, in 2010 and 2017. The present structure of the CJP has been a cause for serious concern, in terms of its independence and the impartiality of the judiciary as a whole. Although this issue requires a separate report, the Council of Europe's Human Rights Commissioner's evaluations may stand as a summary:

".. the new composition of the HSYK (CJP) does not offer adequate safeguards for the independence of the judiciary, and it considerably increases the risk of it being subjected to political influence"<sup>125</sup>

119 Report of the Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment on his mission to Turkey, 18 December 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/362/52/PDF/G1736252.pdf?OpenElement>

120 Ibid.

121 [https://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf)

122 European Commission, 2019 report, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

123 <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/turkey/>

124 <https://www.hrw.org/world-report/2019/country-chapters/turkey>

125 Nils Muiznieks, <https://www.facebook.com/CommissionerHR/posts/806253422883903>

"...(T)he independence of the Turkish judiciary has been seriously eroded during this period, including through constitutional changes regarding the Council of Judges and Prosecutors which are in clear contradiction with Council of Europe standards, and the suspension of ordinary safeguards and procedures for the dismissal, recruitment and appointment of judges and prosecutors..."<sup>126</sup>

The World Justice Project's annual reports may serve as complimentary comment. In these reports, Turkey was ranked 99th of 113 countries in 2016-2017<sup>127</sup>, 101st of 113 countries in 2017-2018<sup>128</sup>, and 109th of 126 countries in 2019.<sup>129</sup>

## ANALYSIS OF LEGISLATION AND PRACTICE

Rights and freedoms, either those recognised by the *jus cogens* rule of international law or those enshrined in an international human rights convention, impose both positive and negative obligations on states. The prohibition of torture, ill-treatment, enforced disappearance and extrajudicial killing are grounded by both the *jus cogens* rule of international law and by several international treaties to which Turkey is party.<sup>130</sup>

The right to life and the prohibition of torture and ill-treatment are non-derogable under Article 15 § 2 of the Constitution of Turkey, Article 4 § 2 ICCPR and Article 15 § 2 ECHR. However, various impunity clauses have been introduced by the Turkish Government following the 1980 military coup and 2016's coup attempt, and these have resulted in derogation from the right to life and the prohibition of torture. During the 1990s, although there was no impunity clause, perpetrators of gross human rights violations were also protected from investigation and prosecution by the Turkish state, as elaborated above. After 2010, some ordinary pieces of legislation and decree laws provided impunity for intelligence and military officers, other security forces, and even for some civilians.

Statistics about the criminal proceedings on torture, which are presented above, show the reluctantance of the Turkish state to comply with its positive obligations with regard to the right to life and the the prohibition of torture.

The right to life and the prohibition of torture impose positive obligations on State parties to the ECHR and ICCPR, as well as a negative one. The positive obligations concerning the right to life require the State parties to take appropriate steps to safeguard the lives of those under its jurisdiction, and to apply this in the context of any activity, whether public or not, in which the right to life may be at stake.<sup>131</sup> Likewise, the State parties are under the obligation to prevent torture and ill treatment. These obligations also require the carrying out of an effective investigation when the right to life or the prohibition of torture has been breached.<sup>132</sup> The

126 Dunja Mijatovic, Turkey needs to put an end to arbitrariness in the judiciary and to protect human rights defenders, <https://www.coe.int/en/web/commissioner/-/turkey-needs-to-put-an-end-to-arbitrariness-in-the-judiciary-and-to-protect-human-rights-defenders>

127 The World Justice Project. Rule of Law Index 2016-2017. <http://data.worldjusticeproject.org/pdf/rule-of-law-index-TUR.pdf>

128 The World Justice Project. Rule of Law Index 2017-2018. [worldjusticeproject.org/sites/default/files/documents/WJP\\_ROLI\\_2017-18\\_Online-Edition.pdf](http://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition.pdf)

129 The World Justice Project. Rule of Law Index 2019. <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2019>

130 Turkey is party to ECHR, ICCPR, ICESCR, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment Optional Protocol of the Convention against Torture.

131 Council of Europe, Guide on Article 2 of the European Convention on Human Rights: Right to Life (updated on 31 Dec, 2018) Para. 9.

132 Armani da Silva v. the United Kingdom no. 5878/08 (ECHR, 30 March 2016) Para. 229.

ECtHR has affirmed, in the case of *Marguš v. Croatia*, that:

*"... the obligation of States to prosecute acts such as torture and intentional killings is thus well established in the Court's case-law. The Court's case-law affirms that granting amnesty in respect of the killing and ill-treatment of civilians would run contrary to the State's obligations under Articles 2 and 3 of the Convention, since it would hamper the investigation of such acts and necessarily lead to impunity for those responsible. Such a result would diminish the purpose of the protection guaranteed under Articles 2 and 3 of the Convention, and render illusory the guarantees in respect of an individual's right to life and the right not to be ill-treated. The object and purpose of the Convention, as an instrument for the protection of individual human beings, require that its provisions be interpreted and applied so as to make its safeguards practical and effective."<sup>133</sup>*

In conclusion, Laws Nos. 353, 2937, 5442, 6722, Decree Laws Nos. 667, 668, 696, and their interpretations and implementations by law enforcement forces, judges and prosecutors, have created a full-dress impunity and have resulted in a derogation of the right to life, and to the prohibition of torture, which clearly breach the Constitution of Turkey, the customary international law, the ECHR, the ICCPR, the European Convention for the Prevention of Torture, the Convention against Torture.

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133 *Marguš v. Croatia* no. 4455/10 (ECHR [GC], 27 May ,2014) Para. 127.

# CHAPTER-VI

## CONCLUSION & RECOMMENDATIONS

## CONCLUSION

As it is said above, in Turkey impunity is not an aberration, but, rather, it is the norm when a rights violation is committed against individuals by state officials. It is a massive field of problems that human rights lawyers and victims have had to deal with for decades.

Turkey's impunity policy has three pillars, which are:

- a) the moral legitimization of the unlawful acts of state officials,
- b) the protection provided for perpetrators by administrative and judicial authorities,
- c) the legal regulations either constitute obstacles for investigation and prosecution, or provide for an explicit impunity for perpetrators.

Within the last four decades, Turkey has experienced, and has been experiencing, gross human rights violations and impunity practices, as explained above. After the military coup of 1980, an impunity clause that was annexed to the Constitution protected those responsible for gross human rights violations until 2010, when that clause was removed.

However, 2010's constitutional reform has not led to effective prosecutions. Although there was no legal impunity clause for 1990s' human rights violations, including extrajudicial killings, enforced disappearance, burning the villages of Kurdish people, the protection provided for perpetrators by administrative and judicial authorities frustrated the prosecution of the perpetrators.

Although, some prosecutions were commenced in the 2010s relating to those crimes, as explained above, all of those cases yielded no result, due to interventions made after the pro-government Unity in the Judiciary Group won 2014's election for the Turkish Council of Judges and Prosecutors.

As in the 1980s and 1990s, the perpetrators of the gross human rights violations that have been widespread since 2016's coup attempt, including murder, torture and enforced disappearance, have been protected through synchronised efforts by all branches of the Turkish State: either by laws and decrees or by state practices.

In conclusion, in today's Turkey, as the social-politic landscape and the legal framework which create impunity stand, the victims of torture, enforced disappearance, extrajudicial, summary or arbitrary executions, and arbitrary detentions have no chance to hold the perpetrators accountable for their crimes.



## RECOMMENDATIONS

**To: The Turkish Government:**

*We urge the Turkish Government to*

1. Amend Article 17 of the Constitution to bring the formulation of the right to life into line with international legal standards,
2. Amend the laws regulating the use of force by law enforcement officers to comply with international legal standards,
3. Amend Article 314 of the Turkish Penal Code and Law no. 3713 to comply with the case-law of the ECtHR,
4. Initiate effective, prompt, impartial and transparent criminal investigations about enforced disappearance, extrajudicial killing and torture incidents, most importantly, about those that took place after 2015,
5. Set up a National Preventive Mechanism in line with Turkey's obligations under the Optional Protocol to the Convention against Torture,
6. Cease the mass arrest campaign against lawyers, and harassment and investigation against Bar Associations, and drop all charges against them,
7. Establish an independent body to investigate gross human rights violations,
8. Remove the statute of limitations for murder and enforced disappearances,
9. Provide the Forensic Medicine Institute and the Law Enforcement Oversight Commission with institutional independence in order to ensure their impartiality, to secure adequate resources so that they can perform their duties effectively,
10. Ensure that when a public official is the subject of investigation for murder, torture and/or enforced disappearance, he or she should not be allowed to remain on active duty and should not receive promotion,
11. Ensure the independence of the THRI in law and in practice, in line with Paris Principles,
12. Ensure the independence of the Ombudsman in law and in practice,
13. Ratify the International Convention for the Protection of All Persons from Enforced Disappearances and the Rome Statute,
14. Further engage with the United Nations human rights system,
15. Authorize the publication of the reports of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment on Turkey,
16. Comply with the opinions of the UN Human Rights Committee and the Working Group on Arbitrary Detention by releasing those arbitrarily detained, and prosecuting those responsible for arbitrary detentions,
17. Comply with the judgments of the ECtHR,
18. Vest an official authority with the Bar Association to examine and investigate torture, enforced disappearance and extrajudicial killing incidents, and the reports of the Bar Associations on the matter should be taken into serious consideration,
19. Publish official data on disciplinary proceedings against state agents relating to murder, torture, enforced disappearance and extrajudicial killings incidents,
20. Repeal the provisions of Laws Nos. 353, 2937, 4483, 5442, 6722, which create immunity for state agents,
21. Repeal impunity clauses enacted by Decree Laws nos. 667, 668, 696 and Laws nos. 6749, 6755 and 7079,
22. Stipulate that arbitrary detention and enforced disappearance are crimes under the Penal Code.



**To: The European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment:***We urge the Committee to*

1. Undertake more frequent *ad hoc* visits to Turkey,
2. Trigger the mechanism laid down in Article 10 § 2<sup>134</sup> of the Convention to publish the reports on Turkey for which publication has not been authorized by the Turkish Government,

**To: The UN Committee Against Torture (CAT):**

We urge the Committee to carry out an inquiry on Turkey under Article 20 of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

**To: The European Union:**

We urge the EU to consider sanctioning those who are responsible for gross human rights violations in Turkey under its human rights sanction regime.

**To: International NGOs:***We urge International NGOs to*

1. Allocate more resources to documenting ongoing human rights violations and impunity practices in Turkey,
2. Consider forging a justice initiative to hold perpetrators accountable under the universal jurisdiction framework,
3. Advocate before the European Union that perpetrators be sanctioned under the Union's human rights sanction regime,
4. Advocate the US Congress to have such perpetrators sanctioned under the US' human rights sanction regime (Magnitsky Act).

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<sup>134</sup> Article 10 § 2 - If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members, to make a public statement on the matter.

# IMPUNITY



**IMPUNITY:**  
AN UNCHANGING RULE IN TURKEY

