

Appendix: A Brief Review of Recent Torture Allegations

26 June 2019

There have been grave and prevalent cases and allegations that signify a substantial escalation in acts of torture and other forms of ill-treatment in recent years.

A similar point was also made particularly in the report of 18 December 2017 drafted by the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment based on his visit to Turkey between 27 November 2016 and 2 December 2016. This report incorporates 31 concrete recommendations beyond a mere assessment of the situation. The UN Special Rapporteur on Torture did not confine himself to the report and felt the need to reiterate his deep concerns about the issue on 27 February 2018 as well. Similar concerns were also voiced by the Office of the UN High Commissioner for Human Rights in “Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East” issued in March 2018.

Further, the fact that the Turkish government has not yet permitted the publication of two completed reports covering observations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that paid an ad hoc visit to Turkey between 29 August 2016 and 6 September 2016 along with its periodical visits between 10 and 23 May 2017 is another indicator of the problem of torture in Turkey. The CPT has paid another ad hoc visit to Turkey between 6 and 17 May 2019 as well.

1. Acts of Torture and Other Forms of Ill-treatment

1.1. Torture and Other Forms of Ill-treatment in Official Custodial Places

When 51 applications by relatives of those who were subjected to torture and those tortured abroad are excluded from 584 persons who applied to HRFIT in 2018, it is seen that 257 (50.9%) out of 505 applicants who were directly subjected to torture and other forms of ill-treatment were allegedly tortured in police departments while 85 (16.8%) were tortured in official custodial places like police stations. It should also be taken into account that 198 (39.2%) persons were subjected to torture in security forces’ vehicles. As has always been stated, although it is not appropriate to establish a linear link between the number and characteristics of those who presented to HRFIT’s treatment centers and those of others who were subjected to torture across the country, these data also prove to be significant indicators of the prevalence and gravity of acts of torture in official custodial places.

Solely within the first five months of 2019, 356 individuals have applied to HRFIT for rehabilitation and medical documentation.

According to the data collected by İHD, on the other hand, a total of 2,719 persons were subjected to torture and other forms of ill-treatment in 2018 while 356 of these were through beating and other methods, 246 in extra-custodial places and 2,598 in assemblies and rallies intervened into by the security forces. In applications from prisons, 1,149 persons stated that they had been subjected to torture and ill-treatment while 160 persons indicated that they had been subjected to torture and ill-treatment while they had been forced to become informants.

According to İHD's data, 1,160 persons were identified to have been subjected to torture in police custody, extra-custodial places, social demonstrations and prisons within the first five months of 2019.

The accounts of those who have recently been subjected to torture in Şanlıurfa's Halfeti District and Ankara, of their relatives and attorneys solely in the last months that have also been reflected in court records reveal the degree to which acts of torture and other forms of ill-treatment, which have been documented in reports drafted by relevant institutions including İHD and HRFT, have been rendered palpable and prevalent in everyday life felt by everyone:

- The process that has begun with 51 persons' being taken under custody on 18 May 2019 in Dergili Neighborhood of Halfeti District in Şanlıurfa is a special instance of the dimension to which absolute prohibition of torture has reached. Observations and inquiries of our bodies along with face to face interviews, forensic reports, detailed accounts and the report confirming that these persons were subjected to torture and other forms of ill-treatment under custody drafted based on observations and inquiries by a committee established within the Şanlıurfa Bar Association clearly lays bare the situation. In the latter report there are accounts of rear-handcuffing, blindfolding, covering persons' heads with sacks, electrocution, beating, bastinado, sexual torture, insults, threats to persons and their relatives (specifically daughters and wives) in line with the observations of attorneys who conducted the interviews.
- Ankara Bar Association's Attorney Rights Center, Prisons Committee and Human Rights Center have drafted a report on allegations of torture in Ankara Police Department's Financial Crimes Investigation Bureau made public and reported by the press on 26 May 2019. The information collected through interviews and inquiries and put forth in this report constitutes another special instance of the level that violation of the absolute prohibition of torture has reached. A delegation conferred with 6 persons whose names were reported in relation to allegations of torture in a closed room in Ankara Police Department's Financial Crimes Investigation Bureau on 27 May 2019 and stated in its report that "when the accounts are evaluated as a whole, it has been confirmed that the persons in question were subjected to torture and other forms of ill-treatment so as not to leave any traces of battery and use of force."
- Ms. Ayten Öztürk's accounts in the hearing held at İstanbul 3rd Assize Court on 13 June 2019, which was originally initiated at Ankara 16th Assize Court then transferred to the latter, constitute yet another very special instance of the necessity to promptly launch effective, impartial and independent investigation processes into allegations of torture and enforced disappearance. Ms. Öztürk stated in her account, which should be taken very seriously, that she was taken under custody in Lebanon on 8 March 2018 and extradited to Turkey while detailing the methods of torture she has been subjected to for 6 months at an unknown location without an official arrest process (enforced disappearance).

1. 2. Torture or Other Forms of Ill-treatment in Extra-Custodial Places

There are ample pieces of evidence cited in reports drafted by human rights institutions and international observation bodies¹ along with video footage reported by the media which show that "excessive and disproportionate force" (handcuffing and rear-handcuffing, pressurized cold water,

¹ Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: "Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment" <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/223/15/PDF/N1722315.pdf?OpenElement>

batons, pepper spray and tear gas, canisters and gas bombs, rubber/plastic bullets, fire arms) used by the security forces amounted to torture or other forms of ill-treatment against people exercising their right to peaceful assembly and demonstration all over the country.

Along with the ECtHR judgments developed since 2012 on the subject, the following statement by the UN Special Rapporteur on Torture in the special report entitled “Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment” issued on 20 July 2017 proves to be very important:

[...] Thus, notwithstanding any additional elements that may be required for a formal qualification as “torture” under the applicable treaty definition, any extra-custodial use of force that involves the intentional and purposeful infliction of pain or suffering on a powerless person as a vehicle for achieving a particular purpose will always amount to an aggravated form of cruel, inhuman or degrading treatment or punishment, irrespective of considerations of lawful purpose, necessity or proportionality and irrespective of its qualification as torture under the applicable treaty definition.²

When one takes into account the fact that 221 (43.2%) applications to the HRFT in 2018 were lodged on allegations of torture and other forms of ill-treatment outdoors and during demonstrations, while 80 (15.8%) were on the same allegations in spaces like homes and workplaces, the gravity of the dimension that torture and other forms of ill-treatment in extra-custodial places which have become quite dramatic in recent years can be seen.

1. 3. Enforced Disappearance/Abduction Attempts

Particularly the repetition of instances of enforced disappearance, which are the black holes of our recent history and in fact our civilization, is extremely alarming.

According to data collected by the Documentation Center at HRFT, 16 persons were subjected to enforced disappearance/abduction attempts in 2018 and these persons who were also subjected to torture were released after some time.

Data collected by the Documentation Department at İHD, on the other hand, reveals that 28 persons were subjected to enforced disappearance/abduction or attempted disappearance/abduction. These persons who were also subjected to torture were released after some time. In 2018, 160 persons were forced to become informants either in custodial or extra-custodial places. İHD’s special report on coerced statements and informant-making can be consulted on this issue.³

According to the 2019 data only, no effective investigation processes have been initiated despite the fact that Gökhan Türkmen has been subjected to enforced disappearance for 137 days, while Özgür Kaya for 132 days, Yasin Ugan for 132 days, Erkan Irmak for 128 days, Salim Zeybek for 124 days and Mustafa Yılmaz for 126 days.

This issue which also signifies the violation of prohibition of “torture and other cruel, inhuman or degrading treatment or punishment” for the relatives of the “missing” enhances the value of endeavors for the “Struggle against Disappearances under Custody” undertaken for many years. This issue proves to be a priority for our bodies as well.

² Ibid. Para. 47.

³ <https://ihd.org.tr/en/?p=2054>

1. 4. Torture and Ill-treatment in Prisons Including Custodial Conditions and Mortality under Custody

According to data provided by the Ministry of Justice, the number of prisoners (detained and convicted) was 55,870 in 2005 while this figure went up to 260,144 as of 16 November 2018. 202,434 of these persons are convicted prisoners, while 57,710 are detained. The number of persons referred to as prisoners on remand pending appeal [hükmen tutuklu], that is, prisoners whose sentences have not been upheld yet, has not been revealed for a long time now. These prisoners are included in the number of convicted prisoners.

The fact that 455,660 persons are under supervised release as of 17 June 2019 demonstrates the overall atmosphere of the country, in other words, the full control under which the society has been placed and is emblematic of the restriction and deprivation liberty for a rather large population.

The fact that the number of prisoners has virtually quintupled only within the last 13 years, a sui generis phenomenon in the history of our country, is somehow a summary of the recent developments in our country. Moreover, the gravity of the situation becomes much more clear when this escalation is taken into account together with the annual number of persons admitted and released from prisons as has been provided by the Turkish Statistical Institute's 2017 prison statistics available on its official website. For instance, 215,761 convicted prisoners were admitted to prisons between 1 January and 31 December 2017, while 193,662 convicted prisoners were released between the same dates.

When the current 211,766-person capacity of prisons is taken into account, it is seen that the perpetual increase in prison population has been accompanied by deterioration in material conditions and an increase in deprivation of rights.

Moreover, there has been an extraordinary escalation in the number of torture and other forms of ill-treatment cases in prisons particularly during the state of emergency following the re-ignition of conflict in July 2015 and the quenching of the coup attempt in 2016.

- All kinds of arbitrary treatment (strip search, physical examination in handcuffs, standing roll calls etc.) for various reasons, beating on admission and afterwards, disciplinary action, solitary confinement, forced transfers have reached unprecedented scales in recent history.
- Acts of ill-treatment, including restriction of access to healthcare services, denial of the right to present to prison infirmaries, handcuffed transfers to the Forensic Medicine Institute, courthouses and hospitals, the failure to resolve prisoners' health problems in a timely and effective manner account for another long-term problematic field. Especially, forced transfer of the great majority of prisoners who have been hardly sustaining their treatment to other prisons has significantly damaged the right access healthcare services.
- Another important issue about prisons is the condition of sick prisoners. According to the last data of 12 April 2019 collected by İHD, there are 456 critically sick prisoners. Not only do these persons face significant challenges in accessing healthcare services but also they face other problems in obtaining independent medical evaluation reports based on qualified assessments including the fact that Forensic Medicine Institute is not independent. Further, the expression "social security" used in the amendment introduced on 28 June 2014 in Law on the Execution of Sentences and Security Measures that read "those evaluated to pose

no grave and concrete threat to social security” has rendered the release of prisoners thoroughly arbitrary even if they had medical reports stating that they faced definitive life-threatening conditions.

- Decree law no. 696 (dated 24 December 2017) introduced mandatory uniforms for prisoners detained for offences within the scope of the Anti-Terror Code while being transferred from prisons for their hearings. Imposition of uniforms that has recently been put on the agenda in spite of all other problems with prisons and signify degrading punishment on its own can lead to utterly serious problems today and in the future.
- According to data provided by the Documentation Department at İHD, at least 23 prisoners lost their lives in prisons under suspicious circumstances in 2018. Despite the presence of allegations regarding these suspicious deaths, there are no effective investigation processes have been initiated to the best of our knowledge.
- Solitary or small group confinement isolation practices, which have been implemented since 2000 causing severe damage to prisoners’ physical and mental integrity, are a deteriorating and prevailing problem. One, on the one hand, should reiterate the standard principle of the CPT once again: “[...] prisoners in remand establishments [should be] able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favorable.” On the other hand, even the Ministry of Justice’s circular letter of 22 January 2007 (45/1) that prescribed socialization for 10 prisoners 10 hours a week is not being implemented though it is still in effect.
- The indefinite and non-alternate hunger strikes started by Leyla Güven on 8 November 2018 and joined by 3,065 persons in 90 prisons in order to lift the isolation on Abdullah Öcalan and 3 other prisoners in İmralı Prison were put to an end on 26 May 2019 upon the initiation of conferences among these persons and their attorneys and family members.
- The refusal to let Abdullah Öcalan, a convicted prisoner, confer with his attorneys since 27 July 2011 and meet with his family members since 11 September 2016 until the latest hunger strike process is a violation of human rights.

1.5. Additionally, Turkey has been hosting a total of 4 million refugees as of April 2019, 3.5 million of which are Syrians, who were displaced because of the armed conflict in Syria and most of whom were subjected to gross human rights violations. Although there are torture and ill-treatment allegations in “Relocation Centers” where refugees with administrative detention decisions are incarcerated, these centers are not open to inspection.

2. Prohibition of Torture and Other Forms of Ill-treatment in Legislation

As has also been stated in our previous reports, the setbacks in regulations on torture in the legislation that have been introduced since 2005 have become systematically evident at all levels, particularly during the re-ignition of conflict in July 2015 and the state of emergency declared after the quenching of the failed coup attempt in July 2016. The consequences of these legislative regulations have been rendered even more prominent so as to preserve all their validity after the lifting of the state of emergency.

- “Law on Amendments to Some Laws and Decree Laws,” which went into force on 31 July 2018, extended the duration of police custody to a total of 12 days allowing 4-day extensions through judges’ orders in contradiction with the current provisions of the Constitution itself.

- The sub-clauses amended to Article 6 of the decree law no. 676 were passed into law on 1 February 2018 and became permanent prescribing that the below-mentioned restrictions could be implemented in prisoners' conferences with their attorneys "upon the request of the chief public prosecutor's office and the order of the enforcement judge in the presence of a possibility that the security of the society and the penal institution are at risk, of directions by a terrorist organization or other criminal organizations, that such organizations are given orders and directions or are communicated secret, open or deciphered messages through comments."
 - Audio or visual recording of conferences with technical equipment,
 - Presence of an officer to monitor conferences between prisoners and their attorneys,
 - Seizure of documents or document copies, files and records of their conversations exchanged between prisoners and their attorneys,
 - Restrictions on the dates and hours of conferences,
 - Immediate termination of the prisoner's conference incase that it was being held on the mentioned intent,
 - Prohibition of prisoners' conferences with their attorneys by Criminal Peace Judgeships upon the request of the public prosecutor, in the case that statements were taken down about the conduct of these prisoners and requesting new attorneys to be assigned from the relevant bar associations. Public prosecutor can also request changing attorneys assigned by the bar associations.

Thus, various restrictive practices on conferences between attorneys and their clients who were under similar investigations and review of file documents at conferences with prisoners have been sustained after the lifting of the state of emergency.

3. Fundamental/Procedural Guarantees Against Torture during Restriction of Liberty

The procedural guarantees, which play a key role in the prevention of torture but have been mostly neglected in practice for years, have significantly been destroyed especially through the recent setbacks in legislation on torture and the impacts of the discourse and conduct of the representatives of the political power as well. These procedural guarantees include informing persons about the reason why they are under custody, informing third parties, access to a defense attorney, access to a medical doctor, conducting appropriate physical examination under appropriate circumstances and drafting medical reports in due form, rapid appeal to legal authorities for legality review, accurate custody reports and independent monitoring. One, however, can assert that these procedural guarantees have been substantially eliminated within recent years and an entirely arbitrary medium has been created on this issue also based on these legal regulations.

4. Human Rights and Equality Institution of Turkey Claimed to Be Serving as the National Preventive Mechanism

The Human Rights and Equality Institution of Turkey, which replaced the Human Rights Institution of Turkey in 2016, is not compatible with the Paris Principles with regards to its statute, structure, function, works; its structural, functional and financial independence and the independence of its members, membership guarantees and member selection criteria. Further, decree law no. 703 of 9 July 2018 introduced an amendment changing the relevant article of the institution's statute which designated the selection of its board members; the amendment prescribed that all the board members of the institution along with its chairperson and second

chairperson would be appointed by the president. The same regulation removed even some of the current criteria. The first presidential circular letter of 15 July 2018 affiliated the institution with the ministry of justice. International reports have voiced concern about problems with the Human Rights and Equality Institution of Turkey including its lack of structural, functional and financial independence while it did not resolve the independence issue of the abolished Human Rights Institution of Turkey which it replaced, on the contrary, provided the opportunity to establish a board fully dependent on the executive power.

The institution's failure to conduct effective monitoring processes and investigations into the widespread and intensive human rights violations during the conflict following 2015 and the state of emergency after the attempted coup d'état proves to be a significant indicator.

While the national preventive mechanism should have been established by the Constitution or at least by law, establishment law for the Human Rights and Equality Institution of Turkey set forth that the task of national preventive mechanism was transferred to this institution. But, as has been explained above, the institution which assumed the task of national preventive mechanism has thoroughly fallen far away from the OPCAT and Paris Principles regarding its independence, competence and functionality, all of which have already been controversial, following the 2018 amendment introduced into its law through a decree law.

Consequently, the Human Rights and Equality Institution of Turkey was prescribed to serve as the national preventive mechanism in Turkey where a large number of human rights violations, prominently torture, take place however it is evident that the institution is quite far away from resolving such problems as per both its structure and its activities.

5. The Culture of Impunity

The rhetoric, conduct and approach of state and public authorities account for one of the most significant factors in the prevention of acts of torture and other forms of ill-treatment. Yet the rhetoric and conduct of state and public authorities of all ranks that protect, even encourage and legitimize the violence of law enforcement for years lead to the consolidation and prevalence of the culture of impunity. The political power tends, at the same time, to legitimize torture in the name of "counter-terrorism," "state of emergency," "national security" and "public order."

Moreover, recent legal regulations virtually intended to "guarantee" impunity render the problem of impunity even more serious.

As we have always stated, another deep-rooted reason underlying impunity is the failure to launch swift, thorough, impartial, independent and effective investigations into all allegations of torture. Perpetrators are almost never convicted.

1. Instead of repealing the legal restrictions on offences of torture, extrajudicial execution and enforced disappearance perpetrated by public personnel, stronger legal restrictions were introduced after 2015. Law No. 6722 that went into effect on 14 July 2016 subjected investigations into allegations of torture and other forms of ill-treatment perpetrated by military personnel in military operations to special permission procedures and established a retroactive shield of impunity. Another state of emergency decree law regulated that decision-makers and other officials shall not have legal, administrative, financial and criminal liabilities in issues related to the state of emergency, thus, introduced absolute impunity.

2. Legal ambiguity to prosecute offences of torture is still lingering. Criminal complaints filed against offences of torture are either end up in non-prosecution decisions based on various reasons or they are investigated within the scope of actual bodily harm, transgressing the limits of use of force or official misconduct, all of which are offences that prescribe lesser sentences and are subjected to statute of limitations. However, those who are prosecuted are rarely convicted.
3. Moreover, the number of counter lawsuits launched against torture victims intended to intimidate them and to prevent investigation of torture offenses has dramatically increased during this period. For instance, according to Ministry of Justice General Directorate of Criminal Records and Statistics data; in the year 2017, out of 85 prosecutions launched under Article 94 of the Turkish Penal Code (torture), 7 persons were sentenced to imprisonment, no lawsuits were filed under Article 95 (aggravated torture), 10 persons were sentenced under Article 256 (violation of the limitation on the use of force), while 17,793 persons were convicted under Article 265 (prevention of public duty). As is seen, this large number of lawsuits launched to protect the law enforcement reveals, even under state of emergency conditions, that they were launched to cover up acts of torture and ill-treatment. This statistical data unearths the extent of impunity. For every security officer sentenced, a thousand citizens have been sentenced, revealing how the threat of a court case is used as a weapon of intimidation.
4. A few examples only from the year 2019 reveal the level impunity has reached:

- Within the scope of the lawsuit regarding ill-treatment by a police officer against 75-year-old Perihan Pulat, who on 1 May 2018 participated the “I want my job back” protests on Yüksel Street in Ankara, the defendant was handed down 3,000 TL fine at the hearing held on 7 February 2019, and this sentence was postponed.
- On 11 April 2019, a pecuniary fine of 15,200 TL was handed down to police officer Ahmet Şahbaz, who shot Ethem Sarısülük dead during the “Gezi Park protests”, was upheld by the Court of Cassation.
- Two police officers were acquitted on 8 February 2019 within the scope of a lawsuit launched upon the complaint of Gökçe Algan, who was injured by the use of pressurized water from a TOMA [water cannon] in Harbiye, Istanbul on 31 May 2013 during the “Gezi Park protests”.
- In August 2018, at the 700th gathering of the Saturday Mothers, Aydın Aydoğan’s arm was broken by a police officer during the police intervention, and on 12 April 2019 the investigation ended with a non-prosecution decision.
- In June 2017, 4 villagers, returning from mushroom hunting in Gevaş District of Van Province, were subjected to severe forms of torture, and photographs clearly showing marks of beatings were met with a strong public reaction. In the criminal case filed against only one police officer, a verdict of acquittal was passed on the grounds that the footage recorded on 24 June 2019 “was not bright enough”.
- Moreover, in February 2019, 3 children, O.D. (17, m), Ş.Y. (16, m) and Ö.S. (14, m), who were taken under police custody at the Van Police Department’s Public Security Unit, were subjected to torture and other ill-treatment, and the governor’s office filed a criminal complaint against Van Bar Association Administration that publicized the issue.

In conclusion;

In an environment where all types of violence have become ordinary and systematic, where the concept of the rule of law has been rendered largely inoperative following the establishment of the

mentality of the state of emergency and the perpetuation of certain developments that were introduced during the state of emergency, where constitutional principles, judicial rules and guarantees have largely lost their function or no longer exist even on paper, and where accountable public officials benefit from all types of impunity, torture has become a prevalent fact felt by every single person in society in the course of everyday life.

As both an outcome and reason of the heavy blow democratic life has sustained in the most recent period, acts of torture and other forms of ill-treatment are recklessly implemented in an overt and explicit manner in order to enhance the government's control and pressure over different sections of society.

Besides, the fact that torture has now been taught to the law enforcement at all levels with negative legislative regulations introduced in the most recent period, constitutes a great risk: the mentality that trivializes torture, and practices and legal regulations based on it, may lead to a permanent and hugely destructive outcome in the period ahead as well.

Further, since the year 2015, when the civilian and political attempts towards a resolution in the Kurdish issue were replaced by clashes, in an environment where the policy of violence has escalated by the day, a feeling of despair and entrapment risks spreading across society in general.

Facing these conditions of uncertainty and unpredictability, an effective human rights struggle depends on the development of an approach emphasizing the "founding role" of human rights and its dissemination across the public space.

And it is also clear that we will labor over ending this malignant process, which is preventable as it is man-made, in Turkey and across the world even more and developing an ideal of co-existence on the basis of human rights.

Human Rights Foundation of Turkey

Human Rights Association