



Torture in its Various Dimensions in Turkey
as of 26 June 2020

Article 1 § 1 of the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) defines torture as follows:

[T]he term "torture" means 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.

All the following assessments have been provided accordingly in the light of this definition.

1. Acts of Torture and Other Forms of Ill-treatment at Official Custodial Places

There has recently been a significant increase in the number of torture and ill-treatment cases in official custodial places brought about by the violation of procedural guarantees, long-term custody periods, dysfunctional monitoring and prevention mechanisms or the sheer absence of independent monitoring and prevention and the like through such reasons as law, rule and norm control evasion; arbitrariness and willful negligence that have become common at various levels of the state. Numerous acts of torture at official custodial places within the last year, particularly in Şanlıurfa, multiple times in Ankara, Antalya and İstanbul, have been reported by the press and cited in court records and human rights organizations' reports.

- 908 individuals have lodged applications before the HRFT in 2019 with allegations of torture and ill-treatment. Of these, 51 were filed by relatives of torture survivors while 19 were allegedly subjected to torture and ill-treatment outside Turkey. 379 (45.2%) out of 838 individuals who have lodged applications before the HRFT alleging that they were

subjected to torture and ill-treatment in Turkey stated that they were tortured at official custodial places like security directorates while 120 (14.3%) indicated that they were tortured at police stations. Further, 214 (25.5%) individuals were subjected to torture and ill-treatment in custody and transfer vehicles of the law enforcement.

- According to data collected by İHD's Documentation Center, 726 individuals were subjected to torture and ill-treatment at official custodial places in 2019.¹
- According to data collected by HRFT's Documentation Center, on the other hand, 107 individuals were subjected to torture and ill-treatment at official custodial places within the first five months of 2020.

2. Acts of Torture and Other Forms of Ill-treatment at Unofficial Custodial and Extra-custodial Places

Cases of torture and other forms of ill-treatment in the streets, outdoors during the intervention of the law enforcement into peaceful assemblies and protests or at spaces like houses and offices, in other words, in non-official custodial and extra-custodial places, have also increased. The proportional increase observed in acts of torture at home raids and before the custody procedure was initiated during such raids in 2019 is also striking.

- 309 (36.9%) of the applicants before the HRFT in 2019 stated that they were subjected to torture and ill-treatment outdoors and during protests, while 170 (20.3%) indicated that they were subjected to torture and ill-treatment in such spaces as homes and offices.
- According to data collected by İHD's Documentation Center, the number of individuals alleging that they were subjected to torture and ill-treatment at unofficial custodial and extra-custodial places in 2019 was 1,477.
- According to data HRFT's Documentation Center, 3,741 individuals were subjected to torture and ill-treatment in 2019 during the law enforcement's intervention into peaceful assemblies and events organized within the scope of freedom of peaceful assembly and protest, while 69 individuals were injured. Within the first five months of 2020, 754 individuals were subjected to torture and ill-treatment and 16 individuals were injured as a result of interventions by the law enforcement. 65 individuals were subjected to torture and ill-treatment in the streets and outdoors within the same period, while another 17 were subjected to torture and ill-treatment at house raids.
- The right to freedom of peaceful assembly and protest along with freedom of expression constitute the basis of a democratic society. The exercise of this right has unfortunately become an exception in our country while interventions and bans have become the rule. Violence committed by the law enforcement that amounts to torture and other forms of ill-treatment against those exercising their right to peaceful assembly and protest has

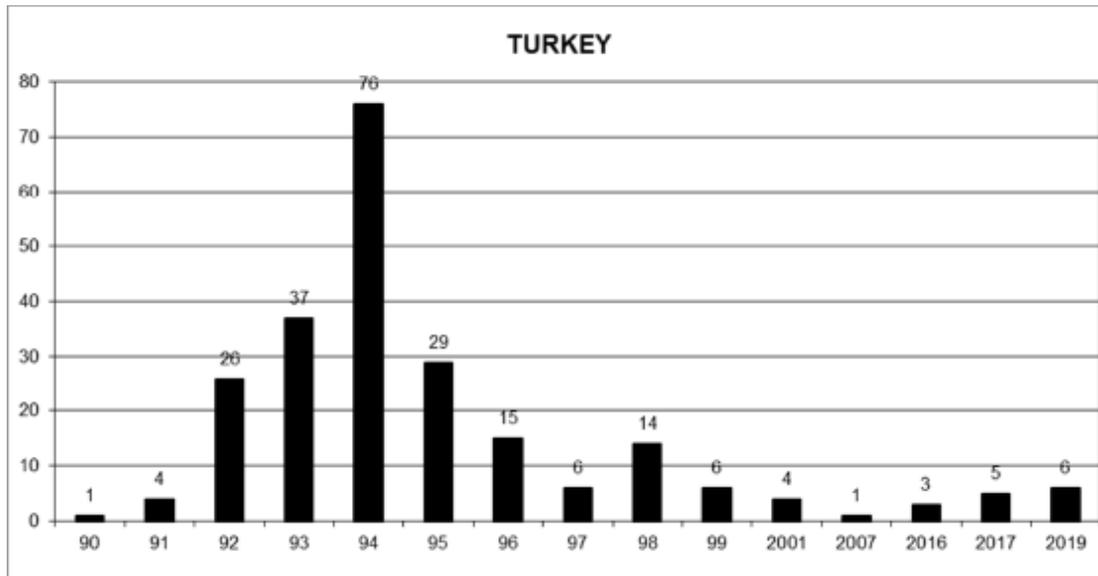
¹ According to İHD's Documentation Center's unsorted data for 2020, the number of individuals alleging they were subjected to torture and other forms of ill-treatment in official custodial and extra-custodial places was at least 356 within the first five months of 2020.

virtually been normalized.² Such violence by the law enforcement is against the rules, not controlled, not punished, ignored and even encouraged by the political power and it goes way beyond the right to use force defined in universal law and domestic laws while virtually becoming a part of social life.

3. Enforced Disappearance/Abduction Attempts

The recurrent increase in enforced disappearance/abduction cases following 2016 when the state of emergency was declared, which is one of the most disgraceful human rights violations of our recent history qualifying as a crime against humanity, is extremely alarming as well.

This situation has also been underlined in the report of 30 July 2019 report³ by the UN Working Group on Enforced or Involuntary Disappearances (WGEID). As can be seen in the below table presented in the report, acts of enforced disappearance that had showed a downward trend between 2001 and 2015 started to increase again as of 2016.



WGEID. “Report of the Working Group on Enforced or Involuntary Disappearances.” 2019.

² The United Nations Special Rapporteur on Torture, Nils Melzer, issued a special report on his mission to Turkey entitled “Extra-custodial Use of Force and the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” on 20 July 2017 and underlined an important point which read: “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.” (para. 47)

³ WGEID. “Report of the Working Group on Enforced or Involuntary Disappearances.” 30 July 2019. <<https://undocs.org/A/HRC/42/40>> p.46.

Acts of enforced disappearance under custody are not momentary acts but involve a specific period of detention mostly accompanied by torture and often result in death. They, therefore, lead to multiple and consecutive violations.

- A total of seven enforced disappearance/abduction cases, including six in February and one in August, were identified in 2019. İHD lodged applications before the WGEID concerning five persons who had been missing since February 2019. It was reported that four individuals were held under custody in July 2019, one in October 2019 and another in November 2019 following the applications in question. One of these individuals, who are currently imprisoned, stated at court that he had been subjected to aggravated torture, threats and harassment during the time he was unaccounted for.
- The fate and whereabouts of an individual who was allegedly abducted in August 2019 in Ankara are still not known although 10 months have passed after the fact.
- According to applications lodged before İHD and news reports; numerous individuals - notably university students, journalists and political activists in many cities particularly İstanbul, Ankara, Diyarbakır and İzmir- were off-the-record taken under custody in 2019 in attempts to force them to become informants through coercion and threats. Some of those who refused to do so were detained on charges of “membership in an illegal organization” or were abducted only to be released after some time having been subjected to various acts of torture and ill-treatment.
- A total of 71 applications were lodged before the İHD on allegations of forced informant-making. The press also reported 66 cases. Thus a total of 137 individuals were subjected to such torture and ill-treatment.

4. Torture and Ill-treatment in Prisons

As the political power has been abusing laws as instruments of repression and intimidation, prisons in Turkey today are way over capacity. The number of prisoners, however, is not known definitively. The Ministry of Justice has not been providing sound data on this issue for long.

According to data provided by the Ministry of Justice, the number of prisoners in 2005 was 55,870. This figure went up to 264,842 as of 31 December 2018 according to the Turkish Statistical Institute (TurkStat) and to 294,000 according to the Ministry of Justice as was presented during the budget deliberations held at the Grand National Assembly of Turkey (GNAT). The same statement by the Ministry of Justice also indicated that there were about 11,000 women and 3,100 children in prisons. Further, 780 children were held in prisons with their mothers. Yet no data have been provided for a long time now on the number of prisoners on remand [**hükmen tutuklu**], i.e. those inmates whose sentences have not been upheld yet.

The fact that the number of prisoners has multiplied about sixfold in 14 years is a recent concrete indicator of the setback in human rights in our country.

When this hike is taken into account along with the high annual turnover rates in prisons, which is cited by TurkStat data, an even more alarming situation is revealed. According to TurkStat data, 266,889 persons were admitted into penitentiary institutions in 2018 while 215,170 persons were released in the same year.

In addition, the number of persons subjected to the supervised release measure was 455,987 as of 31 December 2019 across Turkey. When this figure is added to the number of convicted and non-convicted prisoners, the number of citizens deprived of their liberty amounts to about 750,000. This, in turn, means that one in every hundred citizens is under direct supervision when the other supervision/control apparatuses are left aside.

According to data provided by the Ministry of Justice, the total capacity of current 367 penitentiary institutions was 236,755 as of 1 June 2020. Although the number of prisoners released through Law No. 7242 on the Enforcement of Sentences and Security Measures introduced on the occasion of the COVID-19 pandemic is stated to be about 90,000, authorities have not released the exact figure yet.⁴ This, however, suggests that there is still a significant problem of over-capacity in prisons.

Such over-capacity in prisons qualifies as ill-treatment in terms of universal norms when one takes into account such problems in access to healthcare, water and food which over-capacity brings along.

Acts of torture and ill-treatment against prisoners have skyrocketed during the process initiated with the termination of the quest for a peaceful solution to the Kurdish issue and the reignition of armed conflict in Turkey in July 2015 followed by the quenching of the coup d'état attempt and the declaration of the state of emergency.

- According to data collected by HRFT's Documentation Center, at least 44 individuals lost their lives in prisons in 2019 due to various reasons like diseases, suicide, violence etc. Although there are allegations of misconduct about these deaths under suspicious circumstances, authorities have not shared any information about effective investigation procedures. Further, at least 18 individuals lost their lives in prisons within the first five months of 2020 including four due to the COVID-19 pandemic and one due to death fast protest.
- According to a statement issued by the Ministry of Justice on 19 June 2020 in response to a parliamentary question, 396 prisoners have lodged applications with allegations of torture and other forms of ill-treatment since 1 October 2019.
- According to data collected by İHD's Documentation Center, the number of individuals alleging that they were subjected to torture and other forms of ill-treatment was at least 633 within the first five months of 2020, including 439 persons from Batman Prison.
- Practices like beating prisoners for various reasons (strip search, medical examination in handcuffs, forced reporting at standing roll-calls) at the time of and after admission to the prison, all kinds of arbitrary treatment and disciplinary actions, solitary confinement, forced and involuntary transfers have recently reached unprecedented levels.
- Restriction of access to healthcare services, denial of the right to visit prison infirmaries, ill-treatment practices including handcuffed transfers to the Forensic Medicine Institute, courthouses and hospitals, failure to provide timely and effective solutions to prisoners'

⁴ The Ministry of Justice stated in its press release of 17 June 2020 that following the enactment of the new enforcement regulation about 45,000 prisoners held in open prisons were granted leave while 45,000 prisoners including 15,000 in open and 30,000 in closed prisons were released.

medical problems are other long-term problems. Particularly the recent forced transfer of prisoners who had hardly been maintaining their treatments to other prisons has also impaired the right to access healthcare significantly. Such practices have further deteriorated under the COVID-19 circumstances.

- Another important issue about prisons proves to be the conditions of sick prisoners. According to İHD's latest data of 31 March 2020, there was a total of 1,564 sick prisoners 590 of whom were in critical condition. These individuals face such serious problems as insufficient access to healthcare services and failure to obtain independent and qualified medical evaluation reports. Moreover, the phrase "security of the society" included in the amendment of 28 June 2014 to the Law on the Enforcement of Sentences and Security Measures that read those "assessed to pose no severe and concrete risk in terms of the security of the society" made the release of prisoners entirely dependent on arbitrary decisions although sick prisoners had obtained medical reports that stated their conditions were "definitively life-threatening."
- Solitary confinement or isolation in small groups, which has been in practice since 2000 and has seriously been impairing the physical and psychological integrity of prisoners, is a deteriorating problem that has also become widespread. One should underline once again the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment's (CPT) standard principle: "The CPT considers that one should aim at ensuring that prisoners in remand establishments are 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."⁵ Although the circular letter of 22 January 2007 (45/1) by the Ministry of Justice prescribes that 10 prisoners could get together 10 hours a week to socialize is still in force, its provisions are not implemented.
- A special form of isolation has been maintained in İmralı Prison as well. Bans on family visits and conferences with lawyers that have been in place since 2011 non-stop are still maintained in spite of three family visits in 2019 and one in 2020 (3 March 2020) and conferences with lawyers five times in 2019.
- The largest risk group as of today within the context of the current pandemic is comprised of prisoners. Prisons are closed spaces with the least personal distance and the most limited access to hygiene. Dense and mobile population, features and organization of prisons provide favorable spaces for the rapid spread of such epidemics.

Leading international human rights authorities and bodies have thus issued urgent appeals and statements inviting states and governments to take specialized measures in prisons. For instance the CPT issued a series of principles on prisoners in the context of the coronavirus disease pandemic on 20 March 2020.⁶ The UN High Commissioner for Human Rights and Council of Europe Commissioner for Human Rights have issued statements on 25 March 2020 and 6 April 2020 respectively. The common denominator of these principles and calls focused on the need to

⁵ CPT. "26th General Report of the CPT." 1 January-31 December 2016. <https://rm.coe.int/168070af7a>> p. 34.

⁶ CPT. "Statement of Principles Relating to the Treatment of Persons Deprived of Their Liberty." 20 March 2020. <<https://rm.coe.int/16809cfa4b>>

reduce the number of prisoners and to make sure that the measures taken in states' responses to the pandemic would not restrict freedoms. UN High Commissioner Michelle Bachelet, for instance, provided a very significant guiding call stating "Now, more than ever, governments should release every person detained without sufficient basis, including political prisoners and others detained simply for expressing critical or dissenting views."⁷ High Commissioner also stated that those particularly vulnerable to COVID-19, among them older detainees and those who were sick, should rapidly be released and warned: "Measures taken amid a health crisis should not undermine the fundamental rights of detained people, including their rights to adequate food and water. Safeguards against ill-treatment of people in custody, including access to a lawyer and doctor, should also be fully respected."

Despite all these principles and calls referring to international standards and norms, the visitation rights of prisoners with their families have been banned all together and conferences with their lawyers have been restricted within the scope of measures taken by the Ministry of Justice. When the limited information and complaints from prisons are evaluated together with the UN High Commissioner's warnings, it is revealed that the violations faced by prisoners in access to healthcare, food, water and hygienic material under pandemic conditions qualify as ill-treatment.

In contradiction to the above-mentioned principles and statements; journalists, human rights defenders, lawyers and elected politicians who were detained without sufficient basis, i.e. "political prisoners and others detained simply for expressing critical or dissenting views," could not benefit from early release introduced by an amendment through Law No. 7242 on the Enforcement of Sentences and Security Measures. Although the Ministry of Justice issues statements from time to time, there is no reliable and satisfactory information on the dimensions of COVID-19 in prisons, the total number of cases and deaths, and the distribution of these figures per prisons.

According to a statement released by the Ministry of Justice on 17 June 2020, the number of prisoners diagnosed and treated for COVID-19 was 374. A total of six convicted prisoners lost their lives and there were currently 72 COVID-19 cases in prisons.

Hunger strikes in prisons, which have been held since 8 November 2018 due to various grounds including the deteriorating human rights violations in prisons, have become a special agenda for the country as well. Those responsible for these hunger strikes during which individuals were forced to put their lives at risk are essentially those that govern the country. While it is quite possible to find humane solutions observing the dignity of human life to end hunger strikes, loss of human life opens up incurable wounds in social conscience due to the insensitivity of the political power to say the very least.

- a. Indefinite and non-alternate hunger strikes had been initiated by Leyla Güven on 8 November 2018 and maintained by 3,065 persons in 90 prisons in order to lift isolation, which means torture and ill-treatment, on Abdullah Öcalan and three other prisoners in İmralı Prison. Hunger strikes ended on 26 May 2019 when the prisoners in İmralı Prison were allowed to have family visitations and conferences with their lawyers.

⁷ Bachelet, Michelle. "Urgent Action Needed to Prevent COVID-19 'Rampaging through Places of Detention.'" 25 March 2020. <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>>

- b. Grup Yorum, a folk music band, members also went on hunger strike on 17 May 2019, which they maintained after they were released from prison, to play their music freely and for their right to a fair trial. Grup Yorum member Helin Bölek lost her life on 3 April 2020 on the 288th day of her hunger strike, while İbrahim Gökçek lost his life on 7 May 2020 on the 323rd day of his hunger strike. Mustafa Koçak, who went on hunger strike on 3 July 2019 in order to protect his fundamental rights including the right to a fair trial, prevention of arbitrary and illegal repression and prohibitions, lost his life on 24 April 2020 on the 297th day of his hunger strike.
- c. Lawyers from the Progressive Lawyers Association (Çağdaş Hukukçular Derneği) went on hunger strike on 3 February 2020 in order to protect their fundamental rights including the right to a fair trial, prevention of arbitrary and illegal repression and prohibitions. The lawyers are continuing their rights-based hunger strike protests. More effort should be put into finding a humane solution observing the dignity of the human life before hunger striker lawyers sustain irreparable damage to their health while the grief over such recent deaths are still fresh.
- d. The fact that prisoners have been resorting to hunger strikes in various prisons for different periods within the year with demands to find solutions to different problems, which can be assessed to fall under the context of human rights, is an indicator of the level at which problems in prisons have become unbearable for prisoners.
- e. “Forced intervention or intervention attempts” against hunger strikers without the individual’s consent are against medical ethics, as stated by all international documents, and qualify as torture and other forms of ill-treatment.

Yet a letter entitled “Death Fasts and Indefinite Hunger Strike Protests” (No. 14500235/419) sent by the Ministry of Health’s General Directorate of Healthcare Services to the General Directorate of Public Hospitals on 22 May 2020, argued that measures like treatment and feeding could be taken on the condition that these posed no life-threatening risks to hunger strikers regardless of their consent. Such worrisome approach by the Ministry of Health towards hunger striking prisoners can in no way be accepted. What is more worrisome is the flagrant interpretation and distortion of legal and medical ethics principles while offering grounds for “forced intervention.” The letter in question offers Article 5, which defines the rule “informed consent,” of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine as grounds for forced intervention. Similarly it attempts to devalue World Medical Association’s Malta, Tokyo and Lisbon declarations, which are commonly embraced as pioneering and reference documents that regulate patients’ rights under international law, claiming that they do not qualify as international conventions.

5. Prohibition of Torture and Other Forms of Ill-treatment in Legislation and Procedural Guarantees

Numerous negative amendments have been introduced to Turkish legislation that would impair the absolute nature of prohibition of torture since 2005 at different intervals. These legislative amendments have become systematic following the period that began with July 2015, particularly

during the state of emergency. Such approach, however, has been maintained even after the lifting of the state of emergency.

Law No. 6722 that went into effect on 14 July 2016 subjected investigations into torture and ill-treatment allegations against military personnel involved in operations to a special authorization procedure and established a retroactive shield of impunity. Similarly, state of emergency decree laws assured impunity for state officials passing decisions and holding posts during the state of emergency prescribing that they could not be held responsible for their actions in any criminal, legal, financial or administrative capacity, thus, setting forth absolute immunity.

Procedural guarantees that play an important role in preventing torture but are mostly neglected in practice for years have sustained a heavy blow by legislative amendments in decree laws introduced during the state of emergency. These procedural guarantees include informing individuals promptly of the reasons of their custody/arrest, informing third parties, providing access to a lawyer and a physician, providing adequate examination under adequate circumstances and obtaining adequate medical reports, taking proceedings by which the lawfulness of their custody/detention should be decided speedily by a judicial authority, keeping adequate record of custody, and enabling independent monitoring. The repercussions of this destruction are still in force.

The Constitutional Court ruled solely for the annulment of articles prescribing restrictions on prisoners' conferences with their lawyers among those negative regulations that were introduced during the state of emergency and rendered permanent thereafter but decided to keep the others in effect in its judgment of 24 July 2019 (Merits No. 2018/73 E, 2019/65 K) which was published in the *Official Gazette* on 29 November 2019. This judgment repealed provisions set forth in Article 59 § 5 and 10 of Law No. 5275 on the Enforcement of Sentences, which were among those that allowed public prosecutors to impose restrictions on prisoners' conferences with their lawyers. This article had allowed "audio and visual recording of conferences with technical equipment, presence of an officer to monitor conferences between prisoners and lawyers, seizure of documents or copies of documents, files and the records of their conversations." Merely four months after this judgment by the Constitutional Court, all the repealed articles were included almost verbatim in the Bylaw on the Administration of Penitentiary Institutions and the Enforcement of Sentences and Security Measures that went into force on 29 March 2020 having been published in the *Official Gazette*. This short story, an indicator of the unlawful and arbitrary conduct in legislative regulations, reveals at the same time the level of destruction in respect for law and values.

Law No. 7242 on Amendments to the Law on the Enforcement of Sentences and Security Measures and Some Other Laws, which was rapidly passed at the GNAT setting forth the threat posed by the COVID-19 pandemic and went into force on 15 April 2020 having been published in the *Official Gazette*, made way for impunity in numerous human rights violations notably for the prohibition of torture.

Although the regulation excluded "intentional killing and torture" offenses, it reduced conditional release rates for those convicted of "intentional injury resulting in death" and "reckless killing" and made it easy for them to benefit from supervised release provisions. This means that many law enforcement officers, who had been convicted or facing conviction for violations of the right to

life by unlawful use of force, would be free in a short period of time. Moreover, in practice criminal charges are filed against law enforcement officers committing the offense of torture under “intentional injury,” which often requires a lesser sentence, as a result of impunity systematics. Thus, this regulation excludes the offense of torture as well and further consolidates impunity.

The Bill on Marketplace and Neighborhood Guards tabled at the GNAT in January 2020 and being deliberated at the General Assembly puts forth that these watchmen or guards would “have the right to use force and fire arms, take preventive measures until the general law enforcement arrives to prevent disorder and at protests, marches that disrupt the public order; use their power to stop persons on reasonable suspicion, ask for identification and other documents, frisk persons on suspicion, ask persons to open up covered parts of vehicles.” Violations of the “right to life” and “security of the person” brought about by amendments to the Law of Police Powers in 2007 will further become prevalent upon the adoption of this bill.

6. Torture in Turkey as Reflected in Reports by International Preventive Mechanisms

Torture in Turkey, as stated in the above-listed data, has also been cited in reports in its starkest instances drafted by international mechanisms and bodies. Yet the political power, unwilling to limit itself with any kind of law, rule or norm -specifically the Constitution itself, has not been taking into account criticism and warnings by international preventive and monitoring mechanisms.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), established in 1989 within the scope of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, is a pro-active non-judicial mechanism and works to prevent acts of torture and other forms of ill-treatment in Council of Europe member states. CPT carries out visits on a periodic basis but additional *ad hoc* visits are carried out when necessary. After each visit, the CPT draws up a detailed report incorporating its findings, recommendations and other points on torture and ill-treatment. Its visit report is confidential unless the visited state authorizes its publication.

The CPT paid three *ad hoc* visits to Turkey between 29 August-6 September 2016, 4-13 April 2018 and 6-17 May 2019 along with one periodic visit between 10-23 May 2017. The Turkish state, however, has not yet authorized the publication of its reports covering the committee’s observations, findings and recommendations. The CPT initiated a new regulation that prescribes automatic publication of its country visit reports (without having to obtain authorization from states) as an indicator of states’ dedication and determination to prevent torture but Turkey has not even put the new regulation on its agenda let alone adopting it.

The UN Special Rapporteur on Torture expressed his concerns in his report of 18 December 2017⁸ on his mission to Turkey from 27 November to 2 December 2016 and offered 31 concrete recommendations. The Special Rapporteur further voiced his deep concerns about torture in Turkey in another report on 27 February 2018 as well.

⁸ “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman 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>>

Also the European Commission in its Turkey 2019 Report⁹ stated that allegations of torture and ill-treatment remained a serious concern and offered extensive assessments.

The UN Subcommittee on Prevention of Torture (SPT) carried out a country visit to Turkey between 5-9 October 2015 but its report could only be published after four years on 12 December 2019 following the authorization of the Turkish state.¹⁰ Numerous important findings and recommendations on torture and other forms of ill-treatment that have persistently been expressed by our organizations were also included in this report. However, Turkey has not done what was necessary to meet the recommendations of the Subcommittee, whose authority and mandate it had recognized as a state party to the UN Convention against Torture, in any way for four years.

The Universal Periodic Review (UPR) is still the most comprehensive international human rights monitoring mechanism which involves a periodic review (every five years) of the human rights records of all 193 UN member states under the auspices of the Human Rights Council. Turkey had UPR reviews twice in 2010 and 2015. The UPR third cycle was in January 2020. One of the subjects in the report drafted by the UN Office of the High Commissioner for Human Rights within the scope of UPR was torture. The report offered a comprehensive assessment of torture in Turkey while related criticism and recommendations were communicated to the authorities.¹¹

7. The Human Rights and Equality Institution of Turkey that Fails in Its Function as the National Preventive Mechanism

The Human Rights and Equality Institution of Turkey (HREIT) was authorized to serve the functions of National Preventive Mechanisms (NPMs) that are effective and important tools in preventing torture but the problems about the institution have remained the same in 2019 as well. No single step has been taken to make the HREIT compliant with the OPCAT and Paris Principles while the institution is not independent structurally, functionally and financially.

Visit reports drawn up by the HREIT are riddled with errors in principle and methodology. When one evaluates its reports published in 2019, it is seen that preventive visits to places of detention did not bear the minimum standards and were merely carried out to meet formal requirements.

The failure of the HREIT in carrying out effective monitoring and inquiry processes into human rights violations committed particularly after 2015 during the environment of conflict and during the state of emergency period declared following the coup d'état attempt is an important signifier of its very dysfunction.

⁹ European Commission. "Turkey 2019 Report." 29 May 2019. < <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>>

¹⁰ SPT. "Report on the Visit Made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the Purpose of Providing Advisory Assistance to the National Preventive Mechanism of Turkey." 12 December 2019. <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fTUR%2f1&Lang=en>

¹¹ United Nations Human Rights Council. "Universal Periodic Review – Turkey: Third Cycle." 28 January 2020. < <https://www.ohchr.org/EN/HRBodies/UPR/Pages/TRindex.aspx>>

Another indicator of its dysfunction is that HREIT has not put in any sort of material initiative about prisons and other detention places that posed extremely great risks to human life during the COVID-19 pandemic except for publishing summaries of some statements by UN bodies on its website.

A meeting was held on 24 September 2019 in Ankara with the participation of Jens Modvig, the Chair of the UN Committee against Torture, and Nora Sveaas, the Vice Chair of the UN Subcommittee on Prevention of Torture. At this meeting, as everyone borne witness to, the fact that HREIT was entirely non-compliant with the OPCAT principles both structurally and functionally while being utterly dysfunctional as the NPM in Turkey was revealed once again.

8. Culture of Impunity

The main reason why torture in Turkey is so prevalent is the existence of a very significant culture of impunity that is incompatible with the absolute prohibition of torture. The primary factor that enables the consolidation and prevalence of this culture pertains to the fact it indeed is a policy pursued by the state itself. State and government officials of all levels have long been involved in discourse and conduct that protected and even encouraged violence by the law enforcement and legitimized torture for years. The political power, which has further been highlighting such discourse and conduct in recent years, has also been attempting to “guarantee” impunity through regulations and amendments it introduced into legislation.

Under such circumstances the causes of impunity become untalkable and undebatable. These causes include failure to initiate *ex officio* investigations into torture allegations committed by public officials, lack of effective and independent investigations, resorting to the authorization system in order to bring lawsuits against public officials involved in torture, deferral of sentences handed down to perpetrators, subjective and partial mentality of prosecutors and judges.

Provisions prescribing prosecution of the offense of torture still remain obscure. Criminal complaints against the offense of torture either end up in non-prosecution decisions on various grounds or are investigated under “excessive use of force” or “misuse of public duty” offenses that prescribe lesser sentences and are subject to statute of limitations.

Moreover, torture survivors face counter trials on various grounds like insulting a public officer, prevention of public duty and inflicting injury while resisting a public officer, and damage to public property in cases where criminal complaints are filed, investigations or lawsuits are brought against public officers who commit torture. While trials against perpetrators of torture end up in impunity, those against torture survivors can be finalized with heavy sentences in a short period of time.

According to the “2018 Legal Statistics” provided by the Ministry of Justice’s General Directorate of Criminal Records and Statistics issued in 2019, investigations were launched into 163,032 individuals in 2018 under Chapter IV, Part I of the Turkish Penal Code (TPC), “Offences against the Reliability and Functioning of the Public Administration,” that includes Article 265 “Prevention of Public Duty” and lawsuits were brought against 48,064 of these individuals. In contrast, investigations were initiated into a mere total of 2,196 persons under Article 96 of the TPC that

proscribes torture and Article 94 that regulates the offense of torment which is a commonly used article within the same year. While non-prosecution decisions were handed down to 1,035 persons, lawsuits were brought against 766 and other decisions were passed for 395 persons. Such a high difference between the numbers pertaining to lawsuits for torture and prevention of public duty in 2018, a part of which was spent under the state of emergency and which witnessed a peak in police brutality, clearly reveals the dimensions of impunity and the fact that it is maintained as a systematic policy.