



## **Torture in its Various Dimensions in Turkey as of 26 June 2021**

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.

Further Article 2 of UNCAT prescribes:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

All the following assessments have been provided accordingly in the light of the above-mentioned articles of the Convention.

### **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 worrisome acts of torture at official custodial places within the last year, particularly in Antalya, Diyarbakır, Edirne, İstanbul, Nizip and Van, have been reported by the press and cited in court records and human rights organizations' reports.

- **605** individuals have lodged applications before the HRFT in 2020 with allegations of torture and ill-treatment although applications were received in a controlled manner due to pandemic measures. Of these, **31** were filed by relatives of torture survivors while **12** were about allegations of torture and ill-treatment outside of Turkey. Out of **562** individuals, who have lodged applications before the HRFT alleging that they were directly subjected to torture and ill-treatment in Turkey, **283** (50%) stated that they were tortured at official custodial places like security directorates while **73** (13%) indicated that they were tortured at police stations. Further, **134** (34%) 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, **383** individuals including **10** children were subjected to torture and ill-treatment at official custodial places in 2020.
- According to data collected by HRFT's Documentation Center, on the other hand, at least **192** individuals were subjected to torture and ill-treatment at official custodial places in 2020. **1** individual lost their life in custody under suspicious circumstances. This figure was **86** within the first five months of 2021. During the same period **1** individual was subjected to torture and ill-treatment by a superior officer while serving his compulsory military service, while **1** individual lost their life in custody under suspicious circumstances.

## **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 to peaceful assemblies and protests or at spaces like houses and offices, in other words, in non-official custodial and extra-custodial places, have gained a new dimension and prevalence under the pandemic circumstances.

The right to freedom of assembly and protest, along with the right to freedom of expression, constitute the basis of a democratic society. The exercise of this right, however, has unfortunately become an exception while the bans imposed on the right have become the rule. Violence committed by the law enforcement, which has amounted to acts of torture and ill-treatment, against persons exercising their right to freedom of peaceful assembly and protest has virtually been normalized.

There has also been an increase in the number of acts of torture and ill-treatment during house raids before the "official custody procedure" was initiated, in other words, in the number of those committed at the time of custody processes.

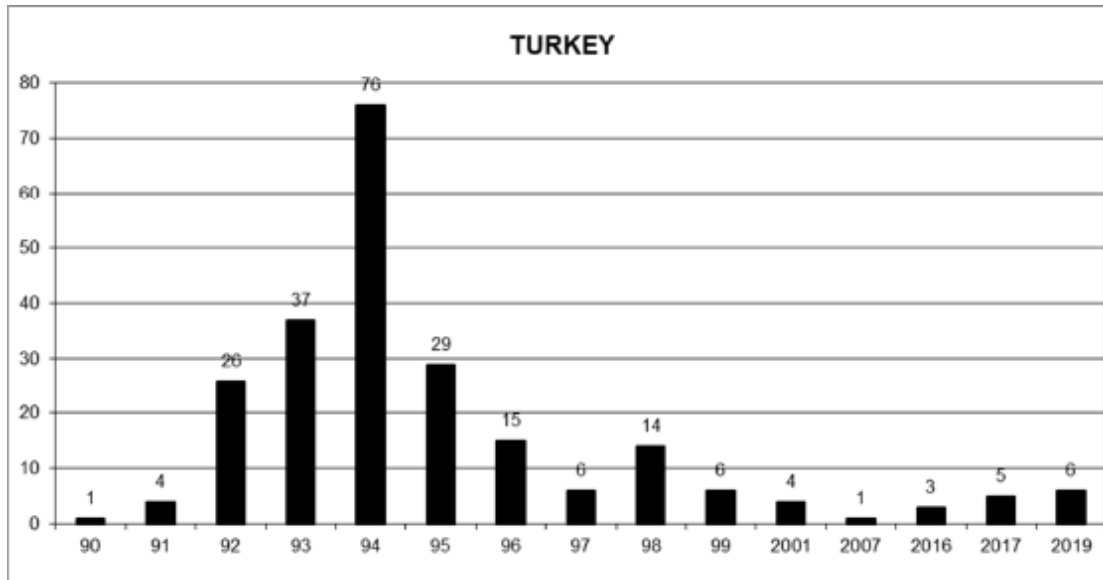
- **229** (41%) individuals who lodged applications before the HRFT in 2020 stated that they were subjected to torture and ill-treatment outdoors and during protests, while **110** (20%) indicated that they were subjected to torture and ill-treatment in such spaces as homes and offices.
- According to data collected by IHD'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 2020 was **397**, including **28** children. At least **2,980** individuals were subjected to torture and ill-treatment as a result of the interventions by the law enforcement to social protests.
- According to data HRFT's Documentation Center, **2,014** individuals were subjected to torture and ill-treatment while **65** individuals were wounded in 2020 during the law enforcement's intervention to peaceful assemblies and events organized within the scope of freedom of peaceful assembly and protest. Within the first five months of 2021, at least **2,153** individuals were subjected to torture and ill-treatment and **23** individuals were wounded as a result of interventions by the law enforcement.
- According to data HRFT's Documentation Center, at least **170** individuals were subjected to torture and ill-treatment in the streets and outdoors, while at least **40** individuals were subjected to torture and ill-treatment during house raids. Further, **161** individuals were subjected to torture and ill-treatment in the streets and outdoors, while **10** individuals were subjected to torture and ill-treatment during house raids within the first five months of 2021.

### 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 state of affairs has also been underlined in the report of 30 July 2019 report by the UN Working Group on Enforced or Involuntary Disappearances (WGEID)<sup>1</sup>. 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 go up again as of 2016.

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<sup>1</sup> WGEID. "Report of the Working Group on Enforced or Involuntary Disappearances." 30 July 2019. <<https://undocs.org/A/HRC/42/40>> p.46.



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

Acts of enforced disappearance in custody are not momentary acts but involve the silence of law, judiciary and justice with an attempted message that the perpetrators are omnipotent. They are accompanied by torture, involve a specific period of off-the-record detention and generally result in death. They, therefore, lead to multiple and consecutive violations. According to data collected by HRFT's Documentation Center:

- The fate and whereabouts of Mr. Yusuf Bilge Tunç, who was abducted on 8 August 2019 in Ankara, are still unknown.
- 10 individuals, who were abducted in 10 separate incidents in 2020, were released on the same or the next day.
- The fate and whereabouts of 1 individual (Mr. Hüseyin Galip Küçüközyiğit) has been unknown since 29 December 2020, which was one of the two incidents that qualified as acts of enforced disappearance in 2020. It was revealed after 44 days that another individual had been in custody.
- 6 individuals have been abducted within the first five months of 2021. 5 of the 6 individuals in question were released the same day, while one was released after 5 days.

Further, 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 2020 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 **188** individuals, including 2 children and 33 through social media, were forced to become informants and were threatened according to applications lodged before the İHD and other data collected.

#### **4. Torture and Ill-treatment in Prisons**

The political power's abuse of laws as instruments of repression and intimidation has both led to great increases in prison population and to overcrowding in Turkish prisons.

According to data provided by the Ministry of Justice, the number of prisoners in 2005 was 55,870. This figure went up to 283,481<sup>2</sup> in 371 prisons which normally have a capacity of 250,576 as of 31 May 2021. This figure includes the number of prisoners who are on COVID-19 leave as per Law No. 7242.

As is seen, the number of prisoners has almost quintupled in 16 years. There were also 32,905 over-capacity prisoners as of 31 May 2021.

When this hike is taken into account along with the high annual turnover rates in prisons an even more alarming situation emerges. According to official TurkStat data, 281,605 persons were admitted into penitentiary institutions in 2019 as convicted prisoners while 291,212 convicted prisoners were released in the same year.

In addition, the number of persons subjected to the supervised release measure was 408,864 as of 30 April 2021 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 692,000. This, in turn, means that one in every hundred citizens is under direct supervision when the other supervision/control apparatuses are left aside.

All these points and data are significant in that they reveal how incarceration has become an essential method of government for the political power.

We do not know for certain the dimension such turnover has reached because 2020 and 2021 data have not been shared with the public. Yet, such population intensity and mobility in prisons lead to more serious and vital problems during the current COVID-19 pandemic. Prisons' features and organization provide rather favorable media for such outbreaks to spread.

Thus international human rights authorities urged states/governments to take even more specialized measures in response to the pandemic in prisons by issuing statements and urgent appeals. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published "Statement of Principles relating to the Treatment of Persons Deprived of their Liberty in the Context of the Coronavirus Disease (COVID-19) Pandemic" on 20 March 2020, while the UN High Commissioner for Human Rights and the Council of Europe's Human Rights Commissioner both issued statements on 25 March 2020 and 6 April 2020 respectively to this end. The common ground that these principles and calls shared was to

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<sup>2</sup> The Ministry of Justice. "Prison Statistics."

<<https://cte.adalet.gov.tr/Resimler/Dokuman/istatistik/istatistik-1.pdf>> Date of access: 22 June 2021.

reduce the number of prisoners and to avoid taking measures that would restrict available freedoms in prisons.

Further the UN High Commissioner for Human Rights, Michelle Bachelet, stressed in her statement that “Now, more than ever, governments should release every person detained without sufficient legal basis including political prisoners and others detained simply for expressing critical or dissenting views.”<sup>3</sup> The High Commissioner underlined that those particularly vulnerable to COVID-19, among them older detainees and those who were sick should also be immediately released adding that the 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.

In spite of all these principles and calls referring to international standards and norms, a new “normal” is attempted to be created in prisons by further restricting the already restricted rights of prisoners within the scope of measures taken by the Ministry of Justice on the grounds of the COVID-19 pandemic. Prisoners’ right to family visitation has almost been eliminated, while their right to confer with their lawyers has been restricted on grounds of the pandemic. Serious restrictions have also been imposed on prisoners’ enjoyment of fresh air along with their exercise of other sportive, social, and cultural rights. Further, it is observed that measures that would actually protect prisoners from the pandemic have not been adequately taken. As was state above, while the overcapacity in prisons is a gross human rights violation on its own, it also poses a serious risk in terms of the COVID-19 pandemic and brings about health problems. There are prevalent complaints indicating that masks, gloves, disinfectants and other sanitary material handed to prisoners were insufficient, water supply was restricted, COVID-19 tests were not done regularly and sufficiently, wardens did not pay enough attention to physical distancing rules during roll-calls and searches. Holding prisoners in quarantine wards upon their return from hospitals is another problem on its own. The fact that the quarantine term is restarted each time a new prisoner is placed in quarantine wards in some prisons make prisoners back out of going to the hospital and deprive them of their right to access healthcare services.

When the limited information and complaints coming in from prisons, and caveats and calls by international human rights authorities like High Commissioner Bachelet referring to universal standards and norms are taken together, it is seen that the violations faced by prisoners in access to health, food and water, hygienic material under pandemic circumstances 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 that went into force after having been published in the *Official Gazette* on 15 April 2020.

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<sup>3</sup> Michelle Bachelet. “Urgent action needed to prevent COVID-19.” 25 March 2020.  
<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>>

Prisons in Turkey have always been spaces where acts of torture and ill-treatment were prevalent. Acts of torture and ill-treatment against prisoners skyrocketed particularly during the period beginning with July 2015 when armed conflict restarted in the country followed by the quenching of the attempted coup d'état and the declaration of state of emergency.

- According to data collected by İHD's Documentation Center, the number of prisoners alleging that they were subjected to torture and ill-treatment was **358** in 2020.

Beatings, all kinds of arbitrary treatment (like strip search, physical examination in handcuffs, standing roll-calls) and arbitrary disciplinary action, solitary confinement, forced and otherwise transfers due to various reasons on admission to prisons have recently reached unprecedented proportions.

Acts of ill-treatment including restriction of access to healthcare services, denial of the right to visit prison infirmaries, handcuffing prisoners on their way to and from courthouses and hospitals have long remained as some of the other problematic areas. Forced transfer of most of the prisoners, who have been facing challenges in maintaining their medical treatments, to other prisons has significantly hurt the right to access healthcare services.

The insufficiency of measures taken in response to the COVID-19 pandemic added on top of restrictions in access to healthcare services further deteriorated the conditions of sick prisoners as well. Failing to provide for adequate access to healthcare services for sick prisoners, failing to get independent and qualified medical evaluation reports including the fact that the Forensic Medicine Institute is not independent, along with the term "public security" incorporated in the amendment of 28 June 2014 to the Law on the Enforcement of Sentences and Security Measures stating that "those who are evaluated to pose no grave and concrete threat to public security" rendered the release of prisoners entirely arbitrary although sick prisoners were given medical reports indicating that their conditions were "definitively life-threatening."

- According to data collected by İHD's Documentation Center, there were a total of **1,605** sick prisoners including **604** in critical condition as of 1 April 2021.
- According to data collected by HRFT's Documentation Center, at least **14** individuals lost their lives in prisons in 2020 under suspicious circumstances. Although there are allegations of misconduct about these deaths under suspicious circumstances, no effective investigations have been initiated to the best of our knowledge.
- According to data collected by İHD's Documentation Center, on the other hand, at least **37** prisoners lost their lives in prisons under suspicious circumstances, while **16** prisoners allegedly committed suicide.
- 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, has become a chronic problem. Although the circular letter of 22 January 2007 (45/1) by the Ministry of Justice prescribes that 10 prisoners can get together 10 hours a week to socialize is still in force, its provisions are not implemented. One should underline once again CPT's 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.”<sup>4</sup>

- 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. It is observed that CPT’s recommendations in its reports published after its country visits to Turkey in 2017 and 2019 have not been complied with.
- Prisoners have been staging hunger strikes on various grounds including the ever-increasing number of human rights violations since 8 November 2018 while these protests have become a special agenda for the country. The fact that prisoners resort to hunger strikes at different times within the year demanding solutions to different problems, which could be handled within the context of human rights, signifies how unbearable these problems have become for prisoners. Those who govern the country are primarily responsible for individuals’ risking their own lives by going on hunger strikes. While it was quite possible to find solutions based on human dignity and life, death of people as a result of the insensitivity of the political power -to say the least-irreparably injures public conscience.
- Members of Grup Yorum, a folk music band, 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 288<sup>th</sup> day of her hunger strike, while İbrahim Gökçek lost his life on 7 May 2020 on the 323<sup>rd</sup> 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 297<sup>th</sup> day of his hunger strike.
- Lawyer Ebru Timtik 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 lost her life on the 238<sup>th</sup> day of her hunger strike on 27 August 2020.
- Alternate and indefinite hunger strikes initiated on 27 November 2020 in order to lift isolation in İmralı Prison and to end rights violations in prisons are still going on in 107 prisons. Efforts to end hunger strikes by seeking solutions based on human life before hunger strikers sustain permanent damage to their health should be intensified.
- “Forced intervention or intervention attempts” against hunger strikers without the individual’s consent are by definition against medical ethics and a violation of human

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<sup>4</sup> CPT. “26<sup>th</sup> General Report of the CPT.” 1 January-31 December 2016. <<https://rm.coe.int/168070af7a>> p. 34.



rights as stated by all international documents particularly in Malta, Tokyo and Lisbon declarations of the World Medical Association.

## **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, 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 crimes of “intentional killing and torture,” it reduced conditional release rates for those convicted of “intentional injury resulting in death” and “reckless killing” and made it easy for perpetrators 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.

Those who would be eligible for reduction in their sentences include perpetrators convicted of manslaughter by using disproportionate and unlawful force in Gezi Park protests and those convicted of reckless killing in Soma and Ermenek mine disasters, Aladağ dormitory fire, Çorlu and Ankara train accidents.

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 powers and duties of enforcement judgeships have been extended so as to make their jurisdiction cover such powers as delivering rulings on many issues that were allocated for courts by legislation in force like the “enforcement of sentences, statute of limitations, conditional release, supervised release, transfers to open prisons, appeals against disciplinary action, etc.” along with upholding and appeals processes.

The Law on Marketplace and Neighborhood Guards, which went into force on 18 June 2020 after having been published in the *Official Gazette* following its adoption at the General Assembly of the GNAT, 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. This law raises concerns, similar to those of amendments introduced to the Law of Police Powers in 2007, pertaining to possible increases in cases of violations of the “right to life” and “security of the person” and violations of “absolute prohibition of torture.”

The “Bylaw on Amendments to the Bylaw on the Movable Properties of the Turkish Armed Forces, National Intelligence Agency, and General Directorate of Security” that authorizes the law enforcement to use heavy weaponry in social events, which should be used in external threats, went into force on 6 January 2021 after having been published in the *Official Gazette*. Even to imagine the unavoidable destructive impacts and consequences of the possible use of heavy weaponry, which only the Turkish Armed Forces should have, in residential areas within the country and on citizens, other living beings, natural and cultural spaces is quite worrisome.

The General Directorate of Security issued a circular letter on 27 April 2021 banning audio-visual recording of law enforcement intervening into assemblies and protests on the grounds that such recordings “violated privacy.” Although this circular letter could not be found on the official websites of the Ministry of Interior and the General Directorate of Security, the press reported about it on 30 April 2021. This circular letter makes it possible to cover up crimes of torture and ill-treatment, injury and even murder committed during the unlawful interventions of the law enforcement into the freedom of peaceful assembly and protest, enshrined in the Constitution, and to make crimes invisible.

## **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 prevention and monitoring mechanisms.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), established in 1987 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 reports are confidential unless the visited state authorizes their 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 two periodic visits between 10-23 May 2017 and 11-25 January 2021. The committee’s finalized reports on its periodic visit of 10-23 May 2017 and *ad hoc* visit of 6-17 May 2019 incorporating its observations, findings and recommendations were published on 5 August 2020 upon Turkey’s authorization. It is observed, however, that Turkey has not essentially been complying with the recommendations in neither of the reports.

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 European Parliament’s 2019-2020 Turkey reports<sup>5</sup> adopted as a non-binding resolution on 19 May 2021 also offer similar recommendations on the prevention of torture.

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. The UPR

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<sup>5</sup> European Parliament. “2019-2020 Turkey Reports.” 19 May 2021.

<[https://www.europarl.europa.eu/doceo/document/TA-9-2021-0243\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0243_EN.html)>

third cycle was held on 28-30 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.<sup>6</sup>

## **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 a National Preventive Mechanism (NPM) that is an effective and important tool in preventing torture but the problems about the institution have remained the same in 2020 as well.

In spite of the criticism and recommendations set forth in the report published by the UN Subcommittee on Prevention of Torture (SPT) on 12 December 2019 and those provided within the scope of the UPR held on 28-30 January 2020, no single material step has been taken to make the HREIT compliant with the OPCAT and Paris Principles and to guarantee the institution's structural, functional and financial independence. Visit reports drawn up by the HREIT are riddled with errors in principle and methodology. When one evaluates its reports published in 2020, 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 escalation of conflict and the state of emergency period declared following the coup d'état attempt is an important signifier of its very dysfunction.

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.

## **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.

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<sup>6</sup> United Nations Human Rights Council. "Universal Periodic Review – Turkey: Third Cycle." 28 January 2020. < <https://www.ohchr.org/EN/HRBodies/UPR/Pages/TRindex.aspx>>

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.

Yet journalists, lawyers and human rights defenders who talk about allegations of torture and ill-treatment face criminal investigations and prosecution. The fact that journalists, who reported an incident during which one individual died while another was wounded due to being thrown out of a helicopter after having been subjected to torture and ill-treatment in Van in 2020, were jailed proves to be a very typical instance revealing the stand of the political power against allegations of torture and ill-treatment and the culture of impunity.

Another instance is the rejection of parliamentary questions tabled about allegations of torture and ill-treatment before the GNAT, which is theoretically the most significant checks body in democracy, on the grounds that the word torture in these questions were “hurtful.”

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

Moreover, torture survivors immediately 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. Indeed in 2019 public prosecutors’ offices initiated investigations into **38,582** individuals under Article 265 of the Turkish Penal Code that proscribes “resisting a public officer” while they brought criminal cases against **28,843** of these individuals.<sup>7</sup> In contrast, investigations were initiated into a mere total of **1,098** persons under Article 94 of the TPC that proscribes torture while only **97** persons faced criminal lawsuits.<sup>8</sup> Such a high difference between the figures pertaining to lawsuits for torture and resisting a public officer clearly reveals the dimensions of impunity and the fact that it is maintained as a systematic policy.

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<sup>7</sup> Ministry of Justice. “Judicial Statistics 2019.” August 2020.  
<[https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/1092020162733adalet\\_ist-2019.pdf](https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/1092020162733adalet_ist-2019.pdf)> p. 59.

<sup>8</sup> Ministry of Justice. “Judicial Statistics 2019.” August 2020.  
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