



Torture in Its Various Dimensions in Turkey as of 26 June 2023

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.

As it can be understood from these provisions in the Convention, the prohibition of torture and other forms of ill-treatment, which is considered to be the most serious attack against the dignity and personality of human beings, has the nature of a jus cogens in terms of international law.

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 Adana, Adıyaman, Dersim, Diyarbakır, Hakkari, İstanbul, İzmir, Mardin, Hatay, Niğde and Şanlıurfa, have been reported by the press and cited in court records and human rights organizations' reports.

Immediately after the earthquakes of 6 February, which caused severe destruction and devastation throughout the country, a state of emergency was declared for 3 months in 10 provinces affected by the earthquakes (Adana, Adıyaman, Diyarbakır, Antep, Hatay, Maraş, Kilis, Malatya, Osmaniye and Urfa) by Presidential Decree No. 6785 dated 7 February 2023. The Presidential Decree No. 120 dated 11 February 2023 on judicial measures under the state of emergency made it possible for the public prosecutors' offices to extend the custody period, which must not exceed 4 days from the moment of arrest, up to 7 days in cases deemed necessary, in cases of "theft and plunder" offenses. Both the declaration of the state of emergency and the extension of the custody period have led to an alarming increase in violations of the prohibition of torture.

- 1201 individuals have lodged applications before the HRFT in 2022 with allegations of torture and ill-treatment. Of these, some were filed by relatives of torture survivors while some were about allegations of torture and ill-treatment outside of Turkey. Out of 1079 individuals, who have lodged applications before the HRFT alleging that they were directly subjected to torture and ill-treatment in Turkey, 547 (50.7%) stated that they were tortured at official custodial places like security directorates, 61 (5.7%) indicated that they were tortured at police stations while 69 (6.4%) stated that they were tortured at gendarmerie stations. Further, 331 (30.7%) individuals were allegedly subjected to torture and ill-treatment in custody and transfer vehicles of the law enforcement.

270 individuals have lodged applications before the HRFT within the first 5 months of 2023 with allegations of torture and ill-treatment.

- According to data collected by the HRFT Documentation Center, 1 person died under suspicious circumstances in custody in 2022. In the first five months of 2023, at least 6 people died under suspicious circumstances in custody.
- According to data collected by İHD Documentation Center, at least 1,347 people were subjected to torture and other ill-treatment in official detention centers in 2022.



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

There has also been a worrying increase in 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.

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.¹

Practices faced by Saturday Mothers/People who have been fighting for truth and justice constitute a concrete example of this. Despite the Constitutional Court's clear judgment on the violation of freedom of assembly, Saturday Mothers/People are surrounded by law enforcement officers carrying shields every time they go to Galatasaray Square and are isolated, reverse handcuffed, etc. They are subjected to acts that constitute torture and other forms of ill-treatment.

The most striking examples of torture and other forms of ill-treatment in unofficial custodial centers or in extra-custodial places were observed in the earthquake region. With the allegations of looting, news and images of torture and lynching cases against some people, including refugees and earthquake victims, started to be shared on social media. In some of these posts, it is seen that there are people dressed in official uniforms. However, unfortunately, no official statement has been made regarding these allegations, which are in need of confirmation in all respects, and no information has been obtained regarding the initiation of an investigation or any administrative action.

¹ On 20 July 2017, the UN Special Rapporteur on Torture published a "Report on the extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment" which stated that "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" (para. 47).



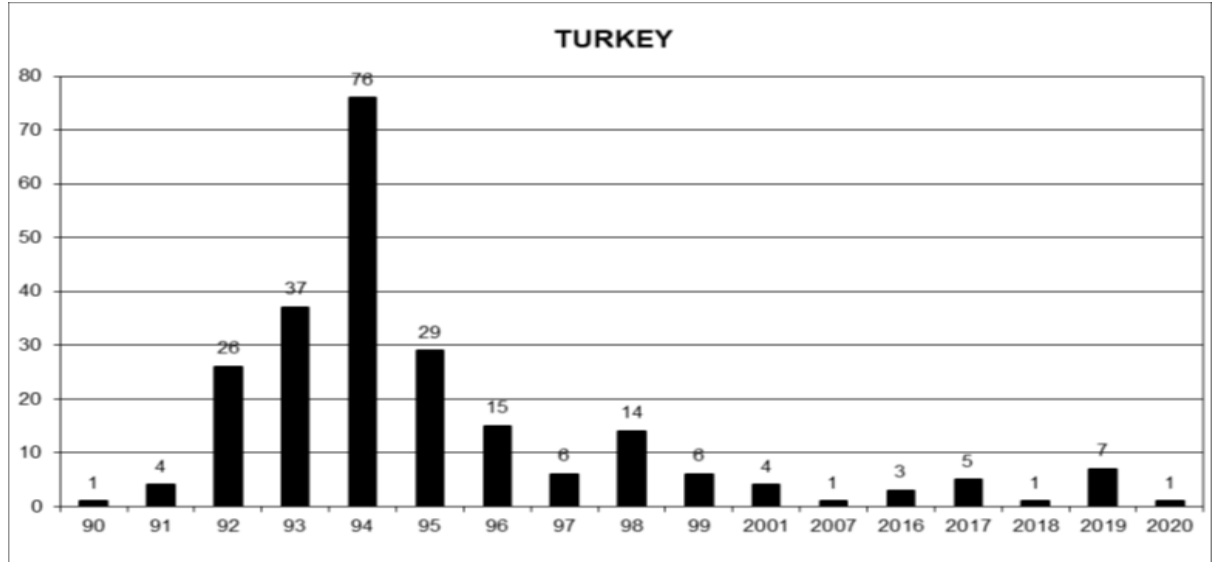
There has also been an increase in the number of acts of torture and ill-treatment during house raids before the “official custody procedure” was initiated, in other words, in the number of those committed at the time of custody processes.

- 546 (50.6%) individuals who lodged applications before the HRFT in 2022 stated that they were subjected to torture and ill-treatment outdoors and during protests, while 177 (16.4%) indicated that they were subjected to torture and ill-treatment in such spaces as homes and offices.
- According to data collected by HRFT’s Documentation Center, at least 5,434 individuals including 144 children were subjected to torture and ill-treatment while 42 individuals were wounded in 2022 during the law enforcement’s intervention to peaceful assemblies and events organized within the scope of freedom of peaceful assembly. Within the first five months of 2023, at least 1,557 individuals, including 49 children, were subjected to torture and ill-treatment and 8 individuals were wounded as a result of interventions by the law enforcement.
- According to data by HRFT’s Documentation Center, at least 230 individuals were subjected to torture and ill-treatment in the streets and outdoors, while at least 29 individuals were subjected to torture and ill-treatment during house raids. Further, at least 76 individuals were subjected to torture and ill-treatment in the streets and outdoors, while 4 individuals were subjected to torture and ill-treatment during house raids within the first five months of 2023.
- 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 2022 was 2,928, including 42 children. At least 4,553 individuals were subjected to torture and ill-treatment as a result of the interventions by the law enforcement to assemblies and demonstrations.

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 reports drafted by the UN Working Group on Enforced or Involuntary Disappearances (WGEID).² 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.

² “Report of the Working Group on Enforced or Involuntary Disappearances.” 12 August 2022. <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/448/25/PDF/G2244825.pdf?Open+Element>>



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.
- At least 4 people were abducted or faced attempted abduction in 2022. In the first five months of 2023, 1 person was abducted or faced attempted abduction.

Moreover, in recent years, there has been an alarming increase in the cases of off-the-record custody of individuals, particularly university students, journalists and political activists, who are subjected to coercion and intimidation and forced to become informants.

- According to the applications made to the İHD and to other available data, 198 people were subjected to informant-making attempts, abduction and threats in 2022.

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 357,572 in 407 prisons which normally have a capacity of



296,202 as of 1 June 2023. This figure includes the number of convicted prisoners who are on COVID-19 leave as per Law No. 7242.

As is seen, the number of prisoners has almost gone up 6.4 times in 17 years. There are also 61,370 over-capacity prisoners as of 1 June 2023.

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, 258,401 persons were admitted into penitentiary institutions in 2020 as convicted prisoners while 361,870 convicted prisoners were released in the same year. When the data of the Ministry of Justice is taken into consideration, it is obvious that these numbers will have increased even more. TurkStat has, unfortunately, not been sharing data on this issue for the last three years.

In addition, the number of persons subjected to the supervised release measure was 437,636 as of 31 August 2022 across Turkey. Unfortunately, the Supervised Release Department of the Ministry of Justice has not shared any new data since. 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 795,506. This, in turn, means that one in every hundred citizens is under direct supervision when the other supervision/control apparatuses are left aside.

Judicial control measures, including house arrest, which have been arbitrarily applied recently, have become ordinary and routine practices. In fact, such measures were designed as an alternative to detention in order to apply a lighter measure to the suspect/accused in the presence of conditions requiring detention. However, since its entry into force on 1 June 2005, and especially as a result of various amendments made to the Criminal Procedure Code No. 5271 in the recent period, it has become a measure that is complementary to and continuation of detention.

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

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 247 in 2022.

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. Restrictions in access to healthcare services further deteriorated the conditions of sick prisoners as well. Failing to provide 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 1,517 sick prisoners including 651 in critical condition as of 29 April 20212.
- In the first 6 months of 2023, 54 prisoners applied to the Turkish Medical Association from different prisons on the grounds of problems in access to health care, imposition of examination in handcuffs, insistence of the security forces to carry out medical examinations and violation of privacy, etc.
- According to data collected by HRFT’s Documentation Center, at least 65 individuals lost their lives in prisons in 2022 due to such causes as illness, suicide, violence, negligence, etc. 10 individuals lost their lives in prisons due to the same causes within the first 5 months of 2023 as well.
- According to data collected by İHD’s Documentation Center, at least 87 individuals lost their lives in prisons under suspicious circumstances in 2022. 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 international norms,³ prisoners should, as far as possible, be placed in prisons close to their homes, families or places of social rehabilitation. However, in recent years it has become a common practice to arbitrarily transfer prisoners to prisons far away from where they live. This practice leads to a violation of rights that can be addressed under the heading of torture and other ill-treatment.

³ See Article 59, “United Nations Standard Minimum Rules for the Treatment of Prisoners.” (the Nelson Mandela Rules).



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."⁴

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.

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.

Procedural guarantees that play an important role in preventing torture but are mostly neglected in practice have largely been destroyed and an entirely arbitrary situation has been created. 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.

According to the Law No. 6722 enacted on 14 July 2016, the investigation of military personnel who participated in operations against allegations of torture and other ill-treatment was made subject to a special permission procedure, and an armor of impunity was retroactively established. Likewise, a state of emergency decree stipulates that persons who make decisions

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



and take part in matters related to the state of emergency will not be held legally, administratively, financially and criminally liable for their duties, and absolute immunity has been introduced.

Although it is a positive development that the custody period was reduced to 4 days by the annulment of Law No. 7145 on 31 July 2022, which included many negative regulations including the 12-day custody period and in a sense meant a de facto state of emergency, the custody period not exceeding 4 days from the moment of arrest in measures about “theft and plunder” crimes was extended up to 7 days by public prosecutors’ offices in cases deemed necessary upon the declaration of a state of emergency for 3 months in 10 provinces affected by the earthquakes of 6 February lead to a rapid increase in violations of the prohibition of torture, while it also is an indicator of the political power’s insincerity in the fight against torture.

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, the 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 firearms, 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. For the stay of execution and cancellation of this regulation, the legal entity of İHD and the chairperson of the association as a real person filed a lawsuit to the Council of State, and the Council of State rejected the lawsuit on procedural grounds due to lack of interest. The case was appealed to the Constitutional Court through individual application, but was rejected. The case was then taken to the European Court of Human Rights (ECtHR).

The “Law on the Enforcement of Sentences and Security Measures”, which entered into force having been published in the *Official Gazette* on 25 June 2021, contains regulations restricting prisoners’ right to communication (such as recording of communication through communication tools such as letters, faxes and telegrams, and listening and recording of their conversations).

The “Regulation on the Amendment of the Regulation on Excuse Leaves of Absence to be granted to Convicts and Prisoners due to Death or Illness of Relatives” which entered into force having been published in the *Official Gazette* on 21 September 2021, stipulates that prisoners are required to seek the recommendation of the prison administration to attend the funeral of their relatives. Although the right to mourn is also a fundamental right of prisoners, putting an administrative barrier to the decision to attend funeral services, which had been decided



by the public prosecutor for many years, that is, a judicial practice, is a regulation that may lead to an increase in arbitrary decisions.

In the “Regulation Amending the Regulation on the Administration of Penal Institutions and the Enforcement of Sentences and Security Measures” of 12 November 2021, the words “strip search” were replaced with “detailed search.” Although there are some nuances between the old (which entered into force on 29 March 2020) and the new regulations, it is clear that this will not create a change in practice. Because only the concepts have changed, no regulation has been made to prevent the actual practice. Once again, we must state that strip search practices are being transformed into torture by going beyond the principles of proportionality, legality and necessity.

The phrase “Body cavity searches shall be carried out by the prison medical officer,” which is included in both the old and new regulations, is unacceptable in any way. The World Medical Association, in its “Statement on Body Searches of Prisoner,” last revised in 2016, states that “Physician participation in body cavity searches should only be provided in exceptional circumstances. In such cases, the task of searching should be kept separate from the physician’s duty of medical service.” The statement also clearly emphasizes the “unacceptability of forced searches from an ethical point of view.”

According to the 2 January 2023 circular issued by the Ministry of Justice within the scope of the special amnesty power of the President of the Republic titled “Procedures on the Commutation or Lifting of Sentences of Persons Due to Permanent Sickness, Disability and Aging”, if the chief public prosecutors’ offices initiate an ex officio process without the request of such persons, as well as if the convict or their legal representative renounces their request or rejects the procedures initiated ex officio chief public prosecutors’ offices, the commutation or lifting of sentences can be continued. This is a positive change, albeit a very relative one.

However, in order to solve the problems of sick prisoners, which have reached the level of violation of the right to life, it is necessary to introduce fundamental amendments, especially the Law on the Enforcement of Sentences and Security Measures and the Anti-Terror Law, together with a radical change of mentality because international and regional human rights bodies have developed very clear rules and guidelines for “persons who are not suitable for permanent imprisonment, such as those with a short-term fatal prognoses, those with a serious illness that cannot be treated well in prison conditions, those with a severe disability, those with serious mental illness.” In particular, the continued detention of persons who are terminally ill or whose health condition has become permanently incompatible with prison conditions is also considered within the scope of the prohibition of torture.

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 story of the case of *Batı and Others* within the scope of the Rule 9.2 Communication submitted jointly by HRFT, İHD and Hafıza Merkezi to the Committee of Ministers of the Council of Europe (CoE) for its meeting on 20-22 September 2022 constitutes a special example of the approach to the criticisms and warnings of international mechanisms. In this context, the Committee of Ministers of the CoE monitors the domestic execution of ECtHR judgments (judgments finding procedural violations of Articles 2 and 3 ECHR) concerning the ineffectiveness of investigations, prosecutions and disciplinary processes in relation to killings, torture and other ill-treatment and acts of disproportionate use of force (including those committed during arrest, detention, interrogation and intervention in peaceful demonstrations) committed by security forces between 1993 and 2011. Although 19 years have passed since the first ECtHR judgment in 2004, the monitoring process is still ongoing as no concrete steps have yet been taken by the political authorities.

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. In addition to these, the CPT announced on 3 October 2022 that they paid an ad hoc visit to Turkey between 21-29 September 2022 and visited İmralı F- Type High Security Prison. Unfortunately, the authorities have not yet shared any information about this visit with the public.

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 fact that



the publication of the other three reports (it can be assumed that the report of the visit between 21 - 29 September 2022 has not yet been prepared) is still not allowed is important in terms of showing the level of sensitivity of the political power regarding torture.

The CPT initiated a new regulation that has been adopted by 12 CoE member states which 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 2021 Turkey report adopted as a non-binding resolution on 7 June 2022 also offers similar points and 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 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.

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 2023 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. In fact, with the amendments made to its law in previous years, HREIT's dependence on the executive power has increased even further.

The visit reports published by the HREIT, which is mandated to act as an NPM in accordance with the provisions of the OPCAT under its founding law, are riddled with errors of principle and methodology. The HREIT published 69 reports in 2022 and 6 reports as of 30 April 2023.



When these reports are evaluated, it is understood that preventive visits to places of detention do not bear minimum standards and that the visits are only carried out in formality.

According to OPCAT principles, NPMs are not an investigative or judicial body. However, in complete contradiction to this principle, HREIT receives applications and renders decisions within the scope of the NPM in order to examine, investigate, decide and monitor the results of the applications made by persons deprived of their liberty or under protection. Although Article 17 of the Law on the Establishment of HREIT stipulates that procedures related to the exercise of judicial and legislative power cannot be the subject of an application, HREIT virtually undertakes a judicial function by conducting a kind of investigation process regarding allegations of torture and other ill-treatment and by ruling that “a violation of the prohibition of ill-treatment has or has not been committed.” In 2022, only three of the 219 decisions issued by the HREIT in this context were on the violation of the prohibition of ill-treatment. In 2023, none of the 93 applications made within the same scope published as of 30 April 2023 did not result in a decision on “violation of the prohibition of ill-treatment.” Likewise, at a time when there were extremely serious allegations of the increasing number of acts of torture and other ill-treatment in prisons, only three of the 312 decisions issued by the HREIT between 1 January 2022 and 30 April 2023 were on “violation of the prohibition of ill-treatment.” It is observed that the evaluation and decision-making processes regarding the applications subject to the decisions are generally carried out through correspondence and by examining the files. Investigating allegations of torture in this way and rendering decisions are completely contrary to the principles of the İstanbul Protocol (UN Manual for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). In brief, by undertaking such an investigation and judgment function, the HREIT paves the way for impunity and clearly harms the struggle for the prevention of torture.

The failure of the Institution to carry out effective monitoring and inquiries into widespread and intensive human rights violations, especially during the turmoil in Turkey after 2015 and during the state of emergency declared after the attempted military coup, is also an important indicator of its dysfunction.

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 dire 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. On the contrary, journalists, lawyers and human rights defenders who raise allegations of torture and ill-treatment are subjected to judicial investigations and prosecutions.

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.

The Constitutional Court’s judgment published in the *Official Gazette* on 23 February 2023 on the individual application filed by Maside Ocak, a human rights defender and relative of a disappeared person, alleging that she was subjected to torture and other forms of ill-treatment, is a recent example of the problems encountered in the investigation processes regarding torture allegations and evaluations that are not in line with universal principles and standards. The evaluations made by the Constitutional Court, which found the allegations of torture and other ill-treatment by Maside Ocak, who was subjected to physical and verbal violence by the police during the 700th vigil of the Saturday Mothers/People, inadmissible are contrary to the principles of the İstanbul Protocol and also hurt the fight against impunity.⁵

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 are finalized with heavy sentences in a short period of time. Indeed in 2021 public prosecutors’ offices filed criminal cases into 28,646 individual under Article 265 of the Turkish Penal Code that

⁵ For a comprehensive analysis of the issue by the HRFT, see: <https://Ohv.org.tr/basin-aciklamalari/aym-maside-ocak-karari/>



proscribes “resisting a public officer.”⁶ In contrast, criminal cases were filed against a mere total of 130 persons under Article 94 of the TPC that proscribes torture.⁷ 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.

Human Rights Foundation of Turkey (HRFT)

Human Rights Association (İHD)

Turkish Medical Association (TMA) Human Rights Branch

⁶ https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/9092022143819adalet_ist-2021.pdf, p.59

⁷ https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/9092022143819adalet_ist-2021.pdf, p.52