



**İHK**  
**İnsan Hakları Kolu**



26 June 2024

## **Against the Global Humanitarian Crisis**

### **We Stand Against Torture**

### **Protecting Human Rights Values!**

26 June, designated as the “International Day in Support of Victims of Torture,” is a special and significant day for human rights defenders all over the world.

The United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) was adopted on 26 June 1987. And the UN proclaimed June 26 the “International Day in Support of Victims of Torture” in 1997.

The UNCAT, which Turkey is a party to, absolutely prohibits torture to protect the inherent dignity and value of the human person. Such an absolute prohibition, which is a common achievement of the human family and constitutes one of the most fundamental rules of modern human rights law, is *jus cogens* as per the hierarchy of norms, in other words, it qualifies as a peremptory norm. There can, therefore, be no exceptions to this rule.

Thus, Article 2 § 2 of the UNCAT prescribes: “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.”

Yet torture is still being committed in many countries in the world by states against societies as an instrument of inhuman punishment and intimidation despite such an open and clear definition. Under conditions where the political will that sustained the global human rights regime as it was established after the Second World War is rapidly unravelling, the severe humanitarian crisis caused by Israel in Gaza, particularly its violations of the prohibition of torture, is important in terms of showing the point where this process of unravelling will reach/has reached.

Turkey ratified the UNCAT in 1988 and prohibited torture in its Constitution and the Turkish Penal Code (TPC). Torture, however, has maintained its existence as a systematic state practice not only during periods of military coup d'états but throughout the history of the republic. Moreover, today the whole country has virtually become a site of torture because the current political power's repressive mode of governance and control has rendered all the issues of the country, ranging from economics to public health, a security problem. The appended data reveal the fact that torture remains the most prominent human rights problem in Turkey despite its absolute prohibition and qualification as a crime against humanity. These data indicate that the statement “Zero tolerance to torture” is nothing but historical and factual discursive propaganda.

Acts of torture and ill-treatment have been maintained with all their severity and gravity in official custodial places, in proportion to the increasing authoritarianism of the political power, and have been 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 mechanisms and the like through such reasons as law, rule and norm control evasion; arbitrariness and willful negligence that have become quite common at various levels of the state.

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 reached unprecedented levels. 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 becoming a part of everyday life.

Particularly Saturday Mothers/People women and the LGBTI+, workers, defenders of life, members and executives of political parties, members and executives of professional organizations and human rights defenders peacefully exercising their right to freedom of assembly and protest, which forms the basis of a democratic society and guaranteed by the Constitution itself, have been subjected to such inhuman and disgraceful violence by the law enforcement.

Saturday Mothers/People, women, the LGBTI+, workers, students, defenders of life, voters who wanted to protect their usurped wills, members and executives of political parties, members and executives of professional organizations, human rights defenders, various religious sects and groups, refugees and asylum seekers who wanted to exercise their freedom of assembly, which is the basis of a democratic society and guaranteed by the Constitution, were subjected to this cruel law enforcement violence throughout the year.

Especially in the recent period, many people who wanted to protest against the appointment of trustees to the municipalities of Kurdish-majority cities and districts on various grounds, based on the usurpation of the will of citizens/voters, in a discriminatory manner, in violation of the principle of the rule of law, human rights and democratic values, were subjected to torture and other ill-treatment, detained and even injured as a result of the intervention of law enforcement forces.

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. The fate and whereabouts of Yusuf Bilge Tunç has been unknown since 6 August 2019.

Prisons have always been spaces where acts of torture and other forms of ill-treatment have been committed intensively. Especially in the period starting with Turkey's re-entry into a climate of conflict in July 2015, followed by the suppression of the military coup attempt and the subsequent declaration of the state of emergency, there has been a significant increase in acts of torture and ill-treatment against detainees and convicts in prisons.

The very nature of incarceration is in itself a painful and traumatic process. Imprisoned persons cannot be subjected to further punishment. Single-person or small-group isolation practices, which cause serious damage to the physical and psychological integrity of prisoners, are a punishment like torture and other acts of ill-treatment. The recent opening of new Type S, Type Y and high-security prisons, which aggravate the conditions of isolation with their architectural structure and daily practice regime, and especially the special form of isolation applied in İmralı Prison, as stated in the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), are unacceptable.

This alarming reality, which becomes visible with the appended data, has also been reflected in reports drawn up by international prevention mechanisms and human rights bodies. Yet, the political power unwilling to limit itself with any rule and norm, particularly by the Constitution, has not been heeding international mechanisms along with their criticism and warnings and failed to take steps to prevent torture. It, on the contrary, has been attempting to “guarantee” impunity by introducing regulations and amendments in legislation that are against the absolute nature of prohibition of torture and hoping to curb the struggle against torture by threats against human rights defenders who have been striving to render these violations visible.

It is, nevertheless, possible to stop torture by humans because it is committed at the hands of humans despite such bleak truth.

The obligation to prevent/stop torture falls firstly on states. We, therefore, remind the political power of the following minimum demands once again that we have been patiently and persistently voicing for years as part of our duty as human rights defenders and ask them to be put in effect without delay:

- The main reason why acts of torture are committed at such a high level in our country is the presence of a very serious culture of impunity that is in non-compliance with the absolute prohibition of torture. Policies of impunity that the authorities attempt to turn into mundane rules, above all, should be put to an end.
- Authorities at all levels should renounce discourse praising and encouraging torture and torturers; acts of torture should be condemned publicly in a crystal-clear manner in line with recommendations by international mechanisms.
- Procedural guarantees for custody/detention conditions should be implemented without any reserve.
- Custody periods should be shortened.
- The current Human Rights and Equality Institution of Turkey (TİHEK) should be abolished, and a thoroughly independent national prevention mechanism should be established in compliance with the provisions of the OPCAT and Paris Principles.
- Documentation and reporting of torture should be conducted in accordance with the principles set forth in the İstanbul Protocol which is a UN document.
- Torture allegations should be investigated in a rapid, effective, and independent way; they should be inquired by independent boards; international ethical and legal rules should be observed at each stage of legal jurisdiction processes.
- Prisons should be made available to monitoring works by human rights and legal organizations.
- All reports by CPT should be disclosed and the recommendations therein should be complied with.
- All regulations that make the Prison Administrative and Observation Boards directly dependent on the executive branch and allow them to act as courts and exercise judicial authority must be cancelled.

We, however, would like to remind all that protecting human dignity and preventing torture is at the same time the responsibility of the whole society. To be human beings and citizens, to protect the common bond that makes us a society we must see the suffering torture brings about and we have to enhance solidarity.

As organizations aiming to achieve a torture-free Turkey and a torture-free world, we will continue to stand by torture survivors under all circumstances, to document and report the torture they have been subjected to, to support their physical and mental reparation processes, to help them access justice, and to fight against impunity so that the pain they have suffered is never repeated, despite all efforts to cover up, intimidate and silence them.

**We do see, we do speak up, we do fight...**

**Human dignity will triumph over torture...**

**A world without torture is possible!**

**Human Rights Foundation of Turkey (HRFT)  
Human Rights Association (iHD)  
Turkish Medical Association (TMA) Human Rights Branch**



**İHK**  
**İnsan Hakları Kolu**



## **Torture in Its Various Dimensions in Turkey**

**as of 26 June 2024**

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**

The 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 has prevailed in 2023 as well. Numerous worrisome acts of torture at official custodial places within the last year have been reported by the press and cited in court records and human rights organizations' reports.

- 781 individuals have lodged applications before the HRFT in 2023 with allegations of torture and ill-treatment. Of these, some were filed by relatives of torture survivors (42 persons) while some were about allegations of torture and ill-treatment outside of Turkey (8 persons). Out of

731 individuals, who have lodged applications before the HRFT alleging that they were directly subjected to torture and ill-treatment in Turkey, 386 (52.8%) stated that they were tortured at official custodial places like security directorates, 55 (7.5%) indicated that they were tortured at police stations while 68 (9.3%) stated that they were tortured at gendarmerie stations. Further, 311 (42.5%<sup>1</sup> individuals were allegedly subjected to torture and ill-treatment in custody and transfer vehicles of the law enforcement.

- According to data collected by the HRFT Documentation Center, 6 persons died under suspicious circumstances in custody in 2023. In the first five months of 2024, 1 person died under suspicious circumstances in custody. Further, 1 asylum-seeker/refugee died under suspicious circumstances at a removal center in Ankara.
- According to data collected by İHD Documentation Center, at least 348 people were subjected to torture and other ill-treatment in official detention centers in 2023.

## **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.<sup>2</sup>

Between 8 April and 4 November 2023, the Saturday Mothers, who have been struggling for truth and justice for 29 years, were subjected to the same treatment every time they went to Galatasaray Square, despite the Constitutional Court's clear ruling that their freedom of assembly and demonstration had been violated, The intense violence of the law enforcement forces against LGBTI+s during Pride Month events, those who wanted to march to Taksim on 1 May 2024, those who protested against the appointment of trustees to municipalities in violation of the will of the voters after the 31 March 2024 local elections are concrete examples of such normalization.

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.

- 365 (49.9%) of the individuals who lodged applications before the HRFT in 2023 stated that they were subjected to torture and ill-treatment outdoors and during protests, while 311 (42.5%) indicated that they were subjected to torture and ill-treatment inside vehicles and 142 stated that they were subjected to torture and ill-treatment in such spaces as homes and offices.

---

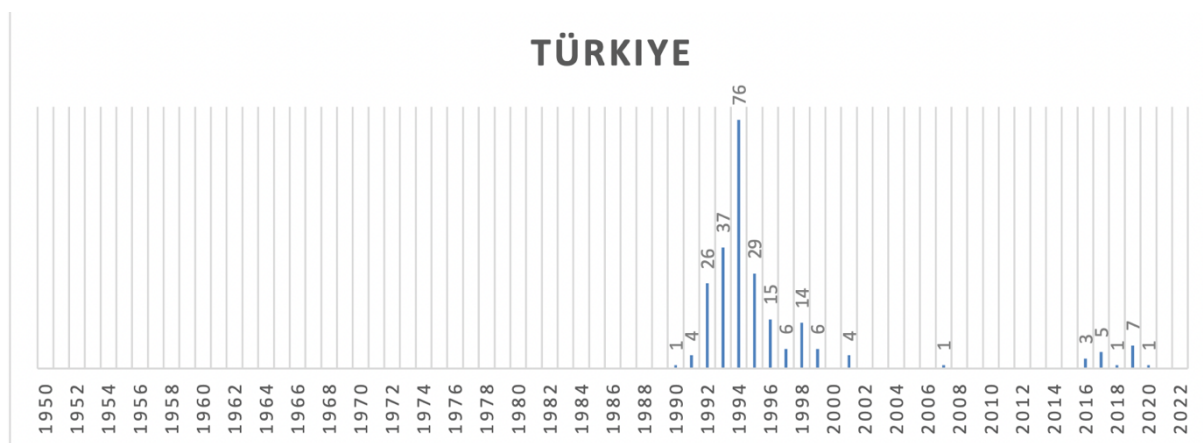
<sup>1</sup> The shared data should be evaluated by taking into account that the applicants to the HRFT were subjected to torture in more than one unit.

<sup>2</sup> In the resolution of the UN General Assembly at its session of 18 December 2013, it was emphasized that the prohibition of torture and other ill-treatment covers not only persons deprived of their liberty, but also violence committed by security forces during arrests or interventions against persons wishing to exercise their right to assembly, etc. and the UN Special Rapporteur on Torture's report to the UN General Assembly dated 20 July 2017 entitled "Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in places other than places of detention and places of official detention" ("extra-custodial use of force") is very comprehensive. Likewise, an important jurisprudence on this issue has been established in the judgements of the European Court of Human Rights (ECtHR), where the treatment of "protesters" by law enforcement forces has been held to amount to the level of "torture".

- According to data collected by HRFT’s Documentation Center, at least 3,595 individuals including 63 children were subjected to torture and ill-treatment while 45 individuals were wounded in 2023 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 2024, at least 1,592 individuals, including 77 children, were subjected to torture and ill-treatment and 23 individuals were wounded as a result of interventions by the law enforcement.
- According to data by HRFT’s Documentation Center, at least 116 individuals were subjected to torture and ill-treatment in the streets and outdoors, while at least 20 individuals were subjected to torture and ill-treatment during house raids. Further, at least 41 individuals were subjected to torture and ill-treatment in the streets and outdoors, while 21 individuals were subjected to torture and ill-treatment during house raids within the first five months of 2024.
- 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 2023 was 733. At least 3,487 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 and was most commonly seen in the early 1990s, 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).<sup>3</sup> As can be seen in the below table presented in the report, acts of enforced disappearance that had shown a downward trend between 2001 and 2015 (four in 2001 and one in 2007) started to go up again as of 2016.



“Report of the Working Group on Enforced or Involuntary Disappearances.” 8 August 2023.<sup>4</sup>

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:

<sup>3</sup> “Report of the Working Group on Enforced or Involuntary Disappearances.” A/HRC/54/22. 8 August 2023. <<https://www.ohchr.org/en/documents/reports/ahrc5422-enforced-or-involuntary-disappearance-report-working-group-enforced-o>>

<sup>4</sup> Ibid.

- The fate and whereabouts of Mr. Yusuf Bilge Tunç, who was abducted on 8 August 2019 in Ankara, are still unknown.
- At least 6 people were abducted or faced attempted abduction in 2023. In the first five months of 2024, 1 person was abducted or faced attempted abduction.
- In addition, in recent years, there has been an alarming increase in practices in which people, especially university students, journalists and political activists, are detained off-the-record and subjected to forced informant-making attempts through pressure and threats.
- According to the applications made to İHD and other available data, 134 people were subjected to informant-making attempts, abduction and threats in 2023.

#### 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. Further, recently there has been an increase in the number of new type prisons based on isolation with their architectural structures and daily practice regime.

According to data provided by the Ministry of Justice, the number of prisoners in 2005 was 55,870. This figure went up to 337,760 in 403 prisons which normally have a capacity of 295,328 as of 3 June 2024.

As is seen, the number of prisoners has almost gone up 6 times in 18 years. There are also 42,542 over-capacity prisoners as of 3 June 2023.

Moreover, when one looks at the entry and exit records made during the year, it is seen that there is a much more intense population mobility in prisons. According to the data of the General Directorate of Judicial Registry and Statistics of the Ministry of Justice dated 20 May 2024, between 1 January and 31 December 2023, 294,991 people registered as convicts in prisons were released, while 356,936 people were admitted as convicts in prisons.

On the other hand, the total number of prisoners decreased from 360,722 as of 3 July 2023 to 251,101 as of 1 September 2023 with the "2023 Enforcement Regulation" which was published in the *Official Gazette* on 15 July 2023. Based on these data, although there is no precise information, it is possible to argue that approximately 110,000 prisoners were released by taking advantage of the said regulation. However, in a short period of 9 months, the total number of prisoners in prisons increased to 337,760 as of 3 June 2024, with the highest rate of increase in Turkey's recent history (86.659 prisoners, 34.51%).

According to the data of the Ministry of Justice General Directorate of Judicial Records and Statistics dated 20 May 2024, the number of people in prisons per one hundred thousand people in Turkey, determined as of 31 December of each year, was 400 in 2022 and 342 in 2023. It can be said that the above-mentioned enforcement regulation is effective in this decrease in the rate. The ratio increases even more when the age limit is taken into consideration: As of 31 December 2023, 412 out of every one hundred thousand people aged 12 and older were incarcerated.

On the other hand, according to the "2023 Council of Europe Annual Penal Statistics on Prison Populations" published on 6 June 2024, Turkey has the highest number of and the highest ratio of this figure to the total population in the countries of the Council of Europe. According to the report, as of 31 January 2023, there were 348.265 prisoners in prisons in Turkey and there are 408 prisoners for every 100 thousand people. The average of this ratio in Council of Europe countries is 106.5.<sup>5</sup>

In addition, the number of persons subjected to the supervised release measure was 230,511 as of 20 June 2024 across Turkey. When this figure is added to the number of convicted and non-convicted

---

<sup>5</sup> See Council of Europe Annual Penal Statistics SPACE I 2023, <https://mycloud.coe.int/s/GJE82FAMH5c3XrZ?path=%2F>



prisoners, the number of citizens deprived of their liberty amounts to about 568,271. This, in turn, means that one in every 150 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.

However, the very nature of imprisonment is in itself a painful and traumatic process. Imprisoned persons cannot be subjected to additional punishment. Acts other than confinement that cause severe physical or mental pain or suffering (including inadequate health care/restricted access to health care) fall within the scope of torture and other ill-treatment.

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.

Indeed, 2,729 out of 5,553 applicants to the HRFT in Turkey who were directly subjected to torture and ill-treatment stated that they had been subjected to torture and ill-treatment in prisons between 1 January 2016 and 31 December 2023. In this context, it was stated that basic rights (94.7%) and social rights (91.2%) were restricted in prisons in addition to physical interventions, especially insults (75.7%) and beatings (60.6 %).

- According to data collected by İHD's Documentation Center, the number of prisoners who claimed to have been subjected to torture and ill-treatment in prisons in 2023 was 594.

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 2022.
- Between 31 May 2023 and 31 May 2024, 275 prisoners applied to the Turkish Medical Association (TMA) from different prisons on the grounds of problems in access to health, imposition of examination in handcuffs, insistence of law enforcement officers to be present in the examination environment and violation of privacy.

According to international norms, states have a positive obligation to protect the right to life of prisoners. Yet,

- According to data provided by HRFT's Documentation Centre, at least 20 prisoners died in prisons in 2023 due to illness, suicide, violence, neglect, etc. In the first five months of 2024, 7 people lost their lives for the same reasons.
- According to data provided by IHD's Documentation Centre, at least 42 prisoners died under suspicious circumstances in prisons in 2023.

Although there are serious allegations that a significant number of these deaths are suspicious, to the best of our knowledge there are no effective investigation processes.

According to international norms,<sup>6</sup> 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.

One of the most important problems in recent period is the postponement of the release of many prisoners, mainly those sentenced on political grounds, by the decisions of Prison Administrative and Observation Boards within the scope of the "Regulation on Observation and Classification Centers and Evaluation of Convicts" although they have completed the required period for the enforcement of their finalized sentences under the name of conditional release. Especially since 2023, the release of a large number of prisoners, known as "30-year" prisoners by the public, who have completed the time required for the enforcement of their life sentences, has been arbitrarily postponed.

The administrative and observation boards established according to the relevant legislation are not independent and exercise judicial authority almost like a court. As a result of this use of authority, a prisoner with a life sentence can be deprived of their freedom for 6 more years, even if they have been in good behavior for 30 years, without even a finalized sentence of solitary confinement.

Unfortunately, since the authorities do not share reliable data on this issue, it is not known how many prisoners' release is postponed and for how long and how many times.

- According to data released by IHD's Documentation Center on 1 June 2024, the conditional release of at least 426 prisoners until the end of 2023 was postponed by the decisions of "Prison Administration and Observation Boards."

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. Recently, there have been attempts to make this practice widespread and routine by opening new prisons such as S Type, Y Type and high-security prisons, where most of the prisoners are held in solitary cells and very few in 3-person rooms, which aggravate the conditions of isolation with its architectural structure and daily application regime.

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>7</sup>

---

<sup>6</sup> See Article 59, "United Nations Standard Minimum Rules for the Treatment of Prisoners." (the Nelson Mandela Rules).

<sup>7</sup> CPT. "26<sup>th</sup> General Report of the CPT." 1 January-31 December 2016. <<https://rm.coe.int/168070af7a>> p. 34.

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 detrimental 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. This approach has been maintained even after the end 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.

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 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.

As a result of the systematic system of impunity in practice, law enforcement officers who commit the crime of torture are usually prosecuted for the offence of "intentional injury", which carries a lighter penalty. Therefore, this regulation excludes the offence of torture and thus reinforces 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.

Further, many regulations that may lead to arbitrary prevention of prisoners' rights have been included in this law. Thus, enforcement judgeships are equipped with the powers of criminal courts of first instance. In the past, prisoners could benefit from conditional release with the decisions of assize courts or criminal courts of first instance, which directly sentenced prisoners, however, with the new regulation, this authority has been granted to the enforcement judgeships, but the decisions of the enforcement judgeships have been excluded from the scope of legal control by exempting them from the review of appeal courts, unlike the decisions of assize courts or criminal courts of first instance. Although the decisions of the enforcement judgeships can be “objected” against before the assize courts by prisoners, it is not possible to talk about a legal review since the assize courts cannot enter into the merits of the file that comes before them with an appeal, that is, they only examine it formally. Thus, with the new regulation, enforcement proceedings have been transformed into a closed-circuit judicial regime.

A large number of prisoners were released with the "Law on the Levy of Additional Motor Vehicles Tax for the Compensation of Economic Losses Caused by the Earthquakes Occurring on 06/02/2023 and Amendments to Certain Laws and Decree Law No. 375", which was published in the *Official Gazette* on 15 July 2023, which is a kind of continuation of the enforcement regulation in 2020. This was made contrary to the principle of equality and the prohibition of discrimination. However, this regulation again excluded certain types of offenses and political prisoners. In addition, the nature of the offense committed by the prisoner will be taken into consideration as a prerequisite for benefiting from rights such as probation and transfer to open prisons. Also, the phrase “the enforcement judge may decide” in this regulation creates a situation that is far from certainty and legal certainty.

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 “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).

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.

With the Decree Law No. 696 dated 24 December 2017 on Making Certain Regulations within the Scope of the State of Emergency (which was later turned into a law by the Turkish Grand National Assembly with the number 7079 dated 1 February 2018), the obligation to wear uniform clothing, which is a "degrading punishment", was imposed on those arrested and convicted of crimes within the scope of the Anti-Terrorism Law during their transfer outside the prison for trial. This regulation was cancelled by the Constitutional Court's ruling dated 26 October 2023 (No. 2023/183) published in the *Official Gazette* dated 17 April 2024. In the said decision, it was stated that “It is clear that the obligation imposed by the rule to wear the clothing given by the penal institution instead of wearing the clothing of one's choice, taking into account the type of clothing in question, limits the right to the protection and development of one's material and spiritual existence” and that the regulation “does not meet the criteria of necessity.”

## **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 20 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 latest Rule 9.2 submission was made in relation to this case on 31 July 2023 by the above-mentioned human rights organizations prior to the meeting of the Committee of Ministers of the Council of Europe on 19-21 September 2023.

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 periodically 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 made paid five ad-hoc visits to Turkey, most recently on 29 August-6 September 2016, 4-13 April 2018, 6-17 May 2019, 21-29 September 2022 and 13-22 February 2024, and two periodic/regular visits on 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 either of the reports. The fact that the publication of the other five reports has still not been authorized is important in terms of showing the level of sensitivity of the political power on the issue of torture.

The CPT initiated a new regulation that has been adopted by 16 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.

On 24 January 2024, the Parliamentary Assembly of the Council of Europe, in its resolution entitled "Allegations of systematic torture and inhuman or degrading treatment or punishment in places of detention in Europe", found that "there has been an increase in torture and ill-treatment in police custody and prisons in Turkey in recent years" and made many similar recommendations on the issue.

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 as of 2024 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 60 reports in 2023 and 16 reports as of 30 April 2024. When these reports are analyzed, it is seen that, although the reference to a large number of international instruments on prisons gives a positive impression, preventive visits to places of detention do not meet minimum standards and are only carried out in a formal manner.

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.”

Among the total 981 decisions rendered by the HREIT in 2023, only 5 of the 139 decisions that can be assumed to fall within the scope of the NPM's functions are "violations of the prohibition on ill-treatment". Although there are extremely serious allegations and evidence of torture and other ill-treatment practices that have increased recently, it is extremely striking that only five "decisions on violation of the prohibition of ill-treatment" have been rendered.

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. Such an investigation and judgment of torture allegations is completely contrary to the principles of the Istanbul Protocol (UN Manual for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). In short, by undertaking such an investigation and judgment function, HREIT paves the way for impunity and clearly harms the struggle for the prevention of torture.

The fact that HREIT has not carried out effective monitoring and investigations against widespread and intensive human rights violations, especially during the conflict in Turkey after 2015 and during the state of emergency declared after the military coup attempt, 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 the 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 700<sup>th</sup> vigil of the Saturday

Mothers/People, inadmissible are contrary to the principles of the İstanbul Protocol and also hurt the fight against impunity.<sup>8</sup>

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 2023 public prosecutors' offices filed criminal cases into 24.870 individuals under Article 265 of the Turkish Penal Code which proscribes "resisting a public officer."<sup>9</sup> In contrast, criminal cases were filed against a mere total of 855 persons under Article 94 of the TPC which proscribes torture.<sup>10</sup> Such a high difference between the figures about 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**

---

<sup>8</sup> For a comprehensive analysis of the issue by the HRFT, see: <https://Ohv.org.tr/basin-aciklamalari/aym-maside-ocak-karari/>

<sup>9</sup> Bkz. [https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet\\_ist-2023CALISMALARI59.pdf](https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet_ist-2023CALISMALARI59.pdf), s.75

<sup>10</sup> Bkz. [https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet\\_ist-2023CALISMALARI59.pdf](https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet_ist-2023CALISMALARI59.pdf), s. 72