



TURKEY TRIBUNAL

Because Silence is the Greatest Enemy of
Fundamental Human Rights

The Turkey Tribunal

SEPTEMBER 2021

**REPORTS SUBMITTED
TO THE TRIBUNAL**

in collaboration with



**INTERNATIONAL
OBSERVATORY
HUMAN RIGHTS**

THE TURKEY TRIBUNAL

“Because silence is the greatest enemy of fundamental Human Rights”

This has been the guiding motto for the Turkey Tribunal since its inception in 2019. It shaped the purpose and motivation to organise a people’s tribunal to consider the situation of human rights in Turkey.

The Turkey Tribunal will be held in Geneva from 20–24 September 2021. It will be adjudicated by a prestigious panel of independent judges who, in their professional careers, are either former judges or renowned academic professors. Therefore their critical mindset, ability to impartially assess the evidence presented and maintain independence is undisputed.

This is the collection of detailed reports that have been compiled by independent experts to submit to the judges of the tribunal. The reports will also be provided to the Turkish authorities to ensure that they also have the same opportunity to engage.

The judges will question the rapporteurs on their findings in the reports and witnesses will be invited to testify before the tribunal. Finally the tribunal will decide on the different questions posed and publish its verdict on the human rights situation in Turkey today.

The rapporteurs hope that the content of the reports will encourage the reader to reflect on the vulnerability of our fundamental rights and the necessity to speak up; because, silence is the greatest enemy of fundamental Human Rights.

PROF. DR. EM. JOHAN VANDE LANOTTE

2 August, 2021

Gent, Belgium

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Torture in Turkey Today

MARCH 2021



ERIC SOTTAS
JOHAN VANDE LANOTTE

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**INTERNATIONAL
OBSERVATORY
HUMAN RIGHTS**

Executive Summary

Torture in Turkey Today

BY ERIC SOTTAS AND JOHAN VANDE LANOTTE

This report aims to provide an answer to the key questions addressed to the Turkey Tribunal about torture. These questions are: Who are the targeted groups? What is the purpose and the motivation of the perpetrators? Is there a pattern in the way torture is inflicted? Is it being used systematically? Is it an organised practice? Is torture tolerated within the security system itself and what is the involvement at the central governmental level?

International legislation

Binding international regulations, which are directly applicable in the Turkish legal order, prohibit the government, without exception, from torturing someone, or treating or punishing someone in an inhumane or degrading manner. These international regulations also mean that all necessary steps must be taken to prevent such behavior, even if it involves non-state personnel. Any such behavior must be detected, investigated thoroughly and must be punished with sufficiently long prison sentences. Even though the burden of proof lies with the victim, if the victim can indicate a reasonable suspicion that he or she has been subjected to torture, inhuman or degrading treatment while deprived of his or her liberty, the government will have to provide evidence to the contrary.

According to the official statistics of the ECtHR, after Russia, Turkey has the most judgements in which a violation of art. 3 ECHR is ruled. In total, from 1991 until the end of May 2020, 620 cases concerning art. 3 ECHR have been decided. In 441 cases (71.1%) a violation was found.

Brief history of the use of torture

The coup d'état of 1980 was followed by a period of generalised use of brutal torture. In the 1990s, the CPT and the UN Committee published their reports, this was clearly and critically pointed out. Without any doubt, in the 1990s, violence and torture are a widely used feature of the Turkish police and security forces.

By the beginning of the twenty-first century, positive legislative changes were made. In 2003, the new Erdogan government officially declared that it will apply a “zero tolerance policy towards torture”. A number of publications by international bodies report an improvement in the situation in that first decade of the twenty-first century, and also mention that when torture occurs, it is less violent. These evolutions do not prevent the continued strong presence of torture in relation to the PKK and other extreme left-wing (Kurdish) organisations, certainly linked to violent confrontations and to the presence of the state of emergency in some regions.

However, in the last ten years there has been an intensive resurgence of torture. Figures on the exact number of cases of torture are not clear. Based on official statistics we can state, albeit with considerable caution, that around 3,000 complaints of torture are filed per year on average. A maximum of 1% of the complaints lead to imprisonment (and this estimate is most probably high), and the chance that the perpetrators will be punished with a sufficiently severe imprisonment, is nearly non-existent.

The Turkish government systematically denies the complaints. This is demonstrated in:

1. The fact that the complainants are opponents of the regime and therefore have an interest in spreading false rumours and accusations;
2. The lack of medical evidence for most of the torture complaints, and;
3. The fact that the complaints examined by the courts very rarely lead to a conviction.

To give an answer to this statement, we examined the jurisprudence of the ECtHR, that concludes, on an almost continuous basis, that there have been violations of Article 3 ECHR by the Turkish state based on the state’s lack of effort to conduct effective investigations, nor to take care of medical reports, that are in line with the international standards, and the almost pervasive culture of losing crucial time in the criminal proceedings makes the arguments of the Turkish authorities very unconvincing. “Nemo auditur propriam turpitudinem allegans”: no one should be permitted to profit from his own fraud or take advantage of his own wrong or negligence.” That is, however, exactly what the Turkish state does in its argumentation and what the judgments of the ECtHR have proven.

More than 20 reports have been made by official international organisations, further demonstrating evidence to support the legally binding rulings of the ECtHR. The Turkish government has, so far, recognised these international bodies involved, and as a result must also recognise the conclusions of these bodies.

The questions

The key questions surrounding concerns about the use of torture being systematic, organized and tolerated were asked.

Is torture organised?

We can establish, without doubt and with absolute clarity, that the frequent use of torture of certain groups of people does not constitute a spontaneous reaction of certain police officers but is a practice that is clearly well organised within the security services.

Is it being used systematically?

With all due precautions about the absence of precise figures, our conclusion is that certainly in the last five years in Turkey, the use of torture is systematic towards members of the targeted groups that we identified. It was used when these groups fail to give the answers the security services want, in the sense that the UN Committee assigns to the word 'systematic'.¹¹

Is torture tolerated within the security system?

The figures submitted by the Turkish government concerning disciplinary sanctions in case of torture, certainly do not justify the assertion that, through disciplinary actions, the security services are reacting to torture in a coherent and rigorous way. The contrary is true. Torture is tolerated in the security system.

The answers to these questions, and the others outlined at the start of this summary, bring us to the inevitable conclusion that the central government bears full responsibility for the systematic and organised use of torture in Turkey, and the nearly non-existent prosecution and punishment of it.

¹¹The UN Committee defines systematic as follows "when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question" And furthermore: "Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice".

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1. INTRODUCTION

1. In this report we aim to provide an answer to the questions addressed to the Turkey Tribunal about torture.
 - Who are the targeted groups?
 - What is the purpose and the motivation of the perpetrators?
 - Is there a pattern in the way torture is inflicted?
 - Is it being used systematically?
 - Is it an organised practice?
 - Is torture tolerated within the security system itself and what is the involvement at the central governmental level?
2. We will first give a short description of the applicable international legal instruments. For this report we have based our findings almost exclusively on official statistics and reports, which we will summarise with the international reports dedicated to these questions. Then we will give an overview of the practice and evolution of torture over the past 30 years in Turkey. Finally, we will seek to answer the questions.

2. INTERNATIONAL LEGAL CONTEXT

3. Article 1 of the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** stipulates the following: *“For the purposes of this Convention, the 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.”*

4. The prohibition of torture and other cruel, inhumane or degrading treatment or punishment is absolute. Exceptions or derogations are not allowed:

“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. An order from a superior officer or a public authority may not be invoked as a justification of torture.” (CAT, art. 2 (2) and art. 2 (3))

5. According to article 4 each state party to the CAT *“must ensure that all acts of torture are offences under its criminal law” (CAT, art. 4(1))*. Disciplinary sanctions and light or suspended prison sentences are not in accordance with this provision. *“In accordance to the practice of the CAT committee in the state reporting procedure, only a prison sentence of at least a few years can be considered as an appropriate penalty which takes the grave nature of torture into account”²*.
6. The non-derogable character of the prohibition is accepted as a matter of *ius cogens* (obligatory international law) in all circumstances. The UN Committee against Torture (UN Committee) *“draws the attention of the State party to paragraph 5 of its general comment No. 2 (2007 on the implementation of article 2 by the State parties, ..., that exceptional circumstances also include any threat of terrorist acts or violent crime, as well as armed conflict, international or non-international.” (CAT/C/TUR/CO/4; No 12)*
7. The CAT is only applicable to *“public officials or other persons acting in an official capacity”*. However: *“Where State authorities (...) know or have reasonable ground to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors (...), the State bears responsibility.” (General Comment No.2, CAT/C/GC/2, No.18)*

² Katona, N., “Article 4. Obligation to criminalize Torture”, in: [The United Nations Convention against Torture. A commentary](#), Nowak, M., Birk, M Monina, G., Oxford University Press, 2019, p.177

8. The **European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR)** is far more concise: *“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”* (art.3 ECHR)³⁴. The interpretation of this concept is largely left to the European Court of Human Rights (ECtHR). The ECtHR has - in line with the CAT and the General Comments and vice versa - elaborated a consistent jurisprudence that the state not only has the duty to abstain from subjecting a person to torture or ill treatment or punishment, but also has *“the obligation to investigate whether torture or inhuman or degrading treatment or punishment has been committed, and the obligation to prevent such treatment from being inflicted both by state agents and by private parties”*⁵.”
9. These obligations are generally referred to as the “positive obligations”: prevention and the obligation to investigate. In 2004, the United Nations published a “Manual on the Effective Investigation and Documentation on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment”, the so-called “Istanbul Protocol”. Where there has been no, or only an insufficient investigation in the jurisprudence of the court, it is referred to as *“a procedural violation – next to a substantial violation”*⁶, more specifically *“criminal proceedings ought not to be discontinued on account of a limitation period and amnesty and pardons are not allowed in these cases”*.⁷ As is the case for CAT, also in the ECHR, the prohibition of torture is absolute and non-derogable. Both the CAT and the ECHR are ratified by Turkey and – according to the Turkish Constitution (Article 90) prevail over national laws in case of conflict.

³ In the International Covenant on Civil and Political Rights Article 7 states as follows: *“No one shall be subjected to torture, inhuman or degrading treatment or punishment. In particular no one shall be subjected without his free consent to medical or scientific experimentation”*. As this article is literally the same as Article 3 ECHR, we will concentrate on this one.

⁴ The European Convention for the prevention of Torture and Inhuman or Degrading Treatment or Punishment, did not add a new definition the ECHR. This convention establishes a Committee which may visit any place within the jurisdiction of the Parties where persons are deprived of their liberty by a public authority. The Committee's function is to carry out visits and, where necessary, to suggest improvements as regards the protection of persons deprived of their liberty from torture and from inhuman or degrading treatment or punishment.

⁵ Vermeulen, B. and Battjes, H. “Prohibition of Torture and other inhuman or degrading treatment or punishment”, in “Theory and Practice of the European Convention on Human Rights, Van Dijk, P., Van Hoof, F., Van Rijn, A. en Zwaak, L; (ed.,) Intersentia, 2018, p. 385 with reference to: A. v. United Kingdom, ECtHR, 23 September 1998 and Assenov and Others v. Bulgaria, ECtHR, 28 October 1998. In several judgments the ECtHR confirmed that the duty to investigate under article 3 is not limited to State agents but also to private persons (ECtHR, M.C. v. Bulgaria, 4 December 2003; ECtHR, M. and M. v. Croatia, 3 September 2015; Dordevic v. Croatia, 19 July 2011).

⁶ “Thus the Court has considered the obligation to investigate as the *“procedural aspect”* of the provision, next to the *“substantive aspect”* under which heading it discussed the obligation to prevent” *Ibidem*, p.405.

⁷ *Ibid.*, p.406, with reference to Mocanu and others, ECtHR, 17 September 2014. Also: *“The CAT Committee has insisted in numerous cases that no acts amounting to torture should be subject to any statute of limitation (...). Accordingly, no time bar should deter the application of criminal law against acts of torture”*, Katona, N. Article 4. Obligation to criminalize, in The United Nations Convention Against Torture and its optional Protocol, *o.c.*, p. 190, No. 44

10. It is important to emphasise that this report is about torture or ill-treatment of persons who are deprived of their freedom, in prison or in police custody or at extra-custodial locations.⁸ The report is not about persons who are abducted and afterwards tortured. Another report deals with that issue. For this report “in police custody” and “police station” not only applies to custody in police stations as such but also to custody in extra-custodial locations and to custody in Security Directorates.
11. For persons who are deprived of their freedom and are thus under the authority of the government, the burden of proof is specific. In the case *Aylin versus Turkey* the ECtHR states:

“that the Commission could properly reach the conclusion that the applicant’s allegations were proved beyond reasonable doubt, it being recalled that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences (see the Ireland v. the United Kingdom judgment cited above, pp. 64–65, § 161). It would also note in this regard that the Government have been unable to adduce any evidence collected in the course of the criminal investigation into the applicant’s allegations (see paragraph 56 above) which would have served to contradict this conclusion and that the medical evidence which they rely on cannot be taken to rebut the applicant’s assertion that she was raped while in custody (see paragraph 67 above).”⁹

12. Although we cannot go so far as to assert that in this judgment, the Court is completely turning around the burden of proof, the fact the Court stresses that evidence of the state is not convincing enough, is not without significance. We see a more explicit statement in a later judgement:

⁸ The situation of migrants in centers where they are detained, including the possibility of removal, is not the subject of the report. We also do not focus on poor living conditions in prisons (overcrowding), long-term solitary confinement or other forms of unacceptable living conditions for prisoners

⁹ ECtHR, *Aylin v. Turkey*, 25 September, Grand Chamber, par 73.

*“Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.”*¹⁰

In any case, when an individual is taken into custody in good health, but found to be injured at the moment of release, it is incumbent upon the state to provide a plausible explanation of how the injuries were caused.¹¹

13. **We can therefore state that binding international regulations, which are directly applicable in the Turkish legal order, prohibit the government without exception from torturing someone or treating or punishing someone in an inhuman or degrading manner. These international regulations, which are applicable in the Turkish legal order, also mean that all necessary steps must be taken to prevent such behavior, (even if it would involve non-state personnel. Any such behavior must be detected, must be investigated thoroughly and must be punished in a severe manner, with sufficiently long prison sentences. Even though the burden of proof lies with the victim, if the victim can indicate a reasonable suspicion that he or she has been subjected to torture, inhuman or degrading treatment while deprived of his or her liberty, the government will have to provide evidence to the contrary.**

¹⁰ ECtHR, *Salman v. Turkey*, 27 June 2000, Grand Chamber, par. 100. See also ECtHR, *Tomasi v. France*, 27 August 1992, par 110 where we partly (in the first section of par. 110) have a reasoning *a contrario*: no other proof being found, the responsibility of the state is accepted.

¹¹ *Süleyman Demir and Hasan Demir v. Turkey*, ECtHR, 24 March 2015; *Aktürk v Turkey*, ECtHR, 13 November 2014.

3. SOME STATISTICAL INFORMATION ABOUT TORTURE IN TURKEY

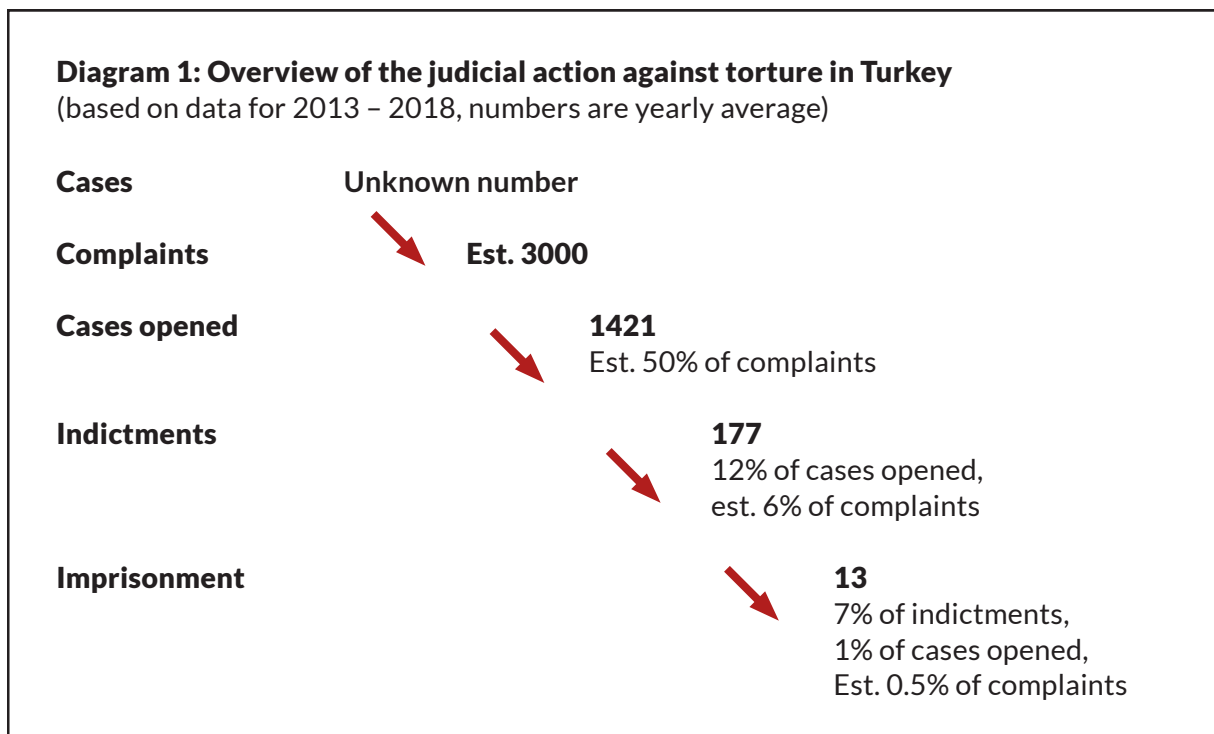
3.1. STATISTICAL INFORMATION FROM THE TURKISH GOVERNMENT

14. In table 1, data is given about the judicial action against torture in Turkey. This data is official data from the Ministry of Justice and is available on the website of the Ministry. No data has yet been published for 2019 or 2020.

Table 1: Judicial Statistics on Article 94 (Torture) and Article 95 (Severe Torture) of the Turkish Criminal Code					
Year	Total	Investigation Phase		Trial Phase	
		Non-Prosecution	Filing a Public Case (Indictment)	Acquittals	Imprisonment
2013	1826	1148	211	86	20
2014	1719	1029	248	99	13
2015	1475	894	294	65	17
2016	1359	903	128	52	11
2017	1191	804	98	144	7
2018	960	652	83	38	10
Total	8530	5430	1062	484	78
Yearly	1422	905	177	80	13

Source: Ministry of Justice, Turkey. These statistics are available in English on the website of the Turkish Ministry of Justice.

15. Based on this information we can present the following overview in Diagram 1.



16. Some remarks must be made to clarify this diagram.

1. We have no statistics about the exact number of cases of torture. It is common and universal knowledge that the dark number is high, certainly in a system where the number of convictions is low.
2. We do not know the exact number of complaints either. For the period 2013-2018, the Human Rights Association (HRA – IHD in Turkish) received an average of 2063 complaints yearly (See Appendix 2)¹². Of course, they do not receive all the complaints from the whole country. In the report of the Committee against Torture for the fourth periodic report on Turkey, the Committee against Torture notes:

“a significant disparity between the high number of allegations reported by non-governmental organizations and the data provided by the state party in its periodic report... suggesting that not all allegations of torture have been investigated during the reporting period.” (CAT/C/TUR/CO/4, No 9). In that context an estimation of a yearly average of 3000 complaints is surely not an overestimation.

3. Filing a complaint doesn't necessarily mean that a case is opened for torture. The case can be considered under article 96 - voluntary injury, for instance (see infra No. 7). Or competence can be denied, etc. It is the prosecutor who decides, not the complainant. We notice that an average of 1421 cases for torture were opened annually. If we estimate the number of complaints yearly at 3000, then half of the complaints are opened under torture.
4. Remarkably, the number of cases opened have clearly declined since 2015. Compared to 2013, the number for 2018 is down by nearly 50%. There is no indication that the number of cases of torture dropped in this period, on the contrary. The number of allegations went up markedly. The only explanation that is plausible is a reduced will to prosecute torture on the part of the prosecutors. If we

¹² In their figures we see a slow growth in the number of complaints till 2010 (average 843 complaints in a year), from 2011 to 2014 the number is higher (average 1428 complaints per year), from 2015 to 2019 we notice a very sharp increase in complaints (average of 2300 complaints per year). As far as the location where the torture is allegedly executed is concerned, prisons represent 39% of the complaints but the proportion is markedly lower before 2010. We see the opposite situation for “custody”, in police stations (this also includes the security directorates). The percentage of the complaints about torture or ill-treatment in extra-custodial places is high.

stick with the number of 3000 complaints yearly (and for the period 2015- 2018 that is probably an underestimation), the percentage of cases opened dropped to less than one third. It should, of course, be borne in mind that the international obligation is for all cases to be examined thoroughly.

5. When a case is opened, this does not automatically lead to an indictment. On average 177 indictments were rendered annually. This is 12% of the cases opened and 6% of the estimated number of complaints.
6. Finally, on average 13 prison sentences were issued. This is 1% of the indictments and 0.5% of the estimated complaints.
7. To this diagram we need to add that under article 96 (torment/deliberate injury – not amounting to torture) on average 1500 cases were opened annually in the period 2013-2018, leading to 532 indictments and 238 imprisonments. A considerable number of these cases most probably should have been investigated as torture cases. The sanction for torment is lower than for torture and suspension of pronouncement of the verdict is possible. Note that if we add these cases opened to the cases on torture, we also arrive at 3000 cases opened annually.
8. Some reports (for instance in the conclusions and recommendations of the UN Committee on the third periodic report of Turkey of 20 January 2011) mention the tendency that, when confronted with complaints of torture or ill-treatment, police officers would often resort to counter-charges, using Art. 265: *using violence or threats against a public official to prevent them from carrying out their duty*. By doing so, the reports suggest that pressure or intimidation is directed towards the victims or the relatives of the victims, not to file a complaint. In this context it is interesting to compare the cases about torture and the number of cases about art. 265.¹³ For this comparison, we have added the numbers of torment/deliberate injury to the ones of torture. For the whole period 2010-2019 in total for torture and deliberate injury: 28,768 cases are concerned and for art. 265: 1,723,767 cases, or 60 times more.

¹³ Data from the official website of the Ministry of Justice

9. Finally, in the yearly reports, HRA mentions that in 2018, 160 persons “*notably students, journalists and political activists*” stated that they were subjected to torture and ill-treatment due to attempts to force them to become informants. For 2019 this concerned 71 persons, but on top of that the media has mentioned 66 other persons.

In Appendix 1 some extra numbers are given. They confirm the findings mentioned above.

17. **The figures and percentages shown above are partly based on assumptions, so we must therefore use them with caution. But it is reasonable to say that a complaint about torture leads to an imprisonment in maximum 1% of the cases. In the past year, this number is even an overestimation. On top of that, in ten years’ time, cases have been opened against 1 million seven hundred and thirty-two thousand and seven hundred and sixty-seven (1.732.767) persons for using violence or threats against a public official to prevent them from carrying out their duty. This is 60 times the number of cases opened for torture + deliberate injury.**

3.2. STATISTICAL INFORMATION FROM THE ECtHR

18. According to the official statistics of the ECtHR, after Russia, Turkey has the most judgements in which a violation of art. 3 ECHR is ruled. Some more detailed information can be found in the Hudoc database. In this database the case-law of the ECHR is incorporated. Our figures are based on the cases, not the judgements. One judgement can decide more than one case. Cases still pending are not included. Knowing the very long time needed for a case to be dealt with in the ECtHR system, cases introduced after 2010 are not systematically in the database yet, as the judgement has not been delivered. We should be aware also of the fact that 95% of the cases do not pass the “entrance filter” and so are not represented in Hudoc either.
19. In total, from 1991 until end of May 2020, 620 cases concerning art. 3 ECHR have been decided. In 441 cases (71.1%) a violation was found. The years in which the most complaints were filed are 2002 (61), 2003 (50), 1999 (40), 2005 (39) and 2008 (38). Most violations are found by the court in the complaints from 2002 (43), 2003 (40), 2005 (37), 2004 (34) and 2007 (28).
20. In fact, we have a constant high number of judgements where the Court found a violation of article 3 in the complaints from 2002 on. We cannot rule out the possibility that being more familiar with the possibility of filing a complaint with the ECtHR also plays a role here.

4. OFFICIAL REPORTS ABOUT TORTURE IN TURKEY

4.1. INTRODUCTION

21. In this section of the report, we will quote extensively from the official documents presented by international bodies. The professional manner in which these documents have been drawn up with the necessary caution makes these reports an important element in arriving at balanced and well-founded answers to the questions raised. As we have based our conclusions for the calculations on official Turkish government figures, we will base our substantive conclusions almost exclusively on these official documents. The longer quotations may to some extent detract from the readability of the report, but it is our conviction that they are absolutely necessary.

4.2. REPORTS OF THE CPT (THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE)

22. The CPT carried out **31 visits** to Turkey from 1990 to the end of 2019. Seven of them were periodic visits, 24 were ad hoc visits. For the reports corresponding to visits in August 2016 and April 2018 no authorisation to publish was given by the Turkish government.
23. The first report of the CPT concerns the **visit from 9 to 21 September 1990**. Most attention has been paid to the Ankara and the Diyarbakir Police Headquarters and to the Interrogation Centre of the political Department of the Diyarbakir Police. The wording of the report is very critical: *“in the light of all information gathered, including its own on-site observations it has concluded that detectives of the Political Department of Ankara and Diyarbakir Police frequently resort to torture and/or other forms of severe ill-treatment, both physical and psychological, when holding and questioning suspects. These practices must cease.”* (CPT/Inf(2007) 1, par. 89) *“The only conclusion that can reasonably be drawn (...) is that torture and other forms of severe ill-treatment are important characteristics of police custody in that country.”* (Ibidem., par. 94)

24. Visits were paid to Turkey in 1991, 1992 (twice), 1994, 1996 (twice), 1997 and 1999. Most attention was devoted to police custody. The CPT made two public statements: one in 1992 and one in 1996. From the **1996 public statement** we present the following comprehensive passage:

In its public statement on Turkey of 15 December 1992, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (...) concluded that the practice of torture and other forms of severe ill-treatment of persons in police custody - both ordinary criminal suspects and persons held under anti-terrorism provisions - remained widespread. (...)

Some progress has been made. The Turkish authorities have issued a multitude of instructions and circulars; further, training programs and human rights education strategies have been devised. However, the translation of words into deeds is proving to be a highly protracted process. The CPT's findings in the course of a visit to Turkey in October 1994 demonstrated that torture and other forms of severe ill-treatment were still important characteristics of police custody in that country. This led to an intensification of the dialogue between the Turkish authorities and the CPT. Nevertheless, the Committee has continued to receive credible reports of torture and ill treatment by Turkish law enforcement officials throughout 1995 and 1996. Further, in the course of visits to Turkey in 1996, CPT delegations have once again found clear evidence of the practice of torture and other forms of severe ill-treatment by the Turkish police.

The CPT's most recent visit took place in September of this year. Police establishments in Adana, Bursa and Istanbul were visited, and the delegation also went to three prisons in order to interview certain persons who had very recently been in police custody in Adana and Istanbul. A considerable number of persons examined by the delegation's three forensic doctors displayed marks or conditions consistent with their allegations of recent ill-treatment by the police, and in particular of beating of the soles of the feet, blows to the palms of the hands and suspension by the arms. The cases of seven persons (four women and three men) medically examined at Sakarya Prison, where they had very recently arrived after a period of custody in the Anti-Terror Department at Istanbul Police Headquarters, must rank among the most flagrant examples of torture encountered by

CPT delegations in Turkey. To focus only on their allegations of prolonged suspension by the arms, motor function and/or sensation in the upper limbs of all seven persons was found to be impaired - for most of them severely - and several of them bore ecchymoses or tumefactions in the axillary region which were also clearly indicative of a recent suspension by the arms. Two of the persons examined had lost the use of both arms; these sequelae could prove irreversible. Further, as had been the case in October 1994 and during earlier CPT visits, the delegation once again found material evidence of resort to ill-treatment, in particular, an instrument adapted in a way which would facilitate the infliction of electric shocks and equipment which could be used to suspend a person by the arms. The objects concerned were discovered in Building B of Istanbul Police Headquarters; they rendered all the more credible allegations of ill-treatment made to the delegation by persons in the custody of the Narcotics Department (which is located in Building B), allegations which were also supported by observations of medical members of the delegation. The CPT forwarded a detailed account of its delegation's findings to the Turkish authorities; however, the reply received from those authorities on 22 November 1996 signally failed to acknowledge the gravity of the situation.

(...)

It is frequently argued that the existence of torture and ill-treatment in Turkey is closely linked to the scale of terrorist activities in that country. (...) Turkey is entitled to the understanding and support of others in its struggle against this destructive phenomenon. However, the Committee has also emphasized that the response to terrorism must never be allowed to degenerate into acts of torture or other forms of ill-treatment by law enforcement officials. (...) Further, the information gathered by the CPT in the course of its visits to Turkey shows clearly that torture and ill-treatment are also inflicted by law enforcement officials upon ordinary criminal suspects. Consequently, it would be quite wrong to assume that the problem of torture and ill-treatment is simply an unfortunate consequence of the scale of terrorism in Turkey. The problem may well have been exacerbated by terrorism, but its roots go far deeper." (CPT/Inf (96)34, No. 1-3 and No.11)

25. **Visit from 16 to 24 July 2000**

In the preliminary observations, the CPT noted that *“resort to the most severe methods of physical ill-treatment encountered in the past by CPT delegations – for example, suspension by the arms and the infliction of electric shocks – has diminished in recent times in the Istanbul area, both in Police Headquarters’ departments and district police establishments. This is a step in the right direction. However it would appear that resort to methods such as deprivation of sleep over periods of days, prolonged standings and threats to harm the detainee and/or his family remains common place, for example in the Anti-Terror Department at Istanbul Police Headquarters.”* (CPT/Inf (2001) 19, p. 7)

26. **Visit from 2 to 12 September 2001**

This report is similar in tone and the attention is drawn to positive constitutional and legislative changes. In the same vein, a quote from the report of the **visit from 7 to 15 September 2003**: *“The facts found in the regions to Turkey visited by the CPT’s delegation are globally encouraging. The government’s message of “zero tolerance” of torture and ill treatment has clearly been received (CPT/Inf (2004)16, nr. 8).* But also: *“However, the picture which emerges from the information gathered by the CPT’s delegation is certainly not entirely positive. The delegation did receive a number of allegations of recent ill treatment during police/gendarmerie custody, and in some cases gathered medical evidence consistent with those allegations.”* (Ibidem)

27. **Visit from 19 to 24 March 2004**

In this report, the legislative and regulatory framework is described as *“characterized by CPT as being capable of combatting effectively torture and other forms of ill treatment”*. Critical observations are made about the situation in the Izmir region and (in a sharp way) about the Ganziatep region: *“a considerable number of allegations of recent ill-treatment were received from both detained persons and other interlocutors, some of them concerning severe ill-treatment.”* (Ibidem, No. 13)

28. **Visit from 7 to 14 December 2005**

This report stated as follows: *“The information gathered during the CPT’s December 2005 visit would indicate that the curve of ill-treatment by law enforcement officers remain on the decline. However, there are clearly no ground for complacency, all the more so as reports continue to appear of ill-treatment by laws enforcement officials in different parts of the country.”* (CPT/In,(2006)30, No. 20). We read the same in the report concerning the **visit from 4 to 17 June 2009**.

29. **Visit from 9 to 21 June 2013**

In this report the CPT no longer mentions a positive evolution and it explicitly mentions the problems in the Diyarbakir area (again) and the Sanliurfa area. CPT also *“paid particular attention to police operations that were carried out in het context of public demonstrations ongoing in different parts of the country.”* (CPT/Inf (2015)6, No. 18.)

30. **Visit from 10 to 23 May 2017**

“[T]he CPT’s delegation received a considerable number of allegations from detained persons (including women and juveniles) of recent physical ill-treatment by police and gendarmerie officers, in particular in the Istanbul area and in south-eastern Turkey. Most of these allegations concerned excessive use of force at the time of or immediately following apprehension (...), as well as beatings during transportation to a law enforcement establishment. In addition, many detained persons claimed that they had been physically ill-treated inside law enforcement establishments (in locations which were apparently not covered by CCTV cameras), with a view to extracting a confession or obtaining information or as a punishment. (...) In Istanbul, the delegation received detailed and consistent accounts from detained persons (including women), interviewed independently of each other, that they had been taken by police officers to a partly derelict building in the city center, where they were subjected to heavy beatings and severe sexual humiliation, in particular by officers of a mobile intervention unit (so-called “Yunus”) (CPT/Inf(2020)22, No.12).It is noteworthy that only a limited number of allegations of physical ill-treatment by law enforcement officials were received from detained persons who had recently been detained on suspicion of terrorism-related offences, in particular in connection with the military coup attempt of 15 July 2016, which constitutes a stark contrast to the findings of the August/September 2016 visit (Ibidem, No.13).

31. Following this, some detailed examples of ill treatment and torture are given that never were prosecuted. In the answer of the government, no comment is given on these cases.
32. In the report the CPT has very critical remarks about the medical control, a keystone to eliminate torture: *“However, the information gathered during the visit suggests that the entire system of medical controls suffers from fundamental flaws which are likely to seriously undermine its effectiveness. First and foremost, (...), it remained the case that medical controls of persons in police custody were usually carried out in the presence of law enforcement officials. Obviously, the relevant provision of the Detention Regulation (Section 9) and the instructions of the Ministry of the Interior remained by and large a dead letter. It does not come as a surprise that a number of persons who indicated to the delegation that they had been subjected to police ill-treatment stated that they had been afraid to speak to a doctor about the ill-treatment. Moreover, several detained persons alleged that they had been threatened by police officers and told not to show their injuries and, in one case, the person concerned claimed that he had been physically assaulted in the police vehicle in retaliation for having complained to the doctor about the ill-treatment. Several allegations were also heard that police officers had exerted pressure on doctors not to record detected injuries. In addition, as was the case during previous visits, medical controls in the context of police custody were often limited to the posing of questions about possible ill-treatment, without any proper physical examination. In this regard, in a number of cases of alleged police ill-treatment where supporting medical evidence was found in prison medical records or was directly observed by the delegation’s doctors, the medical reports obtained by the police indicated an absence of injuries. Moreover, several detained persons alleged that police officers had obtained a medical report carrying the signature of a hospital doctor without them even being presented to the doctor” (Ibidem, No.19).*
33. **Visit from 6 to 17 May 2019**
- This report largely confirms the report of 2016: again the attention is drawn to the mobile motorcycle intervention teams (“Yunus”) as frequent perpetrators of ill-treatment, allegations about torture came mostly from persons suspected of ordinary criminal offences and the lack of a reliable system of medical controls again is clearly criticised. The CPT again gives detailed examples of torture and ill-treatment. A remarkable statement is given about political statements that were made by members

of the government: *“it is a matter of serious concern that, in early 2018, political statements made at the ministerial level had been widely published within and outside Turkey, which appear not only to run counter to the Turkish authorities’ commitment to pursue a ‘zero tolerance policy’ against torture and ill-treatment but which could easily be perceived even as incitement of law enforcement officials to ill-treat certain categories of criminal suspects such as suspected drug dealers.”* (CPT/Inf(2020)24, No. 13).

34. **Visits of 29 August to 6 September 2016 and 4 April to 13 April 2018**

For these reports **no authorisation** has been given by the Turkish government to publish the report. In several reports CPT also mentions recurring allegations (sometimes on a high scale) of physical ill treatment of juveniles, conceived by the juveniles as a (threat of) corporal punishment in case they misbehave.

4.3. REPORTS FROM THE UN COMMITTEE AGAINST TORTURE

35. The UN Committee has published a **first report about Torture in Turkey (15 November 1993)**. The UN Committee examined information about “systematic practice of torture” that it received in April 1990, pursuant to article 20 CAT, from Amnesty International. The government strongly denied this, stating that the NGO’s were *“deeply politicized or never have been giving credible proof of their impartiality”* (A/48/44/Add. 1, p.9), and that the testimonies were essentially derived from *“persons presumed to be terrorists who in line with their strategy, had every reason to claim that they had been tortured”* (*ibidem*). The UN Committee however *“remains concerned at the number and substance of the allegations of torture received, which confirm the existence and systematic character of the practice of torture in this State party.”* (*ibidem*, p. 13)

36. In the conclusions and recommendations of the UN Committee on the **second periodic report of Turkey (27 May 2003)**, the UN Committee welcomes some legislative ameliorations, but expresses concerns about:

“(a) Numerous and consistent allegations that torture and other cruel, inhuman or degrading treatment of detainees held in police custody are apparently still widespread in Turkey; (...) (d) Allegations that despite the number of complaints, the prosecution and punishment of members of security forces for torture and ill-treatment are rare, proceedings are exceedingly long, sentences are not commensurate with the gravity of the crime, and officers accused of torture are rarely suspended from duty during the investigation.”

(CAT/C/CR/30/5, No. 4-5)

37. In the conclusions and recommendations of the UN Committee on the **third periodic report of Turkey (20 January 2011)**, the UN Committee

“welcomes efforts being made by the State party to amend its policies in order to ensure greater protection of human rights and give effect to the Convention, including: the announcement of a “zero tolerance for torture” on 10 December 2003” (...) The Committee is gravely concerned about numerous, ongoing and consistent allegations concerning the use of torture, particularly in unofficial places of detention, including in police vehicles, on the street and outside police stations, (...) while noting the reported decrease in the number of reports on torture and other forms of cruel, inhuman or degrading treatment and punishment in official places of detention in the State party. The Committee is furthermore concerned by the absence of prompt, thorough, independent and effective investigations into allegations of torture committed by security and law enforcement officers (...). It is also concerned that many law enforcement officers found guilty of ill-treatment receive only suspended sentences, which has contributed to a climate of impunity. In this respect, it is a matter of concern to the Committee that prosecutions into allegations of torture are often conducted under article 256 (“excessive use of force”) or article 86 (“intentional injury”) of the Penal Code, which proscribe lighter sentences and the possibility for suspended sentences, and not under articles 94 (“torture”) or 95 (“aggravated torture due to circumstances”) of the same Code (art. 2). “(Cat/C/TUR/Q/4, No. 4-7). Furthermore, the Committee is concerned at reports that police often resort to counter-charges under the Penal Code against individuals and family members of alleged victims complaining of police ill-treatment, (...). The Committee is concerned that

such charges are reportedly employed to deter, and even intimidate, alleged victims of abuse and their relatives from filing complaints (arts. 11 and 16).” (*Ibidem*, No. 13)¹⁴

38. Finally, in the concluding observations on the **fourth periodic report of Turkey (2 June 2016)** the UN Committee “welcomes the State party’s ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 27 September 2011 (CAT/C/TUR/CO/4, No. 4). The Committee is concerned that, (...) it has not received sufficient information on prosecutions for torture, including in the context of cases involving allegations of torture that have been the subject of decisions of the European Court of Human Rights. (...) Further, while the State party has undertaken many investigations into allegations of ill-treatment and excessive use of force by its officials, these have resulted in relatively few cases of disciplinary sanctions, and in fines and imprisonment in only a small number of cases. (...) (*Ibidem*, No. 9). “The Committee is seriously concerned about numerous credible reports of law enforcement officials engaging in torture and ill - treatment of detainees while responding to perceived and alleged security threats in the south-eastern part of the country (e.g. Cizre and Silopi) in the context of the resurgence of violence between the Turkish security forces and the Kurdistan Workers’ Party (PKK) following the breakdown of the peace process in 2015 and terrorist attacks perpetrated by individuals linked to the so-called Islamic State in Iraq and the Levant (ISIL). The Committee is further concerned at the reported impunity enjoyed by the perpetrators of such acts.” (arts. 2, 4, 12, 13 and 16). (*Ibidem*, No. 11)

4.4. COUNCIL OF EUROPE - MEMORANDUM OF THE COMMISSIONER FOR HUMAN RIGHTS.

39. After the coup attempt of 15 July 2016, Nils Muiznieks, Commissioner for Human Rights of the Council of Europe (Commissioner) visited Turkey already in September 2016 and published a Memorandum on the Human Rights implications of the measures taken under the state of emergency in Turkey. This Memorandum dates from 7 October 2016. “As regards on-going criminal proceedings, among the most immediate human rights concerns are consistent reports of allegations of torture and ill-treatment. The Commissioner does not automatically give credence to such allegations, but observes that the

¹⁴ See also: Concluding Observations on the initial report of Turkey adopted by the Committee at its 106th session (15 October - 2 November 2012) “The Committee is concerned that despite progress made, the number of allegations of torture and other inhuman and degrading treatment at the hands of law enforcement officers is still high.” (CCPR/C/TUR/CO/1, No. 14)

extension of the custody period to 30 days, practical changes to procedures for obtaining medical reports, and drastic restrictions to access to lawyers, as well as limitations on the confidentiality of the client-lawyer relationship, contributed to the persistence of such allegations. The fact that there is currently no functioning National Preventive Mechanism in Turkey and that the existing prison monitoring boards have been disbanded and reappointed during such a crucial period only exacerbated the risks inherent in this situation". (Commissioner for Human Rights. Memorandum on the Human Rights Implications of the measures taken under the state of emergency in Turkey – 7 October 2016, No. 15)

40. The Turkish government answered on 31 October 2016.

"The measures taken during the state of emergency have not caused any changes in the daily life. Any restriction which would have an influence on daily life has not been imposed on fundamental rights and freedoms."

(Observations of the Ministry of Justice of the Republic of Turkey concerning the memorandum of 7 October 2016 by the Council of Europe's Commissioner for Human Rights, No. 23)

"(about pictures taken shortly after the coup attempt showing injuries on the persons kept in custody) It must be primarily emphasized that a large part of the persons, who were taken into custody on the first day of the incident, had been arrested at the end of the clashes while some of them had been arrested by the citizens. It is natural that persons arrested at the end of the clashes have certain wounds, which falls within the scope of legitimate power. As a matter of fact, such wounds are indicated in custody reports." (Ibidem, No. 48)

"Furthermore, when maintaining these kinds of allegations it should be taken into consideration that three applications with requests for interim measures lodged by those detained after the 15th July before the European Court of Human Rights alleging that they were subjected to ill treatment and their rights to life are under threat, were rejected." (Ibidem, No. 51)

4.5. THE SPECIAL UN RAPPORTEUR ON TORTURE.

41. In the same period the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, conducted a visit to Turkey from 27 November to 2 December 2016.

“The Special Rapporteur notes with concern that there seemed to be a serious disconnect between declared government policy and its implementation in practice”. (...) Most notably, despite persistent allegations of widespread torture and other forms of ill treatment, made in relation both to the immediate aftermath of the failed coup of 15 July 2016 and to the escalating violence in the south-east of the country, formal investigations and prosecutions in respect of such allegations appear to be extremely rare, thus creating a strong perception of de facto impunity for acts of torture and other forms of ill-treatment.” (A/HRC/37/50/Add.1, No. 23)

“According to numerous consistent allegations received by the Special Rapporteur, in the immediate aftermath of the failed coup, torture and other forms of ill-treatment were widespread, particularly at the time of arrest and during the subsequent detention in police or gendarmerie lock-ups as well as in improvised unofficial detention locations such as sports centers, stables and the corridors of courthouses.” (Ibidem, No.26)

“The Special Rapporteur received numerous testimonies of torture and other forms of ill-treatment of both male and female individuals suspected of being members or sympathizers of the PKK and other groups affiliated with the Kurdish insurgency. Most instances of ill-treatment were alleged to have been inflicted upon apprehension and arrest, as well as during transit to the detention location, predominantly by the special operations teams of the police or by the gendarmerie. Ill treatment was also alleged to have occurred during interrogations in the early hours and days of detention in holding cells. (Ibidem, No. 30)

42. The Turkish government denied the allegations in categorically: the persons the Rapporteur talked with are limited in numbers, are unreliable and there is no medical proof.

“While emphasizing the serious nature of the security challenges that Turkey faces in recent years, the Report cites unsubstantiated, generic and vague claims. Many comments and generic conclusions cited in the Report are built on the claims of a limited number of persons interviewed and flow of information from unknown sources whose reliability could well be questioned and some of them are apparently members of terrorist organizations. The Government wishes to underline that, although the Rapporteur was given access to all locations where people are deprived of liberty throughout Turkey and was able to conduct confidential interviews with detainees of his choosing, no physical signs were reported consistent with allegations of ill-treatment cited in the Report.”
(A/HRC/37/50/Add.2, No. 12-13)

“The Government wishes to express that allegations of torture and ill treatment raised in connection with the terrorist coup attempt of 15th July 2016, as well as southeast Turkey, under this section are unacceptable. It seems that most of the interviewees are apparently members of terrorist organizations and the Report has given full credit to the statements of suspects of offences of overthrowing the Government of the Republic of Turkey, establishing an oppressive and totalitarian system through use of force, violence, threat, blackmailing and other unlawful means.”(*Ibidem*, No. 33-34).

4.6. REPORTS OF THE (OHCHR)

4.6.1. REPORT FEBRUARY 2017.

43. As the Office of the High Commissioner for Human Rights (OHCHR) from July 2015 received “*detailed and credible*” allegations of serious human rights violations in South-East Turkey, the OHCHR requested the government to grant a team of OHCHR human rights officers’ access to the concerned area. No authorisation was given, but a monitoring process was launched.

“The Office of the United Nations High Commissioner for Human Rights (OHCHR) documented numerous cases of excessive use of force; killings; enforced disappearances;

torture; destruction of housing and cultural heritage; incitement to hatred; prevention of access to emergency medical care, food, water and livelihoods; violence against women; and severe curtailment of the right to freedom of opinion and expression as well as political participation. The most serious human rights violations reportedly occurred during periods of curfew, when entire residential areas were cut off and movement restricted around the-the-clock for several days at a time". (Office of the United Nations High Commissioner for Human Rights, Report on the human Rights situation in South - East Turkey, No. 2)

4.6.2. REPORT MARCH 2018.

44. One year later, the OHCHR published a new report on human rights violations in Turkey.

"The findings of OHCHR point to a constantly deteriorating human rights situation, exacerbated by the erosion of the rule of law." (Office of the United Nations High Commissioner for Human Rights, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East January – December 2017, No. 1)

"OHCHR documented the use of different forms of torture and ill-treatment in custody, including severe beatings, threats of sexual assault and actual sexual assault, electric shocks and waterboarding. Based on accounts collected by OHCHR, the acts of torture and ill-treatment generally appeared to aim at extracting confessions or forcing detainees to denounce other individuals. It was also reported that many of the detainees retracted forced confessions during subsequent court appearances. On the basis of numerous interviews and reports, OHCHR documented the emergence of a pattern of detaining women just before, during or immediately after giving birth. In almost all cases, the women were arrested as associates of their husbands, who were the Government's primary suspects for connection to terrorist organizations, without separate evidence supporting charges against them." (Ibidem, No.77-78)

“Thousands of uncensored images of torture of alleged coup suspects in degrading circumstances were circulated widely in Turkish media and social networks after the coup, along with statements inciting violence against opponents of the Government. OHCHR received reports of individuals detained and ill-treated without charge by anti-terrorism police units and security forces in unconventional places of detention such as sports centers and hospitals (Ibidem, No. 80)

45. Human rights organisations have published several reports. These reports contain detailed allegations about Torture or Ill Treatment. The reports are expertly prepared and usually perfectly verifiable. Organisations such as HRW and AI have a longstanding reputation of expertise and impartiality. For this report, however, we have decided to rely almost exclusively on official sources. This may appear disrespectful towards the aforementioned human rights organisations, but it defuses any argument that refers to the messengers and not to the message. In Appendix 3 We give a short overview of these reports.

5. THE PRACTICE AND THE EVOLUTION OVER THE PAST 30 YEARS IN TURKEY

46. The coup d'état of 1980 is followed by a period of generalised use of brutal torture. When, in the 1990s, the CPT and the UN Committee publish their reports, this is clearly and critically pointed out. In 1990 the CPT states that "torture and other forms of severe ill-treatment are important characteristics of police custody in that country". In 1993 the UN Committee talks about the "systematic character of torture".
47. It is important to point out that usually almost exclusively attention is paid to the torture of political opponents, in this case Kurdish, leftist and later on Gülenists organisations. The 1996 public statement of the CPT however clearly states that torture and ill-treatment also are inflicted upon (some) ordinary criminal suspects.¹⁵ Violence against juveniles is also mentioned. This appears to be inflicted mainly as an unacceptable punishment, but not with the intention to obtain information or confessions.
48. **In any case, in the 1990s, violence and torture is an important part of the DNA of the Turkish police and security forces.**
49. We deliberately use the term "police". At least in the period of the nineties of the last century, torture seems to occur mainly when the suspect is in police custody or in custody in security directorates. The international reports clearly indicate certain police stations and security directorates where torture is common practice. Based on the number of complaints received by the HRA it appears that in recent years this has changed, with a greater impact of torture in extra-custodial places (which is also less controllable) and in prisons. It should be noted however that, the complaints to HRA not only relate to torture *sensu stricto* but also relate to ill-treatment and poor conditions in the prisons.
50. At the beginning of the twenty-first century, positive legislative changes are made. In 2003, the new Erdogan government officially declares that it will apply a

¹⁵ We also notice the same remarks in the CPT reports concerning the visits in 2017 and 2019

"zero tolerance policy towards torture". A number of publications by international bodies report an improvement in the situation in that first decade of the twenty-first century, and the reports also mention that when torture occurs, it is less violent.¹⁶

51. These evolutions do not prevent the continued strong presence of torture in relation to the PKK and other extreme left-wing (Kurdish) organisations, certainly linked to violent confrontations and to the presence of the state of emergency in some regions.

However, we can fairly state that the first decade of the twenty-first century is commonly regarded as a period in which the evolution is for the most part moving in the right direction.

52. By the second decade, the situation deteriorates again: the wave of protests that arose as a result of the construction plans in the Gezipark, a number of legal proceedings for corruption where member of the government, the president and his family were mentioned, the end of the peace talks between the government and the PKK in June 2015 and, finally, the failed coup d'état of July 2016 will be answered in 2016 with far-reaching exceptional legislative measures (possibility of long-term custody in police stations without judicial review, possibility to deny contact with a lawyer for 5 days, refusing lawyers, prohibiting the communication of the judicial file including medical reports, impunity of security officials, (...)) which are accompanied by a sharp increase in (allegations of) cases of torture. Members of the Gülen movement and of the PKK are especially targeted. Also, certain categories of suspects of common crimes are targeted, more specifically drug dealers, as confirmed by the CPT report concerning the visits of 2017 and 2019, but this is rarely documented. "Ordinary" opponents appear to be less the object of torture, but they are victims of far-reaching "judicial harassment" which sometimes takes extreme forms (e.g. life imprisonment). Between 1991 and May 2020, the ECtHR pronounced a violation of Art. 3 ECHR in 441 cases.

¹⁶ See, for instance the CPT report concerning the visit from 16 to 24 July 2000.

53. We have no clear figures about the exact number of cases of torture. However, based on official statistics - emphasising the need to approach all figures with caution - we can state that around 3,000 complaints of torture are filed per year on average, for torture. Maximum 1% of the complaints leads to an imprisonment (and most probably this estimation is too high).

In the last ten years, there has been an intensive resurgence of torture and the chance that the perpetrators will be punished with a (sufficiently severe) imprisonment, is nearly non-existent.

6. HOW TO EVALUATE THE ARGUMENTS OF THE TURKISH GOVERNMENT?

54. The Turkish government systematically denies the complaints. As argumentation, reference is made to:
1. the fact that the complainants are opponents of the regime and therefore have an interest in spreading false rumours and accusations;
 2. the lack of medical evidence for most of the torture complaints, and
 3. the fact that the complaints examined by the courts very rarely lead to a conviction.
55. These arguments clearly show how tricky a discussion about torture often is, and certainly when Turkey is concerned. Human rights organisations and international bodies point to the lack of independent and correctly implemented medical reporting on the alleged cases of torture. The Turkish government argues that there is no medical evidence of torture. This, of course, is a circular reasoning. The same applies to the independence of the judiciary. This is strongly disputed by human rights organisations, by the international bodies¹⁷ and very recently by the ECtHR.¹⁸ The absence of convictions is used by the Turkish government, which claims the independence and impartiality of the judiciary, as an argument to contest the presence of torture. Here, too, the argumentation is circular. In both cases, what is fundamentally disputed by one party is used as a basis for the other party's reasoning. So the question that arises and that we have to answer before the other questions can be answered, is clear: can we state with a sufficient degree of certainty that the defence of the Turkish government is not correct? **Are there enough convincing elements to reject the arguments of the Turkish government that minimise torture?**

¹⁷ See for instance CoE Commissioner for Human Rights, Report following the visit to Turkey from 1 to 15 July 2019, CommDH(2020)1 (19 February 2020), pars 27-32 ("the Turkish judiciary is influenced by the political conjuncture").

¹⁸ "It is also significant that those charges were brought following the speeches given by the President of the Republic on 21 November and 3 December 2018. On 21 November 2018 the President stated: "Someone financed terrorists in the context of the Gezi events. This man is now behind bars. And who is behind him? The famous Hungarian Jew G.S. This is a man who encourages people to divide and to shatter nations. G.S. has huge amounts of money and he spends it in this way. His representative in Turkey is the man of whom I am speaking, who inherited wealth from his father and who then used his financial resources to destroy this country. It is this man who provides all manner of support for these acts of terror..." On 3 December 2018 the President openly cited the applicant's name and stated as follows: "I have already disclosed the names of those behind Gezi. I said that its external pillar was G.S., and the national pillar was Kavala. Those who send money to Kavala are well known ..." The Court cannot overlook the fact that when these two speeches were given, the applicant, who had been held in pre-trial detention for more than a year, had still not been officially charged by the prosecutor's office. In addition, it can only be noted that there is a correlation between, on the one hand, the accusations made openly against the applicant in these two public speeches and, on the other, the wording of the charges in the bill of indictment, filed about three months after the speeches in question". Kavala vs Turkey, ECtHR, 10 December 2019, par. 229.

56. In our opinion, two elements are decisive to answer this question.

57. The **first decisive element** is the jurisprudence of the ECtHR.

The ECtHR is not a terrorist organisation that wants to bring down the Turkish state. Moreover, the judgments of the ECtHR have the force of *resjudicata*. Put simply: what the ECtHR decides is presumed to be right and every state is obliged to accept it as such.¹⁹ The binding force of the judgments of the ECtHR also means that the condemned State must avoid repetition of similar facts. This is not a moral obligation, but a legally binding obligation. In terms of the caselaw of the ECtHR, it is obvious that Turkey is not complying with this obligation. Turkey has been condemned in 441 cases for a violation of Article 3 ECHR. As far as torture is concerned, Turkey clearly is a repeat offender. There is no such thing as an effective policy in Turkey through which the Government is trying to avoid the repetition of the same facts. To put these assumptions very clearly: we have established that each year in Turkey, an average of 13 alleged perpetrators are sentenced to imprisonment. By contrast, there are an average of 18 convictions per year in which the Turkish State is being held accountable for a violation of Article 3 ECHR. Hence, Turkey has been more frequently condemned by the ECtHR than it has itself condemned perpetrators of torture. This must be quite unique.

58. Moreover, the analysis of the cases indicates a recurring pattern in the way the Turkish judicial authorities handle torture cases. This pattern seems to suggest the aim (or at least a lack of will to prevent) that claims not be investigated in detail or not in due time with the possibility of prescription. The following passages taken from several judgments of the ECtHR are very clear on this matter.

¹⁹ “On the other hand (the States) must take the measures needed to prevent new, similar violations” Zwaak, L., Burbano Herrera, C., Supervision, In: Theory and Practice of the European Convention of Human Rights, o.c., p.274.

59. In the case of *Rahmi Şahin v. Turkey* the Court found that “*the public prosecutor did not attempt to establish the true circumstances in which the applicant sustained his injuries*”²⁰, “*the public prosecutor neither obtained the arresting officers’ statements nor asked for one from the applicant even though there was an explicit request to do so by the applicant’s legal representative*”.²¹
60. In another judgment, the Court noted that “*the State prosecutor had questioned one of three police officers two months after the applicant’s complaint and the other police officers about three years and three months after that date*”.²² Furthermore, the Court also noted that the decision of the prosecutor had not been issued until almost five years and six months after the initial complaint lodged by the applicant²³. In a similar regard, the Court noted that “*the prosecutor’s office and the Assize Court dismissed the complaint without even trying to justify the degree of force used during the arrest since the criminal investigation had only concerned the allegations of ill-treatment after his arrest*”²⁴.
61. The Court has repeatedly held that “*the medical reports fail to comply with national and international standards concerning the medical examination of persons in police custody*”²⁵. Specifically, according to the Court “*the medical examinations lacked details like the extent of the injuries, the applicant’s own account of how the injuries had been caused, neither is there a mention whether or not the doctors who examined the applicant tried to establish how the injuries might have been caused*”²⁵. Furthermore, the Court notes that the absence of evidence for Article 3 ECHR allegations, can, to a great extent, be attributed to the Turkish State itself “*due to the failure of the public prosecutor and the judge, who both failed to proceed with a prompt investigation given that the evidence was collected more than two months after the end of the applicant’s detention in police custody*”.²⁶
62. The *national* authorities play a crucial role in the quality of the evidence presented before the Court, “*the Court observes that the applicant raised allegations of battery, sexual assault and threats both before the national authorities and the Court and that the medical*

²⁰ ECtHR, *Rahmi Şahin v. Turkey*, 5 July 2016, par.47.

²¹ *Ibid.*, par 46.

²² ECtHR, *Alpar v. Turkey*, 21 January 2016, par 48 (translation)

²³ *Ibid.*

²⁴ *Ibid.*, par 49. (translation)

²⁵ ECtHR, *Şakir Kaçmaz v. Turkey*, 10 November 2015, par. 88. See also: ECtHR, *Salmanoğlu and Polattaş v. Turkey*, 17 March 2009, pars. 79- 84.

²⁶ *Ibid.*, par 87.

reports submitted to the Court lack detail and fall short of both the standards recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the guidelines set out in 'the Istanbul Protocol'²⁷. What is more, the medical reports which are issued in respect of alleged victims of torture in Turkey "lack detail and fall short on both the standards recommended by the CPT and the guidelines set out in 'the Istanbul Protocol. In view of the Court, the public prosecutor should have questioned the quality of the medical reports before basing his decision on them or should have requested a further examination ".²⁸ In the same judgment, with regard to, the procedural limb of Article 3 ECHR, the Court notes "that the medical reports issued in respect of the applicant lack detail and fall short of both the standards recommended by the CPT and the guidelines in 'the Istanbul Protocol'.²⁹

63. In addition, it is well-established caselaw of the Court that domestic judicial authorities must effectively punish the infliction of physical or psychological suffering: "a suspension of the judgment wherein a Turkish Court found police officers guilty of torturing the applicant, must be considered as incompatible with the ECHR its standard of protection from ill-treatment".³⁰
64. Moreover, the Court emphasised the lack of plausible explanation given for the injuries by the Turkish Government, "the Court notes that the Government is not able to give a plausible explanation for the origin of the injuries on the applicant his body"³¹. In addition, "the prosecutor did not conduct any investigative act concerning the applicant his allegations on the force used by the security forces at the moment of his arrestation."³²
65. The findings of the ECtHR are clear, the medical reports are not in compliance with international and European standards and therefore, cannot be regarded as sufficient due to the ineffective or delayed investigations conducted by the authorities. As the Court has stated in the case Aktürk v. Turkey: "the public

²⁷ *Ibid*, par 92.

²⁸ ECtHR, Dilek Aslan v. Turkey, 20 October 2015, par.49.

²⁹ *Ibid*, par. 57.

³⁰ *Ibid*.

³¹ ECtHR,, Atesoglu v. Turkey, 20 January 2015, par 28.

³² ECtHR, Mehmet Fidan v. Turkey, 16 December 2014, par 46 (translation).

prosecutor failed to establish the reason for the differences between the medical reports and the real cause of the injuries observed on the applicant's body".³³

66. Moreover, the ECtHR has systematically held that the handling of the cases of torture by the judicial authorities is being organised in such a way that due to the referral of the case files to other jurisdictions, a lot of time is being wasted which ultimately leads to not taking a final decision or the prescription of the case.
67. This is indicated in the case of *Alpar v. Turkey*, where the case finally was time-barred.³⁴ In the same vein, in March 2007 the Istanbul Assize Court concluded that the proceedings against the police officers who arrested Ms. Eren on 7 June 1999, must be discontinued on the grounds that the prosecution was time-barred.³⁵ The ECtHR used strong wording by noting "*serious shortcomings in the investigation and the ensuing of criminal proceedings.*"³⁶ The Court concluded that there were substantial delays in the criminal proceedings in question, "*the criminal proceedings lasted approximately seven years and eight months and were eventually discontinued on account of prescription.*"³⁷
68. Similarly, in the case *Süleyman Demir and Hasan Demir v. Turkey*, where on 21 November 2012 the Çukurca Criminal Court of First Instance decided that it did not have jurisdiction on the formal complaint made by the applicant on 18 July 2007. The case was then forwarded to the Çukurca Magistrates' Court's Criminal Division where it was still pending when at the moment of the judgement of the Court in March 2015.³⁸ These practices were condemned by the Court which concluded that "*in view of the very significant delay the Turkish authorities did not act with sufficient promptness or with reasonable diligence.*"³⁹ As a result of this delay in the initial investigation, the suspects and witnesses to the incident were not questioned until three and a half months after the incident.⁴⁰

³³ *Ibid*, pars 46-47 (translation).

³⁴ ECtHR., *Aktürk v. Turkey*, 13 November 2014, par 41.

³⁵ ECtHR, *Alpar v. Turkey*, 21 January 2016, par 25.

³⁶ ECtHR, *Afet Sureyya Eren v. Turkey*, 20 October 2015, par 17.

³⁷ *Ibid*, par 42.

³⁸ *Ibid*.

³⁹ ECtHR, *Süleyman Demir and Hasan Demir v. Turkey*, 24 March 2015, par. 28.

⁴⁰ *Ibid*, par 51.

69. Another striking example of the delay concerning the investigation of torture *complaints* in Turkey is the case of Mehmet Yaman v. Turkey. The Court notes that the investigation and the following criminal proceedings taken together were extremely long. The procedure commenced on 17 May 2000 with the complaint of the applicant and resulted in the finding of prescription of the criminal procedure by the Assize Court on 23 February 2013.⁴¹
70. According to the CAT, criminal proceedings on torture need to be achieved within a reasonable period, and suspension of the pronouncement of the verdict and prescription are incompatible with the convention. For instance, in *Rasim Bairamov v Kazakhstan*, the Committee made it clear that undue delays in criminal proceedings automatically constitute a violation of Article 14 CAT.⁴² This is also the point of view of the ECtHR which ruled that the suspension of the pronouncement of the judgment of the Kars Assize Court pursuant to Article 231 of the Turkish Criminal Procedure Code “cannot be considered to be compatible with the Convention standard of protection from ill-treatment.” The Court noted that “this has a stronger effect than the deferral of the execution of the sentence and results in the impunity of the perpetrators.”⁴³
71. The fact that the ECtHR concludes, on an almost continuous basis, that there have been violations of Article 3 ECHR by the Turkish State based on the State’s lack of effort to conduct effective investigations and to take care of medical reports that are in line with the international standards and the almost pervasive culture of losing crucial time in the criminal proceedings makes the arguments of the Turkish authorities very unconvincing. “*Nemo auditur propriam turpitudinem allegans*”: no one should be permitted to profit from his own fraud, or take advantage of his own wrong.” That is however exactly what the Turkish State does in its argumentation and what the judgments of the ECtHR have proven.

⁴¹ Mehmet Yaman v Turkey, ECtHR, 24 February 2015, par 70.

⁴² Rasim Bairamov v Kazakhstan, No. 497/2012 (n113), para 8.9: ‘If criminal proceedings are required under domestic law to take place before civil compensation can be sought, then the absence or delay of those criminal proceedings constitute a failure on behalf of the State party to fulfil its obligations under the Convention.’

⁴³ ECtHR, Ateşoğlu v. Turkey, 20 January 2015, par. 28.

72. **Second decisive element** is that torture is applied on a large-scale.

As a second decisive element, we cannot do otherwise than to refer to the reports of the official intergovernmental organisations, which we quoted earlier. The Turkish government contests these reports, of course. But it is not because they are contested that they are not true. We cannot deny that these reports have been drawn up by reputable institutions, whether or not after a visit in the field, each time explaining their methodology, in detail. And each time the conclusion - certainly for the recent period - is that torture is applied on a large scale. The remark has been repeatedly made that the crucial questions asked by the international institutions have remained unanswered by the Turkish government in its answers. Specific cases for which medical evidence was provided were not answered in clear terms. Usually the answer was limited to "this will be investigated".

73. The two latest CPT reports (visit 2017 and 2019) are extremely clear:

"the information gathered during the visit suggests that the entire system of medical controls suffers from fundamental flaws which are likely to seriously undermine its effectiveness.(...) In addition, as was the case during previous visits, medical controls in the context of police custody were often limited to the posing of questions about possible ill-treatment, without any proper physical examination. In this regard, in a number of cases of alleged police ill-treatment where supporting medical evidence was found in prison medical records or was directly observed by the delegation's doctors, the medical reports obtained by the police indicated an absence of injuries. Moreover, several detained persons alleged that police officers had obtained a medical report carrying the signature of a hospital doctor without them even being presented to the doctor"

(CPT/Inf(2020)22, No.19.)

74. In these reports some detailed "cases" are put forward without any answer from the government. Of course, even an intergovernmental organisation, despite great methodological efforts, can be mistaken. Their reports, contrary to the judgments of the ECtHR, have no binding force. But it is absolutely improbable and implausible that ALL these organisations are mistaken, especially when their reports are in line with the legally binding rulings of the ECtHR. The Turkish government has, so far,

recognised these international bodies involved, as they work with the ECtHR. When a government recognises a body, it must in the end, after having had the opportunity to reply during the proceedings – what effectively was guaranteed- also recognise the conclusions of these bodies and at least accept that they cannot not draw completely wrong conclusions again and again and again.

75. Of course, we could ask ourselves the question of how it was possible that despite all this information and convincing elements, more perpetrators were not ultimately convicted. We will provide more information below and also in other reports, but the authorisation needed to prosecute, the immunity legally introduced, a system of letting the time do its work so a prescription is reached and the lack of good material medical evidence because of poor medical control are some - among others- important factors for understanding the mechanism.

76. The **third decisive element** is that perpetrators of torture have not been punished.

As a third decisive element we have analysed a number of cases of torture ourselves in a separate document. In these cases, it is clear that there are credible allegations that torture took place, with the necessary evidence being provided, and yet the Turkish judicial authorities have not punished the perpetrators. These specific cases more clearly illustrate the serious allegations made against the Turkish State. If even these clear and severe cases of torture were not punished, how can one then defend a point of view that torture scarcely exists by making reference to the judicial proceedings that are supposed to prove that. In annex 4 we give some information about 10 flagrant cases.

77. **The number of judgements of the ECtHR and the clarity of the violations found, the detailed and repeated reports of the international bodies which we have quoted in detail in this report and certain severe cases of torture that did not lead to punishment, force us to conclude without any doubt that torture is effectively a profound evil in the Turkish state nowadays, that occurs frequently and whereby the perpetrators of these crimes very rarely are punished (by an imprisonment).**

78. Now it is time to answer the two questions that we were asked.

7. **QUESTION 1: CAN WE SEE A PATTERN IN THE FACTS UNDERLYING THE (TORTURE) TESTIMONIES? WHAT GROUPS ARE TARGETED AND WHY? WHAT IS THE MOTIVATION, AND WHAT IS THE HIGHEST LEVEL OF STATE INVOLVEMENT?**

79. We have rearranged the question somewhat. Moreover, as indicated, the individual testimonies (which were mainly collected by NGOs, no matter how well this has been done or how credible the testimonies are) are not used as the basis for our conclusions. The part of the question concerning the involvement of the highest level of the state has been shifted to question 2.

80. We have divided question 1 into a number of sub-questions.

1. Who are the targeted groups of torture?
2. What is the motivation behind the torture?
3. Is there a pattern in the way the torture is executed?

7.1. WHO ARE THE TARGETED GROUPS?

81. The various reports and testimonies show that the groups targeted can be divided into five categories.

1/ People who are presumed to be linked with or to be supportive to the **Kurdish movement** (especially the PKK or other leftist groups). This group has been the object of torture throughout this period, albeit with varying intensity. The varying intensity is linked to the presence of a state of emergency in the regions concerned and to whether or not the violent conflict has flared up.

2/ People presumed to have something to do with the **Gülen movement**. This group has mainly been subjected to torture since the attempted coup d'état of July 2016.

3/ People suspected of "**ordinary**" **crimes**, especially aggravated crimes or sexual crimes (against minors). We know very little about this group. They submit few complaints to human rights organisations and are less discussed in the comments. This is a communicative phenomenon that also occurs in other countries.

4/ **Juveniles** who are locked up in a closed shelter / juvenile prison and who suffer from violent illegal punishment. Violent illegal punishment according to the definition of CAT is also torture.

5/ People arrested with the intention of "convincing" them to **become police informants**. This group seems to have become larger in recent years.

6/ Persons, especially presumed members of the PKK, of extreme left-wing organisations and of the Gülen movement who were **abducted**, in Turkey or abroad, and tortured after their abduction. Another report pays attention to this group. The composition (who is abducted) has changed over the years.

7/ The **wives of arrested men**, where a practice of imprisoning these women shortly before childbirth has grown. Today it is taken into account that about 800 young children are in prison.

82. The categories 5-6-7 are not really different targeted groups. They rather belong to category 1 and 2 mostly, but the way they are targeted is different.

83. Many people who are critical of the government have been imprisoned in recent years and sentenced to (long) sentences. Fewer facts of torture against them are known, as opposed to more events of "judicial harassment". As a typical example, the situation of Osman Kavala and Selahattin Demirtas can be cited. But the examples are numerous.

84. In some reports other groups are cited, Islamic State for instance. We do not have enough material to effectively regard these groups as a targeted group nowadays.

7.2. WHAT IS THE PURPOSE OF THE TORTURE?

85. Here, we can distinguish several different categories.⁴⁴

1/ **Obtaining a confession.** Provoking confessions from victims of torture is a general recurring objective. The suspect has to sign a statement in which he incriminates himself. This is the *minimum minimorum*. Quite often, suspects will withdraw their statement afterwards. Nevertheless, knowing that the judges do not attach great importance to the withdrawal, this will not constitute a problem for the torturer. The objective has been reached: the suspect has confessed and the judge will base his/her opinion on that statement.

This seems to apply to almost all the targeted individuals. For juveniles, this appears not to be the case.

2/ **Obtaining information.** The second objective is to betray someone else, who can also be prosecuted in view of the witness statement. It concerns persons claimed to belong to the same movement (PKK, Gülen) as the suspect who is being tortured. We see that this motive is also present among persons who are being arrested and asked to become an informant for the security services. A variant of this is the suspects of common crimes who are expected to give the names of their accomplices of the crime or to designate other individuals who are part of the same criminal organisation.

3/ **Punishment.** When arrests happen in periods of violence (such as in the Kurdish region or after the alleged coup attempt), an element of revenge is often present, especially when police officers get seriously injured or killed. This motive seems to be rather absent in periods which are less violent. Revenge and punishment are also the element that has been reported in cases of torture towards the suspects of sexual abuse (of children). Also, violence towards juveniles has often been reported as having as objective to penalise.

⁴⁴ "for such purposes as obtaining from him or a third person information (2) or a confession(1), punishing(3) him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing(4) him or a third person, or for any reason based on discrimination(5) of any kind (Art. 1 CAT).

4/ **Intimidation or coercion.** Specifically, concerning the partners of suspects, extra pressure is being applied to the suspects by torturing or by the threatening to torture their wife or husband in order to obtain more information or to extract a confession in this manner. We note in the witness statements that this often is being used as leverage if a suspect is not quick enough to tell the security forces what they want him to say. In a wider perspective, we reported that now and then, pictures or videos about torture are published in pro government media or by government officials. This is quite remarkable. It indicates how strong the belief in impunity is and the chilling effect that this kind of publicity has on the public. Towards the broader public the government shows not only how “forcefully” they react, but the government also gives a clear dissuasive message. Not only is it dissuasive toward people who are critical of the government as such, but it will also encourage the broader public not to protest and to follow instructions of the security services much more easily. “Converting” the (young) population within the framework of State established by the regime and thereby getting rid of dissident groups is part of this purpose.

5/ **Discrimination.** Discrimination can be defined as the unjust or prejudicial treatment of different categories of people, especially on the grounds of race, age, sex, religion, disability, As far as the Kurdish people is concerned, discrimination is a purpose. Denying the specificity of the Kurdish ethnic identity is a cornerstone of the Turkish policy and it finds one of his expressions in the practice of torture towards them.

7.3. IS THERE A PATTERN IN THE WAY TORTURE IS INFLICTED?

86. The way in which torture is being carried out also differs in time.
87. Whilst the reports from the 90s talk about severe physical torture, this seems to be less likely to be the case in the years between 2002-2015. Yet, this does not say anything on the traumatic nature of torture. Even less physical torture can have horrible

consequences as well. From 2015 onwards the practices from period before the 90s seem to have returned once more without any limits.

88. What we often see put forward in the reports and the testimonies is that specialised personnel are involved, and whereby these specialised persons make it clear to the victims that they are fully aware of what they are doing and that they can go on for a long period without killing the person in question. This expertise seems to be omnipresent among the personnel of the security directorates.
89. When suspects are resisting for too long, their spouse will become involved and tortured or they will threaten the suspect with torturing their spouse whereby they often use rape and the threat of rape as extra “leverage”.
90. Repeatedly, it has been mentioned that there is timing concerning torture. This means, especially when the detention of 30 days is possible, or in the event that the custody of the person concerned is kept secret, the torture is timed in the sense that the evidence of the physical torture practices will not show or will be less visible when the suspect is brought in contact again with their legal representative or their relatives. However, overall this seems not to be a dominant method.
91. Finally, it is clear that torture often occurs in extra-custodial places, presumably to make monitoring more difficult; in this context, sports stadiums and the vehicles of the security forces are recurring places.

8. QUESTION 2: DO THE TESTIMONIES ABOUT TORTURE ALLOW US TO CONCLUDE THAT THERE IS A SYSTEMATIC AND ORGANISED USE OF TORTURE IN TURKEY?

92. As we previously mentioned, under this question we also will answer the question about the involvement of the government.

93. To answer this question, four sub-questions must be answered.

1. Is torture a practice limited to a spontaneous reaction of certain individual security officers or is it organised?
2. How frequent is the use of torture towards persons kept in police custody? So, can it be regarded as systematic?
3. Is torture a practice that is tolerated in the security system itself?
4. What is the involvement of the central (governmental) level?

94. The answer to these questions is not the same for all services, and not for all situations. The situation of a suspect who is in police custody or in custody in a security directorate or in an extra-custodial place, differs from someone who is in prison. Concerning prisons, the answer to these questions will be less unambiguous. Overpopulation, lack of medical care, excessive use of strip searches and long-term solitary confinement occur, based on several reports. Nevertheless, some reports give a more positive perception of the circumstances in the prisons. The use of torture, especially the physical or psychological violence against prisoners will not appear in every period, nor in all prisons or not for all categories. Without underestimating the severe problems in the Turkish prisons, we cannot, to date, based on the information presented, conclude that there is a systematic and organised use of torture in all Turkish prisons. A more extensive report on the prison conditions in Turkey could bring more clarity on this matter and would give a more detailed answer to this question.

95. Concerning the situation of persons in police custody, in custody in security places and custody in extra-custodial places, the above nuances do not apply and the answer is quite unambiguous.

8.1. IS TORTURE A SPONTANEOUS REACTION OF INDIVIDUAL SECURITY OFFICERS OR IS IT ORGANISED?

96. The question is if torture is incorporated in the functioning of the police, as a known method that has (an important) place in the functioning of the police system. Is torture something spontaneous, emotional, uncontrolled, or is it, on the contrary, based on a way of acting that is certainly not improvised.
97. Frequency as such is already an indication. It is not realistic that a frequent use stems only from the individual “feeling” that torture is needed.
98. Secondly, we note that in the testimonies of the victims, remarks are put forward which indicate that specialised persons took the matter into their own hands, with reference often made to officers of M.I.T. It is repeatedly shown in testimonies that the perpetrators are trained and master their craft such that the victim does not get killed and the torture practices can continue. In the two latest CPT reports (visits of 2017 and 2019) reference is made to the mobile intervention teams (Yunus) who are allegedly “specialised” in the ill-treatment of persons taking in custody.
99. Moreover, there seems to be a consistent pattern, whereby first the person concerned (mainly men) himself alone is dealt with. If the torture does not provide the desired results, the security officers threaten to get the spouse of the detained person involved. We also note that women who are close to giving birth will be arrested close to their delivery. Obviously, these are not spontaneous actions, but they form part of a larger common police practice which is considered to be a legitimate option in the security system. The fact that in international reports certain locations have been frequently mentioned and that in these locations torture devices have been found a few times also points in this direction. Finally, the abduction of persons (with long-term torture subsequently) and the arrest and the torture of

persons to make them an informant for the security forces, are examples of organised actions, which require a lot of preparation, especially with regard to abductions abroad.

100. **Consequently, we can establish without doubt and with absolute clarity that the frequent use of torture of certain groups of people does not constitute a spontaneous reaction of certain police officers but is a practice which is clearly well organised within the security services.**

101. We hereby make a reservation with regard to violent conflicts (especially following incidents whereby security officers are wounded or killed) or in the period immediately following the coup attempt. In those cases, there has been an emotional reprisal against everyone who has been “accidentally” arrested in the subsequent period. Also towards perpetrators of sexual crimes committed against children, such behaviour has been reported.

8.2. HOW FREQUENT IS THE USE OF TORTURE TOWARDS PERSONS KEPT IN POLICE CUSTODY, SO THAT IT CAN BE REGARDED AS SYSTEMATIC⁴⁵?

102. As, in answering the first question, we have already indicated which groups are targeted, the answer to this question concerns these groups of suspects only.

103. In the addendum to the report of the UN Committee for the 48th session of the General Assembly, the UN Committee defines systematic as follows “*when it is apparent that the torture cases reported havenot occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question*”.⁴⁶ And furthermore “*Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice*”.⁴⁷ Under 7.1. we stated already that there is no doubt that torture is an organised practice. In the past, torture was for the most part located

⁴⁵ “Police custody” includes: police custody, custody in security directorates and in extra-custodial places.

⁴⁶ A/48/44/Add.1, 15 November 1993, No.39. The Committee concluded that “the existence of systematic torture in Turkey cannot be denied” (*Ibid.*, No. 38).

⁴⁷ *Ibidem*.

in the Southeast of the country (which in any case also makes up a considerable part of the country). In the current period, this does not seem to be the case anymore, because the targeted groups have also become broader, as we indicated before.

104. To be systematic, it must be habitual and widespread. It does not necessarily always have to occur. It does not have to occur in 99% of the cases, but it must be habitual and widespread. This means that at least the chance of being tortured in the specific groups we are talking about, is greater than not being tortured. For the targeted groups of suspects, when they are not “talking” (meaning not confessing and not giving the information the security services want), they are more likely than not to be tortured.
105. A 100% certain answer to the question of the frequency of torture is not possible. We don't know the exact number of the interrogated persons from the targeted group who initially stayed silent or at least didn't want to say what the services wanted them to say. But, at least for the last 5 years, there are some strong indications. An average of 1500 cases are opened a year. It is known and not contested that the dark number for torture is always high and we know that in Turkey they number of prosecutions is low in any case. In recent years it has been even lower than before. For persons who are abducted there is no doubt. They are always tortured. For the other persons, it is reasonable to conclude that the chance that they will be tortured if they fail to give the information or the confessions the services want, is higher than the chance of the opposite happening. Finally, as stated in the definition of the UN Committee, the lack of adequate legislation, by reinstating immunities and authorisations, is also a factor that points towards a systematic use.
106. With all due precautions about the absence of exact numbers, our conclusion is that certainly in the last 5 years, in Turkey, towards members of the targeted groups that we identified who fail to give the answers the security services want them to give, the use of torture is systematic, in the sense that the UN Committee assigns to that word.

8.3. IS TORTURE A PRACTICE THAT IS TOLERATED WITHIN THE SECURITY SYSTEM ITSELF?

107. This question does not concern the judicial reaction towards torture. We have already stated that the judicial reaction, with a maximum of 1% of the complaints leading to an imprisonment, is virtually non-existent. The question we would now like to answer is about the reaction of the security services themselves and more particularly the relevant authorities over them, through disciplinary actions and sanctions. Disciplinary sanctions are, according to the CAT, not an appropriate reaction to torture.⁴⁸ But still, disciplinary sanctions can indicate how torture is regarded inside the services. It can give a clear indication as to whether they tolerate torture or not.
108. According to the information of the Turkish government submitted to the CPT, during the period 1995- 2004, disciplinary proceedings were brought under Art. 243 (Torture) against 1116 persons. For 1102 cases, no grounds for a sanction was found. In 14 cases a sanction was issued (1%). Three of these sanctions were dismissal from the police force, 7 of these sanctions were a long-term suspension.
109. For ill-treatment, proceedings were brought against 7776 persons. In 347 cases a sanction was issued (4.5%). No dismissals were decided, 73 decisions (1%) were a long-term suspension.⁴⁹ Similar figures can be found for disciplinary proceedings on ill-treatment for personnel of the security general directorate (3% sanctions)⁵⁰ and for ill-treatment in penal institutions (4.4% sanctions)⁵¹ and for “beating employees or persons who visit or were brought to the security premises” (3.8% sanctions).⁵²
110. The number of disciplinary sanctions is very low. The figures are between 1 and 4%. Where we have a “higher” number (although 4% is still very low), the sanctions are

⁴⁸ Katona, N, Article 4. Obligation to criminalize Torture, o.c., No. 2, p. 177 and No. 35, p. 187.

⁴⁹ CPT/ Inf (2005)19, Appendix 3.

⁵⁰ CPT/C/TUR/4/ No.274. Data for 2011-2013.

⁵¹ CAT/C/TUR/4, Appendix 2, Data for 2009-2014.

⁵² CPT/Inf/20157, p.5. Data for 2011-24 February 2014.

minor ones and surely can't be seen as appropriate for a case of torture. Dismissal would be an appropriate disciplinary sanction, but this only exceptionally occurs.

111. The figures submitted by the Turkish government concerning disciplinary sanctions in case of torture, certainly do not justify the assertion that, through disciplinary actions, the security services are reacting to torture in a coherent and rigorous way. The contrary is true. Torture is tolerated in the security system. That is the only logical conclusion we can make.

8.4. WHAT IS THE INVOLVEMENT OF THE CENTRAL (GOVERNMENTAL) LEVEL?

112. When answering this question, Involvement and Responsibility must be considered as synonyms. The question is simple, important and weighty: is the central government of Turkey responsible for the systematic, organised and tolerated use of torture, with nearly no risk of prosecution of the perpetrators. Note that, when the first reports of a positive evolution in the use of torture were made, some years ago, the government claimed responsibility for that. Wouldn't it be legitimate then for the opposite to happen now?
113. On Human Rights issues, specifically on torture, the state authorities may be held responsible for acting against the law and the international obligations, for committing an act of torture, giving orders to perpetrate this type of violations, or actively covering it up... This kind of responsibility suggests that there is an instruction, a guideline, a command, ... from the government, saying that torture is allowed and will be tolerated.
114. Such direct responsibility seldom occurs and if it occurs it is difficult to establish unless members of these security services speak out. Turkey is not an exception to that rule. The official credo of the government is a zero-tolerance policy towards Torture. The government reiterates this policy frequently and continuously. Still, there are some disturbing elements in the official communication.

115. The CPT planned a visit to Turkey from 28 August to 9 September 2016. In a classified letter sent ahead of the CPT visit, the acting deputy head of the Turkish National Police warned all officers about the visit: *“It was stated during a coordination meeting at the Foreign Ministry on Aug. 25, 2016, that the CPT is set to pay a visit to our country between Aug. 28 and Sept. 9, 2016, and that it may conduct spontaneous inspections on any detention center across the country. In this respect, I request you to show the ultimate attention to avoid using places that serve as detention centers including sport facilities; to abide by our own regulations and international standards concerning detention procedures; and to urgently make arrangements in order to get all detention centers ready for the abovementioned visit”*.
116. In Appendix 5 we reproduce this letter and an English translation. It is clear that the letter seems to be more motivated by the aim of hiding than investigating torture. On top of that: the last four reports of the CPT did not get the authorisation from the Turkish government to be published. It is a clear message to the security services that even the visit of an international committee will not lead to extraprosecution.
117. In a political meeting in late July 2016, then Minister of Economy Nihat Zeybekçi said, about the plotters of the failed military coup attempt: “We will put them into such holes for punishment that they won’t even be able to see the sun of God as long as they breathe. They will not see the light of the day. They will not hear a human voice. They will beg for death, saying “just kill us”. And in October 2016, Mehmet Metiner, AKP MP and head of the prison commission in the Turkish parliament clearly stated

“we will not investigate the torture allegations against FETO members”.

These are some examples. However, the same kind of statements have been repeated quite often. On top of that, sometimes uncensored images of torture of alleged coup suspects in degrading circumstances have been circulated widely in Turkish media and social networks after the coup, along with statements inciting violence against opponents of the Government. It is clear that this is not in line with a zero-tolerance policy. In the CPT report (visit of 2019) these statements are clearly criticised.

118. Although these messages raise serious questions about the sincerity of the expressed government policy, they are not sufficiently binding and clear, to conclude that the government by direct instructions bears this first type of explicit, direct responsibility for the continuing torture. We cannot prove this kind of responsibility on the part of the government.
119. But there are other forms of direct responsibility. "Other form" doesn't mean "less important". It means that the message that torture is allowed and will not effectively be prosecuted is given in a different, indirect, more subtle way. The responsibility of the government also includes a kind of "due diligence": taking the necessary measures to ensure the respect of the national and the international regulations, securing a full and efficient investigation in case of violation, adequate measures to prevent the occurrence of torture, etc. This responsibility is different, but just as high and just as important, perhaps even more important than the first type of responsibility. We will introduce two elements in order to answer this question.
120. **The first element** is the high number of cases.
The first element to answer this question is the high number of (reported) cases of torture and the lack of a real independent national prevention mechanism. The number of complaints is high. It is common and universal knowledge that in cases of torture, the dark number is even higher. We cannot rule out that some complaints could be abuse. That is universal too. But the number of complaints is high enough that some possible abuse can never be a reason for the absence of effective, structural extra action by the government. Such action never came, with the exception for some written instructions that had little impact.
121. In this context we would like to pay specific attention to the National Prevention Mechanism as indicated in Article 3 of the Optional Protocol. In the report, based on the visit from 6 to 9 October 2015, but only published on 12 December 2019, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Subcommittee) was very critical about the absence of a

real independent National Prevention Mechanism.⁵³ Meanwhile a law has been passed by the Grand National Assembly, but most of the critical remarks still are in place. The procedure to nominate of the members of this mechanism for instance (as a part of the Turkish Human Rights and Equality Institution (THREI)) still does not correspond to the international standards (Paris principles). Also, other recommendations clearly were not executed.

122. In a state where a high number of (allegations of) cases of torture are reported, not having an independent prevention mechanism surely reinforces the idea that torture is not taken seriously and that punishment of torture must not be expected. Nothing stimulates the use of torture more than the idea that punishment will not occur. The installation of a real independent prevention mechanism is not a difficult task, it is not complicated, the conditions that must be respected are clear, it doesn't take a lot of effort to organise it. Some budget must be made available, but that cannot be a real issue. Therefore, if there is no truly independent national prevention mechanism, it is only because the political will is lacking. There can be no doubt that the absence of a real independent prevention mechanism clearly establishes the responsibility of the Turkish government for the high number of cases of torture in their country.

123. **The second element** is the impunity.

The second element to answer this question lies in the impunity system in Turkey. Under the law no. 4483, Turkish civil servants, including police officers cannot be prosecuted without the permission of the relevant administrative authorities. There is some misunderstanding about this rule. First of all: torture is excluded from the application of this law. Prosecutors don't need permission to investigate a case of torture. On top of that, for security forces, in principle the law only applies to crimes committed during the execution of their administrative enforcement duties (public order). Notwithstanding that, we see in nearly all cases of torture that permission is asked (and often refused, and also, the refusal is regularly overruled by an administrative court). Other systems of permission are provided in the Law No. 2937 (MIT officers), No. 6722 (Southeast region 2015-2016) and Decree No. 667. For more detailed analysis, we refer to the report on Impunity. Needless to repeat here

⁵³ CAT/OP/TUR/1

that any form of impunity, system of authorisations or immunity is contrary to the international obligations of the Turkish state.⁵⁴ The impact of this procedures is important. It is clear that the number of complaints is high, and the number of investigations initiated by the Turkish authorities is extremely low. The impunity clause in the legislation surely is partly responsible for that.

124. This conclusion was already reached in the past by the ECtHR. The ECtHR had found various violations by Turkey which were the result of the actions of the security forces in the South-East of Turkey, a region at that time in a situation of state of emergency.⁵⁵ In the Case of *Yasa v. Turkey* the Court used strong language by stating it was *“struck by the fact that the investigatory authorities appear to have excluded from the outset the possibility that State agents might have been implicated in the attacks.”*⁵⁶
125. The Committee of Ministers in the Council of Europe has the duty to follow up the execution of the judgments and also pays attention to the efforts needed to avoid repetition. In the aftermath of these cases, the Committee of Ministers called upon the Turkish authorities *“to abolish the special powers of the local administrative councils in engaging criminal proceedings and to reform the prosecutor’s office in order to ensure that prosecutors will in the future have the independence and necessary means to ensure the identification and punishment of agents of the security forces who abuse their powers so as to violate human rights.”*⁵⁷ The recommendation was not executed. In its follow-up resolution of 2002, the Committee of Ministers *“urged the authorities to accelerate without delay to reform its system of criminal prosecution for abuses by members of the security forces.”*⁵⁸ Finally, in the resolution of 2005 the Committee of Ministers

*“encourages the Turkish authorities to take the necessary measures to remove any ambiguity regarding the fact that administrative authorisation is no longer required to prosecute any serious crimes allegedly committed by members of its security forces.”*⁵⁹

⁵⁴ Katona, N, Article 4. Obligation to criminalize Torture, *o.c.*, No. 2, p. 177 and No. 38, p. 188.

⁵⁵ E.Ct.H.R, *Aksoy v. Turkey*, 18 December 1996. See also: E.Ct.H.R, *Akdivar and others v. Turkey*, Grand Chamber; E.Ct.H.R, *Aydin v. Turkey*, Grand Chamber, 25 September 1997; E.Ct.H.R, *Mentes and others v. Turkey*, 28 November 1997.; E.Ct.H.R, *Kaya and Others v. Turkey*, 4 October 2005.; E.Ct.H.R, *Selçuk and Asker v. Turkey*, 24 April 1998 which all resulted from the actions of its security forces.

⁵⁶ E.Ct.H.R, *Yasa v. Turkey*, 2 September 1998, par 105.

⁵⁷ Interim Resolution of 9 June 1999, DH (99) 434.

⁵⁸ Interim Resolution of 10 July 2002, DH (2002) 98.

⁵⁹ Interim Resolution of 7 June 2005, DH (2002) 98

126. These clear resolutions of the Committee of Ministers have not prevented the Turkish government and parliament from reinstating several systems of authorisation for prosecution and even immunity. The government knew from the past, through the clear resolutions of the Committee of Ministers, that bringing back some systems of authorisation and immunity – as such already in violation of the ECHR and the CAT – would eventually lead to a higher frequency of the use of torture. And once the legislation was passed, the government never gave instructions to the relevant administrative authorities to make sure each investigation could get started (as is also obligatory according to both conventions). It was within its competence to give that kind of instructions, but the government failed to do that. Moreover, the CPT reports concerning the visits of 2017 and 2019 clearly gave evidence of cases where doctors denied there was proof of ill-treatment or torture. The conclusion of the CPT was harsh: “the entire system of medical control suffers from fundamental flaws”. The government cannot pretend they are not aware of this. Instead of giving new guarantees, in its answer to the report, the government denies the fundamental problem and even justifies the presence of police officers in the doctor’s room during the medical exam. So, our conclusion is clear:

- 1) **The Turkish government did not create an independent national prevention mechanism, although the government received clear and detailed recommendations about this from official international institutions, whose legitimacy was and remains legally recognised by Turkey.**
- 2) **The government reinstated systems of authorisation and immunity, although already in the past the ECtHR made clear that this was unacceptable and would lead to more torture and although these systems are clearly against the obligations provided in the ECHR and the CAT, and the government denies the documented and proven lack of independent medical control, which is essential to prove and thus to prevent torture.**

These two observations bring us to the inevitable conclusion that the central government bears full responsibility for the systematic and organised use of torture in Turkey and the nearly non-existent prosecution and punishment of it.

Appendix 1: Additional statistical information

TABLE 1	Personnel in respect of whom judicial proceedings were brought under Art. 243 (torture) between 1 January 1995 and 31 December 2004 (Date of Offence).				
	Total cases	Trial pending	Decided	Imprisonment	Imprisonment (%)
Total	1554	242	132	80	6
2004	13	6	7	0	0
2003	143	36	107	1	0,1
2002	413	80	333	1	0,3
2001	190	60	130	2	2
2000	128	12	116	13	11
1999	170	38	132	6	5
1998	129	5	124	9	7
1997	112	5	107	10	9
1996	155	0	155	12	8
1995	101	0	101	26	26

Suspended sentence under Law No. 4616: 17 (1,3%)

Source: CTP/Inf. (2005) 19, Appendix 3

TABLE 2	Personnel in respect of whom judicial proceedings were brought under Art. 245 (Ill Treatment) between 1 January 1995 and 31 December 2004 (Date of Offence)				
	Total cases	Trial pending	Decided	Imprisonment	Imprisonment (%)
Total	9792	1773	8019	142	5
2004	234	155	79	1	1
2003	1191	487	704	15	2
2002	1395	534	861	30	3
2001	869	201	668	44	7
2000	1017	190	827	73	9
1999	1090	110	980	87	9
1998	1433	38	1395	33	2
1997	1053	34	1019	28	3
1996	942	18	924	62	7
1995	568	6	562	39	7

Suspended sentence under Law No. 4616: 1203 (15% of decided cases)

Source: CTP/Inf. (2005) 19, Appendix 3

During the period 1995-2004, per year, 150 cases of torture and nearly 1000 cases of ill-treatment gave rise to judicial proceedings. Once started, 6% (torture – 80 for the whole period) or 5% (ill-treatment – 412 for the whole period) resulted in an imprisonment. It is

important to note that in 15% of the decided cases concerning ill-treatment, the final result was a suspension of the sentence (or three times the number of imprisonments). It is striking that, although the number of judicial proceedings on torture went up after 2000, the number of convictions dropped quite spectacularly. These years are also the years in which the number of introduced cases that eventually led to a violation pronounced by the ECtHR were highest.

Year	Art. 86	Art. 256	Art. 94/95	TOTAL
2010	88	0	4	92
2011	106	6	2	114
2012	137	8	11	156
2013	145	4	1	150
2014	36	1	2	39
Total	512	19	20	551

Source: CAT/C/TUR/4 Appendix 5

Table 3 gives the number of officers in respect of whom imprisonment judgements were delivered by criminal courts from 11.01.2010 to 16.04.2014, under art. 86 ((simple) injury), art. 256 (exceeding the limits of authorisation for use of force) and art. 94/95 (Torture). In a period of 4 years and 3 ½ months, 20 security officers were convicted for torture, 19 for exceeding the limits of authorisation for use of force and 512 for (simple) injury. The low numbers concerning torture and ill-treatment are in line with the information mentioned in the report. The average days of imprisonment for torture in these judgements was 1,340 days, the average days of imprisonment for (simple) injury was 456 days. There is no information to indicate if the sanctions under art. 86 were all executed or if they were suspended. It seems obvious that a lot of torture cases were handled as cases of (simple) injury so a lower sanction could be decided and suspension of pronouncement was possible. That is also what the UN Committee notes in the conclusions and recommendations on the third periodic report of Turkey.

TABLE 4	Procedural acts carried out regarding the allegations of ill-treatment in penal institutions 2009 – mid 2014					Acquittal
	Total number persons involved	Pending	No-prosecution (A)	(no inquiry needed) (%)	Imprisonment or fine	
Total	2091	503	1563	98	18	7
2014	87	3	84	100	0	0
2013	494	69	411	97	10	4
2012	419	231	182	97	5	1
2011	283	77	201	97,5	3	2
2010	294	108	186	100	0	0
2009	514	15	499	100	0	0

Source: CAT/C/TUR/4 Appendix 2

Table 4 gives some information concerning the number of procedural acts carried out regarding the allegations of ill-treatment specifically in penal institutions for the period 2009 – mid 2014. These figures give a percentage of 1.2% of the cases in which procedural acts are taken that lead to an imprisonment or a fine. The Turkish government also gave information specifically for personnel of the security General Directorate. Although 250 juridical proceedings were started, no convictions were received (still 164 cases were pending, however).⁶⁰

⁶⁰ CAT/C/TUR/No.274

Appendix 2: Complaints registered by HRA

Appendix 2	Number of complaints concerning torture and ill-treatment and ill-treatment under custody, in prison or in extra-custodial places, received by Human Rights Association (HRA - IHD)					
Year	2003	2004	2005	2006	2007	2008
Torture and ill-treatment under custody	818	526	309	179	234	448
Torture and ill-treatment in extra-custodial places	241	249	165	261	184	264
Torture and ill-treatment in prisons	113	57	158	173	90	333
TOTAL	1172	832	632	613	508	1045

Source: HRA.

Appendix 2	Number of complaints concerning torture and ill-treatment and ill-treatment under custody, in prison or in extra-custodial places, received by Human Rights Association (HRA - IHD)					
Year	2009	2010	2011	2012	2013	2014
Torture and ill-treatment under custody	305	230	310	293	233	1021
Torture and ill-treatment in extra-custodial places	358	138	517	433	307	213
Torture and ill-treatment in prisons	397	512	724	583	843	235
TOTAL	1060	880	1551	1309	1383	1469

Source: HRA.

Appendix 2	Number of complaints concerning torture and ill-treatment and ill-treatment under custody, in prison or in extra-custodial places, received by Human Rights Association (HRA - IHD)						
Year	2015	2016	2017	2018	2019	TOTAL (2003-2019)	% (2003-2019)
Torture and ill-treatment under custody	1379	830	427	356	726	8624	36
Torture and ill-treatment in extra-custodial places	474	628	489	246	751	5918	25
Torture and ill-treatment in prisons	215	1348	1988	1149	495	9413	39
TOTAL	2068	2806	2904	1751	1972	23955	100

Source: HRA.

Appendix 3: Reports about torture in Turkey by NGOs.

Human rights organisations have published reports that attach particular importance to Torture and ill-treatment. We will mention just a few of them.

Human Rights Watch published "A Blank Check" already in October 2016, in which it pointed out the impact that the abolition of a number of basic rights (too long a period within which police custody became possible, possibility to refuse a consultation with the lawyer within the first five days after arrest, exclusion of certain lawyers, lack of access to the judicial file, immunity of security officials) had on the increase of even severe forms of Torture and ill-treatment. In this report, 13 specific cases of torture were documented in detail. A year later "In Custody" followed, where the charges were repeated and again 10 cases of torture by security forces, concerning 22 people, were documented in detail.

Freedom from Torture published a report in April 2017 in which it described 60 cases of torture that occurred from 1992 to 2015, referring partly to earlier published reports. Almost immediately after the coup attempt, **Amnesty International** published a report about the new wave of torture after the coup attempt. AI also submitted numerous reports to the United Nations and the Council of Europe. On 3 July, the former president of Amnesty International himself was condemned to an imprisonment of 6 years and 3 months, because of "membership of a terrorist organisation". In November 2017, **The Stockholm Center for Freedom** published a report on the death of Gökhan Açıkkollu, including medical reports concerning this case. It had already published "Mass Torture and ill-treatment in Turkey" in June 2017. This report contains a large number of detailed allegations of Torture.

Advocates of Silenced Turkey (AST) produced, in January 2020, "Systematic Torture & ill-treatment in Turkey". This report reproduces part of the allegations of the aforementioned report of the Stockholm Center and adds a large number of other allegations. Finally, in the Report "Freedom in the world 2020 - Turkey", **Freedom House** summarises its view as follows *"Torture at the hands of authorities has remained common after the 2016 coup attempt and subsequent state of emergency. Human Rights Watch has reported that security officers specifically target Kurds, Gülenists, and leftist with torture and degrading treatment and operate in an environment of impunity"*.

As mentioned in our report, most of these documents contain detailed allegations about Torture or ill- treatment. The reports are expertly prepared and usually perfectly verifiable. Organisations such as HRW and AI have a longstanding reputation of expertise and impartiality.

Appendix 4: 10 exemplary cases

1. Hasan Kobalay, alleged member of the Gülen movement, teacher. His case (Feb. 2017) is well documented and already several reports have been published. Kirikale court ordered the prosecutor to investigate the allegations, including viewing the camera footage, no result to date.
2. Cemal Haslam, Abdulselan Aslan, Halil Aslan. Were taken in custody (June 2017) suspected of helping PKK with a mortar attack - allegation later turned out to be wrong. Pictures were published of the 3 men beaten. A medical report confirms that. Suspect were released. No conviction for torturing these three persons.
3. Villagers from Sapactan (Altinsu). Kurdish citizens taken in custody (August 2017) after a violent confrontation in the village. Photographs showing clear signs of being beaten, photographs published in media.
4. Acikkollu, alleged member of the Gülen movement, died (5.8.2016), doctors reports published, non-prosecution decision in May 2019.
5. Ayten Ozturk, alleged member of DHKP. Detailed statement of torture (March-August 2018) before the court, no investigation launched.
6. X,Y,Z, youngsters, 14 -16-17 years old, alleged PKK supporters. Health report from Training and research Hospital.
7. Hamza Kacmaz "suicide" (August 2016), common suspect, Autopsy report: no signs of strangulation and noted signs of handcuffing. No hanging, but torture.
8. Fatih Akkoyunlu alleged member of the Gülen movement, teacher and public servant (2016) torture documented by doctor reports. Filed several criminal complaints without any answer.
9. Erhan Dogan, Kurdish teacher, July 2016
10. Tuncer Centinkaya, journalist, medical reports about his medical state, lack of medication given.

**Appendix 5: Letter from the acting deputy head of the Turkish National Police
(original and translation).**

GİZLİ

T.C.
İÇİŞLERİ BAKANLIĞI
Emniyet Genel Müdürlüğü

İVEDİ
.../08/2016

Sayı : 23346125-50151.(61228).
Konu : AlÖK Ziyareti/Bilgi Talebi

DAĞITIM YERLERİNE

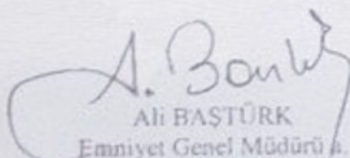
İlgi : 2016081111161065905 EBYS sayılı yazı.

Ülkemizde 15/07/2016 tarihinde gerçekleştirilen hain darbe girişimi sonrasında yürütülen soruşturmalarda ilgili olarak uluslararası kurum ve kuruluşlar tarafından yapılan açıklamalar ile yabancı medyada yer alan haberler konusunda yapılabilecek iş ve işlemlere ilişkin 01/08/2016 tarihinde Adalet Bakanlığında gerçekleştirilen koordinasyon toplantısında dile getirilen hususlar ilgi yazı ile bildirilmiştir.

Bu defa, 25/08/2016 tarihinde Dışişleri Bakanlığında gerçekleştirilen "Koordinasyon Toplantısı"nda Avrupa İşkencenin Önlenmesi Komitesi'nin 28/08-06/09/2016 tarihleri arasında Ülkemize bir ziyarette bulunacağı ve ziyaret esnasında ise Ülkemiz genelinde herhangi bir gözaltı merkezine spontane olarak ziyaretler gerçekleştirebileceği hususu belirtilmiştir.

Bu kapsamda, gözaltı birimi olarak kullanılan spor tesisleri vb. yerlerin mümkün olduğunca kullanılmamasına özen gösterilmesi, gözaltı iş ve işlemlerinde mevcut yasal ve uluslararası standartlara göre hareket edilmesi ve bütün gözaltı birimlerini anılan ziyarete uygun hale getirecek düzenlemelerin ivedilikle yapılması hususunda;

Gereğini rica ederim.


Ali BAŞTÜRK
Emniyet Genel Müdürü
Mülkiye Başmüfettişi
Emniyet Genel Müdür Yrd. V.

Translation

Classified Republic of Turkey
the General Directorate of Security

URGENT

.../08/2016

No: 233461125-50151.(61228).

Subject: CPT visit/request for information

To all distribution centers

Re: Letter no 2016081111161065905 EBYS

The issues raised in the coordination meeting at Ministry of Justice on 01/08/2016 in regards to actions and processes about the statements made by international organisations and institutions and news appearing in the media related to the investigations executed after the treacherous coup attempt that took place in our country on 15/07/2016 were notified with the relevant letter.

This time, it is stated in the coordination meeting that took place at the Ministry of Foreign Affairs on 25/08/2016 that Committee for the Prevention of Torture will pay a visit to our country between 28/08- 06/09/2016, and during this visit, CPT will visit any random detention center all across the country spontaneously.

Within this scope, the sport halls and the like used as detention centers should not be used as much as possible, current laws and international standards should be followed in detention actions and processes, and the regularisations/arrangements to make all other detention centers appropriate for the aforementioned visit should be immediately realised.

Signed

pp Ali Basturk

General Director of
Security Civil Service
Chief Inspector

Vice General Director of Security



TURKEY TRIBUNAL

Because Silence is the Greatest Enemy of
Fundamental Human Rights



in collaboration with



**INTERNATIONAL
OBSERVATORY
HUMAN RIGHTS**



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Because Silence is the Greatest Enemy of
Fundamental Human Rights

Abductions in Turkey Today

JULY 2021

JOHAN HEYMANS

Partly based on a report published
by the Ankara Bar Association

in collaboration with



**INTERNATIONAL
OBSERVATORY
HUMAN RIGHTS**

Executive Summary

Abductions in Turkey Today

BY JOHN HEYMANS

This report aims to provide an answer to the key questions addressed to the Turkey Tribunal about abductions. These questions are: can we, taken into account the reports and the testimonies produced before the tribunal, conclude that abductions again are a part of the action of the state towards opposing persons and that no serious inquiry is organized about these facts?

Internal v. international abductions by Turkey

The report distinguishes between, on the one hand, the abductions within Turkey itself and, on the other hand, the abductions of Turkish citizens abroad in order to bring them back to their homeland. With regards to the former Turkey consistently denies any involvement, with regards to the latter it openly acknowledges having executed these abductions.

In both cases the course of events is identical: opponents of the current regime are abducted and, consequently, disappear from the radar. For some, this situation continues unabated to this day. Most, however, tend to reappear after a few months in certain Turkish police stations. They often turn out to be tortured and were forced to make incriminating statements. For these people, a second phase begins: that of continued deprivation of liberty – this time in a Turkish prison – during which their human rights tend to be strongly restricted. More precisely, the abductees are not allowed to openly discuss their situation with their relatives and generally cannot choose their own lawyer. Similarly, it takes an unlawfully long period of time before these individuals are first presented to a judge having to decide on the need to extend their detention. The abductees are also put under pressure to not fully defend themselves and forced to withdraw complaints on torture and ill-treatment. They are also prohibited from consulting independent physicians to attest their injuries.

The questions:

Is Turkey responsible for the internal abductions of its opponents?

In spite of the fact that the Turkey consistently denies any state implication with regards to internal abductions, it is beyond reasonable doubt that an increasing number of enforced disappearances is taking place in Turkey. Eyewitnesses, statements of abductees who eventually resurfaced and camera footage clearly show that this is due to Turkish police and intelligence services which are actively intercepting opponents of the current Turkish regime to illegally transport them to hidden locations where they are often tortured. These practices are a textbook example of enforced disappearances and are unanimously outlawed by international law.

When the victims reappear their situation of lawlessness continues, and they remain deprived of their most fundamental human rights – the right not to be arbitrarily deprived of one's freedom, the right to a fair trial, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment and even the right to life.

Is Turkey responsible for the extra-territorial abductions of its opponents?

In sharp contrast, Turkey is much more open about its responsibility in terms of extra-territorial abductions. In spite of the fact that our investigation of the publicly known cases only allowed us to identify 63 cases of such abductions, Turkish officials have repeatedly claimed that Turkey was involved in more than 100 international abductions.

Many extra-territorial abductions start with the arrest of Turkish citizens at foreign border crossings due to the fact that the passports of these citizens are, unbeknown to them, cancelled by Turkey. Such behaviour has been declared unlawful by the UN Human Rights Committee and the European Court of Human Rights. Similarly, the active involvement of Turkish intelligence officers abducting the opponents of the current regime with or sometimes even without the consent of the host state is without any doubt contrary to international law and has already been condemned by the European Commission and the European Court of Human Rights.

Does Turkey effectively investigate complaints and allegations of enforced disappearances and unlawful abductions?

In Turkey there currently exists no effective protection of the right to life of political opponents of the regime and no effective investigations are carried out into cases of enforced disappearances. A thorough investigation into such complaints is being prevented in every possible way: the authorities refuse to execute essential investigate acts. When crucial evidence is collected and joined to the file by the relatives of the abductees themselves, the authorities choose to ignore it. This is diametrically opposed to Turkey's positive obligations under international law to investigate such allegations and complaints.

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DOES TURKEY EFFECTIVELY INVESTIGATE COMPLAINTS AND ALLEGATIONS OF ENFORCED DISAPPEARANCES AND UNLAWFUL ABDUCTIONS?

7.1 – FACTUAL FINDINGS

7.2 – LEGAL ANALYSIS AND CONSEQUENCES

VIII – CONCLUSION

IX – ANNEXES

I. INTRODUCTION

1. The present report intends to address and answer the following question: *“Can we, taken in account the reports and the testimonies produced before the tribunal, conclude that abductions again are a part of the action of the state towards opposing persons and that no serious inquiry is organized about these facts?”*

This will require, first, to examine whether the Turkish authorities are involved in kidnappings and, if so, in what way. This analysis will distinguish between, on the one hand, the abductions within Turkey itself (title V) and, on the other hand, the abductions of Turkish citizens abroad in order to bring them back to their homeland (title VI). In both cases, first an overview of the factual findings concerning these abductions will be given. In a second time these findings will be examined in light of Turkey's legal obligations. Finally, under title VII, the effectiveness of the investigations carried out by the Turkish State into both domestic and international kidnappings will be reviewed.

II. THE METHODOLOGY OF THE REPORT

2. The report will be the result of a joint effort by Mr. Johan Heymans and the ‘Ankara Bar Association Human Rights Center’. More precisely, the report itself will be written by Mr. Heymans but, particularly with regards to internal abductions, he will be able to rely on the comprehensive investigations and factual findings of the Ankara Bar Association as published in their joint monitoring report of 27 June 2019 (annex 1).

3. In order to answer the relevant questions, the report will use the ‘beyond reasonable doubt’ standard of proof as applied by supranational courts in cases of abductions and enforced disappearances.¹ This standard may be met by all sorts of evidence as long as it results in *“the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.”*² The report will particularly rely on the report of the Ankara Bar Association, on the reports of international organisations and the case-studies on all known internal and international abductions (see annexes 2 and 3). Each case-study is compiled on the basis of at least three sources which independently of one another and in a credible manner confirmed the same factual findings.

With regards to the burden of proof the imbalance that exists in the collection of evidence between the Turkish State and others will be taken into account. In this regard the European

¹ ECtHR (Grand chamber), *El-Masri v. the Former Yugoslav Republic of Macedonia*, 13 December 2012, Application No. 39630/09, at 151.

² ECtHR (Grand chamber), *El-Masri v. the Former Yugoslav Republic of Macedonia*, 13 December 2012, Application No. 39630/09, at 151. See for a similar standard: Human Rights Committee, Consideration by the Human Rights Committee at its 111th, 112th and 113th sessions of communications received under the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR/C/113/4), 8 September 2015, at 17.

Court of Human Rights (“**ECtHR**”) has specifically held in the context of enforced disappearances that this burden is met when “although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she was officially summoned by the authorities, entered a place under their control and has not been seen since.”³ Statements given by government ministers or other high officials can hold a particularly important probative value but only “when they acknowledge facts or conduct that place the authorities in an unfavourable light. They may then be construed as a form of admission.”⁴

4. Finally, the report intends to answer a number of very specific questions and therefore has to deliberately limit its scope.

First, the analysis will only focus on abductions that took place since 2016. This limitation is prompted, as shown under title IV, by the fact that the tendency to abduct Turkish citizens has been dramatically increasing since particularly the events of 15 July 2016 after years of very strong decline.

Second, only the abductions of 'opponents' of the Turkish State are taken into account. In the relevant period the United Nations (UN) Working Group on Enforced or Involuntary Disappearances has expressed its concerns on the disappearances of migrants at the Syrian border in which local authorities might be involved.⁵ However, these migrants are not considered to be (political) opponents of the current regime and therefore fall beyond the scope of the present report.

Third, the report will only take into account the legal framework applicable to Turkey. For instance, Turkey has not yet, in spite of the encouragements thereto of different UN Bodies, become a party to the International Convention for Protection of All Persons from Enforced Disappearance.⁶ The specific obligations resulting from this convention will therefore not be included in the analysis.

³ ECtHR (Grand chamber), *El-Masri v. the Former Yugoslav Republic of Macedonia*, 13 December 2012, Application No. 39630/09, at 151. See also ECtHR, *Taniş and Others v. Turkey*, 2 August 2005, Application No. 65899/01, at 160; ECtHR, *Yusupova and Zaurbekov v. Russia*, 9 October 2008, Application No. 22057/02, at 52 and ECtHR, *Matayeva and Dadayeva v. Russia*, 19 April 2011, Application no. 49076/06, at 85.

⁴ ECtHR (Grand chamber), *El-Masri v. the Former Yugoslav Republic of Macedonia*, 13 December 2012, Application No. 39630/09, at 163. See also ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*: Merits Judgment, 27 June 1986, at 64.

⁵ Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration (A/HRC/36/39/Add.2) of 28 July 2017, at 33; Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey (A/HRC/33/51/Add.1) of 27 July 2016, at 11.

⁶ See United Nations Treaty Collection (https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4).

III. TURKEY AND ITS HISTORY WITH ABDUCTIONS

5. Turkey has a long history with state-sponsored abductions and enforced disappearances.

After the 1980 coup d'état, Turkey lived a period of violent clashes between the Kurdish Workers' Party (PKK) and government security forces – particularly in the south-east of the country. This resulted during the 1980s and 1990s in many state-sponsored abductions and disappearances. Human rights organizations estimate that up to 3,500 people forcibly disappeared, with around 450 cases being confirmed.⁷ The UN Working Group on Enforced or Involuntary Disappearances registered 214 cases during those years.⁸

6. Still, in the 2000s the number of enforced disappearances in Turkey drastically diminished. This seems to be mainly due to Turkey's accession negotiations with the European Union which required a better human rights track record.

Consequently, between 2002 and 2015, only 1 case of enforced disappearance was transmitted to the UN Working Group on Enforced or Involuntary Disappearances⁹

Different UN visits to and reports on Turkey confirmed this positive tendency. For instance, UN Rapporteur Christof Heyns stressed in 2013: *"The level of extrajudicial executions in Turkey has dramatically decreased compared to the situation in the early 1990s. Current instances of violations of the right to life and related practices such as torture and enforced disappearances must be measured on a very different scale."*¹⁰ Similarly, in its report based on a visit to Turkey from 14 to 18 March 2016, the UN Working Group on Enforced or Involuntary Disappearances stated: *"The Working Group did not receive allegations of recent enforced disappearances (...)".*¹¹

7. This positive tendency seems, however, to have been completely reversed since, on 15 July 2016, an attempted coup d'état to overthrow the government is stated to have taken place.

This is confirmed by the statistics of the UN Working Group on Enforced or Involuntary Disappearances and by the sharp contrast between the positive international reports dating

⁷ Human Rights Watch, Time for Justice Ending Impunity for Killings and Disappearances in 1990s Turkey, 3 September 2012 (see footnote 10 referring notably to the findings of the Human Rights Association's Diyarbakır branch).

⁸ UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/42/40) of 30 July 2019, p. 46: it concerns the registered cases from 1990 till 1999.

⁹ UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/42/40) of 30 July 2019, p. 46: it concerned 1 case in 2007.

¹⁰ Christof Heyns, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Addendum Mission to Turkey (A/HRC/23/47/Add.2) of 18 March 2013, p at 6.

¹¹ UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey (A/HRC/33/51/Add.1) of 27 July 2016, at 11.

from before July 2016 and the completely different and worrying recommendations by those same institutions formulated afterwards¹²

IV. THE ABDUCTIONS IN TURKEY IN NUMBERS

8. It is impossible to provide exact numbers on the individuals who have been abducted by the Turkish State or their officials both internally and internationally.¹³ With regards to internal abductions, the issue is that Turkey consistently denies any state implication. An extensive examination of the suspicious disappearances in Turkey has allowed us to distinguish 25 cases in which it is beyond any reasonable doubt that an abduction organised by the Turkish State has taken place.

However, it is certain that many cases of disappearances will not (yet) have come to the attention of international organisations, NGOs and newspapers and continue to go unnoticed. In that regard it is particularly remarkable that only three abductions of a Kurdish person could be identified while already in July 2016 the UN Working Group on Enforced or Involuntary Disappearances expressed its concerns that *"situations such as the current one in the south-east are conducive to human rights violations, including enforced disappearances."*¹⁴ This situation has – particularly since the 2019 Turkish offensive into north-eastern Syria – not improved.

9. In sharp contrast, Turkey is much more open about its responsibility in terms of extra-territorial abductions. In spite of the fact that our investigation of the publicly known cases only allowed us to identify 68 cases of such abductions, Turkish officials have repeatedly claimed that Turkey was involved in more than 100 international abductions.

For instance, Turkish Foreign Minister Mevlüt Çavuşoğlu confirmed that 104 Gülenists from 21 countries were abducted and brought back to Turkey as part of the Turkish government's

¹² See UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/45/13) of 7 August 2020. See UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/42/40) of 30 July 2019, p. 46. See Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020); UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/42/40), 30 July 2019, at 56.

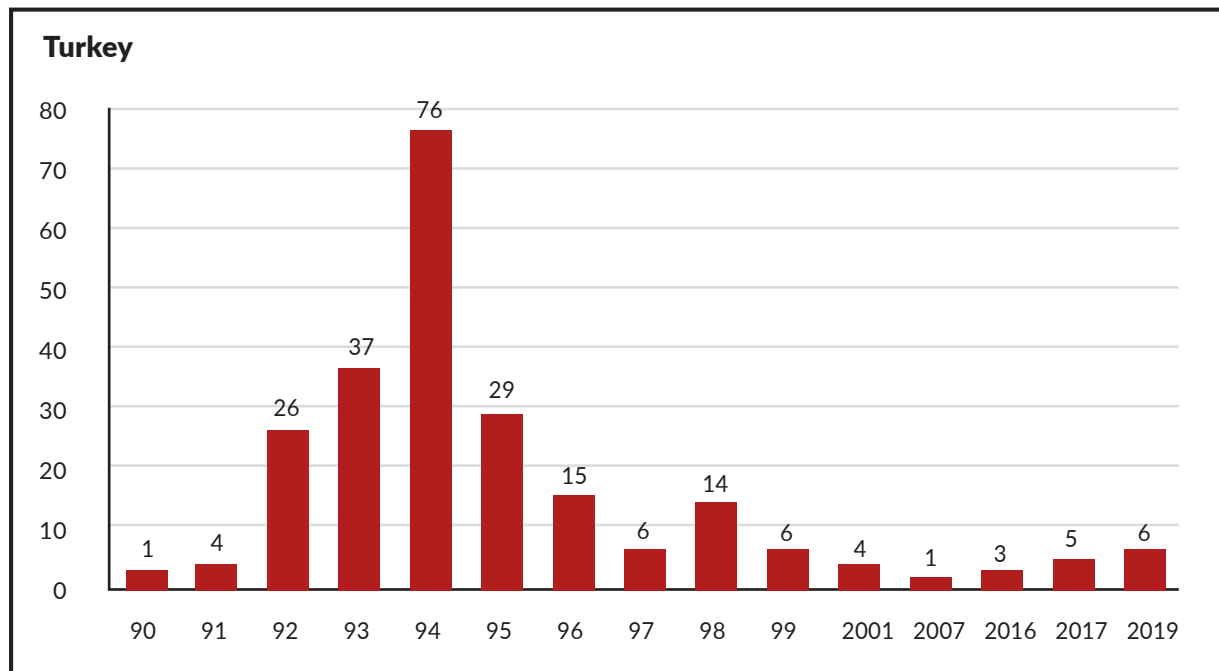
¹³ This was also confirmed by Human Rights Foundation for Turkey, Alternative Report

To the United Nations Committee against Torture For its consideration of the 4th Periodic Report of Turkey, March 2016.

¹⁴ Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration (A/HRC/36/39/Add.2) of 28 July 2017, at 33; Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey (A/HRC/33/51/Add.1) of 27 July 2016, at 11.

global manhunt.¹⁵ Similarly, Deputy Foreign Minister Yavuz Selim Kiran stated that this happened to more than 100 Gülenists.¹⁶

10. In any event, it is clear, at the level of the UN Working Group on Enforced or Involuntary Disappearances, that the number of cases of enforced disappearances (and thus abductions) is steeply increasing since 2016. While from 2002 until 2015, only 1 case was transmitted, since 2016 this already happened 16 times:¹⁷



The number of cases reflected in these statistics is, however, an important underrepresentation of the effective numbers of individuals who have been abducted by Turkey since only very few cases are effectively transmitted to the United Nations.

¹⁵ U.S. Department of State, '2018 Country Reports on Human Rights Practices: Turkey', 28 June 2019 (<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/turkey/>); Sabah, '52 FETÖ'cü 83 ülkede', 15 November 2018 (<https://www.sabah.com.tr/gundem/2018/11/15/452-fetocu-83-ulkede>).

¹⁶ Hurriyet, Bakan Yardımcısı açıkladı: 100'ün üzerinde FETÖ teröristi getirildi, 24 February 2019 (<https://www.hurriyet.com.tr/gundem/bakan-yardimcisi-100un-uzerinde-feto-teroristi-ulkemize-getirildi-41128404>).

¹⁷ UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/45/13) of 7 August 2020, p. 48.

V. QUESTION 1: IS TURKEY RESPONSIBLE FOR THE INTERNAL ABDUCTIONS OF ITS OPPONENTS?

5.1. Factual findings

11. In order to answer the question of whether Turkey, as a state, is involved in the abduction of opponents on its territory, the current report first maps out the factual findings.

It particularly relies on the findings of the investigative acts carried out by the Ankara Bar Association as laid down in its joint report of June 2019.¹⁸ With regard to the other cases where national abductions appear to have taken place, this report builds on other (often journalistic) sources or reports by human rights NGOs active in Turkey. Every case-study is based on at least three different sources.

12. From these factual findings it resorts that domestic abductions generally require to distinguish two stages. During the first stage, opponents of the current Turkish regime are abducted and consequently disappear from the radar: they are not registered in the official detention system and their whereabouts are completely unknown for their relatives (title 5.1.1).

For some, this situation continues unabated to this day. Most, however, tend to reappear after a few months in certain Turkish police stations. For these people, a second phase begins: that of continued deprivation of liberty – this time in a Turkish prison – during which their human rights tend to be strongly restricted (title 5.1.2).

5.1.1. Stage 1: the initial arbitrary deprivation of liberty and consequent disappearance

1) The abductions took place in the same specific circumstances

13. In all of the 25 cases listed under annex 2, abductions - and thus forcible deprivations of liberty - have taken place. This is supported by camera footage, witness statements, investigations of NGOs and other matching sources.

It is striking that these abductions always took place in very similar circumstances.

First, they were carried out in such a way that it is clear that the perpetrators are not worried about an intervention by the law enforcement authorities. Many abductions were the result of large-scale kidnapping operations. Özgür Kaya, for instance, was abducted by a heavily armed group of almost 40 people with many witnesses being present.¹⁹ Similarly, in the cases of

¹⁸ See annex 1.

¹⁹ See annex 2: case number 3.

Mustafa Özgür Gültekin²⁰ and Cemil Koçak²¹ the kidnapping involved 4 cars who followed and abducted them²²; in the case of Mr. Şenyücel 2 cars were involved²³

The abductions often took place in the middle of the day, in very busy streets or in front of commercial centres. Mustafa Yılmaz,²⁴ and Önder Asan²⁵ were, for instance, abducted in the middle of the day. In the cases of Sunay Elmas and Ümit Horzum this happened in front of crowded shopping malls (respectively the CEPA Shopping Centre and the Acity shopping mall in Ankara).²⁶ Mustafa Özgür Gültekin was abducted when he went to a local convenience store.²⁷ The kidnappings of Mesut Geçer²⁸ and Turgut Çapan²⁹ happened in busy districts in Yenimahalle³⁰

Consequently, many people witnessed those abductions. Salim Zeybek was, for instance, abducted in the middle of a highway, when a car was driven into his car and shots were openly fired at him.³¹ Many witnesses testified on the abduction of Özgür Kaya by 40 heavily armed men.³² Different eyewitnesses also saw Cengiz Usta³³, Mustafa Özben³⁴ and Cemil Koçak³⁵ being forced in a car. In the case of Murat Okumus, gunmen forced him into a car: a bystander called the police to report the incident³⁶

The abductors did not seem concerned either by the fact that plenty of security cameras managed to film the abductions and notably recorded the number plates of the vehicles with which they committed the abductions. The kidnappings of Mustafa Yılmaz,³⁷ Sunay Elmas,³⁸ Mustafa Özgür Gültekin³⁹, Mr. Şenyücel⁴⁰, Cemil Koçak⁴¹ and Lider Polat⁴² could, for instance, be very clearly filmed.

²⁰ See annex 2: case number 16.

²¹ See annex 2: case number 23.

²² See annex 2: case number 16.

²³ See annex 2: case number 18.

²⁴ See annex 2: case number 1.

²⁵ See annex 2: case number 8.

²⁶ See annex 2: case number 12.

²⁷ See annex 2: case number 16.

²⁸ See annex 2: case number 13.

²⁹ See annex 2: case number 19.

³⁰ See annex 2: case number 13.

³¹ See annex 2: case number 2.

³² See annex 2: case number 3.

³³ See annex 2: case number 20.

³⁴ See annex 2: case number 21.

³⁵ See annex 2: case number 23.

³⁶ See annex 2: case number 24.

³⁷ See annex 2: case number 1.

³⁸ See annex 2: case number 14.

³⁹ See annex 2: case number 16.

⁴⁰ See annex 2: case number 18.

⁴¹ See annex 2: case number 23.

⁴² See annex 2: case number 26.

14. Second, these abductions were consistently carried out in a very similar manner. The cars of the abductees were blocked by the same type of vehicles. Often with a car accident being provoked. The abductors then put a bag over the heads of the abductees and pushed them in a black VW Transporter van. This happened, for instance, in the cases of Hasan Kala,⁴³ Ümit Horzum,⁴⁴ Sunay Elmas,⁴⁵ Mustafa Özgür Gültekin,⁴⁶ Mr. Şenyücel,⁴⁷ Mustafa Özben,⁴⁸ and Cemil Koçak.⁴⁹ Also, when Turgut Çapan was abducted, CCTV footage showed a black Transporter van approaching the place where her husband was last seen, although the footage did not capture the moment of abduction.⁵⁰

2) All abducted people were qualified by the Turkish State as political opponents

15. All abductees were considered by the Turkish State as political opponents – either as members of the Gülen movement or of the PKK.

16. Many of them even were, before their abduction, the object of a criminal investigation for the alleged membership to these organisations. Mustafa Yılmaz was, for instance, convicted by the 32nd High Criminal Court of Ankara on charges of being a member of FETÖ/PDY and was waiting for his appeal when being abducted.⁵¹ Emine Özben discovered, when filing a “missing persons” notice with the police department, that an outstanding detention warrant existed against her husband Mustafa Özben.⁵² Yusuf Bilge Tunç was investigated for, on the one hand, being a FETÖ/PDY member and, on the other hand, having leaked Public Personnel Selection Examination (KPSS) questions.⁵³

17. Moreover, an important number of abductees knew in advance that they were the object of an arrest warrant and went into hiding out of fear for being tortured by the authorities. This was the case of Salim Zeybek,⁵⁴ Özgür Kaya⁵⁵, Gökhan Türkmen⁵⁶, Erkan Irmak,⁵⁷ Ümit Horzum⁵⁸ and Turgut Çapan⁵⁹ who were all accused of being FETÖ/PDY members.

18. The others worked at institutions considered to be linked to the Gülen movement and were, after the 15 July 2016 events, dismissed from their jobs. This was the case of Hasan Kala

⁴³ See annex 2: case number 10.

⁴⁴ See annex 2: case number 12.

⁴⁵ See annex 2: case number 14.

⁴⁶ See annex 2: case number 16.

⁴⁷ See annex 2: case number 18.

⁴⁸ See annex 2: case number 21.

⁴⁹ See annex 2: case number 23.

⁵⁰ See annex 2: case number 19.

⁵¹ See annex 2: case number 1.

⁵² See annex 2: case number 21.

⁵³ See annex 2: case number 7.

⁵⁴ See annex 2: case number 2.

⁵⁵ See annex 2: case number 3.

⁵⁶ See annex 2: case number 4.

⁵⁷ See annex 2: case number 5.

⁵⁸ See annex 2: case number 12.

⁵⁹ See annex 2: case number 19.

(academician at the Çankırı Karatekin University),⁶⁰ Ayhan Oran (a former MIT employee),⁶¹ Orçun Şenyücel (an expert at Turkey's Competition Authority)⁶² and Fatih Kılıç (a teacher)⁶³ : all lost their jobs immediately after the attempted coup d'état.

19. Finally, the case of Hıdır Çelik stands somewhat out. He seems to have been caught in the midst of violent clashes between the armed forces and the PKK in Diyarbakır's Hazro district.⁶⁴ The Turkish authorities seem to consider that he is a PKK member and was involved with these clashes.⁶⁵ In any event, it is clear that Mr. Çelik was considered to be an "opponent" of the Turkish State.

Lider Polat was, as a youth leader of HDP, also considered to be a political opponent of the current regime in Turkey.⁶⁶

3) *The abductors can be linked to Turkish police forces and secret services*

20. The fact that the Turkish State is involved with these abductions is supported by a wide variety of evidence.

In the first place, reference can be made to various statements made by people who were initially abducted but then resurfaced and were finally able to make statements. Mesut Geçer, who worked for MIT, testified before the Ankara 34th High Criminal Court that he was abducted by some of his former Turkey's National Intelligence Organization ("**MIT**") colleagues.⁶⁷ Moreover, Mr. Gültekin, who also worked for the Turkish government, sent a letter to certain lawyers, judges and prosecutors confirming that he was abducted by members of MIT.⁶⁸ During a hearing in March 2019, Mr. Kötüce, who also worked for the Turkish state, confirmed that he has been abducted by MIT.⁶⁹ After he was released, Mr. Koçak told Human Rights Watch that he had been kept for 3 months in a secret detention facility by men who told him they worked for the state.⁷⁰

21. Moreover, as evinced by CCTV footage and eyewitnesses, the abductors frequently wore clothes or badges indicating that they worked for the Turkish police forces or the Turkish secret services. For instance, Özgür Kaya was abducted by people who wore safety vests with

⁶⁰ See annex 2: case number 10.

⁶¹ See annex 2: case number 15.

⁶² See annex 2: case number 18.

⁶³ See annex 2: case number 22.

⁶⁴ See annex 2: case number 25.

⁶⁵ See annex 2: case number 25.

⁶⁶ See annex 2: case number 26.

⁶⁷ See annex 2: case number 11.

⁶⁸ See annex 2: case number 16.

⁶⁹ See annex 2: case number 17.

⁷⁰ See annex 2: case number 23.

the inscription “TEM” which are Turkish anti-terrorism units.⁷¹ Gökhan Türkmen told the judges he was abducted by people wearing police vests.⁷²

22. Furthermore, the abductors did not hesitate either to present themselves as being police officers and they also behaved as such. For instance, Özgür Kaya was abducted by people who introduced themselves as police officers and who provided an investigation number of the Chief Public Prosecutor’s Office in Ankara.⁷³ Similarly, Yasin Ugan was abducted by armed individuals presenting themselves as police officers in plain clothes. The abductors claimed that their actions were part of a pending investigation before the Prosecutor’s Office.⁷⁴ Önder Asan too testified – and this was confirmed by a witness – that it were police officers who abducted him.⁷⁵ People presenting themselves as police officers stated to Fahri Mert that they would take him to the security directorate for interrogation.⁷⁶

23. Additionally, other objective elements support that these abductions are part of broader government action. Ahmet Ertürk was, for instance, abducted at the same time a raid of the police forces was conducted at his parents’ house in Ankara.⁷⁷

24. Finally, the involvement of the Turkish State in these internal abductions was recently – in May 2020 – confirmed by a video interview given by Mustafa Yeneroğlu, member of Turkish parliament and former chair of the parliament’s Committee on Human Rights Inquiry. He stated:

“The abduction cases began at the time when I was chair of the Committee on Human Rights Inquiry. I talked to relevant people then, telling them that unless those people turned up within three weeks, I would do my part and raise the issue on different platforms. At the time we resolved it and those people all reappeared here and there, at police stations. I know exactly how that happened, how it developed, and by whom it was done. If I did not know, I would not be speaking this assertively”⁷⁸ (emphasis added).

4) All abductees consequently disappeared for a long period of time

25. All abductees, consequently, disappeared for a period ranging from one month to as much as two years without any information on their whereabouts was given.

More specifically, the duration of the disappearances are as follows:

⁷¹ See annex 2: case number 3.

⁷² See annex 2: case number 4.

⁷³ See annex 2: case number 3.

⁷⁴ See annex 2: case number 6.

⁷⁵ See annex 2: case number 8.

⁷⁶ See annex 2: case number 9.

⁷⁷ See annex 2: case number 13.

⁷⁸ Karar TV, “Devlet kutsalsa, o zaman 28 Şubat’ta da sussaydık | Mustafa Yeneroğlu” (<https://www.youtube.com/watch?v=kdMhfnnOD70>).

- Hüseyin Kötüce disappeared for almost 2 year.⁷⁹
- Mesut Geçer disappeared for 483 days / 16 months.⁸⁰
- Gökhan Türkman disappeared for 271 days / 9 months.⁸¹
- Mustafa Yılmaz disappeared for 245 days / 8 months.⁸²
- Erkan Irmak disappeared for 162 days / 5 months.⁸³
- Yasin Ugan disappeared for 165 days / 5 months.⁸⁴
- Salim Zeybek disappeared for 157 days / 5 months.⁸⁵
- Özgür Kaya disappeared for 165 days / 5 months.⁸⁶
- Ümit Horzum disappeared for 131 days / 4 months.⁸⁷
- Mustafa Özgür Gültekin disappeared for 121 days / 4 months.⁸⁸
- Orçun Şenyücel disappeared for almost 3 months.⁸⁹
- Cengiz Usta disappeared for more than 87 days / 3 months.⁹⁰
- Cemil Koçak disappeared for more than 2 months.⁹¹
- Ahmet Ertürk disappeared for 49 days / 2 months.⁹²
- Önder Asan disappeared for 41 days / 1 month.⁹³

26. While most of them eventually resurfaced after a number of months or even years, a considerable number of others continue to be missing. Individuals such as Sunay Elmas (abducted on 27 January 2016)⁹⁴, Ayhan Oran (abducted on 1 November 2016)⁹⁵, Turgut Çapan (abducted on 31 March 2017)⁹⁶, Mustafa Özben (abducted on 9 May 2017)⁹⁷, Fatih Kılıç (abducted on 14 May 2017)⁹⁸, Murat Okumuş (abducted on 16 June 2017)⁹⁹, Hıdır Çelik (abducted on 16 November 2017)¹⁰⁰, Fahri Mert (abducted on 12 August 2018)¹⁰¹, Hasan Kala (abducted on 21 July 2018)¹⁰², Yusuf Bilge Tunç (abducted on 6 August 2019)¹⁰³ and Hüseyin

⁷⁹ See annex 2: case number 17.

⁸⁰ See annex 2: case number 13.

⁸¹ See annex 2: case number 4.

⁸² See annex 2: case number 1.

⁸³ See annex 2: case number 5.

⁸⁴ See annex 2: case number 6.

⁸⁵ See annex 2: case number 2.

⁸⁶ See annex 2: case number 3.

⁸⁷ See annex 2: case number 12.

⁸⁸ See annex 2: case number 16.

⁸⁹ See annex 2: case number 18.

⁹⁰ See annex 2: case number 20.

⁹¹ See annex 2: case number 23.

⁹² See annex 2: case number 11.

⁹³ See annex 2: case number 8.

⁹⁴ See annex 2: case number 14.

⁹⁵ See annex 2: case number 15.

⁹⁶ See annex 2: case number 19.

⁹⁷ See annex 2: case number 21.

⁹⁸ See annex 2: case number 22.

⁹⁹ See annex 2: case number 24.

¹⁰⁰ See annex 2: case number 25.

¹⁰¹ See annex 2: case number 9.

¹⁰² See annex 2: case number 10.

¹⁰³ See annex 2: case number 7.

Galip Küçüközyiğit (abducted on 29 December 2020)¹⁰⁴ have not been heard from in spite of the fact that they have disappeared for a long time.¹⁰⁵

5) *When abductees reappear, it is always in the same circumstances*

27. The abductees who reappear always resurface in local police stations or at the Anti-Terrorism Department in Ankara with the authorities providing no or just an unconvincing explanation as to how they ended up there.

Salim Zeybek reappeared, for instance, at the Anti-Terrorism Department in Ankara. It was claimed that he had been caught during a criminal record check while he was walking to the police station to surrender.¹⁰⁶ An identical explanation was given to the sudden appearance of Özgür Kaya¹⁰⁷, Erkan Irmak¹⁰⁸ and Yasin Ugan¹⁰⁹, all of whom reappeared at the Anti-Terrorism Department in Ankara. Erkan Irmak and Yasin Ugan even reappeared on the same day, on 28 July 2019. Ümit Horzum reappeared in police detention on 16 April 2018 after being "*delivered by unknown people to the police*".¹¹⁰

Önder Asan later testified in court that his abductors forced him to call the Ankara police department to "request" to come and take him in, after which his abductors forced him to sign a paper stating that he wanted to take advantage of repentance law.¹¹¹

Other abductees reappeared in local police stations in Ankara (Mustafa Özgür Gültekin),¹¹² Antalya (Gökhan Türkmen)¹¹³ and Karapürçek (Mustafa Yilmaz)¹¹⁴.

6) *The abductees were tortured and ill-treated in order to obtain incriminating evidence*

28. The abductees were tortured and ill-treated in order to obtain statements in which they either incriminated themselves or others, often in high-profile cases against the Gülen movement in Turkey.

¹⁰⁴ See annex 2: case number 27.

¹⁰⁵ See annex 2: case number 7.

¹⁰⁶ See annex 2: case number 2.

¹⁰⁷ See annex 2: case number 3.

¹⁰⁸ See annex 2: case number 5.

¹⁰⁹ See annex 2: case number 6.

¹¹⁰ See annex 2: case number 12.

¹¹¹ See annex 2: case number 8.

¹¹² See annex 2: case number 16.

¹¹³ See annex 2: case number 4.

¹¹⁴ See annex 2: case number 1.

Ümit Horzum stated in court that he was tortured during his disappearance and coerced to sign previously prepared incriminating statements on people he did not even recognize.¹¹⁵ Similarly, Mr. Gültekin testified that was subjected to brutal extrajudicial interrogations in order to force him to read incriminating statements in front of a camera.¹¹⁶ Consequently, during his 13-day police custody, he was made to sign a number of the statements which he had previously been forced to read to the camera.¹¹⁷

The same modus operandi was described by Mr. Kötüce during a hearing in March 2019: he told the court he had been forced to memorize, under torture, self-incriminating statements in which he accepted responsibility for the assassination of Andrei Karlov, the Russian ambassador to Turkey.¹¹⁸ He denied the veracity of these statements. Similarly, statements made by Orçun Şenyücel, who was abducted and tortured, were used in court against Mesut Geçer.¹¹⁹

29. Many abductees, when they reappeared, wore signs of torture and ill-treatment. Gökhan Türkmen¹²⁰ and Yasin Ugan¹²¹ confirmed that they were subjected to severe, often months-long, torture and ill-treatment. Ümit Horzum had, when he reappeared, rib fractures and burst eardrums.¹²² When Önder Asan was brought to the police station, he had great difficulty in standing and walking. He could only walk to the room to meet his lawyer by holding onto the walls.¹²³ Salim Zeybek was unable to maintain his balance while sitting.¹²⁴

In the same vein, Mesut Geçer still experiences serious medical problems with his left foot and knee due to having been tortured.¹²⁵ Many abductees were in bad health when they reappeared and had lost an unhealthy amount of weight (see Salim Zeybek¹²⁶, Özgür Kaya¹²⁷, Erkan Irmak¹²⁸ and Yasin Ugan¹²⁹).

More in general Nils Melzer, UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, expressed his concerns in February 2018 about the rise in torture allegations which involved Gülen-linked detainees being subjected to brutal

¹¹⁵ See annex 2: case number 12.

¹¹⁶ See annex 2: case number 16.

¹¹⁷ See annex 2: case number 16.

¹¹⁸ See annex 2: case number 17.

¹¹⁹ See annex 2: case number 18.

¹²⁰ See annex 2: case number 4.

¹²¹ See annex 2: case number 6.

¹²² See annex 2: case number 12.

¹²³ See annex 2: case number 8.

¹²⁴ See annex 2: case number 2.

¹²⁵ See annex 2: case number 13.

¹²⁶ See annex 2: case number 2.

¹²⁷ See annex 2: case number 3.

¹²⁸ See annex 2: case number 5.

¹²⁹ See annex 2: case number 6.

interrogation techniques aimed at extracting forced confessions that incriminate themselves as well as others.¹³⁰

7) No effective investigation into the allegations of abduction by the Turkish authorities

30. It is, finally, important to note that the relatives of the abducted people have urged the Turkish authorities to immediately investigate the abduction and disappearance of their loved ones.

However, as will be explained under title VII, the Turkish prosecutors and police consistently refused to conduct an effective investigation. It is the relatives themselves who joined all significant evidence to the investigative files.

5.1.2. Stage 2: the subsequent continued arbitrary deprivation of liberty

1) The abductees are not allowed to openly discuss their situation with their relatives

31. The abductees, after having reappeared in the official detention system, are prohibited to discuss their situation – in particular what happened during their disappearance – with their relatives.¹³¹

During the visits to her husband in prison, Ms. Zeybek was, for instance, prevented by the guards to ask him what happened during his disappearance¹³²

The wives of Mustafa Yilmaz,¹³³ Özgür Kaya,¹³⁴ Erkan Irmak¹³⁵ and Yasin Ugan¹³⁶ also confirmed that the conversations with their previously abducted husbands were consistently recorded and that guards listened in. Their husbands, consequently, did not dare to speak about their abduction¹³⁷

¹³⁰ United Nations Office of the High Commissioner, "Turkey: UN expert says deeply concerned by rise in torture allegations", 27 February 2018

(<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22718&LangID=E>).

¹³¹ See Human Rights Watch, "Turkey: Concerns for Disappeared Men Now In Police Custody," 6 August 2019, (<https://www.hrw.org/news/2019/08/06/turkey-concerns-disappeared-men-now-police-custody>).

¹³² See annex 2: case number 2.

¹³³ See annex 2: case number 1.

¹³⁴ See annex 2: case number 3.

¹³⁵ See annex 2: case number 5.

¹³⁶ See annex 2: case number 6.

¹³⁷ See annex 2: case number 1.

Other abductees were simply refused to see their relatives (see Önder Asan¹³⁸ and Ümit Horzum¹³⁹).

2) *The abductees are limited in their right to choose their own lawyer*

32. After they reappear in the ordinary prison system, the abductees are not allowed to freely choose their own lawyer or to rely on the lawyer proposed to them by their family. In the event they are assigned a lawyer, these lawyers seem to act in the favour of the interests of the Turkish State rather than the detainees.

Ümit Horzum¹⁴⁰ and Yasin Ugan¹⁴¹ were, for instance, brought before a judge without having the possibility to choose their lawyer, even if their wives had paid for a lawyer to assist them.¹⁴² Özgür Kaya even refused to meet the lawyer his wife paid for him.¹⁴³ Gökhan Türkmen said that, while he was in police custody, he was prevented from retaining his own legal counsel. He announced during a later hearing that he had dismissed Ayşegül Güney, the lawyer assigned by the bar association since she tried to convince him to sign incriminating statements. Similarly, the state-appointed lawyer who was assigned to Yasin Ugan tried to make him sign a 58-page testimony taken under the torture without ever having read it. This counsel refused to meet with Ms. Ugan.¹⁴⁴ The same happened to Ms. Zeybek.¹⁴⁵

It is also remarkable to note how these lawyers are appointed to these prisoners. The abductees hire these lawyers because they coincidentally have met them at the police stations where they resurfaced (see Yasin Ugan¹⁴⁶ and Özgür Kaya¹⁴⁷).

33. In cases where the abductees were allowed to use their own lawyers, their assistance was strongly supervised by the police and limited in time. Önder Asan was, for instance, only allowed to see his lawyer for 20 minutes after his reappearance in the detention system.¹⁴⁸ The police remained present during their, normally confidential, first meeting.

¹³⁸ See annex 2: case number 8.

¹³⁹ See annex 2: case number 12.

¹⁴⁰ See annex 2: case number 12.

¹⁴¹ See annex 2: case number 6.

¹⁴² See annex 2: case number 12.

¹⁴³ See annex 2: case number 3.

¹⁴⁴ See annex 2: case number 6.

¹⁴⁵ See annex 2: case number 2.

¹⁴⁶ See annex 2: case number 6.

¹⁴⁷ See annex 2: case number 3.

¹⁴⁸ See annex 2: case number 8.

3) *The abductees are not brought promptly for a judge*

34. After having reappeared in the ordinary judiciary system, the abductees generally had to wait for at least 12 days before they were brought before a judge examining the need to extend their detention (see Salim Zeybek (12 days),¹⁴⁹ Özgür Kaya (12 days),¹⁵⁰ Erkan Irmak (12 days),¹⁵¹ Yasin Ugan (12 days),¹⁵² Ahmet Ertürk (4 days),¹⁵³ Ümit Horzum (11 days),¹⁵⁴ and Ayhan Oran (13 days)¹⁵⁵).

These long periods seem to have been used to subject the abductees to long interrogations in order to obtain incriminating statements (see Ahmet Ertürk,¹⁵⁶ Önder Asan¹⁵⁷ and Ayhan Oran¹⁵⁸).

4) *The abductees are put under pressure to not fully pursue their defence*

35. During their consequent detention, the abductees are put under pressure to not fully pursue their defence.

The lawyer of Önder Asan, Burak Çolak, was, for instance, pressured to sign a false testimony prepared by the police on behalf of his client. Since he refused, the lawyer was detained himself.¹⁵⁹

36. Similarly, pressure seems to have been applied on the abductees to deter them from insisting on the further investigation of their abduction.

In that regard, Gökhan Türkmen and his lawyer filed complaints against the fact that men who introduced themselves as members of the MIT visited him in prison six times since 15 November 2019 and threatened him and his family.¹⁶⁰ During a March 2020 visit, the men pressured him to retract his complaints about abduction and torture at the February court hearing.¹⁶¹ Similarly, Mr. Kaya asked Ms. Kaya to withdraw her applications, shut down her social media accounts and not to meet deputies in order lobby for his liberation.¹⁶² Likewise,

¹⁴⁹ See annex 2: case number 2.

¹⁵⁰ See annex 2: case number 3.

¹⁵¹ See annex 2: case number 5.

¹⁵² See annex 2: case number 6.

¹⁵³ See annex 2: case number 11.

¹⁵⁴ See annex 2: case number 12.

¹⁵⁵ See annex 2: case number 15.

¹⁵⁶ See annex 2: case number 11.

¹⁵⁷ See annex 2: case number 8.

¹⁵⁸ See annex 2: case number 15.

¹⁵⁹ See annex 2: case number 8.

¹⁶⁰ See annex 2: case number 4.

¹⁶¹ See annex 2: case number 4.

¹⁶² See annex 2: case number 3.

Mustafa Yilmaz did not want his wife to pursue her complaints on his abduction.¹⁶³ Ms. Zeybek initially filed numerous complaints to human rights organisations with regards to the ill-treatment of her husband but retracted them afterwards due to pressure being exercised.¹⁶⁴

5) *The abductees are prevented from being examined by an independent physician*

37. The abductees are consistently prevented from assigning an independent physician who would have been able to establish the injuries from the torture and ill-treatment to which they were subjected. This happened in the cases of Salim Zeybek,¹⁶⁵ Özgür Kaya,¹⁶⁶ Erkan Irmak¹⁶⁷ and Yasin Ugan¹⁶⁸.

This is important since the physicians working in the Turkish prisons generally do not seem to dare to attest such injuries. For instance, the lawyer of Önder Asan, Burak Çolak, informed Human Rights Watch of the fact that that, although a medical report from the Forensic Medicine Institute diagnosed Mr. Asan as suffering from “acute stress,” the report did not include his statement to psychiatrists that his stress was the result of being abducted and tortured and it made no reference to how that may be relevant to his medical condition.¹⁶⁹

5.2. Legal analysis and consequences

5.2.1. *Stage 1: the abductions are contrary to international law and attributable to the Turkish State*

38. The abductions which are committed by Turkish officials constitute enforced disappearances under international law.

According to the UN Declaration on the Protection of all Persons against Enforced Disappearance (the “**UN Declaration**”)¹⁷⁰ enforced disappearances occur when “*persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organised groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to*

¹⁶³ See annex 2: case number 1.

¹⁶⁴ See annex 2: case number 2.

¹⁶⁵ See annex 2: case number 2.

¹⁶⁶ See annex 2: case number 3.

¹⁶⁷ See annex 2: case number 5.

¹⁶⁸ See annex 2: case number 6.

¹⁶⁹ See annex 2: case number 8.

¹⁷⁰ Contained in General Assembly Resolution, UN Doc. A/Res./47/133.

acknowledge the deprivation of their liberty, which places such persons outside the protection of the law."¹⁷¹

Thus, the following three "*cumulative minimum elements*"¹⁷² need to be present in order for a deprivation of liberty to constitute an enforced disappearance under the UN Declaration:

- 1) "*Deprivation of liberty against the will of the person concerned*"¹⁷³ (in other words, an abduction);
- 2) "*Involvement of governmental officials, at least indirectly by acquiescence*"¹⁷⁴;
- 3) "*Refusal to disclose the fate and whereabouts of the person concerned*"¹⁷⁵.

39. Regarding the second criterion, *i.e.* the criterion of government involvement, reference should be made to the general rules regarding the attribution of acts to state, which are contained in the Draft articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission in 2001 (the "**Draft Articles**")¹⁷⁶. Pursuant to Article 4 of the Draft Articles, "*[the] conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.*" In this respect, in its commentary to the Draft Articles, the International Law Commission specifies that "*the conduct of certain institutions performing public functions and exercising public powers (e.g. the police) is attributed to the State even if those institutions are regarded in internal law as autonomous and independent of the executive government*"¹⁷⁷ (emphasis added).

As illustrated above under title 5.1.1, 3), the abductors can be linked to the Turkish police forces and secret services. Ozturk Turkdogan, head of IHD, also confirmed in August 2019 "*We are certain that these abductions were carried out by special units belonging to the state. This unit seems to be untouchable!*"¹⁷⁸ Accordingly, the abductions are to be considered as effectuated by Turkish state organs in the sense of Article 4 of the Draft Articles.

40. Regarding the third criterion, *i.e.* the lack of transparency, it is established under title 5.1.1, 4) that no information on the whereabouts of the abductees was given, either to the abductees themselves or to their relatives. Many NGOs such as Human Rights Watch, IHD and the City of Ankara's lawyers' association have filed applications to the Turkish Interior Ministry

¹⁷¹ UN Declaration, third preambular paragraph.

¹⁷² Commission on Human Rights, Report of the Working Group of Enforced or Involuntary Disappearances of 15 January 1996, E/CN.4/1996/38, General comment on Article 4 of the Declaration, p. 15.

¹⁷³ *Ibidem*.

¹⁷⁴ *Ibidem*.

¹⁷⁵ *Ibidem*.

¹⁷⁶ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, (<https://www.refworld.org/docid/3ddb8f804.html>).

¹⁷⁷ Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

¹⁷⁸ DW, Turkey: Families seek their abducted relatives, 4 August 2019 (<https://www.dw.com/en/turkey-families-seek-their-abducted-relatives/a-49889925>); Politico, Suspicious abductions in Turkey raise fears of state role, 19 September 2017 (<https://www.politico.eu/article/turkey-erdogan-suspicious-abductions-raise-fears-of-state-role/>).

in order to find out the whereabouts of the abducted people and to urge the Ministries of Justice and Interior to investigate these disappearances – consistently without success.¹⁷⁹

In many cases, information concerning the whereabouts of the detainees is eventually - after a number of months - shared with the detainees' relatives. However, the sharing of such information in a particular case does not invalidate the qualification of this case as "enforced disappearance". Indeed, Article 17(1) of the UN Declaration states that "[acts] constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified." Accordingly, a detainee can be said to be the victim of enforced disappearance for as long as the required transparency is not given.

41. It is clear from the above that the domestic abductions qualify as enforced disappearances. The gravity of this qualification clearly shows from Article 1(1) of the UN Declaration:

"Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field."

Indeed, while neither the International Covenant on Civil and Political Rights ("**ICCPR**")¹⁸⁰ nor the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "**ECHR**")¹⁸¹ explicitly use the term "enforced disappearance" in any of their articles, enforced disappearance is said to constitute "a unique and integrated series of acts that represent continuing violation of various rights"¹⁸² recognised in the ICCPR and ECHR. The rights which are at issue are, i.a., the right to recognition as a person before the law (Article 16 ICCPR), the right to liberty and security of the person (Article 9 ICCPR and Article 5 ECHR), the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment (Article 7 ICCPR and Article 3 ECHR) and the right to life (Article 6 ICCPR and Article 2 ECHR).

¹⁷⁹ DW, Turkey: Families seek their abducted relatives, 4 August 2019 (<https://www.dw.com/en/turkey-families-seek-their-abducted-relatives/a-49889925>); Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, pp. 23-5 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

¹⁸⁰ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, (<https://www.refworld.org/docid/3ae6b3aa0.html>).

¹⁸¹ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: (<https://www.refworld.org/docid/3ae6b3b04.html>).

¹⁸² UN Human Rights Committee, Sabita Basnet v Nepal (CCPR/C/117/D/2164/2012), 22 November 2016 (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F117%2FD%2F2164%2F2012&Lang=en), at 10.4.

42. Moreover, it should be emphasised that the prohibition on enforced disappearance is an absolute prohibition in international law. Pursuant to Article 7 of the UN Declaration, no circumstances whatsoever, whether a threat of war, terrorism or any other public emergency may be invoked to justify enforced disappearances.

43. Consequently, the conduct of the Turkish State violates its international and human rights obligations. Since 2016, Turkey is responsible for a new wave of unlawful abductions and enforced disappearances of its political opponents.

5.2.2. Stage 2: the subsequent detention of abductees is contrary to international law and attributable to the Turkish State

44. After having disappeared for a certain period of time, a number of abductees resurface and are, subsequently, detained in the Turkish prisons.

For these abductees the situation of enforced disappearance comes to an end. However, this does not put an end to the violations of international and European law. From a situation of “enforced disappearance”, these former abductees end up in the situation of being “arbitrarily deprived of their liberty”.¹⁸³ The prohibition on arbitrary deprivation of liberty is laid down in Article 9 of the ICCPR and in Article 5 of the ECHR. The situation of the abductees, after they have reappeared in the official detention system, violates several aspects of this prohibition, as will be evidenced below.

In addition, several other human rights violations occurring during stage 2 of the detention will be addressed. The below list of violations is non-exhaustive and is limited to the elements which systematically surfaced from the case-studies included in Annex 2.

1) The abductees are not brought promptly before a judge

45. Article 9(3) ICCPR provides that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release”. Similarly, Article 5 ECHR requires that persons arrested or detained “shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial”.

The Human Rights Committee (the “**HRC**”) has consistently found violations of this provision in cases of delays of a “few days” before the person is brought before a judge.¹⁸⁴ At the same

¹⁸³ L. OTT, Enforced disappearance in international law, 2011, Intersentia, p. 32.

¹⁸⁴ UN Human Rights Committee, Bousroual v. Algeria, Communication No. 992/2001, Views adopted on 30 March 2006, at 9.6; UN Human Rights Committee, Bandajevsky v. Belarus, Communication No. 1100/2002, Views adopted on 28

time, the ECtHR has consistently held that Article 5 of the ECHR is violated when a person is deprived from his or her freedom without access to a judge for more than 4 days.¹⁸⁵ Any longer delay is contrary to the requirement of a prompt access to a judge:

"The judicial control on the first appearance of an arrested individual must above all be prompt, to allow detection of any ill-treatment and to keep to a minimum any unjustified interference with individual liberty. The strict time constraint imposed by this requirement leaves little flexibility in interpretation, otherwise there would be a serious weakening of a procedural guarantee to the detriment of the individual and the risk of impairing the very essence of the right protected by this provision (see Brogan and Others v. the United Kingdom, 29 November 1988, § 62, Series A no. 145-B, where periods of more than four days in detention without appearance before a judge were held to be in violation of article 5 §3, even in the special context of terrorist investigations"¹⁸⁶ (emphasis added).

46. In the cases investigated in the present report, the detainees generally had to wait for at least 12 days before they were brought before a judge who examined the need to extend their detention (see title 5.1.2, 3). This delay clearly and largely exceeds the standard upheld by both the HRC and the ECtHR as to the meaning of "promptness".

Further analysis can be found in Annex 1, under section II, D.

2) The abductees are limited in their right to choose their own lawyer

47. The Working Group on Arbitrary Detention recommends that "[a]ll persons subjected to a measure of detention should benefit at all stages of access to a lawyer of her or his choice as well as to effective legal assistance and representation"¹⁸⁷.

The right to choose a lawyer is also recognised as part of the right to a fair trial in Article 14(3)(b) ICCPR and Article 6(3)(c) ECHR. The HRC has held that this requirement means that an accused cannot be forced to accept a government's choice of lawyer.¹⁸⁸ The ECtHR has held in relation to state-appointed lawyers that, in any event, "[t]he Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective" and that "mere

March 2006, at 10.3; UN Human Rights Committee, Borisenko v. Hungary, Communication No. 852/1999, Views adopted on 14 October 2002, at 7.4.

¹⁸⁵ See ECtHR, Demir a.o. v. Turkey, 12 November 2008, Application No. 34503/97, at 39-40; ECtHR O'Hara v. UK, 16 October 2001, Application No. 37555/97, at 46.

¹⁸⁶ ECtHR, McKay v. UK, 13 October 2006, Application No. 543/03, at 22.

¹⁸⁷ UN Human Rights Council, Report of the Working Group on Arbitrary Detention (A/HRC/22/44), 24 December 2012, at 84.

¹⁸⁸ See, e.g., UN Human Rights Committee, Saldías López v. Uruguay (CCPR/C/13/D/52/1979), 29 July 1981; African Commission on Human and Peoples' Rights, Civil Liberties Organisation and Others v. Nigeria, 7 May 2001, Application No. 218/98.

*nomination does not ensure effective assistance since the lawyer appointed for legal aid purposes may die, fall seriously ill, be prevented for a protracted period from acting or shirk his duties*¹⁸⁹.

48. The fact that, as explained under title 5.1.2, 2), the abductees are not allowed to freely choose their own lawyer or to rely on the lawyer proposed to them by their family, but instead are forced to rely on an ineffective, state-appointed counsel therefore violates international human rights law.

Further analysis can be found in Annex 1, under section II, C.

3) *The abductees are put under pressure to not fully pursue their defence*

49. Article 14(3)(b) of the ICCPR and grant Article 6(3)(b) ECHR “[e]veryone charged with a criminal offence [the right] to have adequate time and facilities for the preparation of his defence”. This right is violated when, as detailed under title 5.1.2, 4), detainees are discouraged from requesting a full investigation of their case.

4) *The abductees are prevented from being examined by an independent physician*

50. In the absence of an examination by an independent physician (see title 5.1.2, 5)), the abductees are exposed to a risk of a violation of their right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment (Article 7 ICCPR and Article 3 ECHR) and even their right to life (Article 6 ICCPR and Article 2 ECHR).

Further detail on the human rights impact of the lack of independent medical care can be found in Annex 1, under section II, E.

51. It follows from the above that Turkey fails to adequately protect the fundamental rights of the abductees who eventually reappear: these individuals are arbitrarily detained in circumstances which do not comply with Turkey’s international and European human rights obligations.

¹⁸⁹ ECtHR, Kamasinski t. Oostenrijk, 19 December 1989, Application No. 9783/82, at 65.

VI. QUESTION 2: IS TURKEY RESPONSIBLE FOR THE EXTRATERRITORIAL ABDUCTIONS OF ITS OPPONENTS?

6.1. Factual findings

6.1.1. Stage 1: The initial arbitrary deprivation of liberty

52. The individuals who are abducted abroad, with assistance of Turkey, are almost all accused of being members of the Gülen movement. One abductee, Ayten Öztürk, was suspected by the Turkish authorities of having links to the outlawed Revolutionary People's Liberation Party/Front (DHKP-C).¹⁹⁰ Another, Isa Ozer, was a former local candidate of the largely Kurdish and left-wing Peace and Democracy Party (BPD) and is considered by the Turkish authorities to have ties with PKK.¹⁹¹

The extra-territorial abductions take place all over the world – particularly in countries maintaining strong relationships with the current regime in Turkey.

53. It is important to note that, in the context of international abductions, Turkey has never denied its involvement.

For instance, Turkish Foreign Minister Mevlüt Çavuşoğlu confirmed that 104 Gülenists from 21 countries were abducted and brought back to Turkey as part of the Turkish government's global manhunt.¹⁹² Similarly, Deputy Foreign Minister Yavuz Selim Kiran stated that this happened to more than 100 Gülenists.¹⁹³ Ismail Hakki Pekin, former head of the Turkish Armed Forces Intelligence Department, also confirmed that, unless the followers of the Gülen movement are "*returned to Turkey by force, they must be exterminated wherever they are, just like ASALA or the MOSSAD did with the former Nazis*".¹⁹⁴ The presidential spokesperson Ibrahim Kalin furthermore publicly stated that operations abroad against the Gülen movement were being carried out "*under clear instructions*" from President Erdogan.¹⁹⁵ He also stated on 21 December 2018, during a press conference, that the Government would continue its operations against the Gülen Movement, similar to the one in Kosovo.¹⁹⁶ Vice President Fuat Oktay

¹⁹⁰ See annex 3: case number 16. See also: Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 26 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

¹⁹¹ See annex 3: case number 26.

¹⁹² U.S. Department of State, '2018 Country Reports on Human Rights Practices: Turkey', 28 June 2019 (<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/turkey/>); Sabah, '52 FETÖ'cü 83 ülkede', 15 November 2018 (<https://www.sabah.com.tr/gundem/2018/11/15/452-fetocu-83-ulkede>).

¹⁹³ Hurriyet, Bakan Yardımcısı açıkladı: 100'ün üzerinde FETÖ teröristi getirildi, 24 February 2019 (<https://www.hurriyet.com.tr/gundem/bakan-yardimcisi-100un-uzerinde-feto-teroristi-ulkemize-getirildi-41128404>).

¹⁹⁴ See Twitter account: <https://twitter.com/cemkucuk55/status/810908276208599040?lang=en>.

¹⁹⁵ Press communication of Ibrahim Kalın, the presidential spokesperson, on 21 September 2018 (<http://www.haber7.com/siyaset/haber/2717161-ibrahim-kalin-her-an-her-sey-olabilir>).

¹⁹⁶ Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms

declared that supporters of the Gülen movement "*would never be left alone*" anywhere in the world.¹⁹⁷ Many of the most recent extra-territorial abductions were claimed by President Erdogan himself in the press as Turkish intelligence operations (for instance the abduction of Selahaddin Gülen¹⁹⁸ and Orhan Inandi¹⁹⁹).

This tendency has also been noticed by the United Nations. In August 2020, the UN Working Group on Enforced or Involuntary Disappearances rang the alarm bell while writing: "*The Working Group is deeply concerned that a number of States continue to justify extraterritorial abductions and forced returns under the pretext of combating terrorism and protecting national security. Against this backdrop, the situation in Turkey is particularly worrying, insofar as at least 100 Turkish nationals are presumed to have been forcibly repatriated from numerous States to Turkey on suspicion of involvement in or showing sympathy for a purported terrorist organization.*"²⁰⁰ The same concern was already raised by the UN Working Group in 2019: "*One such development is the increasing use of extraterritorial abductions, as the Working Group observed before the General Assembly in 2018. (...) China and Turkey continue to seek the cooperation of other States to arrest, often in undercover operations, Uighurs and alleged supporters of the Hizmet/Gülen movement, respectively, living outside the country. The allegations received by the Working Group indicate that individuals often disappear during these operations or once they arrive in the country of destination.*"²⁰¹ In 2018 too, the UN Working Group expressed its concerns in that respect: "*The Working Group is concerned at the allegations concerning the practice of extraterritorial abduction of individuals allegedly belonging to and/or sympathizers of the Hizmet/Gülen movement, as pointed out in a number of communications (see A/WGEID/114/1, paras. 7 and 145).*"²⁰² Similarly, in a recent letter written to Turkey by the UN Working Group on Enforced or Involuntary Disappearances and 3 UN Special Rapporteurs it was stated: "*Turkish authorities have not only acknowledged direct responsibility in perpetrating or abetting abductions and illegal transfers, but have also vowed to run more covert operations in the future*".²⁰³

while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020).

¹⁹⁷ Statement of the Vice President at the CNN Türk TV Channel on 20 January 2019

(<https://www.yeniakit.com.tr/haber/cumhurbaskani-yardimcisi-fuat-oktay-fetoculer-asla-rahata-edemeyecek-591984.html>).

¹⁹⁸ See annex 3: case number 24.

¹⁹⁹ See annex 3: case number 25.

²⁰⁰ UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/45/13) of 7 August 2020, at 46.

²⁰¹ UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/42/40) of 30 July 2019, at 56.

²⁰² UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/39/46) of 30 July 2018, at 136.

²⁰³ Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020).

54. Generally speaking 4 categories of extra-territorial abductions can be distinguished: unlawful transfers of Turkish citizens incited by Turkey (title 6.1.1.1), abductions executed by Turkey without the consent of the host state (title 6.1.1.2), abductions with the consent of the host state (title 6.1.1.3) and, finally, unlawful transfers of Turkish citizens back to Turkey where there is no proof of Turkish interference (title 6.1.1.4).

1) Category 1: the incitement by Turkey of unlawful transfers of Turkish citizens back to their home country

55. Many extra-territorial abductions start with the arrest of Turkish citizens at foreign border crossings due to the fact that the passports of these citizens are, unbeknown to them, cancelled by Turkey.

These passport cancellations allow Turkey to swiftly identify where and when political opponents are travelling and to launch an international operation - frequently organized by the MIT - to abduct, at least apply pressure to unlawfully bring, these citizens back to Turkey.

This happened, for instance, to Enver Kiliç and Zabit Kişi: the cancellation of their passports triggered their abduction. They were refused access to their plane to Kyrgyzstan and, consequently, delivered on the Kazakhstan territory to MIT forces.²⁰⁴ The same happened to Taci Şentürk who was arrested because of his cancelled passport in Azerbaijan and, consequently, deported back to Turkey without any form of due process.²⁰⁵

Passports and the need for Turkish citizens abroad to rely on Turkish diplomatic/consular assistance are also used as a technique to detect political opponents abroad and instigate their abduction. Metin Tekeci came, for instance, on the radar of the domestic police in Bahrain after he had contacted Turkey's embassy in January 2017 for consular assistance.²⁰⁶

2) Category 2: extra-territorial abductions by Turkey without the consent of the host state

56. In various cases Turkey abducts its opponents on the territory of the host state but without the consent of the host state.

In some cases, this means that the host state did not at all consent to the illegal abductions carried out on its territory. This was, for instance, the case with the abduction of Isa Ozdemir in Azerbaijan: MIT intervened after the Baku Serious Crimes Court had rejected Turkey's request

²⁰⁴ See annex 3: case number 13.

²⁰⁵ See annex 3: case number 4.

²⁰⁶ See annex 3: case number 11.

for deportation. Mr. Ozdemir was kidnapped on the moment he left the Court house.²⁰⁷ Similarly, Selahaddin Gülen was abducted by MIT after a Kenyan tribunal refused his deportation back to Turkey.²⁰⁸ In the same manner, Salih Zeki Yigit and Yusuf Inan were abducted and brought back to Turkey in July 2018.²⁰⁹ The Ukrainian Ministry of Justice and State Border Services stated that his country did not receive any request for extradition, nor did it have any information concerning the extradition.²¹⁰

A number of attempted abductions were also undertaken by Turkey. These attempts failed because the host state, when the Turkish plans leaked, refused to cooperate and neutralised the kidnapping attempt. In March 2018, for instance, two Turkish diplomats tried to abduct a Turkish-Swiss businessman, who was allegedly active in the Gülen movement.²¹¹ The Swiss secret services discovered their plan in a timely manner and intervened before the diplomats could fully execute the abduction. Similarly, on 27 July 2018, Veysel Akcay was abducted by Turkey's MIT in Mongolia.²¹² Resistance from citizens and politicians prevented his illegal transfer to Turkey.²¹³

57. In other cases, it seems that certain officials within the host state knew that Turkey would carry out a clandestine operation on its territory. However, the high officials representing the legislative, executive and judicial powers were not aware of the Turkish interference with their sovereignty.

In Kosovo, for instance, 6 individuals were kidnapped by the Turkish authorities and brought back to Turkey in a private jet.²¹⁴ A few individuals within the secret services of Kosovo seem to have been aware of Turkey's plans. The government was, however, not. These abductions, consequently, led to a governmental crisis, resulting in the dismissal of the Minister of Internal Affairs and the Intelligence Chief.²¹⁵ In Azerbaijan 4 persons were abducted in 2018 by the Turkish MIT. Azerbaijani officials did not participate but allegedly some of them looked the other way.²¹⁶

²⁰⁷ See annex 3: case number 2.

²⁰⁸ See annex 3: case number 24.

²⁰⁹ See annex 3: case number 15.

²¹⁰ Hromadske International, Turkish Journalist Extradited from Ukraine in Covert Operation, 21 July 2018 (<https://en.hromadske.ua/posts/turkish-journalist-extradited-from-ukraine-in-covert-operation>).

²¹¹ See annex 3: case number 20.

²¹² See annex 3: case number 21.

²¹³ Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 14.

²¹⁴ See annex 3: case number 6.

²¹⁵ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 79.

²¹⁶ See annex 3: case number 3.

3) Category 3: extra-territorial abductions by Turkey with the consent of the host state

58. Since 2016, Turkey has carried out a number of intelligence operations in cooperation with different host states where political opponents of the current regime were legally residing.

These operations are generally executed by both the Turkish MIT and the domestic secret services (see abductions in Moldova,²¹⁷ Sudan²¹⁸, Saudi Arabia²¹⁹, Kazakhstan²²⁰, Lebanon²²¹, Malaysia²²² and Azerbaijan²²³). Sometimes the police of the host state are involved (see abductions in Gabon)²²⁴.

In order to facilitate such abductions, Turkey's MIT established in June 2017 an "Office for Human Abduction and Executions". This Department is responsible for organizing the 'operations' abroad to abduct or murder opponents of the current regime, mainly Gülenists living and working in foreign countries.²²⁵ The Turkish media reported that this Office will initially operate in Sudan, Morocco, Pakistan, Azerbaijan and Iraq and has already been allocated a budget of 5 million US dollars.²²⁶

²¹⁷ See annex 3: case number 1.

²¹⁸ See annex 3: case number 6.

²¹⁹ See annex 3: case number 9.

²²⁰ See annex 3: case number 13.

²²¹ See annex 3: case number 16.

²²² See annex 3: case number 17.

²²³ See annex 3: case numbers 22 and 23.

²²⁴ See annex 3: case number 5.

²²⁵ Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020), p. 3; Journalists and Writers Foundation, 'Escaping the witch hunt from Turkey & around the world', April 2018, p. 59 (<https://jwf.org/jwf/wp-content/uploads/2018/05/Escaping-the-Witch-Hunt-JWF-Report-April-2018.pdf>); Turquoise Harmony Institute, Statement on Illegal Abductions & Extrajudicial Executions, 13 July 2017 (<https://turquoise.org.za/develop/2017/07/13/re-concerns-relating-to-illegal-abductions-and-extrajudicial-executions-by-turkish-authorities/>);

²²⁶ Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020), p. 3; Journalists and Writers Foundation, 'Escaping the witch hunt from Turkey & around the world', April 2018, p. 59 (<https://jwf.org/jwf/wp-content/uploads/2018/05/Escaping-the-Witch-Hunt-JWF-Report-April-2018.pdf>); Turquoise Harmony Institute, Statement on Illegal Abductions & Extrajudicial Executions, 13 July 2017 (<https://turquoise.org.za/develop/2017/07/13/re-concerns-relating-to-illegal-abductions-and-extrajudicial-executions-by-turkish-authorities/>);

The abductions consistently target victims who had lived for a long time in the host state and who resided there legally (see abductions in Moldova²²⁷, Gabon²²⁸ and Saudi Arabia²²⁹). Some even held a UN Refugee status (see in Malaysia: Mr. Özçelik²³⁰ and Mr. Komis²³¹). Most of them were unaware of the fact that were sought by Turkey abroad and had no idea on the accusations held against them (see abductees in Moldova²³² and Gabon²³³). Those who knew Turkey was requesting their extradition were – often successfully – exhausting the domestic procedures to challenge these requests (Isa Ozdemir in Azerbaijan²³⁴, Mr. Özçelik and Karaman in Malaysia²³⁵). They were, however, abducted, before the completion of these procedures.

59. When the victims were deprived of their liberty this consistently happened through very swift well-prepared operations. The abductees were kept outside of the ordinary detention system and the normal extradition and deportation due process rules were not applied to them (see abductions in Moldova²³⁶, Gabon²³⁷, Malaysia²³⁸). In the case of Myanmar, the Turkish Ambassador even personally pressured the police to confiscate the family's passports and deviate from the ordinary and prescribed domestic procedures.²³⁹

Before being transferred back to Turkey, MIT officers were frequently allowed to personally interrogate the victims immediately after their deprivation of liberty, on the territory of the host state (see abduction in Sudan²⁴⁰). In the event this was not possible these interrogations were done by Turkish embassy personnel (see abductions in Lebanon²⁴¹ and Myanmar²⁴²).

60. A very short time after having abducted the victims, they are put on private or military Turkish planes (see abductions in Moldova²⁴³, Saudi Arabia²⁴⁴, Kazakhstan²⁴⁵ and Lebanon²⁴⁶) and flown back to Turkey where they tend to disappear for a short (or longer) period of time (see title 6.1.2).

As concluded by the ECtHR in the Moldovan abduction cases the preparation and speed with which these operations are carried out, indicate a well in advance prepared operation in order

²²⁷ See annex 3: case number 1.

²²⁸ See annex 3: case number 5.

²²⁹ See annex 3: case number 9.

²³⁰ See annex 3: case number 17.

²³¹ See annex 3: case number 18.

²³² See annex 3: case number 1.

²³³ See annex 3: case number 5.

²³⁴ See annex 3: case number 2.

²³⁵ See annex 3: case number 17.

²³⁶ See annex 3: case number 1.

²³⁷ See annex 3: case number 5.

²³⁸ See annex 3: case number 17.

²³⁹ See annex 3: case number 8.

²⁴⁰ See annex 3: case number 6.

²⁴¹ See annex 3: case number 16.

²⁴² See annex 3: case number 8.

²⁴³ See annex 3: case number 1.

²⁴⁴ See annex 3: case number 9.

²⁴⁵ See annex 3: case number 13.

²⁴⁶ See annex 3: case number 16.

to completely surprise the Turkish citizens concerned and to avoid that they would be able to use the generally granted due process protections to slow down or even completely prevent their transfer to Turkey²⁴⁷

4) Category 4: unlawful transfers of Turkish citizens to Turkey without direct proof of Turkish interference

61. Finally, a number of abductions of Turkish citizens have taken place in host states where it is not immediately clear how and to what extent Turkey was involved.

The intensity with which the host states acted, and the surrounding circumstances of these transfers make it apparent that there are secret arrangements or even cooperation agreements between the host state and Turkey.

For instance, in the case of Abdullah Büyük,²⁴⁸ the Bulgarian courts initially rejected the Turkish extradition request and confirmed that it was based on purely political views without any guarantees that Mr. Büyük would enjoy a fair trial. A few months later, he was suddenly taken to the border by the Bulgarian police and handed over to Turkey. No formal extradition or deportation procedure was followed. Similarly, the abductions of Turkish citizens in Malaysia and Indonesia followed shortly after high level meetings between the governments of Turkey and the host state. In this regard, on 14 October 2016, Turkish Foreign Minister Mevlüt Cavusoglu stated: *"Last night we received three terrorists from Malaysia."*²⁴⁹ and: *"Last week we met with the Malaysian Prime Minister in Thailand, Bangkok, they said they would deliver three people at the Asia Dialogue Meeting. After I returned, I gave information to the President, the Prime Minister, the relevant institutions. As a result of mutual contacts, three people were handed over last night."*²⁵⁰ This seems to indicate that Turkey is concluding bilateral security cooperation agreements with different countries in order to abduct its political opponents abroad while circumventing all due process rules and guarantees.

62. This concern was recently, on 5 May 2020, shared by the UN Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in a 15-page letter which was sent

²⁴⁷ ECtHR, *Ozdil and Others v. the Republic of Moldova*, 11 June 2019, Application No. 42305/18, at 55.

²⁴⁸ See annex 3: case number 10.

²⁴⁹ Stockholm Center for Freedom, *Erdogan's long arms: the case of Malaysia*, May 2017 (<https://stockholmcf.org/wp-content/uploads/2017/05/Erdogans-Long-Arms-The-Case-Of-Malaysia.pdf>), pp. 10-1.

²⁵⁰ Stockholm Center for Freedom, *Erdogan's long arms: the case of Malaysia*, May 2017 (<https://stockholmcf.org/wp-content/uploads/2017/05/Erdogans-Long-Arms-The-Case-Of-Malaysia.pdf>), pp. 10-1.

to the Turkish government.²⁵¹ The UN condemned such agreements and considered them contrary to international law.

6.1.2. Stage 2: The subsequent disappearance of the abductees

63. Many individuals who are the victim of an extra-territorial abduction, disappear when they arrive on the Turkish territory: nothing is known on their fate or whereabouts.

Sometimes this period of disappearance only lasts a few weeks (see the 6 persons abducted in Moldova²⁵², Taci Şentürk abducted in Azerbaijan²⁵³, Ayten Ozturk abducted in Lebanon²⁵⁴, Turgay Karaman and Ismet Özçelik abducted in Malaysia²⁵⁵) but in other cases this disappearance can last for months (see the disappearance of Zabit Kişi which lasted 108 days / almost 4 months²⁵⁶) or even forever (see the disappearance of Enver Kiliç²⁵⁷).

This period of being under the radar is frequently accompanied by periods of intense torture and ill-treatment. Zabit Kişi testified, for instance, that for months he was continuously beaten and electrocuted. When he nearly died, they injected him with unknown medications and continued to torture him.²⁵⁸ Similarly, Ayten Ozturk extensively spoke on the torture to which she was subjected during the 25 days she disappeared.²⁵⁹ Alettin Duman²⁶⁰, Ismet Özçelik²⁶¹ and Orhan Inandi²⁶² were also tortured during their disappearance.²⁶³

This observation was also included in the recent letter of the UN Working Group on Enforced or Involuntary Disappearances and 3 UN Special Rapporteurs to Turkey:

“They remain forcibly disappeared for up to several weeks in secret or incommunicado detention before deportation. During that period they are often subjected to coercion, torture and degrading treatment aimed at obtaining their consent on voluntary return

²⁵¹ Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020).

²⁵² See annex 3: case number 1.

²⁵³ See annex 3: case number 7.

²⁵⁴ See annex 3: case number 16.

²⁵⁵ See annex 3: case number 17.

²⁵⁶ See annex 3: case number 13.

²⁵⁷ See annex 3: case number 13.

²⁵⁸ See annex 3: case number 13.

²⁵⁹ See annex 3: case number 16.

²⁶⁰ See annex 3: case number 19.

²⁶¹ See annex 3: case number 17.

²⁶² See annex 3: case number 25.

²⁶³ Stockholm Center for Freedom, Cellmate: teacher abducted by Turkey's MIT from Malaysia subjected to torture in Ankara, 1 April 2018 (<https://stockholmcf.org/cellmate-teacher-abducted-by-turkeys-mit-from-malaysia-subjected-to-torture-in-ankara/>).

and at extracting confessions that would inform criminal prosecution upon arrival in Turkey. At this stage, individuals are denied access to medical care and legal representation and are unable to challenge the lawfulness of detention before a competent court, effectively placing them outside the protection of the law. Their family members are unaware of their fate and whereabouts. According to testimonies obtained, the victims of these operations have recounted unabated abuse perpetrated by intelligence agents, primarily aimed at obtaining forced confession. Most prevalent forms of torture include food and sleep deprivation, beatings, waterboarding, and electric shocks.”²⁶⁴

64. There is no doubt about the fact that these disappearances happened under the control and direction of the Turkey since the Turkish authorities repeatedly proclaimed their involvement in these extra-territorial abductions. Moreover, in their statements all abductees consistently confirmed that they were transported back to Turkey by Turkish officials on often private or military planes.

6.1.3. Stage 3: The subsequent and continued arbitrary deprivation of liberty

65. After a while – or sometimes even immediately - most internationally abducted individuals reappear in the ordinary detention system.

There they are subjected to similar violations as the ones extensively discussed under title 5.2.2. Memduh Çıkmaz argued, for instance, that he was not physically capable to defend himself due to the abuse.²⁶⁵ Similarly, Turgay Karaman and Ismet Özçelik were detained without access to their family, to a lawyer or even to their case file.²⁶⁶ It also took the Turkish authorities 21 and 19 days respectively to bring them for the first time before a judge - this happened on May 23, 2017. Additionally, Mr. Özçelik did not receive proper medical care for his heart condition. In the case of Alettin Duman, his cellmate later testified on the beatings, torture, death threats and staged executions to which Mr. Duman was subjected during his pre-trial detention in Ankara.²⁶⁷

²⁶⁴ See Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020), p. 3.

²⁶⁵ See annex 3: case number 6.

²⁶⁶ See annex 3: case number 17.

²⁶⁷ See annex 3: case number 19.

6.2. Legal analysis and consequences

6.2.1. Stage 1: the extra-territorial abductions violate international law and are attributable to the Turkish State

66. As explained under title 6.1.1, the nature of the involvement of the Turkish State in the cases of the international transfer of suspected members of the Gülen movement (the "**Transferee**") to Turkey which have been brought to our attention, essentially falls within at least one of four categories:

1. Turkey illegally triggers the return of the Transferees to its territory by way of cancellation of passports.
2. Agents of the Turkish State arrest the Transferee on the territory of the host state without consent by the host state.
3. The host state and the Turkish State jointly arrest the Transferee on the territory of the host state.
4. Circumstances point towards the Turkish State, but the involvement of the Turkish State is insufficiently documented.

The first category will be discussed in section 1), where it will be explained that the cancellation of passports is an illegal act by the Turkish State. The second and third category will be discussed in section 2), where the international transfer of detainees will be analysed from the perspective of international human rights law. Finally, the fourth category will be briefly addressed in section 3), which will discuss the issue of bilateral security cooperation agreements.

1) Turkey illegally triggers the return of the Transferees to its territory by way of cancellation of passports

67. The cancellation of passports, unbeknownst to owners, is deliberately used by Turkey as a means to monitor the international movements of its opponents and to incite, when possible, the unlawful extra-territorial abduction and consequent transfer of the passport holder to Turkey (see title 6.1.1).

Such way of working violates Turkey's international obligations. More precisely, Article 12 ICCPR provides that "[e]veryone shall be free to leave any country, including his own". Restrictions on this right are permissible pursuant to Article 12.3 ICCPR, but only when they are "provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant". Turkey has not made any reservations regarding the applicability of this provision.

The HRC has stated, both in its General Comment No. 27²⁶⁸ and in its jurisprudence²⁶⁹, that a passport provides a national with the means to exercise the right to freedom of movement under Article 12.2 ICCPR in practice. The withdrawal of the passports of the Transferees by the Turkish authorities thus constitutes an unmistakable interference with the Transferees' right to free movement. It should therefore be analysed whether this interference meets the requirements for permissible derogations as laid down in Article 12(3) ICCPR.

As directly relevant jurisprudence of the HRC is scarce, this analysis of permissible restrictions to the right of free movement will also refer to the case law of the ECtHR in relation to Article 2 of Protocol No. 4 to the ECHR ("**Protocol No. 4**")²⁷⁰. This provision lays down substantially the same right to free movement and the same permissible restrictions as Article 12 ICCPR. While Turkey has signed but not ratified Protocol. No. 4, and is therefore not directly bound by it, we will rely on the case law of the ECtHR for interpretative purposes. This approach is justified, in our opinion, in view of the fact that the ECtHR explicitly and favourable refers to the case law of the HRC, thus indicating the intention that the interpretation of Article 12 ICCPR and Article 2 of Protocol No. 4 should be convergent.²⁷¹

68. Article 12(3) ICCPR requires a legal basis for any restrictions on the right to free movement. In this respect, reference should be made to Article 5 of Turkish Decree Law No. 667²⁷², which was enacted on 29 July 2016 following the events of 15 July 2016 and which has extended the list of situations in which passports can be cancelled through administrative decisions. Article 5 of Decree Law No. 66 reads:

*"Those who have been subjected to a criminal investigation or prosecution for their membership or affiliation with structures, entities or groups or organizations with terrorist affiliations that are found to pose a threat to national security are immediately reported to the relevant passport unit. Passports are cancelled by the relevant passport units upon this notification."*²⁷³

This provision restricts the freedom of movement for persons "*subjected to a criminal investigation or prosecution for their membership or affiliation with structures, entities or groups*

²⁶⁸ UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999.

²⁶⁹ UN Human Rights Committee, Communication No. 1143/2002 (CCPR/C/90/D/1143/2002), 20 July 2007; UN Human Rights Committee, Communication No. 492/1992 (CCPR/C/51/D/492/1992), 21 July 1994 at 8.2 and UN Human Rights Committee, Communication No. 57/1979 (CCPR/C/15/D/57/1979) 2 April 1980, at 9.

²⁷⁰ Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto of 16 September 1963.

²⁷¹ See, e.g., ECtHR, *Riener v. Bulgaria*, 23 May 2006, Application No. 46343/99, at 84 and 121.

²⁷² Full text available in Turkish at <https://www.resmigazete.gov.tr/eskiler/2016/10/20161029-1.htm>.

²⁷³ Free translation from Turkish: "Yürütülen soruşturmalarda alınacak tedbirler MADDE 5 – (1) Milli güvenliğe tehdit oluşturduğu tespit edilen yapı, oluşum veya gruplara ya da terör örgütlerine üyeliği veya iltisakı ya da bunlarla irtibatı nedeniyle haklarında idari işlem tesis edilenler ile aynı gerekçeyle haklarında suç soruşturması veya kovuşturması yürütülenler, işlemi yapan kurum ve kuruluşlarca ilgili pasaport birimine derhal bildirilir. Bu bildirim üzerine ilgili pasaport birimlerinde pasaportlar iptal edilir."

or organizations with terrorist affiliations that are found to pose a threat to national security". Accordingly, the restriction is explicitly linked to grounds of national security, which is one of the permissible purposes listed in Article 12(3) ICCPR. However, the HRC has specified that "it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality".²⁷⁴

The proportionality test in relation to measures restricting free movement was interpreted by the ECtHR in relation to members suspected of being members of a criminal syndicate, where the Court accepted that such measures may be necessary for the maintenance of public order and for the prevention of crime.²⁷⁵ However, the ECtHR also held in relation to a travel ban during judicial criminal proceedings that "[i]t could not be considered proportionate because it had been automatic and not based on any specific reasons, and could not have been properly reviewed by the courts".²⁷⁶

As far as the passport withdrawals pursuant to Article 5 of Turkish Decree Law No. 667 are concerned, it should be highlighted that this provision does not foresee any individual appreciation. It simply states that passports of persons with Gülen movement affiliations are cancelled. Moreover, the administrative passport withdrawals under Article 5 of Turkish Decree Law No. 667 are not open to judicial review, as was confirmed by the Turkish Constitutional Court on 24 December 2019.²⁷⁷

69. As a result, the administrative withdrawal of passports of Transferees by the Turkish State does not comply with the requirements for permissible restrictions to the right to free movement, as laid down in Article 12(2) ICCPR, and thus violates international law.

2) The international transfer of detainees under international human rights law

70. Under international human rights law, the international transfer of detainees from one state (the "**host state**") to another state (the "**destination state**") should take place in accordance with a procedure prescribed by law. This rule follows from Articles 9 and 13 ICCPR and Article 5 ECHR.

A large share of the available jurisprudence interpreting this legality requirement addresses the requirement from the perspective of the host state. Both the HRC²⁷⁸ and the ECHR²⁷⁹ have found a violation by the host state of its human rights obligations when the host state transfers

²⁷⁴ UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999.

²⁷⁵ ECtHR, Raimundo v. Italy, 22 February 1994, Application No. 12954/87 at 39.

²⁷⁶ ECtHR, Nalbantski v. Bulgaria, 10 February 2011, Application No. 30943/04, at 59.

²⁷⁷ See: <http://www.resmigazete.gov.tr/eskiler/2020/03/20200310-9.pdf>.

²⁷⁸ UN Human Rights Committee, Giry v. Dominican Republic (CCPR/C/39/D/193/1985), 20 July 1990.

²⁷⁹ ECtHR, Ozdil and Others v. the Republic of Moldova, 11 June 2019, Application No. 42305/18, at 57.

an alien to the territory of the destination state in violation of its national extradition or immigration procedures.

71. While many of the cases which are the subject of the present report likely engage the international responsibility of the host states concerned, the focus of the present report is on the involvement of the Turkish State in the return of the Transferees to Turkish territory. In order to assess the legality of the actions of the Turkish State in this respect, a distinction will be made between those cases in which the transfer occurs without the consent of the host state and those cases in which the host state is somehow involved in the transfer.

a. Agents of the Turkish State arrest the Transferee on the territory of the host state without consent by the host state

72. When the destination state abducts a person on the territory of the host state and subsequently transfers the detainee to the territory of the destination state without any interference or consent of the host state, such transfer violates the human rights of the Transferee. In such circumstances, the HRC has consistently found a violation of Article 9 ICCPR.²⁸⁰ Similarly, in *Stocké v. Germany*, the ECHR has qualified such transfer as a violation of the Transferee's individual right to security under Article 5(1) ECHR:

"Article 5 para. 1 of the Convention requires that any measure depriving a person of his liberty must be in accordance with the domestic law of the High Contracting Party where the deprivation of liberty takes place. Accordingly, a person who is on the territory of a High Contracting Party may only be arrested according to the law of that State. An arrest made by the authorities of one State on the territory of another State, without the prior consent of the State concerned, does not, therefore, only involve State responsibility vis-à-vis the other State, but also affects that person's individual right to security under Article 5 para. 1."²⁸¹ (emphasis added).

The ECtHR reiterated this principle in *Öcalan*.²⁸² The ECtHR thus links the protection of a person's right to security under Article 5(1) ECHR, to the respect by the destination state for the sovereignty of the Host State: a lack of respect for the sovereignty of the host state bypasses the protections foreseen in the law of the host state, which generally include procedures aimed at protecting transferees from grave human rights abuse such as the risk of torture or persecution.

73. Aside from the issue under international human rights law which is created by a violation of the sovereignty of the host state, such intervention with matters that are essentially

²⁸⁰ UN Human Rights Committee, *Delia Saldias de Lopez v. Uruguay*, (CCPR/C/13/D/52/1979), 29 July 1981, at 12.3 and UN Human Rights Committee, *Lilian Celiberti de Casariego v. Uruguay*, (CCPR/C/13/D/56/1979), 29 July 1981, at 11.

²⁸¹ ECtHR, *Stocké v. Germany*, 19 March 1991, Application No. 11755/85, at 167.

²⁸² ECtHR (Grand Chamber), *Öcalan v. Turkey*, 12 May 2005, Application No. 46221/99, at 85.

within the domestic jurisdiction of the host state also constitutes an internationally wrongful act. Under the Draft articles,²⁸³ at the request of the host state, the destination state would have to make full reparation for the injury caused by the internationally wrongful act at the request of the injured State.²⁸⁴ In the case of an extraterritorial abduction, full reparation would include the return of the Transferee.²⁸⁵

74. Therefore, the abductions examined under title 6.1.1, 2) are attributable to Turkey and violate its international human rights obligations.

b. The host state and the Turkish State jointly arrest the Transferee on the territory of the host state

75. Under the jurisprudence of the HRC, any abductions by the destination state on the territory of the host state constitute a violation of the Transferee's human rights. Whether or not the destination state has consented to this way of proceeding is irrelevant as far as the illegality of such actions is concerned.²⁸⁶ Accordingly, even in situations where the host state cooperates in the abduction, as described under title 6.1.2, 2), the destination state still violates Article 9 ICCPR.

76. In addition, the joint operations of the Turkish State and the various host states in relation to the Transferees also constitute violations of Article 5(1) ECHR. The ECtHR held in its recent *Ozdil* case that:

“Article 5 § 1 requires [...] that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness [...]
One general principle established in the case-law is that detention will be “arbitrary” where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities [...]
Although the investigation of terrorist offences undoubtedly presents the authorities with special problems, that does not mean that the authorities have carte blanche under Article 5 to arrest suspects and detain them in police custody, free from effective control by the domestic courts and, in the final instance, by the Convention’s supervisory institutions, whenever they consider that there has been a terrorist offence”²⁸⁷.

²⁸³ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1.

²⁸⁴ Article 31(1) of Draft Articles: “The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”

²⁸⁵ See Venice Commission, Opinion No. 363/2005 on the International legal obligations of Council of Europe member States in respect of secret detention facilities and inter-state transport of prisoners, 17-18 March 2006.

²⁸⁶ Delia Saldias de Lopez v. Uruguay, CCPR/C/13/D/52/1979, UN Human Rights Committee (HRC), 29 July 1981, available at: <https://www.refworld.org/cases,HRC,4028d4954.html>, at 12.3, emphasis added.

²⁸⁷ ECtHR, *Ozdil and Others v. the Republic of Moldova*, 11 June 2019, Application No. 42305/18, at 47, 49 and 51. It is important to note that this jurisprudence is not contradictory with the ECtHR decision in the *Öcalan*-case. In that last case the ECtHR was only allowed to make a very limited assessment of the legality of the situation since the host state in that case (Kenya) was not a State party to the ECHR and therefore not bound to comply with the ECHR. For that reason,

In Ozdil, the “element of bad faith” which led the Court to conclude to a breach of the Convention was the fact that the transfer of detainees to the destination state “circumvented all guarantees offered to them by domestic and international law”²⁸⁸.

77. This is precisely what is at stake in the transfers under consideration in the present report. The cooperation between Turkey and the various host states involved is organised in such a way that the Transferees have no valid opportunity to challenge their detention in due time and before an independent court. As a result, the transfers described under title 6.1.1, 3), violate Article 5(1) ECHR as interpreted by the ECtHR.

3) Turkey concludes secret security co-operation agreements with other States

78. The rendition or abduction of suspected members of the Gülen movement reportedly occurs in accordance with bilateral security cooperation agreements.²⁸⁹

This way of working prompted the UN Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to warn Turkey on 5 May 2020 that such agreements violate international (human rights) law.

More precisely they stated: “Invoking the principle of legality, we stress that any inter-State agreements or arrangements the execution of which may result in substantial interference with human rights, must be publicly accessible so as to allow individuals to take cognizance of the terms of such agreements and regulate their conduct accordingly. Secret agreements fall short of this requirement and appear to be prima facie in contravention of a State’s obligation of legal certainty under international human rights law”²⁹⁰ (emphasis added). They also referred to the fact that under the ECHR the requirement of legal precision and notice applies both to the criminal and civil detriments that may be experienced by an individual. In the context of

the Court held that, in such a situation, it could not analyse the domestic law of the host state under Article 5(1) ECHR and thus the full legality of the deprivation of liberty of Mr. Öcalan (ECtHR, Grand Chamber, Öcalan v. Turkey, 12 May 2005, Application No. 46221/99, at 90). These jurisdictional limitations do, however, not apply to the Turkey Tribunal.

²⁸⁸ ECtHR, Ozdil and Others v. the Republic of Moldova, 11 June 2019, Application No. 42305/18, at 57.

²⁸⁹ Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (AL TUR 5/2020) of 5 May 2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25209>.

²⁹⁰ Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020), p. 8.

rendition, there is additionally a consistent view that agreements made on the basis of impugned acts that are imprecise, vague, and lack precision impinge upon the fundamental rights of individuals.²⁹¹

79. Moreover, as emphasized by this UN Working Group and Special Rapporteurs: *“any such arrangements and their implementation must be in full compliance with the human rights obligations of all State parties, including in relation to habeas corpus, the respect of due process, and the principle of non-refoulement. The illegal and secret detention and treatment of these individuals outside the protection of the law, constitute impediments to domestic courts exercising effective or fair jurisdiction over the case in question.”*²⁹² It is for that reason that the international criminal tribunals consistently emphasize that *“in a situation where an accused is very seriously mistreated, maybe even subjected to inhuman, cruel or degrading treatment, or torture, before being handed over to the Tribunal, this may constitute a legal impediment to the exercise of jurisdiction over such an accused.”*²⁹³

They therefore conclude that the conclusion of bilateral agreements is unlawful since it is used by Turkey to bypass the conditions and safeguards provided under regular extradition and deportation processes.²⁹⁴ As explained under title 6.2.1, 2), such “bad faith” behaviour recently served as the basis for the ECtHR to conclude to a violation of Article 5(1) ECHR in a case concerning an extra-territorial abduction from Moldova to Turkey²⁹⁵

6.2.2. Stages 2 and 3: the subsequent enforced disappearance and arbitrary detention of abductees violate international law and are attributable to the Turkish State

80. After being unlawfully transferred to Turkey, the abductees tend to either disappear (see title 6.1.2) or be unlawfully deprived of their liberty (see title 6.1.3).

In the first case, these individuals are victims of an enforced disappearance. An identical legal analysis to the one developed under title 5.2.1. should be applied. In the second case, these

²⁹¹ See also Commission on Human Rights, Promotion and Protection of Human Rights: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98) 28 December 2005.

²⁹² Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020), p. 8.

²⁹³ ICTR, Prosecution v. Barayagwiza, Decision on the Extremely Urgent Motion by the Defence for Orders to Review and/or Nullify the Arrest and Provisional Detention of the Suspect, Application No. ICTR-97-12-AR72, 3 November 1999, at 74 and 114.

²⁹⁴ Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020), pp. 8-9.

²⁹⁵ ECtHR, Ozdil and Others v. the Republic of Moldova, 11 June 2019, Application No. 42305/18, at 47, 49 and 51.

abductees are detained in conditions which violate international human rights law. The legal analysis under title 5.2.2. applies.

These violations are clearly attributable to Turkey. As explained under title 6.2.1, the Turkish State played a major role in the initial unlawful deprivation of liberty of the abductees and consistently supervised, by using its airplanes and intelligence personnel, the effective transfer of the abductees back to their home country. The abductees in question are therefore clearly under their control, which makes Turkey responsible for their lawful treatment. As explained under titles 6.1.2 and 6.1.3 such treatment is not granted to them. Turkey therefore violates its obligations under international law.

VII. QUESTION 3: DOES TURKEY EFFECTIVELY INVESTIGATE COMPLAINTS AND ALLEGATIONS OF ENFORCED DISAPPEARANCES AND UNLAWFUL ABDUCTIONS?

7.1. Factual findings

81. Information on the effectiveness of investigations into abductions and disappearances is mainly available for cases of internal abductions. For the extra-territorial cases preference seems to be given to immediately apply to international courts (for instance the ECtHR and the HRC). Some international abductees, such as Ayten Ozturk, have however filed complaints in Turkey for, amongst others, enforced disappearance.²⁹⁶

82. The present report is not aware of an investigation into abductions having taken place since 2016 which yielded any results.

In spite of the fact that the relatives of the abductees generally file numerous complaints, the authorities refuse to carry out - let alone promptly - even the most obvious investigative acts indispensable to discover what happened with the abductees and who is responsible for the abductions and subsequent disappearances. Requests of family members to examine the camera footage of the abduction, to trace the last phone signals of the abductees or the inquire about the number plates of the cars involved in the abductions are generally rejected (see cases of Mustafa Yilmaz²⁹⁷, Salim Zeybek²⁹⁸, Mustafa Özgür Gültekin²⁹⁹, Orçun Şenyücel³⁰⁰, Ümit Horzum³⁰¹ and Fatih Kılıç³⁰²) or simply ignored (Yusuf Bilge Tunç³⁰³, Önder Asan³⁰⁴ and Hüseyin

²⁹⁶ See annex 3: case number 16.

²⁹⁷ See annex 2: case number 1.

²⁹⁸ See annex 2: case number 2.

²⁹⁹ See annex 2: case number 16.

³⁰⁰ See annex 2: case number 18.

³⁰¹ See annex 2: case number 12.

³⁰² See annex 2: case number 22.

³⁰³ See annex 2: case number 7.

³⁰⁴ See annex 2: case number 8.

Galip Küçüközyiğit³⁰⁵). In the event they are granted by the prosecutor, they are then never executed by the police (see cases of Özgür Kaya³⁰⁶, Yasin Ugan³⁰⁷ and Hüseyin Kötüce³⁰⁸).

When relatives, consequently, try gathering the relevant evidence themselves and request it to be added to the file, this is refused or ignored by the authorities. The family of Yusuf Bilge and Önder Asan managed, for instance, to track themselves the cars of their disappeared loved ones in which they hoped fingerprints of the preparators could be found.³⁰⁹ In both cases these cars were not investigated. The same happened with the CCTV footage of the abductions of Mesut Geçer³¹⁰ and Murat Okumuş³¹¹ and with the declarations of the eyewitnesses of the abduction of Mustafa Özben.³¹²

83. On the contrary, complaints claiming that there has been an abduction are generally swiftly dismissed by the prosecutors and police officers concluding that they, in spite of the camera footage and witness statements, did not find any proof of a crime (see cases of Mustafa Yılmaz³¹³, Salim Zeybek³¹⁴, Gökhan Türkmen³¹⁵ and Mr. Ertürk³¹⁶). The authorities often try to justify this conclusion by claiming that the disappeared individuals have in reality just fled abroad or to some other place within Turkey (see Özgür Kaya³¹⁷ and Turgut Çapan³¹⁸). These claims often turn out to be false. For instance, in the case of Gökhan Türkmen, the police claimed that his car was still seen after his disappearance on city surveillance camera recordings while in reality his car had not left the family's garage for more than 2 years and had, also after his disappearance, consistently been parked there.³¹⁹

84. Moreover, in the event the relatives of the abductees insist too strongly or publicly on the need to investigate, they are threatened and put under pressure to no longer insist in their complaints. A Gendarmerie Commander, for instance, warned the wife of Ümit Horzum³²⁰ to give up looking for her husband.³²¹ The same happened to the wife of Mustafa Özben.³²² Ms. Çapan was even arrested herself after she went public with the abduction of her husband on social media due to the absence of any real investigation.³²³ The fact that in November 2020, 46 peaceful participants of the Saturday Mothers/People (a group of human rights defenders

³⁰⁵ See annex 2: case number 27.

³⁰⁶ See annex 2: case number 3.

³⁰⁷ See annex 2: case number 6.

³⁰⁸ See annex 2: case number 17.

³⁰⁹ See annex 2: case numbers 7 and 8.

³¹⁰ See annex 2: case number 13.

³¹¹ See annex 2: case number 24.

³¹² See annex 2: case number 21.

³¹³ See annex 2: case number 1.

³¹⁴ See annex 2: case number 2.

³¹⁵ See annex 2: case number 4.

³¹⁶ See annex 2: case number 11.

³¹⁷ See annex 2: case number 3.

³¹⁸ See annex 2: case number 19.

³¹⁹ See annex 2: case number 4.

³²⁰ See annex 2: case number 12.

³²¹ See annex 2: case number 12.

³²² See annex 2: case number 21.

³²³ See annex 2: case number 19.

gathering every Saturday at noon demanding the disclosure of the fate and whereabouts of their disappeared relatives) were charged before the Turkish criminal tribunals for having participated in one of their meetings held on 25 August 2018 is also indicative in this regard³²⁴

85. Furthermore, filing an effective complaint to start to investigation is often rendered very burdensome to almost impossible. For instance, when the relatives of Gökhan Türkmen attempted to file a complaint on his disappearance, they were informed that their complaint needed to be submitted by the disappeared person himself.³²⁵ Similarly, it has been reported that investigations were allegedly opened while in reality no investigation number existed³²⁶ or prosecutor was appointed³²⁷.

86. Additionally, following up on the investigations is rendered very complicated for the relatives of the abductees. Their complaints are often added to other classified files or classified themselves, making it impossible for them to access the file and to examine what has been done with their complaints (see cases of Özgür Kaya,³²⁸ Erkan Irmak³²⁹, Yasin Ugan³³⁰, Yusuf Bilge Tunç³³¹ and Murat Okumuş³³²).

In the same vain, applying to higher courts (particularly the Constitutional Court) in the hope of obtaining injunctions to investigate always seems to be unsuccessful (see cases of Mustafa Yılmaz³³³, Salim Zeybek³³⁴, Özgür Kaya³³⁵, Erkan Irmak³³⁶ and Yasin Ugan³³⁷).

7.2. Legal analysis and consequences

87. The State has two important positive obligations in cases of abductions and disappearance of individuals.

³²⁴ Letter by the Mandates of the Special Rapporteur on the situation of human rights defenders, the Working Group on Enforced or Involuntary Disappearances, the Special rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association (AL TUR 7/2021), 12 May 2021.

³²⁵ See annex 2: case number 4.

³²⁶ See annex 2: case number 12.

³²⁷ See annex 2: case number 7.

³²⁸ See annex 2: case number 3.

³²⁹ See annex 2: case number 5.

³³⁰ See annex 2: case number 6.

³³¹ See annex 2: case number 7.

³³² See annex 2: case number 24.

³³³ See annex 2: case number 1.

³³⁴ See annex 2: case number 2.

³³⁵ See annex 2: case number 3.

³³⁶ See annex 2: case number 5.

³³⁷ See annex 2: case number 6.

First, a State has the positive obligation, as enshrined in Article 2 ECHR and Article 6 ICCPR, to take adequate measures to protect the right of life of the disappeared individual.³³⁸ A State fails in this obligation if the authorities knew or ought to have known - at the time - of the existence of a real and immediate risk to the life of an identified individual and when they failed to take all reasonable measures within the scope of their powers to avoid that risk.³³⁹ Such a risk to life is deemed to exist when a pattern of disappearances takes place. The ECtHR withheld such a pattern in light of the important number of disappearances in south-east Turkey between 1992 and 1996. This was considered to be qualified as a life-threatening event.³⁴⁰

Nowadays such a pattern seems to be emerging once more in Turkey with the number of disappearances strongly increasing since 2016 (see title IV). Moreover, Turkey knew or should have known that many of the individuals who were abducted and disappeared feared for their lives, even before their disappearance. As explained under title 5.1.1, 2), many of them went into hiding before their abduction out of fear for being kidnapped and consequently tortured.

88. Second, a State has the obligation to conduct an effective investigation.³⁴¹ This means that a State must promptly investigate cases of enforced disappearance to establish the fate and whereabouts of the disappeared persons and to identify and prosecute those responsible. Enforced disappearance is a continuous crime and lasts until the fate and whereabouts of the victim are established with certainty. Reparation, in the form of compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition must also be ensured. This obligation requires the authorities to take all reasonable measures available to secure evidence concerning the incident at issue.³⁴²

Turkey does not comply with these requirements. As explained under title 7.1, no investigation whatsoever is carried out in cases of enforced disappearances. If probative evidence is added to the file, this is mostly due to the efforts of the relatives of the disappeared individuals themselves. Even more, if such relatives insist too strongly on Turkey's duty to effectively investigate, they are threatened and pressured to withdraw their complaints or even arrested.

This conclusion is unanimously confirmed by different institutional reports. The European Commission stressed, for instance, in its 2019 Turkey Report:

³³⁸ See ECtHR, *Koku v. Turkey*, Application No. 27305/95, 31 May 2005, at 132; ECtHR, *Osmanoğlu v. Turkey*, Application no. 48804/99, 24 January 2008, at 75; UN Human Rights Committee, CCPR General Comment No. 6: Article 6 (Right to Life), 30 April 1982, para. 4.

³³⁹ ECtHR, *Koku v. Turkey*, Application No. 2730/95, 31 May 2005 at 128; ECtHR, *Osmanoğlu v. Turkey*, Application No. 48804/99, 24 January 2008.

³⁴⁰ ECtHR, *Meryem Çelik and Others v. Turkey*, 16 April 2013, Application No. 3598/03, at 58; ECtHR, *Enzile Özdemir v. Turkey*, 8 January 2008, 54169/00, at 45.

³⁴¹ Council of Europe, *Missing persons and victims of enforced disappearance in Europe*, March 2016, p. 5. See also ECtHR, *Varnava and Others v. Turkey*, 18 September 2009, Application No. 6064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90, 16073/90.

³⁴² ECtHR, *Mustafa Tunç and Fecire Tunç v. Turkey*, 14 April 2015, Application no. 24014/05, at 173.

*"Furthermore, alleged cases of abductions and enforced disappearances by security or intelligence services in several provinces have not been adequately investigated."*³⁴³

Similarly, in its 2020 Turkey Report:

*"Turkish authorities have yet to effectively investigate the cases of at least two dozen people allegedly abducted by state agents for many months."*³⁴⁴

The U.S. Department of State confirmed the same practices too in its 2019 Report on the human rights practices in Turkey:

*"Domestic and international human rights groups reported disappearances during the year, some of which these groups alleged were politically motivated. (...) The government declined to provide information on efforts to prevent, investigate, and punish such acts. (...) The government took limited steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses; impunity remained a problem."*³⁴⁵

Similarly, in its 2020 Report:

*"The government engaged in a worldwide effort to apprehend suspected members of the Gulen movement. There were credible reports that the government exerted bilateral pressure on other countries to take adverse action against specific individuals, at times without due process."*³⁴⁶

In 2020, the UN Working Group on Enforced or Involuntary Disappearances expressed its regrets notably on the fact that Turkey failed to conduct independent, thorough and impartial investigations into such allegations without delay, with a view to providing alleged victims and their families the right to an effective remedy.³⁴⁷

³⁴³ European Commission, Commission Staff Working Document: Turkey 2019 Report, 29 May 2019 (<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>).

³⁴⁴ European Commission, Commission Staff Working Document: Turkey 2020 Report, 6 October 2020 (https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf).

³⁴⁵ U.S. Department of State, '2019 Country Reports on Human Rights Practices: Turkey', 12 March 2020 (<https://tr.usembassy.gov/2019-country-reports-on-human-rights-practices-turkey/>).

³⁴⁶ U.S. Department of State, '2019 Country Reports on Human Rights Practices: Turkey', 30 March 2021 (<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/turkey/>).

³⁴⁷ UN Working Group on Enforced or Involuntary Disappearances, Communications transmitted, cases examined, observations made and other activities conducted by the Working Group on Enforced or Involuntary Disappearances (A/HRC/WGEID/121/1) of 28 July 2020, at 131-132.

89. In light of the aforementioned elements, it is clear that Turkey does not comply with its positive obligations under international and European human rights law. In Turkey there currently exists no effective protection of the right to life of political opponents of the regime and no effective investigations are carried out into cases of enforced disappearances.

VIII. CONCLUSION

90. The present report intended to answer the question: *"Can we, taken in account the reports and the testimonies produced before the tribunal, conclude that abductions again are a part of the action of the state towards opposing persons and that no serious inquiry is organized about these facts?"*

A comprehensive analysis of the facts and the legal framework applicable to Turkey shows that, since 2016, the country has re-established its negative tradition of enforced disappearances from the past. Abductions are used to eliminate and target opponents – particularly the Gülen movement and the Kurds.

This practice of abducting opponents has manifested itself both on the domestic and international level. While with regards to the internal abductions, the Turkish State denies any involvement, there is a cartload of objective evidence and testimonies confirming that these abductions and subsequent disappearances are organised by MIT officials, at least by individuals working with or for the Turkish State. With regards to the extra-territorial abductions, Turkey has claimed responsibility through several of its highest officials. These acts are attributable to the Turkish State and violate Turkey's international human rights obligations.

Finally, the fact that the Turkish authorities are not conducting effective investigations into complaints of abductions supports the strong involvement of the Turkish State with these crimes. A thorough investigation into such complaints is being prevented in every possible way. Therefore, it should come as no surprise that, to date, no successful investigation into the enforced disappearances which have taken place after 2016 has been completed.

IX. ANNEXES

- Annex 1: Joint monitoring report of the 'Ankara Bar Association Human Rights Center' of 27.06.2019
- Annex 2: case-studies internal abductions
- Annex 3: case-studies extra-territorial abductions

Annex 1



ANKARA BAR ASSOCIATION HUMAN RIGHTS CENTER

Joint Monitoring Report

Applicants : Sümeyye YILMAZ, Fatma Betül ZEYBEK, Aycan KAYA, Zehra Genç TÜRKMEN, Nilüfer IRMAK, Mikail UGAN, Nuray TUNÇ
Application No : 1-7/2019
Subject : Enforced Disappearance

I. FACTS

A. Introduction and Procedures

1. Sümeyye Yılmaz, Fatma Betül Zeybek, Aycan Kaya, Zehra Genç Türkmen, Nilüfer Irmak, Mikail Ugan, and Nuray Tunç filed applications with the Human Rights Center of the Ankara Bar Association on 25.04.2019, 03.05.2019, 13.05.2019, 17.05.2019, 24.05.2019, 14.05.2019, and 29.08.2019 respectively, and lawyers that are member to the Human Rights Center of the Ankara Bar Association recorded these applications.

2. Pursuant to Article 5/1/a of the Directive of the Human Rights Center of the Ankara Bar Association, when the Center receives an application on violation of human rights, it conducts a preliminary review of these applications, and upon receiving approval of the Board of Directors of the Ankara Bar Association related to applications that are in its purview, takes relevant decisions and actions.

3. The preliminary review has revealed that the allegation of enforced disappearance under the knowledge and authorization of public officers indicates a structural problem, and these applications in fact play a critical role in the fight given to protect human rights since it is possible that the right to live and prohibition on ill-treatment might have been violated. Therefore, Human Rights Center of the Ankara Bar Association determined that these applications are in its purview.

4. The Board of Directors of the Ankara Bar Association decided on 22.05.2019 that necessary inquiries should be made on Sümeyye Yılmaz's application and a report should be issued. The Human Rights Center of the Ankara Bar Association issued the report on 14.06.2019 and submitted and published the report on 27.06.2019.

5. Following the developments that occurred upon finding six of the relatives of the applicants, the Human Rights Center decided to consolidate similar applications of Fatma Betül Zeybek, Aycan Kaya, Zehra Genç Türkmen, Nilüfer Irmak, Mikail Ugan, Nuray Tunç and to issue a joint monitoring report.

B. Summary of Applications

6. Applicant Sümeyye Yılmaz applied to our Center stating that her husband Mustafa Yılmaz was abducted by unknown people when he was going to work on 19.02.2019, and according to a camera footage she got hold of, her husband was forced to get on a black Transporter, and taken away by these unknown people. Mustafa Yılmaz worked as a physiotherapist in a private healthcare organization, and a 6 year 3 month prison sentence given by the 32nd High Criminal Court in Ankara against Yılmaz on charges of being a member of FETÖ/PDY was pending an appeal review. The applicant stated that she was called by the police at 23.30 on 22.10.2019, and informed that her husband was at the Karapürçek Police Station.



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7. Applicant Fatma Betül Zeybek applied to our Center stating that when she, her husband Salim Zeybek and their children were driving on Edirne highway towards Havsa toll stations on Thursday 21.02.2019, a Dacia Duster cut them off trying to stop them, and the driver of their car did not stop, and started quickly to drive on the opposite direction, and they crashed into the traffic island and the cars coming from the opposite direction, and when their car was heavily damaged, their driver told them to “Run away”, and they started running without any idea on what was going on, and heard a few shots behind them, and individuals, who were armed, and introduced themselves as police officers in plain clothes, made her husband Salim Zeybek lay on the ground first, and then put him in a car, whereas she and her children were put in another car, and these individuals, who hid their faces, left her and the children in front of their home in Ankara, and her husband Salim Zeybek was abducted by these unknown individuals by a car, and she had not heard from her since that date. It was determined that Salim Zeybek was a suspect in the investigation file no. 2017/69394 of the Chief Public Prosecutor’s Office in Ankara, and an arrest warrant has been issued against him on allegations of being a FETÖ/PDY member. On 28.07.2019, the police reported that Salim Zeybek was in detention at the Anti-Terrorism Department in Ankara, and he was caught during a criminal record check when he was walking to the police station to surrender. The applicant stated that after her husband was found, she was not allowed to meet his counsels that he selected at the Anti-Terrorism Department in Ankara, and her requests to have her husband examined by an independent physician were denied, and no written document was given stating that these requests were denied, and she visited her husband at the Anti-Terrorism Department in the company of police officers, and when she asked about what has happened in the past six months, the police officers intervened, and her husband, who always wore his eyeglasses normally, was not wearing them this time, and lost a significant amount of weight, and was unable to maintain his balance while sitting, and her husband remained in detention for 12 days, and he was not brought before a judge for extending his the detention, and her husband told her not to wait for him in front of the courthouse, and refused to meet the counsel she selected, and another counsel was following the procedures, but she did not contact this counsel, who did not even call her for his fees, and the prosecutor’s office denied her request for a medical examination by an independent physician, but she was not given a document including such decision to deny her request.

8. Applicant Aycan Kaya applied to our Center through her lawyer stating that unknown individuals abducted her husband Özgür Kaya on 13.02.2019. There were almost forty people, who were heavily armed and introduced themselves as police officers, and they were dressed in plain clothes and wearing vests on which letters TEM (Anti-Terrorism) was written. Many neighbors witnessed his abduction. The applicant stated that her husband was working as a teacher in a private institution connected to Gülen movement, and he voluntarily left home, when a search was made in September 2016 in the house he was residing with his family. The applicant stated that at the time of taking him into custody in Ankara, which could not be confirmed officially later, the individuals, who introduced themselves as police officers gave an investigation number of the Chief Public Prosecutor’s Office in Ankara to those who were present there, and she was also taken into custody as part of the same investigation a short period before the abduction, and when she was in detention, she was asked whereabouts of her husband. On 28.07.2019, the police informed the applicant that Özgür Kaya was detained at the Anti-Terrorism Department in Ankara, and he was caught during a criminal record check when he was walking to the police station to surrender. The applicant stated that after her husband was found, she visited him for almost half an hour at the Anti-Terrorism Department in Ankara in the company of police officers, and her husband



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lost too much weight, and asked her to withdraw her applications, shut down her social media accounts, and not to meet deputies. She also stated that her husband remained in detention for 12 days, and at the end of the fourth day, she waited at the court house until 20.00 thinking that he would be brought before a judge for extension of his detention, but no one came, and her husband did not want to meet the counsel she found, and told her that he found a counsel at the police station as a coincidence, and her request for medical examination of her husband by an independent physician when he was brought to the courthouse from detention, was denied, and after her husband was arrested, she could visit her husband in the prison in the company of guardians, and she did not talk to her husband's counsel after the arrest.

9. Applicant Zehra Genç Türkmen applied to our Center stating that her husband Gökhan Türkmen left his family's home in Antalya on 07.02.2019, and no one heard from him since then. In the application it is stated that Gökhan Türkmen was working for the Agricultural and Rural Development Support Authority, and his employment contract was terminated on 21.07.2016 on allegations that he was a FETÖ/PYD member. In the application it is also stated that police officers from the Special Forces Department searched Gökhan Türkmen's house in August 2017, and the applicant was notified that there was an arrest warrant against Gökhan Türkmen, and he was not taken into custody since he was not at home, and he did not surrender later. On 5 November 2019, the police informed the applicant that he was at the Antalya Police Department.

10. Applicant Nilüfer Irmak stated that three individuals in plain clothes abducted her husband Erkan Irmak on 16.02.2019. Her husband was cornered at a turning point very close to İstiklal Secondary School, which was close to their home, and two of the abductors came from his behind, and the third one came in front of him, to corner him. The investigation of the Chief Public Prosecutor's Office in Ankara into Erkan Irmak on allegations of being a FETÖ/PYD member continued when he was missing. There was an arrest warrant against Erkan Irmak when he was missing. On 28.07.2019, the police informed the applicant that Erkan Irmak was in detention at the Anti-Terrorism Department in Ankara, and he was caught during a criminal record check when he was walking to the police station to surrender. The applicant stated that after her husband was found, she visited him for almost half an hour at the Anti-Terrorism Department in Ankara in the company of a police officer, her husband lost almost 15 kilos, and remained in detention for 12 days, and was not examined by an independent physician, and she visited him twice in the company of officers in the prison after he was arrested, and there were cameras in the room where they met.

11. Applicant Mikail Ugan applied to our Center on 14.05.2019 stating that his brother Yasin Ugan was taken into custody at around 15.00-16.00 on 13.02.2019 from a house in Çamlık neighborhood in Altındağ District, by armed individuals, who introduced themselves as police officers in plain clothes, and a black plastic bag was placed on his head, and these individuals claimed that there was a pending investigation before the prosecutor's office, and although they went to all units of the police department and the prosecutor's office, they could not learn where his brother was detained, therefore he was concerned that his brother was abducted and tortured, and worried about his life. The applicant stated that his abducted brother was an accountant working in the private sector. On 28.07.2019, the police informed the applicant that Yasin Ugan was detained at the Anti-Terrorism Department in Ankara, and he was caught during a criminal record check when he was walking to the police station to surrender. Applicant Selda Ugan stated that after her husband was found, she visited him for almost half an hour at the Anti-Terrorism Department in Ankara in the company of police



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officers in plain clothes, and her husband lost too much weight, and he seemed too pale, and her husband remained in detention for 12 days, and she waited with their counsel at the courthouse at the end of the fourth day of detention, but her husband was not taken to a judge, and another counsel was present when her husband was giving his testimony, and she learned from a news site that her husband hired that counsel while he was at the police department as a coincidence, and this counsel refused to meet her, and her husband told her that this counsel should follow the procedures, and her husband was not examined by an independent physician, and after her husband was arrested, she visited him at the prison, in the company of officers, and there were cameras in the room.

12. Applicant Nuray Tunç applied to our Center on 29.08.2019 stating that she did not hear from her husband since 06.08.2019, and she was concerned that her husband could have been abducted, because of the reports on similar disappearances. Yusuf Bilge Tunç was working as a Financial Services Expert at the Undersecretariat of Defense Industry, and he was removed from public office with the Decree Law No. 675 issued in the Official Journal of 29 October 2016. There are two investigations conducted against him by the Chief Public Prosecutor's Office in Ankara, one of them is on suspicions of being a FETÖ/PDY member and the other is related to leakage of (Public Personnel Selection Examination (KPSS) questions. It is stated that after being removed from office with the Decree Law, Yusuf Bilge Tunç tried to make his livelihood by selling packaging products to wet markets and restaurants. No one has heard from Yusuf Bilge Tunç yet.

C. Application Documents

13. Upon review of the application documents, it has been determined that the applicants had applied to Police Centers, Chief Public Prosecutor Offices, the Constitutional Court, the Ombudsman's Office, the Office on Missing and Wanted Persons at the Police Department, Governor's Office, the Turkish Parliament's Committee on petitions, the Ministry of Interior, General Directorate of International Law and Foreign Relations, the Office on Human Rights at the Police Headquarters, the Office on Reviewing Human Rights Violations at the Civil Inspection Board, the Turkish Human Rights and Equality Authority, the Ministry of Health and General Directorate of Public Hospitals, Assistant General Manager's Office responsible for European Council and Human Rights, the Office on Human Rights and Gendarmerie Headquarters, and the Presidential Communication Center (CİMER).

14. The applicants had also applied to the Human Rights Association, the UN Working Group on Enforced or Involuntary Disappearances, the Human Rights Office of the Turkish Medical Association, the Human Rights Center of the Turkish Bar Association, the Human Rights Commission of Ankara Chamber of Medicine, and the International Amnesty Organization.

15. The European Court of Human Rights notified applications of applicants Sümeyye Yılmaz, Fatma Betül Zeybek, Aycan Kaya, Nilüfer Irmak and Mikail Ugan to the government.¹

D. Applications of Applicants Filed with Other Authorities

Yılmaz :

¹ Yılmaz v. Turkey, Application no. 30957/19, 06/09/2019, Zeybek and Others v. Turkey, Application no. 21330/19, 30/04/2019, Kaya and Others v. Turkey, Application no. 14443/19, 09.04.2019, Irmak and Others v. Turkey, Application no. 18036/19, 09/04/2019, Ugan v. Turkey, Application no. 26429/19, 28/08/2019



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16. The Office on Missing and Wanted Persons at the Police Department reported that they had camera footage of a metro station, but this footage was not included in the investigation file. The Chief Public Prosecutor's Office in Ankara made a decision on 09/03/2019 with no. 2019/27773 in the investigation no. 2019/32930 and decided that there was no need to prosecute because there was no evidence which demonstrated that Mustafa Yılmaz was abducted or constrained, and the applicant filed an objection with the 5th Criminal Court of Peace in Ankara. The 5th Criminal Court of Peace in Ankara accepted the objection of the applicant with its decision of 30.04.2019, and returned the decision to the Chief Public Prosecutor's Office in Ankara. In another investigation with no. 2019/90003, the Chief Public Prosecutor's Office in Ankara decided that there was no need to prosecute because the missing person was not a minor, and left home on his own will.

17. Legal applications of the applicant were inconclusive, and although the applicant requested, no enquiries were made in the investigation into metro camera recordings, city surveillance camera recordings, HTS, Base, Signal and GPRS recordings. The applicant determined that the camera footage displayed to the applicant by the Office on Missing and Wanted Persons at the Police Department belonged to another day, not the day her husband disappeared, because the reading hours of the transportation card and the camera footage did not match.

18. The applicant's application filed with the Constitutional Court on 30.04.2019 with no. 2019/13374 requesting an injunction was also dismissed.

Zeybek :

19. Edirne Provincial Directorate of Security stated that no event described in the application has occurred in its purview, and no proceedings were launched against the husband of the applicant, whereas, Edirne Governor's Office Provincial Gendarmerie Command stated that this event has not occurred, and the General Directorate of Security stated that they did not find any missing person application when they made enquiries into the Smuggling and Intelligence Unit (KİHBİ), National Judiciary Informatics System (UYAP), and Law Enforcement Procedures Project (EKİP PROJE). The applicant filed a criminal complaint with the Ankara Chief Public Prosecutor's Office on 25.02.2019 alleging that the perpetrators committed offences of deprivation of liberty and armed threat. On 25.02.2019, the applicant testified before the Public Prosecutor's Office on Duty in the Ankara Courthouse. The applicant requested the prosecutor's office to determine the owner and driver of the car that brought her and their children to Ankara giving the plate number of this car; and to ask 155, 156, and 112 call centers in order to learn whether a call was made related to a "car driving on the opposite direction" between 18.00 and 21.00 on 21.02.2019, to identify the reports on accidents that occurred on that route on the given date, and to determine public officers that emitted signals at base stations on the same date and at the same time, but these requests were not met. Although the applicant stated that she wanted to testify before the prosecutor conducting the relevant investigation, review of the documents demonstrated that she has not been asked to testify until today. On 05.04.2019, the applicant filed an application with the Constitutional Court requesting an injunction, and this application was responded on 17.04.2019, stating that there was no need to send the application to the relevant unit for evaluation of the request for injunction, and admissibility of the application would be evaluated separately.

Kaya :



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20. The applicant stated that when she went to the police, she was told that her husband was not in detention, but fled abroad. When the applicant filed a criminal complaint, the Chief Public Prosecutor's Office in Ankara launched an investigation into the abduction on 16.02.2019 (hereinafter "initial investigation"). When the applicant sent letters to the Ministry of Interior and the Turkish Parliament Human Rights Investigation Commission, Deputies Sezgin Tanrikulu and Ömer Faruk Gergerlioğlu submitted written questions to the Turkish Parliament Human Rights Investigation Commission.

21. On 27.02.2019, the applicant requested the Chief Public Prosecutor's Office in Ankara via her lawyer to have testimony of eyewitnesses, and collect security camera recordings. The Chief Public Prosecutor's Office in Ankara issued a written order to the police, asking the police to make certain enquiries, but when no reply was given, and this request was repeated on 15.03.2019 and 27.03.2019.

22. On 26.02.2019, the applicant filed an individual application with the Constitutional Court, seeking an injunction, and this application was dismissed on 14.03.2019 on grounds that the public prosecutor's office was dealing with this event, the relevant police units were working on the case, and evidence was being collected.

23. On 18.02.2019, the applicant applied to CİMER and upon this application, her statement was taken at the Şentepe Şehit Cevdet Yeşilay Police Station on 12.03.2019.

24. On 24.05.2019, the Legal Affairs Unit in Ankara Governor's Office, wrote letters to Ankara Provincial Security Directorate and the Public Prosecutor's Office in Ankara in response to the application filed by the applicant on 21.05.2019, and requested these authorities to make necessary enquiries and examinations and to inform Ankara Governor's Office for the issue to be discussed at Provincial Human Rights Board.

25. The initial investigation file was joined with the second investigation, which is still conducted by the Chief Public Prosecutor's Office in Ankara, where Özgür KAYA is a suspect. Since there is a confidentiality order in this second investigation file, the applicant has not been able to learn anything on the actions taken to find the missing person after the decision to join the files, and the Chief Public Prosecutor's Office in Ankara has not informed the applicant.

Türkmen :

26. The applicant stated that Gökhan Türkmen's father went to Antalya Varsak Polic Station on 12 February for the first time, and he testified there, and later, police officers coming to their house from the Anti-Terrorism Department took his statement once more, and the police officers told them that the car registered to her husband was seen in Ulus, Ankara 10 days ago through city surveillance cameras. The applicant stated that this was impossible, because this car was in their house's garage for the last two years.

27. The Chief Public Prosecutor's Office in Antalya launched an investigation into this missing person case (hereinafter "initial investigation"), and decided on 26.02.2019 that Office on Missing and Wanted Persons, Public Security Branch Office at Ankara Provincial Security Directorate were handling procedures related to Gökhan Türkmen, and it was not necessary to prosecute since there was no criminal element.

28. Zehra Genç Türkmen, who applied to the General Directorate of Prisons and Detention Houses, Ministry of Justice, also applied to CİMER and asked whether the missing person was in any penal institution, and on 14.03.2019, she was informed that an enquiry was made



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into the records of convicts and detainees in the National Judiciary Informatics System, and Gökhan Türkmen's name was not found in these records.

29. The Chief Public Prosecutor's Office in Kayseri launched an investigation, after the applicant applied to CİMER (hereinafter "second investigation"), and decided on 20.03.2019 that "if Gökhan Türkmen was a victim of any offense, an investigation could be conducted upon his complaint."

30. On 27.03.2019, the Chief Public Prosecutor's Office in Antalya reviewed the initial investigation documentation, and reentered the investigation into records in order to deepen the investigation, and to summon telephone records and historical traffic search entries. Letters were sent to the Preparation Office of the Chief Public Prosecutor's Office in Antalya, and Antalya Varsak Police Station to make necessary enquiries, to allow examination of historical traffic search records, and to interview the family of the applicant's spouse.

31. On 04.04.2019, Zehra Genç Türkmen testified at Kayseri Melikgazi Police Station and stated that on 07.03.2019 at 02.34, three messages were sent to the Twitter account she opened for her husband Gökhan Türkmen on the phone she was using: "He cannot die before he answers with whom he shared the data he stole from the state and did not belong him. He is looking at me begging, like a sewer rat squeezed under a manhole cover. If he does not reply the questions with supplementing evidence he will suffer and be destroyed", "Ok", "He is secure now." She also stated that this account called "15 Temmuz @vforvendetta TUR" was then renamed as "NÖBET@nobetdizisi7_24". She stated that she believed that individual or individuals using this account abducted her husband, and therefore, she was complaining them. She also stated that when she checked the accounts once more, she noticed that these accounts were no longer in use.

32. On 07.05.2019, the Chief Public Prosecutor's Office in Antalya contacted the Chief Public Prosecutor's Office in Kayseri and asked to contact applicant Zehra Genç Türkmen to have her witness statement, to ask whether she contacted the victim, and whether the victim has called her, and wanted to be informed on the developments, later, the applicant gave her testimony once more.

33. On 05.03.2019 Zehra Genç Türkmen applied to Ombudsman's Office with no 2019/54540, and this application was dismissed and "Ineligible for Review" decision was made on 02.05.2019 with no. 2019/1671-S.2507.

İrmak :

34. The application filed with the İstanbul Governor's Office on 02.02.2019 with registration no. 63800 was not replied, and in response to the application filed with CİMER with no. 1900532752 was replied by Ümraniye District Security Department on 07.03.2019 as follows "you will be informed if you personally apply to competent authorities related to confidential aspects of your application."

35. Counsel to the applicant filed a request to receive information on 01.03.2019, under an investigation launched by the Chief Public Prosecutor's Office in İstanbul upon complaint of the applicant, and with this request, the applicant asked the prosecutor's office to review the footage from city surveillance cameras no 046-g-34 umr and 048-g-34 umr that cover the area, where the incident has occurred. On 24.04.2019, the initial investigation file was joined with the investigation, which is still conducted by the Chief Public Prosecutor's Office in Ankara, where Erkan IRMAK is a suspect (hereinafter "second investigation"). Since there is a confidentiality order in this second investigation file, the applicant has not been able to learn



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anything on the actions taken to find the missing person after the decision to join the files was taken, and the Chief Public Prosecutor's Office in Ankara has not informed the applicant.

36. On 11.03.2019, the counsel to the applicant filed an individual application with the Constitutional Court, seeking an injunction, and this application was dismissed on 26.03.2019 on grounds that the investigation was pending and there was no need for an injunction.

37. On 02.04.2019, an application was filed with the European Court of Human Rights, seeking an injunction, and on 11.04.2019, the Court notified that an injunction was not issued, and this case would be given priority according to Article 41 of the internal directive of the ECtHR. Furthermore, the application was notified to the Government on 10.04.2019. The application filed with the UN Working Group on Enforced or Involuntary Disappearance has not been replied yet.

38. Deputy Ömer Faruk Gergerlioğlu brought the abduction case to the Parliament, and submitted a parliamentary question, asking Vice President Fuat Oktay to answer this question.

Ugan :

39. In response to the application filed with CİMER, on 27.03.2019 the Altınbaş District Security Directorate replied as follows: "The inquiry made by Hüseyingazi Şehit İdris Aydın Police Center revealed that Yasin Ugan is not in prison, and he is not detained at any police department that he could have been detained". Also, on 02.04.2019, the Gölbaşı District Security Directorate replied as follows: "Anti-Terrorism Department – Security Office has not performed any judicial proceedings involving Yasin Ugan". When the Human Rights Association wrote to the Ministry of Interior, the Ministry of Interior replied as follows on 20.03.2019 related to allegations of enforced disappearance of Yasin Ugan and Özgür Kaya: "No missing person application has been found when enquiries were made into the Smuggling and Intelligence Unit (KİHBİ), National Judiciary Informatics System (UYAP), and Law Enforcement Procedures Project (Ekip Proje)." The Ombudsman's Office issued an "Ineligible for Review" decision on 05.04.2019. Under the initial investigation file, the Chief Public Prosecutor's Office in Ankara wrote a letter on 22.02.2019 to the Anti-Terrorism Department in Ankara Security Directorate and asked "to notify whether Yasin Ugan was in detention, and to send a copy of the notice informing his next-of-kin, if this was the case." This letter has not been replied. The initial investigation file was joined with the second investigation file against Yasin Ugan related to FETÖ/PDY structure within National Intelligence Organization, and the applicant was not asked to testify again. The Constitutional Court dismissed the request for an injunction on 20.03.2019 with no. 2019/8172 on grounds that the investigation was still continuing.

Tunç :

40. The Chief Public Prosecutor's Office in Ankara received Nuray Tunç's application on 08.08.2019, and issued an investigation number, however, did not assign a prosecutor for a long period of time, and after the applicant followed up the issue persistently, they wrote a letter on 19.08.2019 to the Office on Missing Persons, asking them to make an enquiry about Yusuf Bilge Tunç, but city surveillance camera recordings were not examined.

41. The applicant and relatives of the missing person filed a criminal complaint with the Chief Public Prosecutor's Office in Ankara on 12.08.2019, and requested an enquiry into the car, as well as into the camera footage, and the Chief Public Prosecutor's Office in Ankara issued an investigation number but did not take any action regarding this request. On 04.09.2019, the counsel to the applicant requested the Chief Public Prosecutor's Office in



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Ankara to conduct a survey in the area, to identify camera footage/pictures, examine all the footage from the city surveillance cameras, OTS, KGYS, private business on the route, to look into location of the missing person using his telephone number, and to identify public officers who emitted signal from the same base station, however, no action was taken in response to this request.

42. Above-mentioned investigation files, including the file of the Chief Public Prosecutor's Office in Ankara containing the missing person application were joined with the investigation file of the Chief Public Prosecutor's Office in Ankara, where Yusuf Bilge Tunç is a suspected FETÖ/PDY member. On 09.08.2019, the applicant applied to CİMER, but could not receive any response. On 21.08.2019, a criminal complaint was filed with the Judges and Prosecutors Board against the prosecutor and law enforcement officers who did not conduct an effective investigation, but no action has been taken related to this complaint. No decision has yet been made related to the individual application and request for an emergency injunction that had been filed with the Constitutional Court.

E. Minutes of Meeting of Human Rights Center of Ankara Bar Association

43. Members of the Human Rights Center of the Ankara Bar Association went to the Anti-Terrorism Department in Ankara to visit relatives of the six applicants, who appeared and were detained at different times. Law enforcement officers and the prosecutor's office did not allow our members to visit detained relatives of the applicants.

44. On 27.08.2019, members of the Human Rights Center of the Ankara Bar Association went to Sincan No 1. Type F Closed Penitentiary Institution to visit detained Erkan Irmak, Yasin Ugan, Özgür Kaya an Salim Zeybek. Guardians told that Erkan Irmak, Yasin Ugan, and Özgür Kaya did not want to meet the lawyers, who are members of the center. The meeting of the members of the Center with Salim Zeybek was recorded by a camera, and there was a guardian in the room during the interview. Zeybek stated that he was not missing during the time when no one heard from him; he did not feel the need to call his relatives, he received legal assistance, was examined by a physician, and was not subject to torture and ill treatment and his statements were recorded in the form of minutes. Members of the center were asked to deliver the original of the minutes of the meeting without any court order, but the members explained that it would be unlawful to deliver the original minutes of the meeting without a court order. Then prison officers threatened and treated the members unlawfully, and the minutes of the meeting including statements of Zeybek were taken from them by force. Ankara Bar Association filed a complaint against these officers.

F. General Findings related to Missing Person Applications

45. It is important to note some common features of the above-summarized 7 applications that were filed with our Center.

46. Relatives of the applicants remained missing for minimum 5 months, maximum 9 months. Yusuf Bilge Tunç, the husband of the last applicant Nuray Tunç was still missing at the time of writing this report. Applicants filed applications with numerous authorities for their missing relatives but all of these applications remained inconclusive.

47. Relatives of six applicants were found after the application. It is interesting that all of these individuals appeared in police units, and four of them allegedly were caught during a criminal record check, when they were going to a police station to surrender. Individuals, who



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were missing for months, are stated to have surrendered to security forces without informing their families.

48. All the applications describe detention processes in the same way. The statements of the applicants related to their relatives' physical condition, are also very similar. None of the applicants had to opportunity to see their relatives alone, and there was always at least one police officer present during their visits. It is also indicated that when they visited their relatives after the arrest these visits were recorded.

49. All the applicants stated that their relatives did not want the counsel brought by their families, and they wanted all the applications to be withdrawn. Moreover, the applicants stated that they did not meet the private counsels that their spouses have found as a coincidence, and the counsels that were appointed under the Code of Criminal Procedure system.

50. The applicants do not have reliable information on whether their relatives were examined by a physician when they were in detention. Although the detained individuals persistently stated that they would not claim they were subject to torture and ill treatment, in none of these cases, these statements were made to their families or private counsels in an environment, out of hearing and sight of others.

51. The fact that individuals who are still under investigation on suspicions of being FETÖ/PYD members appeared at a police station after remaining missing for more than six months, and stated that they did not want any counsel, other than those shown to them at the police station, strengthens the suspicion that they made their statements under duress. Given that relatives of the applicants have not communicated with the external world where the camera or sound recorders were not used and there were no law enforcement officers, the truthfulness of their statements should be approached with suspicion.

II. LEGAL STANDARDS TO BE APPLIED TO ENFORCED DISAPPEARANCE CASES

52. Turkey is not a party to the International Convention for Protection of All Persons from Enforced Disappearance² (ICCPED) of the UN. However, international legal standards for protection of all persons from enforced disappearance are regulated in customary law in addition to general and specific international conventions, and these standards are binding on Turkey. Humanitarian law, human rights law, and international criminal law govern prohibition on enforced disappearance.

53. The International Convention on Civil and Political Rights³, the European Convention on Human Rights⁴, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵ where Turkey is a contracting party, as well as the UN

² See, <http://www.un.org.tr/humanrights/images/pdf/butun-kisilerin-zorla-kaybedilmeden-korunmasina-dair-uluslararasi-sozlesme.pdf>, the most recent access 13.01.2020.

³ See, Official Journal dated 21/07/2003 and numbered 25175.

⁴ See, Official Journal dated 19/03/1954 and numbered 8662.

⁵ See, Official Journal dated 10/08/1988 and numbered 1989.



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Declaration on Protection of All Persons From Enforced Disappearance⁶ lay down obligations of the states and standards related to enforced disappearance.

54. Enforced disappearance; is defined as *“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”*.⁷

55. Above definition of enforced disappearance exists in international instruments, particularly in the International Convention for Protection of All Persons from Enforced Disappearance, where Turkey is not a party, as well as in customary law and interpretation of general agreements.

56. Prohibition on enforced disappearance is an absolute prohibition in international law. Pursuant to Article 7 of the 1992 Declaration on Protection of All Persons Against Enforced Disappearance (Declaration), no circumstances whatsoever, whether a threat of war or any other public emergency may be invoked to justify enforced disappearances. Enforced disappearance is a continuous violation, which begins at the time of abduction until the fate of the individual is found out.

57. In fact, an enforced disappearance case is a special type of violation, where multiple human rights violations occur at the same time. The Human Rights Committee (HRC) determined that enforced disappearance violated multiple rights protected under the International Convention on Civil and Political Rights. According to the HRC, enforced disappearance violates the right to liberty and security of a person (Article 9), prohibition on subjecting any person to torture or to cruel, inhuman or degrading treatment or punishment (Article 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person. This act also violates or seriously threatens the right to life (Article 6).⁸

58. Pursuant to the human rights law and the humanitarian law, anyone violating the prohibition on enforced disappearance has to be punished under the criminal law in proportion to the offense. In fact, according to Article 17 of the Declaration, an act constituting enforced disappearance is considered a continuing offense as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared. Enforced disappearance is an offense, where perpetrators cannot benefit from amnesty law or similar measures that may exempt them from criminal sanctions.

59. Violation of prohibition on enforced disappearance may also constitute an international offence in case of existence of certain conditions. According to Article 7.1.i. of the Rome Statute of the International Criminal Court, enforced disappearance of a person is considered a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population. It is possible to say that this rule reflects customary law. In other words, systematic enforced disappearance offense is a crime against humanity in the international criminal law.

⁶See, www.ombudsman.gov.tr/contents/files/312b12--Zorla-Kayip-Edilmeye-Karsi-Herkesin-Korunmasina-Dair-Bildiri.pdf, the most recent access 13.01.2020.

⁷ UN International Convention for Protection of All Persons From Enforced Disappearance, Article 2.

⁸ Communication No. 950/2000, Sarma v. Sri Lanka, 16 July 2003, para. 9.3.



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60. In addition to international conventions which apply as domestic laws, according Article 77 of the Turkish Criminal Court, voluntary manslaughter, malicious injury, torture, deprivation of liberty constitute crimes against humanity when committed systematically as part of a plan against any part of the society with political, philosophical, racial, or religious motives. There is no doubt that enforced disappearance cases, that are not a systematic or widespread attack will be subject to different provisions of the Turkish Criminal Code depending on the circumstances.

A. Obligations of the States related to Enforced Disappearance

1. Obligation to Protect Life

61. When a person disappears under conditions that threatens his or her life, the state has to take operational measures to protect the life of the disappeared person in line with its positive obligation enshrined in Article 2 of the European Convention on Human Rights (ECHR).⁹ ECtHR held that if a person had been threatened beforehand and the authorities are informed on the next day of abduction, that disappearance has occurred under life threatening conditions.¹⁰ In such case, if the state cannot prevent disappearance of that person, it should take operational measures to protect that person, who may be victim of other criminal acts.¹¹ In 1992 and 1998, ECtHR decided that enforced disappearance of persons suspected to be linked to PKK is life threatening.¹²

62. Under these circumstances, any negligence displayed by the investigating or supervising authorities in the face of real and imminent threats to an identified individual's life emanating from state agents, such as police, who are acting outside their legal duties, might entail a violation of the positive obligation to protect life.¹³ ECtHR concluded that by their failure to act rapidly and decisively, the authorities that are involved had not taken operative measures within the scope of their powers which, judged reasonably, might have been expected to avoid risking the missing man's life.¹⁴

2. Obligation to conduct an effective investigation

63. As a natural consequence of the absoluteness of the prohibition on enforced disappearance, the obligation of the state to conduct an effective investigation continues as long as the fate of the person is unaccounted for. Enforced disappearance cases are characterized by an ongoing situation of uncertainty and unaccountability. This may be due to lack of information or deliberate concealment of what has occurred. Therefore, in such cases, the obligation of the state to conduct a thorough investigation as long as the fate of the person is unaccounted for. Failure to provide the requisite investigation will be considered as a continuing violation. This is so, even where death may, eventually, be presumed.¹⁵

⁹Koku v. Turkey, Application no. 27305/95, 31/05/2005, §132; Osmanoğlu v. Turkey, Application no. 48804/99, 24/01/2008, §75.

¹⁰Koku v. Turkey, Application no. 27305/95, 31/05/2005, Osmanoğlu v. Turkey, Application no. 48804/99, 24/01/2008

¹¹ Koku v. Turkey, Application no. 27305/95, 31/05/2005, §132, Osmanoğlu v. Turkey, Application no. 48804/99, 24/01/2008, §76.

¹² Meryem Çelik and Others v. Turkey, Application no. 3598/03, 16/04/2013, §58; Enzile Özdemir v. Turkey, 54169/00, 08/01/2008, §45.

¹³ Gongadze v. Ukraine, Application no. 34056/02, 08/11/2005, §170; Turluyeva v. Russia, Application no. 63638/09, 20/06/2013, § 100.

¹⁴ Turluyeva v. Russia, Application no. 63638/09, 20/06/2013, §101

¹⁵ Varnava and Others v. Turkey, Application no. 6064/90 16065/90 16066/90 16068/90 16069/90 16070/90 16071/90 16072/90 16073/90, 18/09/2009, §148.



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64. The necessity to effectively investigate allegations on violation of right to life also applies to enforced disappearance cases. ECtHR case law sets out four principles on how this obligation should be fulfilled. Accordingly, an effective investigation should have below elements:

- a) Independence of investigatory authorities
- b) Adequacy
- c) Promptness and reasonable expedition of investigations
- d) Public scrutiny and participation of the next-of-kin.¹⁶

65. When there is possibility of violation of right to life and prohibition on torture and ill treatment, the state has the obligation to conduct an effective investigation notwithstanding whether such violation has been committed by public officers. Pursuant to jurisprudence of the ECtHR¹⁷ the obligation of the state to conduct an effective investigation requires the state to uncover the circumstances in which the disappearance has occurred, to find the missing person, to prosecute and if necessary to impose penal sanctions on the perpetrators, and to compensate the damage suffered by relatives of the victim.¹⁸ Authorities conducting the investigation in disappearance cases have to start with a very small amount of evidence, and to look for more evidence to trail the missing person, or to find out his fate.

66. In fact, in the below examples ECtHR has identified how an investigation meeting these standards should be conducted.

67. ECtHR concluded as follows in *Mustafa Tunç and Fecire Tunç v. Turkey* judgment related to effective investigation obligation: *“The obligation to conduct an effective investigation is an obligation not of result but of means: the authorities must take the reasonable measures available to them to secure evidence concerning the incident at issue. In any event, the authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence and (...) provides a complete and accurate record of (...).*

175. In particular, the investigation’s conclusions must be based on thorough, objective and impartial analysis of all relevant elements. “¹⁹

68. ECtHR concluded as follows in its *Ak v. Turkey* judgment *“Article 3 of the Convention imposes an obligation on the authorities to conduct an effective investigation to uncover facts and relevant circumstances and to identify and prosecute perpetrators. When natural persons are involved, these obligations apply notwithstanding who the perpetrators are. The obligation to provide an effective investigation implies reasonable promptness and duty of care. Protection mechanisms of the domestic law should be operated in practice in a reasonable period of time allowing conclusion of substantive review of the cases and preventing the perpetrators from enjoying impunity for violent acts. In fact, if the protection mechanisms of the domestic law only exist in theory, the State will not be deemed to have fulfilled its obligation under Article 3 of the Convention: These mechanisms should be*

¹⁶ For detailed information on these obligations See. Osman Doğru (2018), *Yaşama Hakkı (Right to Life)*, (Ankara: Constitutional Court Publications), s. 295-321.

¹⁷ *Varnava and Others v. Turkey*, Application no 6064/90 16065/90 16066/90 16068/90 16069/90 16070/90 16071/90 16072/90 16073/90, 18/09/2009; *Er and Others v. Turkey*, Application no. 23016/04, 31/07/2012

¹⁸ *Varnava and Others v. Turkey*, Application no. 6064/90 16065/90 16066/90 16068/90 16069/90 16070/90 16071/90 16072/90 16073/90, 18/09/2009.

¹⁹ *Mustafa Tunç and Fecire Tunç v. Turkey*, Application no. 24014/05, 14/04/2015, §173.



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functioning effectively particularly in practice, and therefore the case must be reviewed promptly and without undue delay.”

69. In *G.U. v. Turkey* judgment, the duty to provide an investigation is defined as follows: *“In order to consider an investigation effective, it has to be conducted with reasonable care and promptness. In order to prevent giving the impression that any unlawful act is allowed or tolerated and to avoid losing the trust of the public, it is very important for the authorities to act promptly in line with principle of legality.”*²⁰

70. ECtHR described the obligation to provide an investigation in disappearance cases in more detail in its *Osmanoğlu v. Turkey* judgment: *“The Court is of the opinion that a number of basic steps could have been taken by the investigating authorities which would have offered a reasonable prospect of success in finding the applicant's son. To that end, the starting point for the prosecutor should have been to obtain more information from the applicant and to question the neighboring shop owners who, the applicant claimed, had witnessed his son being taken away by the two men. In the light of the descriptions given by the applicant, the prosecutor could have made attempts to verify whether the two men who took the applicant's son away were indeed police officers. Furthermore, the Court takes judicial notice of the fact that, during the relevant period, there were a large number of police and gendarmerie checkpoints on the roads in the area, which could have been alerted to be on the lookout for the applicant's son in case he was transported through one of the checkpoints.*

- a. an inspection of the relevant gendarmerie or police headquarters or any other premises to which the applicant's son might have been brought after he had been abducted;*
- b. the making of enquiries and the taking of statements from those in custody in the relevant gendarmerie or police headquarters at the time of the disappearance, in an attempt to establish whether or not the applicant's son had been taken into custody;*
- c. the making of enquiries and the taking of statements from those officers who were on duty on the relevant dates; and*
- d. attempts to secure potential eyewitnesses to the incident.*

As pointed out above, according to Turkish law it is a criminal offence to deprive an individual unlawfully of his or her liberty. Public prosecutors have a duty to investigate offences reported to them. Despite this, the prosecutor in the instant case remained completely and incomprehensibly inactive at a time when many people were being killed in that region of Turkey. By failing to take any steps, neither the prosecutor, nor indeed the Turkish authorities in general, did everything within their power to protect the right to life of the applicant's son after his abduction.

These obligations apply in the same way to cases where individuals disappear under conditions, which can be considered as life threatening. Therefore, the Court concluded that disappearance of the applicant's son can be considered life threatening. Nevertheless, as conceded by the Government themselves, no investigation was carried out into the disappearance of the applicant's son. In this connection, the Court also regrets that the allegations made by Mr Aygan did not spur the Government into action. The Court disagrees with the Government that Mr Aygan's allegations were abstract and unsubstantiated, and is of the view that the specific allegations at issue merited consideration by the domestic authorities. In this connection the Court cannot but remark that a decision not to carry out an investigation into those allegations on the ground that they were “unsubstantiated” reveals

²⁰ *G.U. v. Turkey*, Application no. 16143/10, 18/10/2016



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an illogical decision-making process, as allegations cannot be found to be unsubstantiated unless they are investigated first. 92. In the light of the total failure to carry out an investigation – which has already given rise to a violation of Article 2 of the Convention in its substantive aspect – the Court concludes that there has also been a violation of Article 2 of the Convention under its procedural limb.”²¹

a) Applying the Principles to the Facts

71. It is apparent that Salim Zeybek, who was abducted by armed individuals stopping his car, Özgür KAYA, who was abducted by almost forty heavily armed individuals wearing TEM (Anti-Terrorism Department) vests, Yasin UGAN and other missing persons, who were subject to legal proceedings on suspicions of being a member to a terror organization, disappeared under life threatening conditions. As underlined by the ECtHR in *Osmanoğlu v. Turkey* judgment, when individuals disappear under life-threatening conditions, the state has the obligation to conduct an effective investigation into the disappearance case. Therefore, even if public officers have not committed the enforced disappearance, disappearance cases that constitute the subject matter of the application must be duly investigated to avoid giving the impression that any unlawful act is allowed or tolerated.

72. The prosecutor’s office, that was aware of the disappearances that constitute the subject matter of the applications, has the testimonies of the applicants, and joined investigation files of the missing persons with a FETÖ/PDY membership investigation, which was subject to confidentiality restrictions. It has been determined that the authorities, particularly the prosecutor’s office has not provided any information or documents to the applicants or their counsels, demonstrating that below listed actions, which had to be promptly taken, were actually taken as long as the whereabouts of the disappeared persons has not been identified:

- Inspection of the relevant gendarmerie or police headquarters or any other premises to which the individual might have been brought after abducted and attempts to secure potential eyewitnesses to the incident;
- Making of enquiries and the taking of statements from those in custody in the relevant gendarmerie or police headquarters at the time of the disappearance in an attempt to establish whether or not the person had been taken into custody;
- Taking of statements from law enforcement officers who were on duty in the area, where abduction is alleged to have taken place on the relevant dates;
- Making of enquiries related to city surveillance camera recordings and if any, private camera recordings in the area where abduction is alleged to have taken place, collecting and examining footage from these cameras;
- Collecting information on the plate number, model, physical properties of the care alleged to have been used in abduction and making of enquiries to find the owner and why it is used;
- Making enquiries into GPRS records etc. to identify the location;
- Informing other law enforcement units, particularly the national intelligence organization and consulting other units that may be involved;

²¹ *Osmanoğlu v. Turkey*, Application no. 48804/99, 24/01/2008.



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- Taking statements of the applicant and relatives and associates of the disappeared person, and assessing any potential risks.

73. Since the applicants were not given any information which would indicate that above listed actions to secure evidence were taken promptly gives the impression that disappearance cases were not investigated effectively. Although six of the disappeared persons were found at different police stations months later, it is still not clear where and by whom these persons were held during that time. Moreover, no reasonable or logical explanation has been made to public on a matter, which closely involves the public. It is a coincidence quite difficult to explain in the ordinary course of life that individuals alleged to be abducted on different dates from different places had in fact surrendered to the police and appeared in a very similar way. There is no doubt that the authorities have the obligation to inform the public.

74. There is no information which indicates whether any investigation has been provided related to disappearance allegations of these 6 individuals who appeared later, and whether accuracy of these allegations have been inquired. As it will be discussed below, it is against the international standards to accept without questioning the accuracy of the statements made by these individuals to their families and counsels under police supervision that they did not have any complaints. If it is alleged that a person has disappeared and tortured, it should be taken into account that this person could be under duress. Under these circumstances, it has to be examined carefully whether this person has made a statement on his free will.

75. Examination of the facts of these cases as a whole does not indicate that an effective investigation has been conducted into the enforced disappearance allegations in order to identify perpetrators if these allegations prove to be true, and to prosecute and if necessary to impose sanctions on those perpetrators and to compensate the damage suffered by relatives of the victim.

b) Public Scrutiny of the Investigation and Participation of the Next-of-kin

76. An effective investigation should allow public scrutiny and participation of the next-of-kin of the victim to the extent it is possible. This requirement is graver in disappearance cases where applicants have difficulty in receiving information on their relatives, and uncertainty of their fate causes significant physiological damage.

77. According to the ECtHR, when there are allegations that there is a violation of right to life: *“The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim’s next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.”*²²

78. Therefore, relatives of the victim should not be prevented from accessing contents of the investigation, excluding circumstances, which may prevent the investigation from being conducted reliably. In fact, in its *Benzer and Others v. Turkey* judgment, the ECtHR reached the following conclusion: *“The Court considers that the military investigating authorities’ attempts to withhold the investigation documents from the applicants is on its own sufficiently serious as to amount to a breach of the obligation to carry out an effective investigation. To this end, the Court is of the opinion that, had the applicants been in possession of the military prosecutor’s investigation file, which presumably contained the flight log, they could have increased the prospect of success of the search for the perpetrators. The Court also considers*

²² Al-Skeini and Others v. United Kingdom, Application no. 55721/07, 07/07/2011, §167.



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*that the withholding of the flight log from the applicants prevented any meaningful scrutiny of the investigation by the public”.*²³

79. As such in *Dimitrova and Others v. Bulgaria* judgment; “*Court concludes that applicants were not given any meaningful opportunity to participate in the investigation into their relative’s death, and therefore, requirements of Article 2 were violated*”.²⁴

80. The investigation should not be accessible only by the family; it should be accessible by the public. According to the ECtHR: “*There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice, maintain public confidence in the authorities’ adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts*”.²⁵

81. ECtHR concluded that under below listed circumstances, the investigation is not open for public scrutiny and accessible by the victim’s relatives:

- the investigation or case file was not accessible to the victim’s relatives,²⁶ the victim’s relatives were not informed of significant developments in the investigation;²⁷
- victim’s wife was not provided with any information on the progress of the investigation, was not allow to study the case file appropriately, and was not given any record concerning the witness statements or other procedural steps undertaken;²⁸
- discontinuation order issued for the investigation was not notified to the victim’s father, and the investigation was conducted without participation of the father, who is acting as the complainant;²⁹
- the victim’s relatives was required to lodge a criminal complaint to join the proceedings as a civil party if they wish to be involved in the investigation proceedings;³⁰
- prosecution authorities attempted to conceal investigation documents from the applicants.³¹

82. Since multiple disappearance investigations were joined with a single investigation on terror organization membership, which was subject to confidentiality restriction, the applicants could not receive any information on the developments related to the fate of their disappeared relatives. However, disappearance allegations are not directly related to an on-going terrorism investigation. Moreover, when it is alleged that there has been a grave violation of human rights, it is evident that such confidentiality restriction has to be removed if it will cause continuation of violation or at least the disappearance investigation has to be separated from the main investigation file. The applicants complain that despite their persistent requests, they were not allowed to access the file by the prosecutor’s office and neither them nor their lawyers were informed on the steps taken and the developments that occurred. Furthermore, the applicants’ requests from the prosecutor’s office to secure evidence were not evaluated, dismissed or responded. As underlined in the ECtHR’s *Oğur v.*

²³ *Benzer and Others v. Turkey*, Application no. 23502/06 , 12/11/2013, §193.

²⁴ *Dimitrova and Others v. Bulgaria*, Application no. 44862/04, 27/01/2011, §87.

²⁵ *Kolevi v. Bulgaria*, Application no. 1108/02, 05/11/2009, §39.

²⁶ *Oğur v. Turkey*, Application no. 21594/93, 20/05/1999, §92.

²⁷ *Betayev and Betayeva v. Russia*, Application no. 37315/03, 29/05/2008, §88.

²⁸ *Mezhiyeva v. Russia*, Application no. 44297/06, 16/04/2015, §75.

²⁹ *Güleç v. Turkey*, Application no. 21593/93, 27/07/1998, §82.

³⁰ *Slimani v. France*, Application no. 57671/00 , 27/07/2004, §47.

³¹ *Benzer and Others v. Turkey*, Application no. 23502/06 , 12/11/2013, §193.



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Turkey judgment, the fact that the victim's relatives were not able to access the investigation or case file, led to violation of the obligation to conduct an effective investigation.

B. The accused's right to communicate with his counsel out of a hearing of a third person

83. The right of any accused person to communicate with his counsel without the risk of being overheard by a third party is one of the basic requirements of a fair trial.³² This is how ECtHR interpreted the right stipulated in Article 6(3)(c) of the European Convention on Human Rights providing that any person charged with a criminal offense is entitled to defend himself through legal assistance of his choosing.³³ In *Brennan v. United Kingdom* judgment, the ECtHR concluded that if a counsel were unable to confer with his client and receive confidential instructions from him without surveillance, his assistance would lose much of its usefulness.³⁴

84. As regards the attorney-client privilege, European Council Standard Minimum Rules on the Treatment of Prisoners, Article 93 provides as follows: "Untried prisoners shall be entitled, as soon as imprisoned, to choose a legal representative, or shall be allowed to apply for free legal aid where such aid is available and to receive visits from that legal adviser with a view to their defense and to prepare and hand to the legal adviser, and to receive, confidential instructions. On request, they shall be given all necessary facilities for this purpose. In particular, they shall be given the free assistance of an interpreter for all essential contacts with the administration and for their defense. Interviews between prisoners and their legal advisers may be within sight but not within hearing, either direct or indirect, of the police or institution staff."³⁵

85. According to Article 5 of the Basic Principles on the Role of Lawyers, government shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

86. UN Human Rights Council has stated that the right to access a lawyer must be provided from the beginning of detention.³⁶ UN Special Rapporteur on Torture underlines that access to counsel must be provided immediately after the moment of deprivation of liberty and unequivocally before any questioning by authorities.³⁷ The accused's right to consult his lawyer immediately is also recognized by the UN Human Rights Committee.³⁸

87. According to UN Basic Principles on the Role of Lawyers, consultation between the lawyer and his client cannot be heard, and they should take place without delay, interception or censorship and in full confidentiality.³⁹ According to Article 61/1 of the UN Standard

³² *Castravet v. Moldova*, Application no. 23393/05, 13.03.2007, §49, *Sakhnovskiy v. Russia*, [BD], Application no. 21272/03, 02.11.2010, §97.

³³ *Brennan v. United Kingdom*, Application no. 39846/98, 16.10.2001, §58

³⁴ *Brennan v. United Kingdom*, Application no. 39846/98, 16.10.2001, §58

³⁵ European Council Standard Minimum Rules on the Treatment of Prisoners, Recommendation of the Committee of Ministers No. R (87) 3, Article 93. See. <https://rm.coe.int/16804f856c>

³⁶ UN Human Rights Council Resolution, 24.03.2016, A/HRC/RES/31/31, §7.

³⁷ Special Rapporteur on Torture Juan E. Méndez's report, UN Doc A/71/298, §69.

³⁸ General Comments No. 32, Un Human Rights Committee, CCPR/C/GC/32, §34

³⁹ Basic Principles on Role of Lawyers, Principle 8; and Nelson Mandela Rules 61.1.



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Minimum Rules on Treatment of Prisoners⁴⁰ or so-called Nelson Mandela Rules, prisoners should be provided with adequate opportunity to communicate and consult with a legal adviser of their choosing in full confidentiality, and this consultation cannot be within hearing of the prison staff.

88. UN Human Rights Committee's General Comments on Article 14 of the UN Convention on Civil and Political Rights, which governs right to a fair trial, indicate that the lawyer should have the power to consult and confer with the suspect in a setting, where confidentiality is absolutely maintained.⁴¹ The Convention is considered to have been violated if confidentiality cannot be maintained.⁴² In *Öcalan v. Turkey* judgment, the ECtHR Grand Chamber reminded European standards on this matter and noted that consultation of the suspect with his lawyer within hearing of others will make such assistance lose much of its usefulness. When the government objected that this was done for the safety of the subject, the court replied that this risk could easily be avoided if the consultation is made within the sight but out of hearing of others.⁴³ Under these conditions, the right of the suspects to confer and consult with their lawyers out of hearing of others cannot be restricted, and it is possible to consider this right as an absolute right.

89. Detainees should be able to confer and consult with their lawyers without censorship and interception. Places of detention should provide an opportunity to consult the legal adviser in confidentiality. In a case, where the detainee and his lawyer had to yell to communicate, ECtHR decided that detention was unlawful because it breached the right to liberty and security.⁴⁴ In the event the lawyer of the detainee holds a genuine belief on reasonable grounds that their discussion was being listened to will hamper the detainee's right to effectively challenge the lawfulness of this detention.⁴⁵

90. Four of the disappeared relatives of the six applicants appeared on the same date, and the rest appeared on different dates. Relatives of the applicants, who have appeared insistently, stated that they did not want to confer with the lawyers their families brought. Yılmaz told his lawyer, to whom he had given a power of attorney in the past, that he did not want to confer with him. Zeybek, Kaya, Ugan, and Irmak stated that they were receiving legal assistance from two lawyers that they met as a coincidence at the Anti-Terrorism Department, where they were detained. Later, the families stated that they did not talk to these lawyers. The families also stated that there was always a police officer when they were visiting their relatives. There is no information, which indicates that six people, claimed to have disappeared could confer with and consult their lawyers when in detention, in full confidentiality in compliance with international standards. On the contrary, there are serious suspicions that they did not have the opportunity to confer with and consult a lawyer of their choosing out of hearing of others.

91. When members of the Human Rights Center of the Ankara Bar Association were visiting Salim Zeybek at Sincan Type F Closed Penitentiary Institution, their visits were recorded by a camera, and during their visit, a guardian was present, and listened to them. The

⁴⁰ Nelson Mandela Rules, Rule 61.1, See. http://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

⁴¹ UN Human Rights Committee, General Comment No. 32, Article 14, *Right to equal treatment before courts and fair trial*, 23.08.2007, CCPR/C/GC/32, §34.

⁴² *Nazira Sirageva v. Uzbekistan*, No 907/2000 (12 December 1999)

⁴³ *Öcalan v. Turkey* (BD), no. 46221/99, 12.5.2005, §133.

⁴⁴ *Modarca v. Moldova*, 10.05.2007, Application no. 14437/05, §51.

⁴⁵ *Castravet v. Moldova*, Application no. 23393/05, 13 June 2005, §49-50



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minutes of meeting, which contained statements of Zeybek, were taken from the members by force. When it is taken into account that lawyers selected by the applicants were not allowed to communicate with the disappeared persons, and lawyers, who participated when disappeared persons were testifying during their detention, were not consulted, it is not certain whether individuals, who are charged with criminal offenses and constitute the subject matter of applications, could have exercised their right to confer with and consult their lawyers in confidentiality.

92. Particularly when the subject matter of the complaints is taken into account, it is considered that not allowing relevant individuals to meet lawyers sent by the Bar Association out of hearing of others is a clear violation of international standards.

C. Right to defend himself through legal assistance of his own choosing

93. The accused's right to defend himself through legal assistance of his own choosing is enshrined in Article 6(3)(c) of the European Convention on Human Rights, Article 14(3)(d) of the UN International Convention on Civil and Political Rights, and Principle 5 of UN Basic Principles of Role of Lawyers.

94. ECtHR frequently reminded that authorities must respect the accused's choosing of his legal assistance.⁴⁶ If the accused's right to a free choice of counsel is restricted, which in turn has an adverse effect on his defense; this is a violation of right to a fair trial.⁴⁷ The right to a free choice of counsel right from the beginning of the proceedings is protected under the right to access a lawyer. If a person charged with a criminal offence is deprived of his right to have recourse to legal assistance of his choosing, the rights of the defense may be adversely affected to such an extent as to undermine overall fairness of the proceedings.⁴⁸

95. ECtHR held in its *Dvorski v. Croatia* judgment that Article 6 of the Convention protecting right to a fair trial does not prevent a person from waiving on his free will of the guarantees of a fair trial. However, such a waiver of fair trial guarantees on free will must be established in an unequivocal manner and attended by minimum safeguards commensurate with its importance.⁴⁹ This means that it is possible for a person to waive on his own will of his right to a legal assistance of his own choosing, but there should be no uncertainty as to whether such waiver has been made willingly. If the person has waived of this right under duress, in circumstances where he cannot express his own will freely, this waiver must be questioned and enquired.

96. In its *Martin v. Estonia* judgment ECtHR held that the applicant's wish to replace counsel of his own (his parents') choosing could not be considered genuine given the applicant's young age and seriousness of charges.⁵⁰ In this judgment, ECtHR considered the counsel chosen by the applicant's parents, as the counsel chosen by the applicant. The Court concluded that the authorities' failure to make use of the formal procedure for the removal of counsel in case there were doubts about a conflict of interests on his part and their reliance, instead, on informal talks with the applicant, the applicant's apparent instability, which

⁴⁶ *Meftah and Others v. France* [BD], Application no. 32911/96, 26.07.2002, §45.

⁴⁷ *Croissant v. Germany*, 25.09.1992, §31; *Meftah and Others*, 26.07.2002, Application no. 32911/96, 35237/97 34595/97, §46-47; *Vitan v. Romania*, Application no. 42084/02, 25.03.2008, §53-55; *Zagorodniy v. Ukraine*, Application no. 27004/06, 24.11.2011, §55.

⁴⁸ *Dvorski v. Croatia*, Application no. 25703/11, 20.10.2015, §78.

⁴⁹ *Dvorski v. Croatia*, Application no. 25703/11, 20.10.2015, §100, *Sejdovic v. Italy* [BD], Application no. 56581/00, 01.03.2006, §86, *Poitrimol v. France*, Application no. 56581/00, 23.11.1993, §31.

⁵⁰ *Martin v. Estonia* Application no. 35985/09, 30.05.2013, §93



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prompted his subsequent psychiatric and psychological expert examination on two occasions, therefore there was an infringement of the applicant's right to defend himself through legal assistance of his own choosing.

97. In *Simeonovi v. Bulgaria*⁵¹ and *Pishchalnikov v. Russia*⁵² judgments, the ECtHR concluded that waiver of legal assistance can only be voluntarily which requires knowledge of consequences of such waiver and waiver can only be in compliance with the Convention if these consequences are accepted. According to the Court, a waiver of a right covered by the right to a fair trial and made knowingly should not conflict with an important public interest.⁵³ In *İbrahim and Others v. United Kingdom* judgment⁵⁴ the ECtHR underlined that knowing and intelligent waiver standard⁵⁵ is inherent in the privilege against self-incrimination, the right to silence and the right to legal assistance.

98. It has been observed that disappeared persons that constitute the subject matter of application were found at a police station 5 to 8 months later, lost a significant amount of weight, their skin color faded and seemed very unsettled. Applicants stated that their relatives who were found, stated that they should immediately withdraw their applications, and they were taking assistance from a lawyer they first saw at the police headquarters, and therefore they did not want legal assistance from lawyers, who represented them in the past, or from other lawyers.

99. These coincidental developments in choosing of counsel seem to conflict with what is told by the law enforcement officers, it is considered that potential victims could not exercise their right to have legal assistance of their own choosing. Given that the communication between applicants and their relatives is recorded and guardians accompanied their meeting makes it more likely that these persons, who were found months after their disappearance were under duress and could not make statements on their free will. Moreover, this does not only apply to one applicant, it has happened exactly in the same way for six different individuals. The fact that the prosecutor's office has not made any enquiries into this incident, which was also covered by press, and has not started any proceedings against perpetrators, left these individuals, who were probably under duress, completely vulnerable.

100. It cannot be known for certain whether these individuals, who had disappeared for a long period of time, were subject to torture and ill treatment. However, the possibility of existence of undue pressure on individuals whose reasons of disappearance and the time they disappeared under life threatening conditions have not been explained yet, raises doubts as to whether they decided to change counsels chosen by themselves (their families) voluntarily. This doubt over whether the waiver was voluntary, was the justification of the violation judgment made against Estonia in *Martin v. Estonia* ruling.⁵⁶

101. When there is uncertainty as to whether the waiver was made voluntarily, it is also possible to consider that those whose whereabouts were finally determined, did not actually choose a counsel with their free will and had to accept the counsel shown by law enforcement officers to them. In fact, what makes this possibility even more stronger is the fact that law enforcement officers and applicants stated that counsels who participated when the

⁵¹ *Simeonovi v. Bulgaria*, Application no. 21980/04, 12.05.2017, §115.

⁵² *Pishchalnikov v. Russia*, Application no. 7025/04, 24.09.2009, §77.

⁵³ *Håkansson and Sturesson v. Sweden*, Application no. 11855/85, 21.02.1990, §66.

⁵⁴ *Ibrahim et al v. United Kingdom [BD]*, Application no. 50541/08, 13/09/2016, §272.

⁵⁵ *Vizgirda v. Slovenia*, Application no. 59868/08, 28/08/2018, §87.

⁵⁶ *Martin v. Estonia*, Application no. 35985/09, 30.05.2013, §93.



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individuals were making their statements in detention, were there as a coincidence. It is not known whether the individuals, who constitute the subject matter of applications, replaced their counsels willingly and knowing consequences thereof that will meet standard of knowing and intelligent waiver. This uncertainty may lead to violation of right to defend him through legal assistance of his choosing. This possibility has to be inquired extensively and if relevant requirements are met, perpetrators should be persecuted.

D. Right to be brought promptly before a judge

102. Bringing anyone arrested or detained promptly before a judge is mandatory to determine ill treatment and reducing arbitrary intervention into right to freedom.⁵⁷ According to Article (9)(3) of the UN Civil and Political Rights Convention anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.

103. Right to be promptly brought before a judge is also protected under Article 5(3) of the European Convention on Human Rights,⁵⁸ Article 10 of the 1992 Declaration on Protection of All Persons from Enforced Disappearance⁵⁹, Articles 11 and 37 of 1998 Body of Principles for the Protection of All Persons under Any form of Detention of Imprisonment⁶⁰, Article 59(2) of the Rome Statute of the International Criminal Court⁶¹, and Article 7(5) of the 1969 American Convention of Human Rights⁶²

104. According to the ECtHR, at first glance, any period of time exceeding four days is too long for the requirement of promptness.⁶³ Any delay in bringing any detainee before a judge should be justified with special challenges or exceptional conditions. Otherwise, even periods shorter than four days may violate requirement of promptness.⁶⁴ According to Article 5 (3) of

⁵⁷ McKay v. United Kingdom [BD], 03.10.2006, Application no. 543/03, §33.

⁵⁸ ECHR Article 5 (3): Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

⁵⁹ 1992 UN Declaration on the Protection of all persons from Enforced Disappearance Article 10. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

⁶⁰ 1988 Body of Principles for the Protection of All Persons under Any form of Detention of Imprisonment 1988 Principle 11: "A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.". Principle 37: "A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest.. <https://www.ombudsman.gov.tr/contents/files/528b7--Herhangi-Bir-Bicimde-Tutulan-veya-Hapsedilen-Kisilerin-Korunmasi-Icin-Prensipler-Butunu.pdf>

⁶¹ 1998 Rome Statute of the International Criminal Court Article 59/2: A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that: (a) The warrant applies to that person; (b) The person has been arrested in accordance with the proper process; and (c) The person's rights have been respected.

⁶² 1969 American Convention on Human Rights Article 7(5): "Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power."

⁶³ Oral and Atabay v. Turkey, 23.06.2009, Application no. 39686/02, §43; McKay vs. United Kingdom [BD], 03.10.2006, Application no. 543/03, §47; Năstase-Silivestru v. Romania, 04.10.2007, Application no. 74785/01, §32

⁶⁴ Gutsanovi v. Bulgaria, 15.10.2013, Application no. 34529/10, §154-59; İpek et al v. Turkey, 03.02.2009, Application no. 17019/02 Application no. 30070/02, §36-37; Kandzhov v. Bulgaria, 06.11.2008, Application no. 68294/01, §66.



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the ECHR, there is no exception to right to be promptly brought before a judge after being arrested or detained.⁶⁵

105. A judge should automatically control detention, without requiring the detainee to lodge an application.⁶⁶ Before a decision is made, the person brought before a judge should be heard.⁶⁷ Although it is not an obligation to make available a lawyer during a hearing, preventing participation of a lawyer in a hearing may have an adverse effect on the defense of the applicant.⁶⁸

106. Article 13 of the Law No. 7145 added Provisional Article 19 to the Anti-Terrorism Law No. 3713. Accordingly: “As regards offenses listed in Sections Four, Five, Six and Seven in Chapter Four, Book Two of the Turkish Criminal Code No. 5237 and the offenses subject to Anti-Terrorism law No. 3713 or offenses committed as part of a criminal organization:

a) Time of detention may not be more than forty eight hours starting from the time of arrest, and four days in offenses committed collectively, excluding the time spent to send the detainee to the judge or court that is nearest to the place of arrest. The time of detention may be extended maximum two times due to difficulty in securing evidence or complexity of the case, provided that the time periods set forth in the first sentence are complied with. The decision to extend detention shall be made by a judge upon request of the public prosecutor, and the judge will hear the detained person. This provision shall apply to any person, who is caught relying on an arrest warrant.”

107. According to this provision, which is pending before the Constitutional Court on unconstitutionality claims, “extended detention time” is applied in our law. Accordingly, the detainee has to be brought before a judge at the end of the fourth day, but remains in detention. Although conformity of this provision to the Constitution and ECHR is disputable, it is known that it is applied extensively. Moreover, there is no example, where the prosecutor office has requested an extension, and the judge denied this request.

108. This new provision was also applied to these six individuals, for whom applications were made. However, it is not certain whether these individuals that constitute the subject matter of applications, were brought before a judge during the time they remained in detention for 12 days after being found at different police stations. Applicants explained that they waited at the courthouse on the days the criminal courts of peace decided to extend the detention for 4 days, but could not see their relatives, and they were not informed which criminal court of peace would make the decision. As such, it is not known why detention period of these individuals were extended. Although participation of applicants - who are relatives of the individuals that are alleged to be victims of enforced disappearance - in the investigation, is a part of the state’s obligation to conduct an effective investigation, the violation of this obligation, led to uncertainty whether the relevant individuals had benefited from the right to be promptly brought before a judge. The decisions of the criminal courts of peace to extend detention were not given to applicants. Therefore, the reasons for extending

⁶⁵ Bergmann v. Estonia, 29.05.2008, Application no. 38241/04, §45.

⁶⁶ McKay v. United Kingdom [BD], 03.10.2006, Application no. 543/03, §34; Varga v. Romania, 01.04.2008, 73957/01, §52; Viorel Burzo v. Romania, 30.06.2009, Application no. 75109/01, 12639/02, §107.

⁶⁷ Schiesser v. Switzerland, Application no. 7710/76, 04/12/1979, §31; De Jong, Baljet and Van den Brink v. Netherlands, Application no.8 805/79 8806/79 9242/81, 22/05/1984 §51; Nikolova v. Bulgaria [BD], Application no. 31195/96, 25/03/1999, §49; Aquilina v. Malta [BD], Application no. 25642/94, 29/04/1999, §50.

⁶⁸ Schiesser v. Switzerland, Application no. 7710/76, 04/12/1979, §36, Lebedev v. Russia, 25.07.2013, Application no. 11082/06, §83-91.



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detention are not known, and they did not have the opportunity to object to extension decisions.

E. Right to access of a person deprived of his liberty to access a physician

109. According to standards set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) under the European Convention on Preventing Torture and Inhuman or Degrading Treatment or Punishment, persons in police custody should have a right of access to a physician as soon as deprivation of liberty.⁶⁹ The right of access to a physician should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his own choosing in addition to any medical examination carried out by a physician called by the police. In a recent report, the UN Special Rapporteur on Torture referred to right of persons deprived of their liberty, to access to a physician of their own choosing as part of guarantees against torture and ill treatment.

110. In its *Aksoy v. Turkey* judgment and many other subsequent judgments the ECtHR concluded that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the causing of the injury. The right of access to a physician before and after detention is important because of the role it plays in preventing torture.⁷⁰

111. Medical examination of an individual under police custody should not be made in the presence of police officers, and the police officers should not hear the conversations during medical examination, or see the examination. The statements of the person under custody made during medical examination, and the findings of the physician, should be recorded by the physician.⁷¹

112. It is not known whether a physician examined these individuals, after they were taken into police custody. It is not known whether a law enforcement officer was present during medical examination, if an independent physician made such an examination. Even if medical examinations were made, and the relevant physicians issued medical reports, such reports were not given to the applicants. Therefore, it has not been possible to raise an objection against such report. Due to these reasons, it is still not certain if and under which conditions individuals deprived of their liberty had the opportunity to exercise their right of access to a physician.

III. ASSESSMENT :

113. Under the light of above listed duties and principles, it has been determined that in present cases, the investigations into enforced disappearance allegations were not open for public scrutiny, and relatives of possible victims could not participate. It has also been determined that disappearances, which constitute the subject matter of applications, were not duly investigated to prevent creating an impression that public officers allow or tolerate any unlawful act.

Enforced Disappearance Allegations

⁶⁹European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Developments concerning CPT standards in respect of police custody, CPT/Inf(2002)15, <https://rm.coe.int/16806cd1eb>

⁷⁰ *Aksoy v. Turkey*, Application no. 21987/93, 18/12/1996.

⁷¹ *Aksoy v. Turkey*, Application no. 21987/93, 18/12/1996, §38.



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114. Since whereabouts of Yusuf Bilge Tunç, the husband of applicant Nuray Tunç is still not known, an investigation into complaints of this person should be conducted without any delay, and in compliance with international standards.

115. In addition to Nuray Tunç's application, the state's obligation to provide an investigation has also not ended for the other applications. **Allegations of enforced disappearance, torture and ill treatment should be promptly investigated in compliance with the Constitution and international standards, and perpetrators who acted intentionally or negligently should be punished in proportion with their acts.**

Right to access a Lawyer and a Physician and to be brought before a Judge

116. The individuals, for whom applications were made, were not allowed to communicate with lawyers chosen by their families, and lawyers, who are members of the Human Rights Center could only communicate with Salim Zeybek. Prison officers were present during the visit at Sincan No 1. Type F Closed Penitentiary Institution, and were able to hear the conversation. There is no information, which indicates that these individuals had the opportunity to communicate with their lawyers, chosen by law enforcement officers, in full confidentiality whether in detention or thereafter. Therefore, it is concluded that these individuals charged with criminal offenses were allowed to benefit from their right to communicate with their lawyers in full confidentiality.

117. There are uncertainties as to whether the individuals - for whom applications were made - voluntarily waived of their right to receive legal assistance from a lawyer of their own choosing. It is not known whether these individuals changed the lawyers their families chose, willingly, and knowing consequences thereof. Since there is doubt over whether the waiver is voluntary, it is concluded that the right of these individuals to receive legal assistance from a lawyer of their own choosing was violated. **The relatives of the applicants should immediately be allowed to exercise their right to communicate with their lawyers in full confidentiality.**

118. It is not known whether the individuals - for whom applications were made - had been able to exercise their right to be promptly brought before a judge. Applicants stated that on the fourth and eight days of detention on which their relatives had to be brought before a court to decide on extension of detention, they waited at the courthouse all day long, but their relatives were not brought to the court. **It has to be clarified whether relatives of the applicants, who remained in detention for 12 days, were brought before a judge during this period of time.**

119. It is not known whether the individuals - for whom applications were made - had been able to exercise their right to access a physician. Even if there are medical reports issued after examination of these individuals, such reports were not given to their relatives or lawyers, and no opportunity was given to raise an objection.

120. Six out of seven disappeared person charged with being a FETÖ/PDY member, appeared at police headquarters months later. **Investigation into enforced disappearance should be separated from the investigation where these individuals are suspects, and information, which would not jeopardize the investigation into disappearance cases, should be shared with the public, and families should be informed on the progress of the investigation, and allowed to participate in the investigation.**



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Conclusion: Based on above grounds, it has been found out that the investigation conducted into allegations of enforced disappearance of 7 individuals, for whom applications were made, and their subsequent detention process do not comply with international standards of human rights law. It is beyond purview of the Human Rights Center to further investigate this finding. However, given the gravity of alleged violations, it has been concluded to submit this report together with its annexes to the Management of Ankara Bar Association to be forwarded to the Ankara Chief Public Prosecutor's Office to pursue a thorough investigation.

Ankara Bar Association, Human Rights Center
Monitoring Sub-Committee

Annex 2

ANNEX 2: STATE SPONSORED DOMESTIC ABDUCTIONS

1. MUSTAFA YILMAZ³⁴⁸

- Mustafa Yilmaz was abducted on 19 February 2019 and resurfaced on 22 October 2019 after having disappeared for 245 days (8 months).
- Mustafa Yilmaz, a physiotherapist in a private healthcare organization, was abducted on his way to work by unknown people. As witnessed by camera footage, he was forced into a black Transporter van and taken away.
- At the moment of his abduction, Mustafa Yilmaz was awaiting the appeal procedure against his conviction by the 32nd High Criminal Court of Ankara to a prison sentence of 6 years and 3 months on charges of being a member of FETÖ/PDY.
- On 22 October 2019 at 23.30 h, the police called Mrs. Yilmaz to inform her that her husband resurfaced at the Karapürçek Police Station.
- Immediately after his arrest, Mustafa Yilmaz was put in solitary confinement.³⁴⁹ Moreover, visits of Mrs. Yilmaz to her husband in prison have always taken place in the presence of prison guards and were recorded audio-visually. During these visits Mustafa Yilmaz was very reluctant to speak about his abduction and period of disappearance. Mrs. Yilmaz testified: *“Every time I have tried to ask about what happened, my husband would become tense and from his physical reactions I understood that he did not want to speak about it. He told me to withdraw my complaints, but he accepts I will not do that.”*³⁵⁰
- The physical health of Mustafa Yilmaz had deteriorated due to the detention: He had lost a significant amount of weight and looked very pale.³⁵¹
- No effective investigation into the abduction and enforced disappearance of Mustafa Yilmaz was launched:
 - The Office on Missing and Wanted Persons at the Police Department reported that they had camera footage relevant to the abduction. This footage was, however, not included in the investigation file. Similarly, no investigation was conducted into metro camera recordings, city surveillance camera recordings, HTS, Base, Signal and GPRS recordings.
 - The Chief Public Prosecutor’s Office in Ankara decided on 9 March 2019 that there was no need to further investigate this case since he considered there was

³⁴⁸ Ankara Bar Association Human Rights Center, Joint Monitoring Report, 1 July 2019, (https://turkeytribunal.com/wp-content/uploads/2020/06/Enforced_Disappearances_JointMonitoringReport_AnkaraBar.pdf).

³⁴⁹ Bold App, “Abductee turns up in police custody after nine months of disappearance, 25 October 2019, (<https://boldapp.de/en/2019/10/25/abductee-turns-up-in-police-custody-after-nine-months-of-disappearance/amp/>).

³⁵⁰ Human Rights Watch, “Turkey: Enforced Disappearances, Torture”, 29 April 2020, (<https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture>).

³⁵¹ Deutsche Welle (DW), “Turkey: The case of the vanished civil servants”, 27 October 2019, (<https://www.dw.com/en/turkey-the-case-of-the-vanished-civil-servants/a-51008072>).

no evidence demonstrating that Mustafa Yılmaz had been abducted or unlawfully deprived of his liberty (decision no. 2019/27773 in case no. 2019/32930).

- Ms. Yılmaz filed an objection with the 5th Criminal Court of Peace of Ankara, which overturned the decision of the Chief Public Prosecutor's Office on 30 April 2019. Still, insisting on an effective investigation yielded no results. In investigation no. 2019/90003, the Chief Public Prosecutor's Office in Ankara decided once more that there was no need to prosecute because the missing person was not a minor and left home on his own will.
- The requests of Mrs. Yılmaz to look into the metro camera recordings, the city surveillance camera recordings, HTS, Base, Signal and GPRS recordings were all dismissed and so was her request of an injunction to the Constitutional Court on 30 April 2019 (case no. 2019/13374).

2. SALIM ZEYBEK³⁵²

- Salim Zeybek was abducted on 21 February 2019 and resurfaced on 28 July 2019 after having disappeared for 157 days (5 months).
- Salim Zeybek, a computer technician, was being driven with his wife Fatma Betül Zeybek and their children on the Edirne highway towards the Havsa toll stations when a Dacia Duster cut them off and tried to stop them. Their driver did not stop but quickly made a U-turn. He hit cars coming from the opposite direction, damaging their car heavily to the point that the driver told them to "run away". Mr. Zeybek, his wife and children started to run without having any idea of what was going on. Shots were fired and armed individuals in plain clothes introduced themselves as police officers.³⁵³ They made Salim Zeybek lay on the ground and put him in a car which drove him to an unknown location. His wife and their children were put in another car by masked individuals and driven back to their home in Ankara.
- It was consequently discovered that the Chief Public Prosecutor's Office in Ankara had issued an arrest warrant against Salim Zeybek in the investigation file no. 2017/69394 on allegations of being a FETO/PDY member.
- On 28 July 2019, the police reported that Salim Zeybek was in detention at the Anti-Terrorism Department in Ankara. It was claimed that Salim Zeybek had been caught during a criminal record check while walking to the police station to surrender.
- Mrs. Zeybek stated that after her husband resurfaced, she was not allowed to meet the lawyers he had allegedly chosen at the Anti-Terrorism Department in Ankara. Her

³⁵² Ankara Bar Association Human Rights Center, Joint Monitoring Report, 1 July 2019, (https://turkeytribunal.com/wp-content/uploads/2020/06/Enforced_Disappearances_JointMonitoringReport_AnkaraBar.pdf).

³⁵³ IPA News, "Abductions on the rise in Turkey as the latest, horrific one see a father brutally kidnapped in front of his kids", 4 March 2019, (<https://ipa.news/2019/03/04/abductions-on-the-rise-in-turkey-as-the-latest-horrific-one-see-a-father-brutally-kidnapped-in-front-of-his-kids/>).

requests to have her husband examined by an independent physician were denied (without the authorities willing providing a written refusal).³⁵⁴ When visiting her husband at the Anti-Terrorism Department, Mrs. Zeybek was always accompanied by police officers and when she asked her husband about what had happened in the past months the police officers would intervene, not letting her husband discuss the abduction. Salim Zeybek's physical state had deteriorated as well: he was not wearing his eyeglasses as he usually did, he had lost considerable weight and was unable to maintain his balance while sitting. Moreover, after having been arrested on 28 July 2019, Salim Zeybek remained in detention for 12 days without being brought before a judge to decide on the extension of his detention. Salim Zeybek told his wife not to wait for him in front of the courthouse and refused to meet the counsel she selected.

- No effective investigation into the abduction and enforced disappearance of Salim Zeybek was launched:
 - The Edirne Provincial Directorate of Security, the Edirne Governor's Office, the Provincial Gendarmerie Command and the General Directorate of Security all denied that an abduction and consequent disappearance had taken place.
 - On 25 February 2019, Mrs. Zeybek filed a criminal complaint with the Ankara Chief Public Prosecutor's Office alleging that the perpetrators committed offences of deprivation of liberty and armed threat. On that 25 February 2019, she testified before the Public Prosecutor's Office on Duty in the Ankara Courthouse. She gave the Prosecutor's Office the license plate number of the car that brought her and their children to Ankara with the request to inform her on its owner and driver. She also requested to verify with emergency call centres whether an emergency call was made on a 'car driving in the opposite direction' between 18.00 and 21.00 on 21 February 2019. As well as to investigate all the reports on accidents that occurred on that route on the given date and to determine public officers that emitted signals at base stations on the same date and at the same time. However, none of these requests were met. Although Mrs. Zeybek stated that she wanted to testify before the prosecutor conducting the relevant investigation, a consultation of the relevant documents has shown that she has not been asked to testify until today.
 - On 5 April 2019, Mrs. Zeybek filed an application with the Constitutional Court requesting an injunction. This request was rejected on 17 April 2019.
 - Later on Mrs. Zeybek withdrew all her complaints submitted to the Ankara Bar Association and the Human Rights Association asking for an investigation into her husband's whereabouts. Observers consider she was pressurised into doing so by state officials.³⁵⁵

354 The Arrested Lawyers Initiative, "Suspensions and concerns continue about the four victims of enforced disappearance as the Ankara Court has decided to remand them", 10 August 2019, (<https://arrestedlawyers.org/2019/08/10/suspensions-and-concerns-continue-about-the-four-victims-of-enforced-disappearance/>).

355 Nordic Monitor, "Evidence piles up to indicate Turkish intelligence recruited Gülen disciple to frame the group for coup attempt", 29 April 2021,

3. OZGUR KAYA³⁵⁶

- Özgür Kaya was abducted on 13 February 2019 and resurfaced on 28 July 2019 after having disappeared for 165 days / 5 months.
- Özgür Kaya, a teacher in a private institution connected to the Gülen movement, was abducted by a heavily armed group of almost 40 people wearing vests with the inscription of TEM (anti-terrorism units). They introduced themselves as police officers and provided an investigation number of the Chief Public Prosecutor's Office in Ankara. Many neighbours witnessed his abduction.
- Özgür Kaya was the object of an investigation on suspicion of being a FETÖ/PDY member. This investigation led to a search of his house in September 2016. Subsequently, Özgür Kaya went temporarily into hiding. Mrs. Kaya herself was shortly before his abduction taken into custody and being asked about the whereabouts of her husband.
- On 28 July 2019, the police informed Mrs. Kaya that her husband was detained at the Anti-Terrorism Department in Ankara, as he had allegedly been caught during a criminal record check when he was walking to the police station to surrender.
- Mrs. Kaya stated that she went to visit him for almost half an hour at the Anti-Terrorism Department in Ankara but that she was always in the company of police officers. She noticed that her husband had lost much weight. He asked her to withdraw her applications, to shut down her social media accounts and not to meet deputies in order to lobby for his liberation.³⁵⁷ After having re-appeared in the Anti-Terrorism Department in Ankara, Özgür Kaya remained in detention for 12 days without being brought before a judge. Özgür Kaya did not want to meet the lawyer Mrs. Kaya paid for him. Özgür Kaya told her he had found a lawyer by coincidence at the police station. However, this lawyer never contacted Mrs. Kaya. The request of Mrs. Kaya to have her husband medically examined by an independent physician was denied.³⁵⁸
- No effective investigation into the abduction and enforced disappearance of Özgür Kaya was launched:
 - Mrs. Kaya regularly inquired at the police about the whereabouts of her husband. She was consistently told that her husband was not in detention but had fled abroad.

(<https://nordicmonitor.com/2021/04/evidence-piles-up-to-suggest-turkish-intelligence-recruited-gulens-disciple-to-frame-the-group-for-coup-bid/>).

³⁵⁶ Ankara Bar Association Human Rights Center, Joint Monitoring Report, 1 July 2019, (https://turkeytribunal.com/wp-content/uploads/2020/06/Enforced_Disappearances_JointMonitoringReport_AnkaraBar.pdf).

³⁵⁷ Bold Medya, "Six special captives of Erdogan regime", 12 November 2019, (<https://boldmedya.com/en/2019/11/12/six-special-captives-of-erdogan-regime/>).

³⁵⁸ The Arrested Lawyers Initiative, "Suspensions and concerns continue about the four victims of enforced disappearance as the Ankara Court has decided to remand them", 10 August 2019, (<https://arrestedlawyers.org/2019/08/10/suspensions-and-concerns-continue-about-the-four-victims-of-enforced-disappearance/>).

- On 16 February 2019, Mrs. Kaya filed a criminal complaint to the Chief Public Prosecutor's Office in Ankara in order to launch an investigation into the abduction of her husband (hereinafter "initial investigation").
- Mrs. Kaya also sent letters to the Ministry of Interior and to the Turkish Parliament Human Rights Investigation Commission. Deputies Sezgin Tanrıkulu and Ömer Faruk Gergerlioglu submitted written questions to the Turkish Parliament Human Rights Investigation Commission.
- On 27 February 2019, Mrs. Kaya requested the Chief Public Prosecutor's Office in Ankara via her lawyer to collect the testimonies of the eyewitnesses and the footage of the relevant camera recordings. The Chief Public Prosecutor's Office in Ankara issued a written order to the police asking the police to make certain enquiries, but without any response. This request was repeated on 15 March 2019 and 27 March 2019.
- On 26 February 2019, Mrs. Kaya filed an individual application to the Constitutional Court, seeking an injunction. Her application was, however, dismissed on 14 March 2019.
- On 18 February 2019, Mrs. Kaya applied to CIMER (hereinafter "second investigation"). Consequently, her statement was taken on 12 March 2019 at the Şentepe Şehit Cevdet Yesilay Police Station.
- On 24 May 2019, the Legal Affairs Unit in Ankara Governor's Office wrote letters to the Ankara Provincial Security Directorate and the Public Prosecutor's Office in Ankara in response to the application filed by the Mrs. Kaya on 21 May 2019. This Unit requested these authorities to make the necessary enquiries and to inform Ankara Governor's Office on the matter so it could be discussed at the Provincial Human Rights Board. However, the initial investigation file was joined with the second investigation, which is still conducted by the Chief Public Prosecutor's Office in Ankara where Mr. Kaya is a suspect. Since there is a confidentiality order in this second investigation file, Mrs. Kaya has not been able to access neither of the two files. Neither has the Chief Public Prosecutor's Office in Ankara informed Mrs. Kaya.

4. GOKHAN TURKMEN³⁵⁹

- Gökhan Türkmen was abducted on 7 February 2019 and resurfaced on 5 November 2019 after having disappeared for 271 days / 9 months.
- Gökhan Türkmen was a former employee of the Agricultural and Rural Development Support Authority. His employment contract was terminated on 21 July 2016 on allegations that he was a FETO/PYD member. He was abducted on 7 February 2019 when he left his home without coming back.
- Gökhan Türkmen was the object of an arrest warrant in the context of an investigation on him being a FETO/PYD member. In August 2017, police officers from the Special Forces Department searched Gökhan Türkmen's house and notified his wife, Zehra Genç Türkmen, that there was an arrest warrant against Mr Türkmen, who was not at home during the search. Mr. Türkmen had to present himself to the authorities as soon as possible, which he did not do.
- On 5 November 2019, the police informed Mrs. Türkmen that her husband was at the Antalya Police Department.
- An Ankara court sent Gökhan Türkmen to pretrial detention where he remains in solitary confinement in Ankara's Sincan F-type Prison No. 1.³⁶⁰
- During a court hearing on 10 February 2020 Mr. Türkmen spoke for the first time on his abduction, enforced disappearance and the torture he had suffered.
 - Gökhan Türkmen told the judges he was abducted by people wearing police vests.³⁶¹ He was taken by a van to a location four or five hours away and it's there and then that months-long torture and ill-treatment started.³⁶²
 - Gökhan Türkmen said that, while he was in police custody in November 2019, he was prevented from retaining his own legal counsel. He announced during a hearing that he had dismissed lawyer Ayşegül Güney who had been assigned by a bar association.³⁶³
 - Gökhan Türkmen and his (new) lawyer filed complaints against the fact that men who introduced themselves as members of the National Intelligence Agency

³⁵⁹ Ankara Bar Association Human Rights Center, Joint Monitoring Report, 1 July 2019, (https://turkeytribunal.com/wp-content/uploads/2020/06/Enforced_Disappearances_JointMonitoringReport_AnkaraBar.pdf).

³⁶⁰ Human Rights Watch, "Turkey: Enforced Disappearances, Torture", 29 April 2020, (<https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture>).z

³⁶¹ Hizmet Movement News Archive, Man abducted by Turkish intel exposes torture during 9-month enforced disappearance, 17 February 2020 (<https://hizmetnews.com/25172/man-abducted-by-turkish-intel-exposes-torture-during-9-month-enforced-disappearance/#.X0qe6S2iHBI>).

³⁶² Hizmet Movement News Archive, Man abducted by Turkish intel exposes torture during 9-month enforced disappearance, 17 February 2020 (<https://hizmetnews.com/25172/man-abducted-by-turkish-intel-exposes-torture-during-9-month-enforced-disappearance/#.X0qe6S2iHBI>).

³⁶³ Hizmet Movement News Archive, Man abducted by Turkish intel exposes torture during 9-month enforced disappearance, 17 February 2020 (<https://hizmetnews.com/25172/man-abducted-by-turkish-intel-exposes-torture-during-9-month-enforced-disappearance/#.X0qe6S2iHBI>).

MIT visited him in prison six times since November 15, 2019 and threatened him and his family.³⁶⁴

- During a March 2020 visit, the men pressured him to retract his complaints about abduction and torture at the February court hearing.³⁶⁵
- No effective investigation into the abduction and enforced disappearance of Gökhan Türkmen was launched:
 - On 12 February 2019, Gökhan Türkmen's father went to Antalya Varsak Police Station. Eventually police officers from the Anti-Terrorism Department came to his house and took his statement. The officers told them that his son's car had been seen in Ulus (in Ankara) 10 days earlier on city surveillance cameras. Mrs. Türkmen, however, immediately stated that this was impossible, as their car had been in their house's garage for the last two years.
 - The Chief Public Prosecutor's Office in Antalya launched a first investigation into this missing person case and decided on 26 February 2019 that the Office on Missing and Wanted Persons was handling the procedures related to Gökhan Türkmen. As a result, the prosecutor's Office did not find it necessary to prosecute since they considered there to be no criminal element.
 - Upon her request, Mrs. Türkmen, was notified on 14 March 2019 by the General Directorate of Prisons and Detention Houses, that Mr Türkmen's name was not found in the records of convicts and detainees of the National Judiciary Informatics System.
 - On 20 March 2019, the Chief Public Prosecutor's Office in Kayseri launched a second investigation after Mrs. Türkmen filed a complaint to CIMER. He concluded, however, that *"if Gökhan Türkmen was a victim of any offense, an investigation could be conducted upon his complaint."* Such a complaint was of course impossible since Gökhan Türkmen was in the impossibility to file such a complaint.
 - On 27 March 2019, the Chief Public Prosecutor's Office in Antalya reviewed the initial investigation documentation in order to continue the investigation, to summon telephone records and historical traffic search entries. Letters were sent to the Preparation Office of the Chief Public Prosecutor's Office in Antalya, and Antalya Varsak Police Station to make the necessary enquiries, to allow examination of historical traffic search records and to interview the family of Mr. Türkmen.
 - On 4 April 2019, Mrs. Türkmen testified at Kayseri Melikgazi Police Station and stated that on 7 March 2019 at 02:34, three messages were sent to the Twitter

³⁶⁴ Bold Medya, HUMAN RIGHTS Human Rights Watch: Allegations of Abduction and Torture Not Investigated in Turkey, 29 April 2020 (<https://boldmedya.com/en/2020/04/29/human-rights-watch-allegations-of-abduction-and-torture-not-investigated-in-turkey/>).

³⁶⁵ Bold Medya, HUMAN RIGHTS Human Rights Watch: Allegations of Abduction and Torture Not Investigated in Turkey, 29 April 2020 (<https://boldmedya.com/en/2020/04/29/human-rights-watch-allegations-of-abduction-and-torture-not-investigated-in-turkey/>).

account she had opened for her husband Gökhan Türkmen: "He cannot die before he answers with whom he shared the data he stole from the state and which did not belong to him. He is looking at me begging, like a sewer rat squeezed under a manhole cover. If he does not reply to the questions with additional evidence he will suffer and be destroyed", "Ok", "He is secure now." She also mentioned that this account was called "15 Temmuz @vforvendetta TUR", which was later changed to "NOBET@nobetdizisi7_24". Mrs. Türkmen stated that she believed that the individual or individuals using that account have abducted her husband. She also stated that when she checked the accounts again, these were no longer in use.

- On 7 May 2019, the Chief Public Prosecutor's Office in Antalya contacted the Chief Public Prosecutor's Office in Kayseri and asked him to interrogate Mrs. Türkmen as a witness. Mrs. Türkmen gave her testimony once more.
- On 5 March 2019, Mrs. Türkmen applied to the Ombudsman's Office. On 2 May 2019, her application was dismissed and a "Ineligible for Review" decision was rendered (case no. 2019/1671-S.2507).
- On April 16 2019, the Ankara prosecutor issued three decisions saying there was no need to investigate the complaints of Mrs. Türkmen.³⁶⁶

5. ERKAN IRMAK³⁶⁷

- Erkan Irmak was abducted on 16 February 2019 and resurfaced on 28 July 2019 after having disappeared for 162 days / 5 months.
- Erkan Irmak, a teacher, was abducted by three individuals in plain clothes.³⁶⁸
- Erkan Irmak was under investigation of the Chief Public Prosecutor's Office in Ankara based on allegations of being a FETO/PYD member. During the period of his disappearance, this investigation continued and eventually led to an arrest warrant being issued against Mr. Irmak.
- On 28 July 2019, the police informed Mr. Irmak's wife, Nilüfer Irmak, that her husband was in detention at the Anti-Terrorism Department in Ankara and that he had been caught during a criminal record check when he was walking to the police station to surrender.
- Mrs. Irmak confirmed that, after her husband resurfaced in prison, she visited him for almost half an hour at the Anti-Terrorism Department in Ankara in the company of a

³⁶⁶ Bold Medya, HUMAN RIGHTS Human Rights Watch: Allegations of Abduction and Torture Not Investigated in Turkey, 29 April 2020 (<https://boldmedya.com/en/2020/04/29/human-rights-watch-allegations-of-abduction-and-torture-not-investigated-in-turkey/>).

³⁶⁷ Ankara Bar Association Human Rights Center, Joint Monitoring Report, 1 July 2019, (https://turkeytribunal.com/wp-content/uploads/2020/06/Enforced_Disappearances_JointMonitoringReport_AnkaraBar.pdf).

³⁶⁸ Stockholm Center for Freedom, Enforced Disappearance: One more abduction reported in Turkey, 4 March 2019, (<https://stockholmcf.org/enforced-disappearance-one-more-abduction-reported-in-turkey/>).

police officer and with cameras in the room where they met. Her husband had lost almost 15 kilos. He remained in detention for 12 days without being presented to a judge. He was also not examined by an independent physician.³⁶⁹

- No effective investigation into the abduction and enforced disappearance of Erkan Irmak was launched:
 - Mrs. Irmak filed an application to the Istanbul Governor's Office on 2 February 2019 (case no. 63800), to which no reply was received. She also filed an application to CIMER with no. 1900532752. On 7 March 2019 she received the following response from the Ümraniye District Security Department: "you will be informed if you personally apply to the competent authorities related to the confidential aspects of your application."
 - On 1 March 2019, the counsel of Mrs. Irmak filed a request to receive information about an investigation launched by the Chief Public Prosecutor's Office in Istanbul upon the complaint of Mrs. Irmak.
 - Mrs. Irmak also asked the Prosecutor's Office to review the footage from city surveillance cameras (no. 046-g-34 umr and no. 048-g-34 umr) that cover the area where the abduction occurred. On 24 April 2019, the initial investigation file was joined to the investigation in which Mr. Irmak is a suspect and which is still ongoing. However, since there is a confidentiality order in this second investigation file, Mrs. Irmak has not been able to learn anything on the actions undertaken by the authorities on the abduction of her husband nor has she been informed by the Chief Public Prosecutor's Office in Ankara.
 - On 11 March 2019 an individual application for injunction has been filed with the Constitutional Court, which was dismissed.
 - On 2 April 2019, an application was filed with the European Court of Human Rights, seeking an injunction. On 11 April 2019, the Court notified Mr. Irmak that an injunction would not be issued but that this case would be given priority according to Article 41 of the internal directive of the ECtHR. The application was notified to the Government on 10 April 2019. The application filed with the UN Working Group on Enforced or Involuntary Disappearance has not yet been replied to.
 - Deputy Ömer Faruk Gergerlioglu brought the abduction case to the Parliament and submitted a parliamentary question, asking Vice President Fuat Oktay to answer this question. No answer was provided.

³⁶⁹ Human Rights Watch, "Turkey: Concerns for Disappeared Men Now in Police Custody", 6 August 2019, (<https://www.hrw.org/news/2019/08/06/turkey-concerns-disappeared-men-now-police-custody>).

6. YASIN UGAN³⁷⁰

- Yasin Ugan was abducted on 13 February 2019 and resurfaced on 28 July 2019 after having disappeared for 165 days / 5 months.
- Yasin Ugan, an accountant working in the private sector, was abducted from a house in the Çamlık neighbourhood in the Altındağ District.³⁷¹ He was abducted by armed individuals in plain clothes who introduced themselves as police officers. A black plastic bag was placed on his head. The abductors claimed that their actions were part of a pending investigation before the Prosecutor's Office.
- On 28 July 2019, the police informed Mikail Ugan that his brother was being detained at the Anti-Terrorism Department in Ankara and that he had been caught during a criminal record check when he was walking to the police station to surrender.
- Selda Ugan, Yasin Ugan's wife, stated that after her husband resurfaced in prison, she was only allowed to visit him at the Anti-Terrorism Department in Ankara in the presence of police officers in plain clothes. Her husband had lost a lot of weight and he looked very pale. Her husband remained in detention for 12 days without being taken to a judge for the extension of the detention period. When Yasin Ugan gave his testimony, another counsel than the one his wife had chosen was present. She learned from a news site that her husband had hired that counsel while he was at the police department. This counsel refused to meet with Mrs. Ugan. Yasin Ugan was not examined by an independent physician.
- On 23 June, 2019 Yasin Ugan testified before the Ankara 34th High Criminal Court: "the Turkish police abducted and heavily tortured me for six months."³⁷² He was severely beaten and only allowed to shower three times during the six months. ³⁷³ Yasin Ugan eventually dismissed his state-appointed lawyer after being made to sign a 58-page testimony, taken under the torture, without ever having read it.³⁷⁴
- No effective investigation into the abduction and enforced disappearance of Yasin Ugan was launched:
 - Mikail Ugan went to all units of the police department and the Prosecutor's Office but did not manage to find out where his brother was being detained.
 - In response to the application filed with CİMER on 27 March 2019, the Altındağ District Security Directorate replied as follows: "The inquiry made by Hüseyingazi Şehit İdris Aydın Police Center revealed that Yasin Ugan is not in

³⁷⁰ Ankara Bar Association Human Rights Center, Joint Monitoring Report, 1 July 2019, (https://turkeytribunal.com/wp-content/uploads/2020/06/Enforced_Disappearances_JointMonitoringReport_AnkaraBar.pdf).

³⁷¹ Human Rights Watch, "Turkey: Concerns for Disappeared Men Now in Police Custody", 6 August 2019, (<https://www.hrw.org/news/2019/08/06/turkey-concerns-disappeared-men-now-police-custody>).

³⁷² IPA News, Tortured for six months by Turkish police: Detainee, 24 June 2020 (<https://ipa.news/2020/06/24/tortured-for-six-months-by-turkish-police-detainee/>).

³⁷³ IPA News, Tortured for six months by Turkish police: Detainee, 24 June 2020 (<https://ipa.news/2020/06/24/tortured-for-six-months-by-turkish-police-detainee/>).

³⁷⁴ IPA News, Tortured for six months by Turkish police: Detainee, 24 June 2020 (<https://ipa.news/2020/06/24/tortured-for-six-months-by-turkish-police-detainee/>).

prison, and that he is not detained at any police department where he could have been detained”.

- On 2 April 2019, the Gölbaşı District Security Directorate replied as follows: “Anti-Terrorism Department – Security Office has not performed any actions involving Yasin Ugan”.
- When the Human Rights Association wrote to the Ministry of Interior, it replied, on 20 March 2019, as follows regarding the allegations of enforced disappearance of Yasin Ugan and Özgür Kaya: “No missing person application has been found when enquiries were made into the Smuggling and Intelligence Unit (KİHBI), National Judiciary Informatics System (UYAP), and Law Enforcement Procedures Project (Ekip Proje).”
- On 5 April 2019, the Ombudsman’s Office issued an “Ineligible for Review” decision.
- Under the initial investigation file, the Chief Public Prosecutor’s Office in Ankara wrote a letter on 22 February 2019 to the Anti-Terrorism Department in Ankara Security Directorate and asked “to notify whether Yasin Ugan was in detention, and to send a copy of the notice informing his next-of-kin, if this was the case.” No answer was given to this letter. The initial investigation file was joined with a second investigation file against Yasin Ugan, relating to his implication in the FETO/PDY structure. Mikail Ugan was not asked to testify again.
- The Constitutional Court dismissed the request for an injunction on 20 March 2019 on grounds that the investigation was still ongoing.

7. YUSUF BILGE TUNÇ³⁷⁵

- Yusuf Bilge Tunç was abducted on 6 August 2019 and continues to have disappeared to this day.
- Yusuf Bilge Tunç, a Financial Services Expert at the Under secretariat of the Defense Industry, was removed from public office with the Decree Law No. Two. He disappeared in unknown circumstances on 6 August 2019.
- Yusuf Bilge Tunç was the object of an investigation conducted against him by the Chief Public Prosecutor’s Office in Ankara. He was alleged, on the one hand, to be a FETO/PDY member and, on the other hand, to have leaked Public Personnel Selection Examination

375 Ankara Bar Association Human Rights Center, Joint Monitoring Report, 1 July 2019, (https://turkeytribunal.com/wp-content/uploads/2020/06/Enforced_Disappearances_JointMonitoringReport_AnkaraBar.pdf).

(KPSS) questions. In April 2017, the police searched his home address but Mr. Tunç was not at home at that time. Afterwards he did not surrender himself to the police.³⁷⁶

- No effective investigation into the abduction and enforced disappearance of Yusuf Bilge Tunç was launched:
 - On 8 August 2019, the Chief Public Prosecutor's Office in Ankara received Mrs. Tunç's application to investigate the disappearance of her husband. The Prosecutor created an investigation number but did not assign a prosecutor to the case. On 19 August 2019, following the persistent requests of Mrs. Tunç, the Prosecutor sent a letter to the Office on Missing Persons, asking them to make an enquiry about Yusuf Bilge Tunç. However, no city surveillance camera recordings were examined. Eventually, Mr. Tunç's family members themselves found the car.
 - On 9 August 2019, Mrs. Tunç applied to CİMER, but did not receive any response.
 - On 12 August 2019, Mrs. Tunç and other relatives of Mr. Tunç filed a criminal complaint with the Chief Public Prosecutor's Office in Ankara. They requested, among others, an enquiry into the movements of his car and into relevant camera footage. The Chief Public Prosecutor's Office in Ankara did not take any action regarding this request.
 - On 4 September 2019, the counsel of Mrs. Tunç requested the Chief Public Prosecutor's Office in Ankara to conduct a survey in the area, to identify camera footage/pictures, examine all the footage from the city surveillance cameras, OTS, KGYS, private business on the route, to look into the location data of the missing person using his telephone number and to identify public officers who might have emitted alarm signals. However, no action was taken in response to this request.
 - The investigation files, including the file of the Chief Public Prosecutor's Office in Ankara containing the missing person's application were joined with the investigation file against Mr. Tunç.
 - On 9 August 2019, Mrs. Tunç applied to CİMER, but did not receive any response.
 - On 21 August 2019, a criminal complaint was filed with the Judges and Prosecutors Board against the prosecutor and law enforcement officers who did not conduct an effective investigation, but no action has been taken related to this complaint. No decision has yet been issued related to the individual application and request for an emergency injunction that had been filed with the Constitutional Court.

376 BOLD MEDYA Abducted political science graduate Tunç's wife: "The police are asking me where my husband is" 17 September 2019 (<https://boldmedya.com/en/2019/09/17/abducted-political-science-graduate-tuncs-wife-the-police-are-asking-me-where-my-husband-is/>).

8. ONDER ASAN³⁷⁷

- Önder Asan was abducted on 1 April 2017 and resurfaced on 12 May 2017 after having disappeared for 41 days / 1 month.³⁷⁸
- Önder Asan, a philosophy teacher, was abducted in broad daylight in the Turkish capital. Initially, the circumstances of his abduction remained unknown, but when Mr. Asan reappeared in the ordinary detention system, he managed to convey what happened to his lawyer, Mr. Burak Çolak. Mr. Asan testified that, on 1 April 2017, when he arrived at his car that was parked in the Şentepe neighbourhood, his tires were slashed by unknown people. He, consequently, had to take a cab. On the way to his destination the cab was cut-off by four vehicles on Vatan Street. The people who came out of the cars said they were the police. They blindfolded him and forced him to get into a black Volkswagen Transporter van. A witness confirmed that it were police officers who forced Mr. Asan out of the cab into a Transporter van.³⁷⁹ Mr. Asan stated that he was blindfolded and beaten on the way to an unknown location. He was then put in a cell and tortured for several days. On 12 May 2017, he was once more blindfolded and put into a van. When they removed his blindfold, he realized he was near Eymir Lake (some 20 kilometres south of Ankara). His abductors called the Ankara police department and forced Mr. Asan to say on the phone *"I am Önder Asan, a member of Fethullah Terrorist Organization, I want to surrender myself. Please come and take me in."* They then compelled him to sign a paper stating that he wanted to take advantage of repentance law. Eventually, the police officers of the Ankara police department arrived and picked him up.
- On May 12, Mrs. Asan received a phone call from the Ankara police department informing her that her husband was in detention in the Organized Crime and Smuggling Unit (KOM).³⁸⁰

377 Human Rights Watch, Turkey: Enforced Disappearances, Torture Investigate Disappearances; End Threats to Detainee and His Family, April 29, 2020 (<https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture>); Human Rights Watch, "In Custody: Police Torture and Abductions in Turkey", 12 October 2017, (<https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey#page>); Stockholm Center for Freedom, "Abducted teacher in Turkey turns up in police detention after 42 days of torture by government thugs", 14 May 2017, (<https://stockholmcf.org/abducted-teacher-in-turkey-turns-up-in-police-detention-after-42-days-of-torture-by-govt-thugs/>); Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 11 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

378 Human Rights Watch, "Turkey: Investigate Ankara Abductions, Disappearances", 3 August 2017, <https://www.hrw.org/news/2017/08/03/turkey-investigate-ankara-abductions-disappearances>.

379 Human Rights Watch, "Turkey: Investigate Ankara Abductions, Disappearances", 3 August 2017, <https://www.hrw.org/news/2017/08/03/turkey-investigate-ankara-abductions-disappearances>.

³⁸⁰ Stockholm Center for Freedom, "Abducted teacher in Turkey turns up in police detention after 42 days of torture by government thugs", 14 May 2017, (<https://stockholmcf.org/abducted-teacher-in-turkey-turns-up-in-police-detention-after-42-days-of-torture-by-govt-thugs/>).

- Mrs. Asan was initially denied access to her husband. Only his lawyer was granted to access to him for 20 minutes. When Önder Asan was brought to the police station, he had great difficulty in standing and walking. He walked to the room to meet his lawyer by holding onto the walls. Although the police were present during his brief meeting with the lawyer, he had the courage to tell some parts of his story and asked for a medical and psychological treatment. Burak Çolak, the lawyer representing Önder Asan, was eventually also detained since he refused to sign a false testimony prepared by the police on behalf of his client. The police tried to force the lawyer to sign the document that included a false testimony by his client.³⁸¹ Burak Çolak was later released after a detention. Burak Çolak also informed Human Rights Watch on the fact that, although a medical report from the Forensic Medicine Institute diagnosed Asan as suffering from “acute stress,” the report did not include his statement to psychiatrists that his stress was the result of being abducted and tortured, and made no reference to how that may be relevant to his medical condition.³⁸²
- No effective investigation into the abduction and enforced disappearance of Önder Asan was launched:
 - His wife, Fatma Asan, worried because her husband did not return. Eventually she found her husband’s car, with slashed tires, parked near Şentepe. Mrs. Asan immediately filed petitions with the police and the prosecutor to investigate his possible abduction.³⁸³
 - The authorities were, however, very reluctant to look into his case. On April 3, 2017, Ms. Asan went to the police, who sent her to the prosecutor’s office. The prosecutor then sent her back to the police. On April 4, 2017, Ms. Asan went to a different police station, where the officers told her that her husband had “run off”.³⁸⁴ They did not even bother to check CCTV cameras around the neighbourhood where the incident took place.³⁸⁵ Mrs. Asan filed a criminal complaint with the Public Prosecutor’s Office and launched a social media campaign appealing to the public to help her and locate her husband. All these efforts yielded no result. Mrs. Asan attempted herself to recover the relevant

³⁸¹ Stockholm Center for Freedom, “Abducted teacher in Turkey turns up in police detention after 42 days of torture by government thugs”, 14 May 2017, (<https://stockholmcf.org/abducted-teacher-in-turkey-turns-up-in-police-detention-after-42-days-of-torture-by-govt-thugs/>).

³⁸² Human Rights Watch, “Turkey: Enforced Disappearances, Torture”, 29 April 2020, (<https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture>).

³⁸³ Stockholm Center for Freedom, “Abducted teacher in Turkey turns up in police detention after 42 days of torture by government thugs”, 14 May 2017, (<https://stockholmcf.org/abducted-teacher-in-turkey-turns-up-in-police-detention-after-42-days-of-torture-by-govt-thugs/>).

³⁸⁴ Human Rights Watch, “In Custody: Police Torture and Abductions in Turkey”, 12 October 2017, (<https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey#page>).

³⁸⁵ Change.org, “BBC interviews families of abducted Gülenists”, 22 April 2019, (<https://www.change.org/p/amnesty-international-australia-whisked-away-erdogan-s-program-of-kidnappings-a3752055-3f72-495a-906f-6a924b410d60/u/24457607>).

CCTV footage but the relevant business owners who possessed this footage refused to share these recordings without judicial request thereto.³⁸⁶

- At present no progress has been made in the investigation on Önder Asan's abduction.³⁸⁷

9. FAHRI MERT³⁸⁸

- Fahri Mert was abducted on 12 August 2018 and continues to have disappeared to this day.
- Fahri Mert was abducted in the izmir province by a group of people who reportedly introduced themselves as police officers. They pushed him into a black Transporter van and told him: "We will take you to the security directorate".
- No effective investigation into the abduction and enforced disappearance of Fahri Mert was launched:
 - His family and friends have been unable to get any information about Mert's whereabouts since the incident.

³⁸⁶ Stockholm Center for Freedom, "Abducted teacher in Turkey turns up in police detention after 42 days of torture by government thugs", 14 May 2017, (<https://stockholmcf.org/abducted-teacher-in-turkey-turns-up-in-police-detention-after-42-days-of-torture-by-govt-thugs/>).

³⁸⁷ Human Rights Watch, "Turkey: Enforced Disappearances, Torture", 29 April 2020, (<https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture>).

³⁸⁸ Turkish Minute, "Another victim added to list of abducted Turkish citizens", 28 August 2018, (<https://www.turkishminute.com/2018/08/28/another-victim-added-to-list-of-abducted-turkish-citizens/>); TR724, "İzmir'de kaçırılan Fahri Mert'ten 2 haftadır haber alınamıyor", 26 August 2018, (<http://www.tr724.com/izmirde-kacirilan-fahri-mertten-2-haftadir-haber-alinamiyor/>); Stockholm Center for Freedom, "No news received from Fahri Mert since he was abducted in Turkey's Izmir 2 weeks ago", 26 August 2018, (<https://stockholmcf.org/no-news-received-from-fahri-mert-since-he-was-abducted-in-turkeys-izmir-2-weeks-ago/>); Stockholm Center for Freedom, "No news received from Fahri Mert since he was abducted in Turkey's Izmir 2 weeks ago", 26 August 2018, (<https://stockholmcf.org/no-news-received-from-fahri-mert-since-he-was-abducted-in-turkeys-izmir-2-weeks-ago/>); Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 17 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

10. HASAN KALA³⁸⁹

- Hasan Kala was abducted on 21 July 2018 and continues to have disappeared to this day.
- Hasan Kala is an academician who was dismissed from his post at Çankırı Karatekin University by a government decree under the state of emergency declared in the aftermath of the alleged coup d'état. He was dismissed for reason of his alleged links to the Gülen movement. He was reportedly abducted on 21 July 2018 at 11.30 pm by an unknown group of people after being forced into a black Transporter van in Ankara's Batıkent district.
- No effective investigation into the abduction and enforced disappearance of Hasan Kala was launched:
 - Family members filed a number of complaints to the authorities, but these remained unanswered.

11. AHMET ERTURK³⁹⁰

- Ahmet Ertürk was abducted on 16 November 2018 and resurfaced on 4 January 2019 after having disappeared for 49 days / 2 months.
- Ahmet Ertürk was a teacher at a private school which was shut down because of alleged links with the Gülen movement. He was abducted at the same time as a raid of the police forces was conducted at his parents' house in Ankara.³⁹¹
- On 8 January 2019, Ahmet Ertürk's wife tweeted that he was found and that he had been in police custody for four days - thus since 4 January 2019 - during which he was consistently questioned by the police.

³⁸⁹ TR724, "Siyah transporterlar Ankara'da yine devrede: KHK ile ihraç edilen akademisyen kaçırıldı," 22 July 2018, <http://www.tr724.com/siyah-transporterlar-ankarada-yine-devrede-khk-ile-ihrac-edilen-akademisyen-kacirildi/>; Turkish Minute, Another victim added to list of abducted Turkish citizens, 28 August 2018 (<https://www.turkishminute.com/2018/08/28/another-victim-added-to-list-of-abducted-turkish-citizens/>); Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 16 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

³⁹⁰ Turkish Minute, "Purged teacher from shut-down Gülen movement school disappears," 30 November 2018, (<https://www.turkishminute.com/2018/11/30/purged-teacher-from-shut-down-gulen-movement-school-disappears/>). See notably tweet thereon of Ertürk's wife of that day announced his disappearance on Twitter, saying her husband went missing at the same time that police raided his parents' house in Ankara; Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 17 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

³⁹¹ Turkish Minute, "Purged teacher from shut-down Gülen movement school disappears," 30 November 2018, <https://www.turkishminute.com/2018/11/30/purged-teacher-from-shut-down-gulen-movement-school-disappears/>. See notably tweet thereon of Ertürk's wife of that day announced his disappearance on Twitter, saying her husband went missing at the same time that police raided his parents' house in Ankara.

- No further explanation has been given by Mr. Ertürk, his lawyer or his family members on his abduction and disappearance. No effective investigation into the abduction and enforced disappearance of Mr. Ertürk was launched:³⁹²
 - After her husband had been missing for 13 days, Mrs. Ertürk stated that she filed different complaints but that neither law enforcement nor the prosecutor in charge “have responded positively”.

12. ÜMIT HORZUM³⁹³

- Ümit Horzum was abducted on 6 December 2017 and resurfaced on 16 April 2018 after having disappeared for 131 days / 4 months.
- Ümit Horzum was a former civil servant who was removed from his job at Turkey’s Banking Regulation and Supervision Agency (BDDK) by one of the emergency decrees after the alleged failed coup d’état. On 6 December 2017 at 6 p.m. he was abducted from his car near the Acity shopping mall in Ankara after his vehicle was cut off by a black Transporter van. Mr. Horzum was forced into the van and disappeared.³⁹⁴
- Before his disappearance, Ümit Horzum was already sought by the police after a detention warrant had been issued for him over his alleged links to the Gülen movement. However, he had not surrendered to the police out of fear of the widespread and systematic torture in detention. For that reason, Ümit Horzum did not stay at home for a long time since he was afraid of being detained.
- On 16 April 2018, Mrs. Horzum was contacted by the police, saying that her husband was being held in custody in Ankara. He was allegedly delivered to the police by unknown people.
- When he reappeared, Ümit Horzum had rib fractures and burst eardrums.³⁹⁵ Neither Mrs. Horzum nor her lawyer were allowed to meet him. On 27 April 2018, after 11 days of detention, Ümit Horzum appeared for the first time before a judge and was immediately released. He was, however, brought before the judge without having the possibility to choose his lawyer.

³⁹² Turkish Minute, “Purged teacher from shut-down Gülen movement school disappears,” 30 November 2018, (<https://www.turkishminute.com/2018/11/30/purged-teacher-from-shut-down-gulen-movement-school-disappears/>).

³⁹³ Stockholm Center for Freedom, “Ümit Horzum released by Turkish court 145 days after his abduction in Ankara”, 28 April 2018, (<https://stockholmcf.org/umit-horzum-released-by-turkish-court-145-days-after-his-abduction-in-ankara/>); Solidarity with Others, Enforced Disappearances: Turkey’s Open Secret, May 2020, p. 15 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf); Leighann Spencer, Vocal Europe, “The Case of Ümit Horzum, Most Recent Victim In A String Of Abductions In Post-Coup Turkey,” 11 January 2018 (<https://www.vocaleurope.eu/the-case-of-umit-horzum-most-recent-victim-in-a-string-of-abductions-in-post-coup-turkey/>).

³⁹⁴ Leighann Spencer, Vocal Europe, “The Case of Ümit Horzum, Most Recent Victim In A String Of Abductions In Post-Coup Turkey,” 11 January 2018 (<https://www.vocaleurope.eu/the-case-of-umit-horzum-most-recent-victim-in-a-string-of-abductions-in-post-coup-turkey/>).

³⁹⁵ Stockholm Center for Freedom, “Abducted Turkish citizen subjected to heavy torture at Ankara Organized Crime Bureau”, 22 April 2018, (<https://stockholmcf.org/abducted-turkish-citizen-subjected-to-heavy-torture-at-ankara-organized-crime-bureau/>).

- In February 2020, Ümit Horzum Horzum discussed his abduction and disappearance during a court hearing. According to the Court records, he stated that, during his disappearance and before he was handed over to the regular police on 16 April 2018, he had been tortured and coerced to sign previously prepared incriminating statements on people he did not even recognize. He also confirmed that he was abducted after his abductors blocked his vehicle in Etlik.³⁹⁶
- No effective investigation into the abduction and enforced disappearance of Ümit Horzum was launched:
 - Mr. Horzum's family managed to find his empty car after his abduction. They immediately informed the police of the whereabouts of the car and requested them to use it to search for further evidence on the fate of Mr. Horzum. Still, the police simply towed the car from the scene of the crime to the Balgat car park without any examination.
 - Mrs. Horzum went to the police department, gendarmerie and prosecutor's offices to get information about him and to check if and where he was detained. This without any result.
 - After learning that there was no detention registration of her husband, Mrs. Horzum applied to a gendarmerie station near her house and informed the authorities of the fact that her husband had been abducted. A Gendarmerie Commander reportedly warned her to give up looking for her husband and stated that "No good can come to you from him. He is a wanted man with a charge of life imprisonment for being a leader in a terror organisation." The same commander has reportedly registered the application as "missing person" rather than "abduction."³⁹⁷
 - Consequently Mrs. Horzum tried to file a legal complaint. However, none of the prosecutors wanted to accept her complaint. Eventually, a prosecutor decided to accept her legal complaint on the condition that she would give up tracing her husband. The prosecutor, however, refused to give her an application registration number.
 - On 18 January 2018, an application no. 4475/18 was lodged against Turkey at the ECHR. The application concerns the disappearance of Umit Horzum, following his alleged abduction by unknown persons on 6 December 2017 and the allegations of a lack of an effective investigation into his disappearance.³⁹⁸

³⁹⁶ Bold Medya, "Ümit Horzum mahkemede konuştu: Kaçırıldım, işkence gördüm," 21 February 2020, <https://boldmedya.com/2020/02/21/umit-horzum-mahkemede-konustu-kacirildim-iskence-gordum/>

³⁹⁷ See tweets Mrs. Horzum's wife.

³⁹⁸ European Court of Human Rights, *Aynur Horzum and others v. Turkey*, n°4475/18, 18 January 2018, ([https://hudoc.echr.coe.int/eng#{"itemid":\["001-182899"\]}](https://hudoc.echr.coe.int/eng#{)).

13. MESUT GEÇER³⁹⁹

- Mesut Geçer was abducted on 18 March 2017 and resurfaced on 14 July 2018 after having disappeared for 483 days / 16 months.
- Mesut Geçer was a former National Intelligence Organization (MIT) officer. He was abducted after his car was stopped in the district of Çakırlar in Yenimahalle following his dismissal from the MIT as part of the government's post-coup crackdown.
- On 3 December 2019, Mesut Geçer testified, as shown by the court records, before the Ankara 34th High Criminal Court that he was abducted by some of his former MIT colleagues while driving in Ankara. He publically stated that they blocked his car in traffic and then put him in another vehicle with a bag over his head. The next day, he was put in a cell on an unknown location, handcuffed from behind and interrogated while his head was banged against the wall. Mesut Geçer stated that, after his health deteriorated, he was transferred to another location, which he later found out was Syria, with people speaking Arabic around him, and was held there until 14 July 2018, when he was taken back to Turkey and subsequently arrested. At the moment of his testimony Mesut Geçer still experienced serious medical problems with his left foot and knee.⁴⁰⁰
- No effective investigation into the abduction and enforced disappearance of Mesut Geçer was launched:
 - According to Aktif Haber, his family members have been experiencing difficulties even in submitting petitions to ask about Geçer's whereabouts as officials often refused to cooperate with them.
 - According to his testimony in court of 3 December 2019, Mesut Geçer has not seen his family since his abduction on 18 March 2017.⁴⁰¹
 - Later complaints submitted by Mesut Geçer and his family on his abduction have not been investigated. His lawyer has, consequently, appealed to the European Court of Human Rights.

³⁹⁹ Human Rights Watch, "Turkey: Enforced Disappearances, Torture Investigate Disappearances; End Threats to Detainee and His Family", 29 April 2020, (<https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture>); Solidarity with Others, "Enforced Disappearances: Turkey's Open Secret", May 2020, p. 9 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

⁴⁰⁰ BOLD MEDYA, Siyah Transporterla kaçırılan Mesut Geçer mahkemede 16 aylık işkence sürecini anlattı, 2 January 2020 (<https://boldmedya.com/2020/01/02/16-ay-boyunca-alikonulan-mit-mensubu-mahkemede-konustu-iskencelerimi-teshis-edebilirim/>); Cumhuriyet, FETÖ tutuklusundan çarpıcı ifadeler, 2 January 2020 (<https://www.cumhuriyet.com.tr/haber/feto-tutuklusundan-carpici-ifadeler-1712065>).

⁴⁰¹ IPA News, "'Syria acted as Turkey's Guantanamo' says exiled journo on torture claims, 3 January 2020, (<https://ipa.news/2020/01/03/syria-acted-as-turkeys-guantanamo-says-exiled-journo-on-torture-claims/>).

14. SUNAY ELMAS⁴⁰²

- Sunay Elmas was abducted on 27 January 2016 and continues to have disappeared to this day.
- Sunay Elmas, a teacher, was reported missing in Ankara as of January 27, 2016. He was abducted in front of the CEPA Shopping Center at 11:00 am by being pushed by unknown individuals in a black Transporter van. CCTV footage obtained by his family clearly showed Mr. Elmas being intercepted after getting out of his car and being forced into the van.
- No effective investigation into the abduction and enforced disappearance of Mesut Geçer was launched:
 - The family of Mr. Elmas filed applications to the Ankara police and prosecutors with the request to investigate the abduction. Since the authorities did not seem to take any active investigative steps, the relatives of Mr. Elmas collected CCTV footage of the abduction themselves and provided this to the police. No investigation has, however, taken place.⁴⁰³
 - Similarly, the application made by Mr. Elmas's wife to Ankara Security Directorate has remained unanswered.

15. AYHAN ORAN⁴⁰⁴

- Ayhan Oran was abducted on 1 November 2016 and continues to have disappeared to this day.
- Ayhan Oran was a former National Intelligence Organisation (MİT) employee. He was suspended from his duties on 17 July 2016 and dismissed on 2 August 2016 over alleged links with the Gülen movement.
- Security camera footage showed Ayhan Oran leaving, with his car, the residential compound where he lived at 12:38 am. The signal of his cell phone continued to receive

⁴⁰² Human Rights Association, "Those claimed to have been forcibly and involuntarily disappeared must be clarified & perpetrators must be tried", 30 May 2017, (<https://ihd.org.tr/en/those-claimed-to-have-been-forcibly-and-involuntarily-disappeared-must-be-clarified-perpetrators-must-be-tried/>); Stockholm Center for Freedom, "CHP deputy asks about 7 abducted purge victims in parliamentary question", 25 April 2017, p. 6 (<https://stockholmcf.org/chp-deputy-asks-about-7-abducted-purge-victims-in-parliamentary-question/>); Solidarity with Others, "Enforced Disappearances: Turkey's Open Secret", May 2020, p. 9 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

⁴⁰³ Bold MEDYA, "İlk siyah Transporter kurbanı Sunay Elmas'ın kaçırılışının 3üncü yılı," 27 January 2019, (<https://boldmedya.com/2019/01/27/ilk-siyah-transporter-kurbani-sunay-elmasin-kacirilisinin-ucuncu-yili/>).

⁴⁰⁴ Stockholm Center for Freedom, "CHP deputy asks about 7 abducted purge victims in parliamentary question", 25 April 2017 (<https://stockholmcf.org/chp-deputy-asks-about-7-abducted-purge-victims-in-parliamentary-question/>); Human Rights Association, "Those claimed to have been forcibly and involuntarily disappeared must be clarified & perpetrators must be tried", 30 May 2017, (<https://ihd.org.tr/en/those-claimed-to-have-been-forcibly-and-involuntarily-disappeared-must-be-clarified-perpetrators-must-be-tried/>); Solidarity with Others, "Enforced Disappearances: Turkey's Open Secret", May 2020, p. 8 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

signals until 16:00am the same day. Mr. Oran left his home without bidding farewell to his wife or taking any money with him.

- A news outlet close to the PKK alleged that Ayhan Oran had knowledge of the controversial January 2013 assassination of three Kurdish female activists in Paris,⁴⁰⁵ which some believe was perpetrated by the MIT.
- No effective investigation into the abduction and enforced disappearance of Ayhan Oran was launched:
 - In April 2017, Sezgin Tanrikulu, an Istanbul deputy of Turkey's main opposition Republican People's Party (CHP) submitted a parliamentary question to the Parliament Speaker's Office in which he asked Prime Minister Binali Yıldırım why no effective investigation on this case was conducted.⁴⁰⁶

⁴⁰⁵ ANF, "MIT'çi Ayhan Oran nerede? Öldürüldü mü?", 11 January 2018 (<https://anfturkce.net/kadin/mit-ci-ayhan-oran-nerede-Oelduerueldue-mue-101343>).

⁴⁰⁶ Stockholm Center for Freedom, CHP deputy asks about 7 abducted purge victims in parliamentary question, 25 April 2017 (<https://stockholmcf.org/chp-deputy-asks-about-7-abducted-purge-victims-in-parliamentary-question/>).

16. MUSTAFA ÖZGÜR GÜLTEKİN⁴⁰⁷

- Mustafa Özgür Gültekin was abducted on 21 December 2016 and seems to have resurfaced on 21 April 2017 after having disappeared for 121 days / 4 months.
- Mustafa Özgür Gültekin was an employee of the Turkish Competition Authority. He was abducted in Beştepe, Ankara, around 18:15 pm. CCTV footage from the neighbourhood gathered by his family members showed Mr. Gültekin's vehicle being followed by four other cars. Consequently, he was forced into a black Transporter van after having stopped by a convenience store for shopping.
- On 21 April 2017, Mustafa Özgür Gültekin reappeared in police custody in Ankara (close to the Kurtuluş Park). In a letter he sent to lawyers as well as judges and prosecutors overseeing his case, Mr. Gültekin revealed that he had been abducted by members of MIT.⁴⁰⁸ He was subjected by them to brutal extrajudicial interrogations and forced to read incriminating statements in front of a camera. Consequently, during his 13-day police custody, he was made to sign a number of prepared statements which he had previously been forced to read to a camera while being secretly interrogated by the MIT. This interrogation was conducted by the Ankara Anti-Terror Department. Mr. Gültekin said that he signed everything they put in front of him out of fear to be subjected to torture again. After having signed all these documents, he was released and fled abroad.
- No effective investigation into the abduction and enforced disappearance of Ayhan Oran was launched:
 - Mr. Gültekin's family members said the police did not conduct any investigation despite available CCTV footage on which the individuals involved were clearly identifiable.

⁴⁰⁷ Human Rights Association, "Those claimed to have been forcible and involuntarily disappeared must be clarified & perpetrators must be tried", 30 May 2017, (<https://ihd.org.tr/en/those-claimed-to-have-been-forcibly-and-involuntarily-disappeared-must-be-clarified-perpetrators-must-be-tried/>); The Globe Post, "Surge in Kidnappings of Purged Officials Recalls Dark 1990s", 23 April 2017, (<https://theglobepost.com/2017/04/20/surge-in-abductions-of-purged-officials-recalls-dark-1990s/>); Turkey Purge, "Report: 7 victims of Turkey's post-coup purge reportedly abducted", 20 April 2017, (<https://turkeypurge.com/exclusive-7-victims-of-turkeys-post-coup-purge-reportedly-abducted/>); Solidarity with Others, "Enforced Disappearances: Turkey's Open Secret", May 2020, p. 8 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

⁴⁰⁸ Hak İnisiyatifi, "2016 Yılı Sonrası Kamu Görevlileri Tarafından Yasadışı Alıkonulma İddialarına İlişkin İnceleme ve Araştırma Raporu," 19 June 2019, p. 7 (<https://www.hyd.org.tr/attachments/article/537/Hakinisiyatifi.2019AlıkonulmaİddialarıRaporu.pdf>) (They based themselves on the parliamentary question asked on behalf of the CHP Group Deputy Chairperson Sezgin Tanrıkulu of 26 April 2017, with numbers 9807 and 11565 and the letter with the signature of Mustafa Özgür Gültekin, which was sent to a lawyer on 21 July 2018). See also Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 8 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

17. HÜSEYİN KÖTÜCE⁴⁰⁹

- Hüseyin Kötüce was abducted on 28 February 2017 and seems to have resurfaced in the beginning of 2019 after having disappeared for almost 2 years.
- Hüseyin Kötüce was an employee of Turkey's Information Technologies and Communications Authority (BTK). He was abducted from the parking lot of the Batıkent subway station. His car was found nearby and in it Mr. Kötüce's winter coat as well as a cake that he had bought.⁴¹⁰
- In the beginning of 2019, Mr. Kötüce resurfaced as a defendant in the trial related to the assassination of Andrei Karlov, the Russian ambassador to Turkey. During a hearing in March 2019, he denied involvement in the assassination and said that the self-incriminating statement he had previously given in police custody constituted a scenario that he was made to memorize under torture during his interrogation while he was abducted. He confirmed that he had been abducted by the MIT and that they had intercepted his car while he was heading home from work. He had been handcuffed and put in a black van with a bag over his head.⁴¹¹
- No effective investigation into the abduction and enforced disappearance of Hüseyin Kötüce was launched:
 - The police did not comply with family members' repeated requests to conduct a fingerprint search in the car and to gather CCTV footage from the area.

⁴⁰⁹ Solidarity with Others, "Enforced Disappearances: Turkey's Open Secret", May 2020, p. 9 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf); IPA News, "Two imprisoned for Karlov assassination deny charges, citing torture", 26 March 2019 (<https://ipa.news/2019/03/26/two-imprisoned-for-karlov-assassination-deny-charges-citing-torture/>); Cumhuriyet, Karlov suikastının kritik ismi: Kaçırıldım, MIT işkence yaptı, 25 March 2019 (<https://www.cumhuriyet.com.tr/haber/karlov-suikastinin-kritik-ismi-kacirildim-mit-iskence-yapti-1313080>).

⁴¹⁰ Hurriyet Daily News, "Turkish main opposition deputy asks about 'mysterious kidnapping incidents'", 26 April 2017, (<https://www.hurriyetdailynews.com/turkish-main-opposition-deputy-asks-about-mysterious-kidnapping-incidents-112447>); Stockholm Center for Freedom, "CHP deputy asks about 7 abducted purge victims in parliamentary question", 25 April 2017, (<https://stockholmcf.org/chp-deputy-asks-about-7-abducted-purge-victims-in-parliamentary-question/>).

⁴¹¹ IPA News, "Two imprisoned for Karlov assassination deny charges, citing torture", 26 March 2019 (<https://ipa.news/2019/03/26/two-imprisoned-for-karlov-assassination-deny-charges-citing-torture/>); Cumhuriyet, Karlov suikastının kritik ismi: Kaçırıldım, MIT işkence yaptı, 25 March 2019 (<https://www.cumhuriyet.com.tr/haber/karlov-suikastinin-kritik-ismi-kacirildim-mit-iskence-yapti-1313080>).

18. ORÇUN ŞENYÜCEL⁴¹²

- Orçun Şenyücel was abducted on 20 April 2018 and seems – but this is not certain - to have resurfaced in July 2018 after having disappeared for almost 3 months.
- Orçun Şenyücel was a former public sector worker who was employed as an expert at Turkey's Competition Authority until he was dismissed by an emergency decree over alleged Gülen links. He left his house in the evening to buy milk for his kids and he did not return home. His phone became unreachable shortly afterwards. Family members got hold of a convenience store CCTV footage where Şenyücel was seen being abducted by gunmen coming out of a black Transporter van and a white Toyota.
- Hak İnisiyatifi cited unconfirmed claims that Orçun Şenyücel was released three months after his disappearance and that he had been subjected to torture while he was missing. Orçun Şenyücel's name did appear as a witness in Mesut Geçer's trial.⁴¹³
- No effective investigation into the abduction and enforced disappearance of Orçun Şenyücel was launched:
 - Family members complained on social media about the lack of effective investigation. They collected the main evidence (CCTV footage) themselves. Despite this footage clearly showing the license plates of the vehicles involved in the abduction, no investigation into Orçun Şenyücel's disappearance was conducted.

⁴¹² Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 12 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf); Zaman Australia, No news received from Fahri Mert since he was abducted in Turkey's izmir 2 weeks ago, 27 August 2018 (<https://zamaustralia.com/en/2018/08/27/no-news-received-from-fahri-mert-since-he-was-abducted-in-turkeys-izmir-2-weeks-ago/amp/>); Hak İnisiyatifi, "2016 Yılı Sonrası Kamu Görevlileri Tarafından Yasadışı Alıkonulma İddialarına İlişkin İnceleme ve Araştırma Raporu," 19 June 2019, p. 19, (<https://www.hyd.org.tr/attachments/article/537/Hakinisiyatifi.2019AlıkonulmaiddialarıRaporu.pdf>).

⁴¹³ Hak İnisiyatifi, "2016 Yılı Sonrası Kamu Görevlileri Tarafından Yasadışı Alıkonulma İddialarına İlişkin İnceleme ve Araştırma Raporu," 19 June 2019, p. 19 (<https://www.hyd.org.tr/attachments/article/537/Hakinisiyatifi.2019AlıkonulmaiddialarıRaporu.pdf>) (They based themselves on the parliamentary question asked on behalf of the CHP Group Deputy Chairperson Sezgin Tanrıkulu of 30 April 2018, with number 24426).

19. TURGUT CAPAN⁴¹⁴

- Turgut Çapan was abducted on 31 March 2017 and continues to have disappeared to this day.
- Turgut Çapan was an employee at the Turgut Özal University which has been shut down after the July 2016 events. He was abducted in the district of Şentepe in Yenimahalle. CCTV footage from the area showed a black Transporter van approaching the place where Turgut Çapan was last seen, although the footage did not capture the moment of abduction.
- Turgut Çapan had a search warrant outstanding against him, as did three of his colleagues at the Turgut Özal University (amongst others Mustafa Özben who was also abducted). He rarely came home to his family out of fear of being arrested and consequently tortured.
- Turgut Çapan's disappearance was revealed to the public by his wife Ulkü Çapan who opened a Twitter account and released a video message on April 8 in which she told that a friend of her husband dropped by her home to say that Çapan had been abducted.⁴¹⁵ Closely after the revelation, Çapan's house was raided by the police and Ulkü Çapan was briefly detained and then released.
- No effective investigation into the abduction and enforced disappearance of Turgut Çapan was launched:
 - When Mrs. Çapan went public with the abduction of her husband she was briefly arrested herself.
 - Mrs. Çapan later met with Ankara Governor Ercan Topaca who she said tried to convince her that her husband might have fled by himself.⁴¹⁶

⁴¹⁴ Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 10 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf); Human Rights Association, "Those claimed to have been forcible and involuntarily disappeared must be clarified & perpetrators must be tried", 30 May 2017, (<https://ihd.org.tr/en/those-claimed-to-have-been-forcibly-and-involuntarily-disappeared-must-be-clarified-perpetrators-must-be-tried/>); Hak İnisyatifi, "2016 Yılı Sonrası Kamu Görevlileri Tarafından Yasadışı Alıkonulma İddialarına İlişkin İnceleme ve Araştırma Raporu," 19 June 2019, p. 9 (<https://www.hyd.org.tr/attachments/article/537/Hakinisiyatifi.2019AlıkonulmaiddialarıRaporu.pdf>).

⁴¹⁵ Turkish Minute, "Woman says husband abducted after losing job in post-coup crackdown," 9 April 2017, (<https://www.turkishminute.com/2017/04/09/woman-says-husband-abducted-losing-job-post-coup-crackdown/>).

⁴¹⁶Deniz Zengin "15 Temmuzla Kararan Hayatlar", December 2018, https://books.google.be/books/about/15_Temmuzla_Kararan_Hayatlar.html?id=Ih6VDwAAQBAJ&redir_esc=y

20. CENGİZ USTA⁴¹⁷

- Cengiz Usta seems to be abducted on 4 April 2017 and resurfaced on 30 June 2017 after having disappeared for more than 87 days / 3 months.
- Cengiz Usta was a former public-school teacher who, during the state of emergency, was dismissed from his job by an emergency decree over alleged Gülen links. He was reported missing in İzmir's Torbalı district. Family members said he left the house to make a routine apartment-related payment and did not come back. A local news website cited eyewitness who claimed to have seen him being forced into a vehicle.⁴¹⁸ This was recorded in police records as well.
- Three months later, Mr. Usta called his family members to let them know that he was in the Afyon province and that he was returning home. News reports said he had left because he had psychological problems and he needed to be alone for a while.⁴¹⁹ On the other hand, Önder Asan told his lawyer that he had overheard someone named Mr. Cengiz being held in the same secret detention facility where he was interrogated.⁴²⁰ Both men effectively disappeared during the same period.

21. MUSTAFA ÖZBEN⁴²¹

- Mustafa Özben was abducted on 9 May 2017 and continues to have disappeared to this day.
- Mustafa Özben was a lawyer and an academic who used to give lectures at the Gülen-affiliated Turgut Özal University which was shut down during the state of emergency. He first disappeared after dropping his daughter at school. Family members later located his abandoned car. Eyewitnesses confirmed that he was forcibly put into a black van in Ankara's Yeni Mahalle neighbourhood. Upon

⁴¹⁷ Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 11 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf); Hak İnisyatifi, "2016 Yılı Sonrası Kamu Görevlileri Tarafından Yasadışı Alıkonulma İddialarına İlişkin İnceleme ve Araştırma Raporu," 19 June 2019, p. 9 (<https://www.hyd.org.tr/attachments/article/537/Hakinisiyatifi.2019AlıkonulmaİddialarıRaporu.pdf>); Torbalı Güncel, "Cengiz öğretmen 45 gündür kayıp," Torbalı Güncel, 19 May 2017 (<https://torbaliguncel.com/gundem/cengiz-ogretmen-45-gundur-kayip-h12270.html>).

⁴¹⁸ Torbalı Güncel, "Cengiz öğretmen 45 gündür kayıp," Torbalı Güncel, 19 May 2017 (<https://torbaliguncel.com/gundem/cengiz-ogretmen-45-gundur-kayip-h12270.html>).

⁴¹⁹ Torbalı Güncel, "Kayıp öğretmen 87 gün sonra bulundu," 10 July 2017, (<https://torbaliguncel.com/gundem/kayip-ogretmen-80-gun-sonra-bulundu-h14801.html>).

⁴²⁰ Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 13 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

⁴²¹ Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 12 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf); BBC Türkçe, "Ankara'da yakınları kaçırılanlar anlatıyor," 29 June 2017, (<https://www.bbc.com/turkce/haberler-turkiye-40372013>); Turkey Purge, Abducted academic's wife says threatened by authorities to stop pursuing case, 7 August 2017, (<https://turkeypurge.com/abducted-academics-wife-says-threatened-by-authorities-to-stop-pursuing-case>); TR724, Eşi kaçırılan Emine Özben'in hak mücadelesi: 'Bu işi kurcalamayın, sizin de başınız ağrır', 7 August 2017 (<http://www.tr724.com/esi-kacirilan-emine-ozbenin-hak-mucadelesi-isi-kurcalamayin-sizin-de-basiniz-agrir/>).

filing a missing notice with the police department, his wife Emine Özben found out about an outstanding detention warrant against her husband. A similar warrant was issued against three of his colleagues at the Turgut Özal University (amongst other Turgut Çapan who was also abducted). Two days later she received a brief phone call from Mustafa Özben who she said sounded worn out, hesitant and afraid. He continues, however, to have disappeared to this day.

- No effective investigation into the abduction and enforced disappearance of Mustafa Özben was launched:
 - Emine Özben went to the police, the gendarmerie and many other places to file complaints but without any result.
 - After failing to convince the police that her husband might have been abducted, Emine Özben conducted her own investigation and found eyewitnesses from the area who saw a man being pushed into a van by three men, one of whom was wearing a black ski mask.
 - The witness statements of students and shopkeepers who saw the abduction were not fully entered into police records and the investigation did not proceed.
- In May 2017, Emine Özben said she was threatened and ordered by authorities to stop following up on her husband's case. She was told several times at the Ankara Police Department and Public Prosecutor's Office that she would find herself in trouble if she insisted on claiming that her husband was abducted by the National Intelligence Organization (MIT).

22. FATİH KILIÇ⁴²²

- Fatih Kılıç was abducted on 14 May 2017 and continues to have disappeared to this day.
- Fatih Kılıç was a teacher who was removed from his job by an emergency decree over alleged Gülen links. He disappeared after he sent off his family at the Ankara Intercity Bus Terminal (AŞTi) around 23.00.
- No effective investigation into the abduction and enforced disappearance of Fatih Kılıç was launched:
 - The police refused to recover CCTV footage in the AŞTi in spite of Kılıç's family's insistence.
 - Eventually Human Rights Watch reported that the CCTV footage revealed that Fatih Kılıç left the bus station by subway and got out at the Dikimevi station

⁴²² Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 13 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf); Human Rights Watch, "Letter from Human Rights Watch to Minister Gül," 3 August 2017, (<https://www.hrw.org/news/2017/08/03/letter-human-rights-watch-minister-gul>); Hak İnisiyatifi, "2016 Yılı Sonrası Kamu Görevlileri Tarafından Yasadışı Alıkonulma İddialarına İlişkin İnceleme ve Araştırma Raporu," 19 June 2019, p. 10 (<https://www.hyd.org.tr/attachments/article/537/Hakinisiyatifi.2019AlıkonulmaİddialarıRaporu.pdf>).

after which he has never been seen again. No official investigation into his disappearance has been conducted.

23. CEMİL KOÇAK⁴²³

- Cemil Koçak was abducted on 15 June 2017 and resurfaced in late September 2017 after having been disappeared for more than 2 months.
- Cemil Koçak was a former public sector worker who was dismissed from the Ministry of Agriculture by an emergency decree over alleged Gülen links. On 15 June 2017, around 17:30, Mr. Koçak's car was followed by four cars (a black and a white Ford Focus, a VW Transporter van and a Fiat Doblo) near his home in Ankara's Altındağ district. His car was hit by another vehicle and he was forced into a black Transporter van. The incident took place in the presence of Koçak's 8-year-old son as well as eyewitnesses who reported seeing Koçak taken away in a dark-coloured van. The allegations were supported by CCTV footage.⁴²⁴
- Human Rights Watch later learned that Mr. Koçak was released from a secret detention facility where he had been held for over three months by men who told him they worked for the state.⁴²⁵

⁴²³ Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 13 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf); Hak İnisyatifi, "2016 Yılı Sonrası Kamu Görevlileri Tarafından Yasadışı Alıkonulma İddialarına İlişkin İnceleme ve Araştırma Raporu," 19 June 2019, p. 10 (<https://www.hyd.org.tr/attachments/article/537/Hakinisiyatifi.2019AlıkonulmaİddialarıRaporu.pdf>); Human Rights Watch, "Letter from Human Rights Watch to Minister Gül," 3 August 2017, (<https://www.hrw.org/news/2017/08/03/letter-human-rights-watch-minister-gul>).

⁴²⁴ Human Rights Watch, "Letter from Human Rights Watch to Minister Gül," 3 August 2017, (<https://www.hrw.org/news/2017/08/03/letter-human-rights-watch-minister-gul>).

⁴²⁵ Human Rights Watch, "In Custody: Police Torture and Abductions in Turkey," 12 October 2017, (<https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey#page>).

24. MURAT OKUMUS⁴²⁶

- Murat Okumuş was abducted on 16 June 2017 and continues to have disappeared to this day.
- Murat Okumuş worked as an accountant for the Gülen-affiliated Sıfa Hospital which was shut down during the state of emergency. He was reported missing in İzmir. His family told Human Rights Watch that gunmen identifying themselves as the police forced Okumuş into a vehicle in a central street in İzmir. One bystander called the police to report the incident. No effective investigation into the abduction and enforced disappearance of Murat Okumuş was launched:
 - Family members who got hold of CCTV footage and filed criminal complaints with a prosecutor later discovered that the prosecutor was removed from the case and a secrecy order was imposed on the investigation.
 - On 21 August 2017, application no. 58984/17 was eventually lodged at the ECHR by his family members. The application concerns the disappearance of Murat Okumuş and the allegations of a lack of an effective investigation into his disappearance.⁴²⁷

⁴²⁶ Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 14 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf); Turkish Minute, "Another post-coup victim abducted in broad daylight in Turkey", 23 June 2017, (<https://www.turkishminute.com/2017/06/23/another-post-coup-victim-abducted-in-broad-daylight-in-turkey/>); Politico, "Suspicious abductions in Turkey raise fears of state role", 19 September 2017, (<https://www.politico.eu/article/turkey-erdogan-suspicious-abductions-raise-fears-of-state-role/>).

⁴²⁷ European Court Human Rights, *Ahmet Okumus v. Turkey*, n° 58984/17, 21 August 2017, (<http://hudoc.echr.coe.int/eng?i=001-180190>).

25. HİDİR ÇELİK⁴²⁸

- Hıdır Çelik was abducted on 16 November 2017 and continues to have disappeared to this day.
- Hıdır Çelik was a farmer. He was reported missing in Diyarbakır. News reports indicated that he disappeared after he was caught in the midst of clashes between the armed forces and the PKK in Diyarbakır's Hazro district.⁴²⁹ Reports said that the Kurdish farmer happened to be at the scene to purchase livestock and that he was wounded during the incident. A press release published by the Diyarbakır governor's office stated that a certain PKK co-conspirator was captured alive during the combat, without giving names.⁴³⁰ The Turkish NGO Hak İnisyatifi claimed that by 'co-conspirator' the governor's office was referring to Mr. Çelik.⁴³¹
- No news has been heard from Mr. Çelik from this day.

26. LİDER POLAT⁴³²

- Lider Polat was abducted on 27 August 2020 and continues to have disappeared to this day.
- Lider Polat is a youth member of the pro-Kurdish party HDP.
- He was abducted by 4 men who identified themselves as police officers and pushed him into a white vehicle after being blindfolded. There exists video footage of the entire abduction.

⁴²⁸ Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 14 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf); Hak İnisyatifi, "2016 Yılı Sonrası Kamu Görevlileri Tarafından Yasadışı Alıkonulma İddialarına İlişkin İnceleme ve Araştırma Raporu," 19 June 2019, p. 14 (<https://www.hyd.org.tr/attachments/article/537/Hakinisiatifi.2019AlıkonulmaİddialarıRaporu.pdf>); Grihat, "İki kayıp/kaçırılma olayı daha," 14 December 2017 (<https://grihat.com/iki-kayipkacirilma-olayi-daha/>).

⁴²⁹ Grihat, "İki kayıp/kaçırılma olayı daha," 14 December 2017 (<https://grihat.com/iki-kayipkacirilma-olayi-daha/>). Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 14 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

⁴³⁰ Diyarbakır Valiliği, "Etkisiz hale getirilen BTO mensupları ve ele geçirilen muhimmatlar," 17 November 2017 (<https://diyarbakir.gov.tr/17112017-basin-duyurusu-etkisiz-hale-getirilen-bto-mensuplari-ve-ele-gecirilen-muhimmatlar>). See Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 14 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

⁴³¹ Hak İnisyatifi, "2016 Yılı Sonrası Kamu Görevlileri Tarafından Yasadışı Alıkonulma İddialarına İlişkin İnceleme ve Araştırma Raporu," 19 June 2019, p. 14 (<https://hakinisiatifi.org/wp-content/uploads/2019/06/Hakİnisyatifi.2019AlıkonulmaİddialarıRaporu.pdf>). See Solidarity with Others, Enforced Disappearances: Turkey's Open Secret, May 2020, p. 14 (https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf).

⁴³² Mezopotamya Ajansı, HDP'li Polat'ın kaçırılma anına dair görüntüler ortaya çıktı, 3 September 2020 (<http://mezopotamyaajansi22.com/tum-haberler/content/view/108373>); BOLD MEDYA, GÜNDEM HDP'li Polat'ın kaçırılma anına ilişkin görüntüler ortaya çıktı, 3 September 2020 (<https://boldmedya.com/2020/09/03/hdpli-polatin-kacirilma-anina-iliskin-goruntuler-ortaya-cikti/>). See also twitter account of Mezopotamya Ajansı for the footage on the abduction.

27. HÜSEYİN GALİP KÜÇÜKÖZYİĞİT⁴³³

- Hüseyin Galip Küçüközyiğit was abducted on 29 December 2020 and continues to have disappeared to this day.
- Hüseyin Galip Küçüközyiğit was living in Ankara. On the day of his abduction, he was in contact with his family and announced he would come to Kocaeli to visit his family for New Year. He did, however, never show up and since then his family has been unable to reach him.
- The family managed to recover pertinent camera recordings. According to the camera records of the office where Mr. Küçüközyiğit works, he left the office on 29 December 2020 at 5.23 p.m. These records indicate that there were three suspects following Hüseyin Galip Küçüközyiğit while he was entering the office. His vehicle with the license plate 34 FNF 28 was not in its place. The family does not know whether he used his vehicle on the day when he got missing.
- The family applied to the Kocaeli Bekirpaşa Police Station on 31 December 2020 and reported Hüseyin Galip Küçüközyiğit missing. They also applied to the Presidential Communications Center (CİMER) and filed a criminal complaint by appealing to the prosecutor's office. Since no response from the government was received an application was filed to the ECHR on 21 April 2021.

⁴³³ English Bianet, Human rights group demands an end to abductions in Turkey, 27 January 2021, (<https://bianet.org/english/human-rights/238245-human-rights-group-demands-an-end-to-abductions-in-turkey>); Aktif Haber, 5 aydır kayıp Hüseyin Galip Küçüközyiğit için AİHM'e başvuru yapıldı, 3 May 2021 (<http://aktifhaber.com/gundem/5-aydir-kayip-huseyin-galip-kucukozyigit-icin-aihme-basvuru-yapildi-h160521.html>); Stockholm Center for Freedom, "1,388 people victims of enforced disappearance in Turkey since 1980", 18 May 2021 (<https://stockholmcf.org/1388-people-victims-of-enforced-disappearance-in-turkey-since-1980-report/>).

Annex 3

ANNEX 3: STATE SPONSORED EXTRA-TERRITORIAL ABDUCTIONS

1. MOLDOVA: CASES OF YASIN OZDIL, MUJDAT CELEBI, RIZA DOGAN, SEDAT HASAN KARACAOGLU, MEHMET FERIDUN TUFEKCI, AND TWO UNIDENTIFIED TURKISH NATIONALS

- Yasin Ozdil, Mujdat Celebi, Riza Dogan, Sedat Hasan Karacaoglu and Mehmet Feridun Tufekci and two other Turkish nationals were abducted on 6 September 2018 and immediately deported to Turkey, where they remain imprisoned.
- On the morning of 6 September 2018, they were arrested in their homes or on their way to work by individuals wearing plain clothes and they were taken to an unknown destination.⁴³⁴
- Later in the day, the Moldovan SIS (Intelligence and Security Service) issued statements concerning a large anti-terrorist operation which had taken place that day and during which seven foreign nationals, suspected of ties to an Islamist organization, had been arrested and removed from Moldova in cooperation with secret services from other countries.⁴³⁵ It has been confirmed that Turkey's National Intelligence Organization (MIT) was directly involved in the operation.⁴³⁶ On the same day, the Turkish media namely reported that the Turkish National Intelligence Organization had conducted a successful operation in Moldova during which seven members of the Fethullah Gülen movement had been arrested.⁴³⁷

⁴³⁴ ECtHR, *Ozdil and Others v. the Republic of Moldova*, 11 June 2019, Application No. 42305/18, at. 13.

⁴³⁵ ECtHR, *Ozdil and Others v. the Republic of Moldova*, 11 June 2019, Application No. 42305/18, at. 13; Amnesty International, Moldova: Seven people deported to Turkey despite major human rights concerns, 6 September 2018 (<https://www.amnesty.org/en/latest/news/2018/09/moldova-seven-people-deported-to-turkey-despite-major-human-rights-concerns/>).

⁴³⁶ Nordic Monitor, Teachers abducted by Turkish intelligence in Moldova hit by bogus criminal charges, 9 August 2020 (<https://www.nordicmonitor.com/2020/08/teachers-kidnapped-by-turkish-intelligence-in-moldova-were-accused-of-terrorist-group-membership/>); Madalin Necsutu, Moldova's Human Rights Deficit: ECHR ruling highlights wider failings in system (<https://iwpr.net/global-voices/moldovas-human-rights-deficit>).

⁴³⁷ ECtHR, *Ozdil and Others v. the Republic of Moldova*, 11 June 2019, Application No. 42305/18, at. 14.

- The arrested were taken directly to Chişinău Airport where a specially chartered airplane was waiting for them. It took them immediately to Turkey.⁴³⁸
- Their families had no knowledge of their fate for several weeks.⁴³⁹
- They were all linked to a private chain of schools in Moldova, in Chişinău's Durleşti neighbourhood, called Orizont, which has been in operation since 1993.
- They all had had valid residence permits for Moldova.
 - Mr Yasin Ozdil had lived in Moldova since 2015 with his wife and their two minor children.
 - Mr Mujdat Celebi had lived in Moldova since 2014 with his wife and their three minor children.
 - Mr Riza Dogan had lived in Moldova since 1993 with his wife and their two minor children who are Moldovan citizens. He was the director of the school.
 - Mr Sedat Hasan Karacaoglu had lived in Moldova since 1998 with his wife.
 - Mr Mehmet Feridun Tufekci had lived in Moldova since 1993 together with his Moldovan wife and their two minor children who are Moldovan citizens.
- In April 2018, months before their abduction, they had all applied for asylum with the Moldovan Bureau for Migration and Asylum. They sought to obtain refugee status in Moldova because they feared reprisals in Turkey on the grounds of their political views. Several days after the arrests, the families received letters from the Moldovan Bureau for Migration and Asylum rejecting their applications. The Bureau confirmed that the fear of reprisals at the hands of the Turkish authorities were justified, however they rejected the application on the basis of a classified note, received from the Moldovan secret service, according to which the Turkish nationals presented a threat to national security. The decisions did not provide any details.⁴⁴⁰
- Five of the seven teachers applied to the European Court for Human Rights, which rendered judgment on 11 June 2019. The Court found that the deprivation of liberty on 6 September 2018 was neither lawful nor necessary within the meaning of Article 5 § 1

⁴³⁸ ECtHR, *Ozdil and Others v. the Republic of Moldova*, 11 June 2019, Application No. 42305/18, at. 17; Madalin Necsutu, Moldova's Human Rights Deficit: ECHR ruling highlights wider failings in system (<https://iwpr.net/global-voices/moldovas-human-rights-deficit>).

⁴³⁹ ECtHR, *Ozdil and Others v. the Republic of Moldova*, 11 June 2019, Application No. 42305/18, at. 16.

⁴⁴⁰ ECtHR, *Ozdil and Others v. the Republic of Moldova*, 11 June 2019, Application No. 42305/18, at. 19.

(f), nor devoid of arbitrariness.⁴⁴¹ The Court also confirmed that it concerned a joint operation between the Moldovan and Turkish secret services that was prepared well in advance of 6 September 2018.⁴⁴²

- The Court held that Moldova is to pay each applicant 25 000 EUR.
- The international community condemned the illegal abduction that took place on 6 September 2018:
- On 15 October 2016 the European Parliament made public a report on the implementation of the EU Association Agreement with Moldova: *“ Strongly condemns the recent extradition/abduction of Turkish citizens to Turkey due to their alleged links to the Gülen movement, in violation of the rule of law and basic human rights; urges the Moldovan authorities to ensure that any extradition requests coming from third countries are processed in a transparent manner while following judicial procedures fully in line with European principles and standards...”*
- On the day of the abduction, the Amnesty International’s director for Eastern Europe and Central Asia issued the following statement: *“The Moldovan authorities didn’t just violate these individuals’ rights once by deporting them - they put them on a fast-track to further human rights violations such as an unfair trial. ... The latest arrests in Moldova follow the pattern of political reprisals against Turkish nationals living abroad by the increasingly repressive government of Recep Tayyip Erdoğan. ... Forcible return of those seeking protection in Moldova is a flagrant violation of Moldova’s international human rights obligations. The state authorities must immediately hold to account those responsible for the arbitrary detention and expulsion of the Turkish nationals.”*

⁴⁴¹ ECtHR, *Ozdil and Others v. the Republic of Moldova*, 11 June 2019, Application No. 42305/18.

⁴⁴² ECtHR, *Ozdil and Others v. the Republic of Moldova*, 11 June 2019, Application No. 42305/18, at. 55: *“The material in the case file also indicates that the joint operation of the was prepared well in advance of. The fact that the applicants were transported to Turkey in a specially chartered airplane for that purpose is only one of the elements that support that point of view. The facts of the case also indicate that the operation was conceived and organized in such a manner as to take the applicants by surprise (...)”*

- According to a leaked document of the Turkish public prosecutor's office, dated 18 December 2019, an investigation was launched.⁴⁴³ In July 2019, the seven Turkish teachers were convicted by Turkish courts on terrorism-related charges and are currently imprisoned in Turkey.⁴⁴⁴

⁴⁴³ Nordic Monitor, Teachers abducted by Turkish intelligence in Moldova hit by bogus criminal charges, 9 August 2020 (<https://www.nordicmonitor.com/2020/08/teachers-kidnapped-by-turkish-intelligence-in-moldova-were-accused-of-terrorist-group-membership/>).

⁴⁴⁴ Nordic Monitor, Teachers abducted by Turkish intelligence in Moldova hit by bogus criminal charges, 9 August 2020 (<https://www.nordicmonitor.com/2020/08/teachers-kidnapped-by-turkish-intelligence-in-moldova-were-accused-of-terrorist-group-membership/>); Madalin Necsutu, Moldova's Human Rights Deficit: ECHR ruling highlights wider failings in system (<https://iwpr.net/global-voices/moldovas-human-rights-deficit>).

2. AZERBAIJAN: CASE OF ISA OZDEMIR

- Isa Ozdemir, who enjoyed legal residence in Azerbaijan⁴⁴⁵ was abducted on 12 July 2018 and 8 days later, on 20 July 2018, he was further detained in Turkey (Ankara).⁴⁴⁶
- Isa Ozdemir lived in Azerbaijan for more than 20 years. He was the owner of his own construction business.⁴⁴⁷
- He was abducted by the Directorate of Turkey's National Intelligence Organization (MIT).⁴⁴⁸ MIT announced the detention of Isa Ozdemir as part of an investigation into the movement of Fetullah Gülen.
- He was brought to Istanbul by private plane on Thursday afternoon by MIT-agents.⁴⁴⁹
- Before his abduction, Isa Ozdemir had been detained in Baku (Azerbaijan) at the request of the Turkish authorities. He was, however, released from custody by the Baku Serious Crimes Court which rejected the request for deportation. Immediately after his release, Isa Ozdemir disappeared.⁴⁵⁰
- Upon arrival in Turkey, he was immediately arrested on charges of "*being a member of an armed terrorist organization*" and, until today, he remains behind bars.⁴⁵¹
- In February 2018, an application (n° 8098/18) on behalf of Isa Ozdemir and 4 other Turkish nationals was lodged before the European Court for Human Rights. On 6

⁴⁴⁵ Turkey News, ECtHR to accelerate cases of 5 Turks abducted from Azerbaijan by Turkish intelligence, 26 February 2019 (<https://trnews0.blogspot.com/2019/02/ecthr-to-accelerate-cases-of-5-turks.html>).

⁴⁴⁶ Anadolu Ajansı (AA), FETÖ'nün 'Azerbaycan kasası' tutuklandı, 20 July 2018 (<https://www.aa.com.tr/tr/turkiye/fetonun-azerbaycan-kasasi-tutuklandi/1209711>).

⁴⁴⁷ Turan, The Turk, freed by the Court of Baku, was kidnapped and taken to Turkey, 13 July 2018 (<https://www.turan.az/ext/news/2018/7/free/politics%20news/en/73570.htm>).

⁴⁴⁸ Barış Kılıç and Serdar Açıl, Anadolu Ajansı (AA), FETÖ'nün 'Azerbaycan kasası' tutuklandı, 20 July 2018 (<https://www.aa.com.tr/tr/turkiye/fetonun-azerbaycan-kasasi-tutuklandi/1209711>); Turkey Purge, Man abducted from Azerbaijan put in pre-trial detention in Ankara (<https://turkeypurge.com/man-abducted-from-azerbaijan-put-in-pre-trial-detention-in-ankara>).

⁴⁴⁹ Anadolu Ajansı (AA), FETÖ'nün 'Azerbaycan kasası' tutuklandı, 20 July 2018 (<https://www.aa.com.tr/tr/turkiye/fetonun-azerbaycan-kasasi-tutuklandi/1209711>); Stockholm Center of Freedom, Turkey's intelligence service abducts 2 people from Azerbaijan and Ukraine over Gülen links, 12 July 2018 (<https://stockholmcf.org/turkeys-intelligence-service-abducts-2-people-from-azerbaijan-and-ukraine-over-gulen-links/>).

⁴⁵⁰ Turan, The Turk, freed by the Court of Baku, was kidnapped and taken to Turkey, 13 July 2018 (<https://www.turan.az/ext/news/2018/7/free/politics%20news/en/73570.htm>).

⁴⁵¹ Turkey News, ECtHR to accelerate cases of 5 Turks abducted from Azerbaijan by Turkish intelligence, 26 February 2019 (<https://trnews0.blogspot.com/2019/02/ecthr-to-accelerate-cases-of-5-turks.html>).

February 2019 the Court communicated the case, under an accelerated procedure, to the State of Azerbaijan for observations.⁴⁵²

3. AZERBAIJAN: CASES OF MEHMET CELIK, AYHAN SEFEROGLU, FAIK SEMIH BASOGLU AND ERDOGAN TAYLAN

- In 2018 (exact date unknown), Mehmet Çelik, Ayhan Seferoğlu, Faik Semih Başoğlu and Erdoğan Taylan were abducted and delivered to Turkey despite the fact that they were enjoying legal residence in Azerbaijan.⁴⁵³
- They were taken by the Turkish intelligence while Azerbaijani officials looked the other way.⁴⁵⁴
- They were detained and arrested by Turkey over their alleged links to the Gülen movement and they remain behind bars.
- In February 2018, an application (n° 8098/18) on behalf of these 4 Turkish nationals was lodged before the European Court for Human Rights. On 6 February 2019, the Court communicated the case, under an accelerated procedure, to the State of Azerbaijan for observations.⁴⁵⁵

⁴⁵² LawEuro, Ozdemir v. Azerbaijan and 4 other applicants (European Court of Human Rights), 14 April 2019 (<https://laweuro.com/?p=927>); Turkey News, ECtHR to accelerate cases of 5 Turks abducted from Azerbaijan by Turkish intelligence, 26 February 2019 (<https://trnews0.blogspot.com/2019/02/ecthr-to-accelerate-cases-of-5-turks.html>).

⁴⁵³ Turkey News, ECtHR to accelerate cases of 5 Turks abducted from Azerbaijan by Turkish intelligence, 26 February 2019 (<https://trnews0.blogspot.com/2019/02/ecthr-to-accelerate-cases-of-5-turks.html>).

⁴⁵⁴ Turkey News, ECtHR to accelerate cases of 5 Turks abducted from Azerbaijan by Turkish intelligence, 26 February 2019 (<https://trnews0.blogspot.com/2019/02/ecthr-to-accelerate-cases-of-5-turks.html>).

⁴⁵⁵ LawEuro, Ozdemir v. Azerbaijan and 4 other applicants (European Court of Human Rights), 14 April 2019 (<https://laweuro.com/?p=927>); Turkey News, ECtHR to accelerate cases of 5 Turks abducted from Azerbaijan by Turkish intelligence, 26 February 2019 (<https://trnews0.blogspot.com/2019/02/ecthr-to-accelerate-cases-of-5-turks.html>).

4. AZERBAIJAN: CASE OF TACI ŞENTÜRK

- Taci Şentürk was deported to Turkey on 8 June 2017.⁴⁵⁶ 15 days later, on 23 June 2017 he resurfaced in Turkey.⁴⁵⁷
- He was working as a private teacher in Azerbaijan.⁴⁵⁸
- He was legally residing in Azerbaijan. He was granted a temporary residence permit, which was regularly extended. On 9 March 2017, his temporary residence permit was extended *de novo* until 9 September 2017.⁴⁵⁹
- On 3 June 2017, the Turkish authorities informed their Azerbaijani counterparts via Interpol that Taci Şentürk's passport had been cancelled and therefore requested to arrest and deport him to Turkey.⁴⁶⁰
- On 7 June 2017, Taci Şentürk was arrested and brought to a deportation facility of the Organized Crime Department of the Ministry of Internal Affairs in Azerbaijan, where he was informed that he would be taken to Baku International Airport and deported to Turkey on the same day.⁴⁶¹ His wife declared in a video that went viral on social media that her husband was picked up from work around 2:00 PM and that they tried to put him on a plane at 10:00 PM.⁴⁶²
- He requested not to be deported and voiced his intention to apply for asylum on the grounds of his persecution in Turkey. While he was already in the boarding area, hence

456 Turkey Purge, ECHR asks Azerbaijan to clarify why Turkish teacher was deported despite asylum request, 25 July 2018 (<https://turkeypurge.com/echr-asks-azerbaijan-to-clarify-why-turkish-teacher-was-deported-despite-asylum-request>); ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts; Stockholm Center for Freedom, Turkish teacher under UN protection detained in Azerbaijan for deportation to Turkey, wife says, 10 June 2017 (<https://stockholmcf.org/turkish-teacher-under-un-protection-detained-in-azerbaijan-for-deportation-to-turkey-wife-says/>).

457 Turkish minute, Turkish teacher under UN protection detained in Azerbaijan for deportation to Turkey, wife says, 10 June 2017 (https://www.youtube.com/watch?time_continue=13&v=jDu5rWqE0IA&feature=emb_title).

458 <https://turkeypurge.com/echr-asks-azerbaijan-to-clarify-why-turkish-teacher-was-deported-despite-asylum-request>

⁴⁵⁹ ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts.

⁴⁶⁰ ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts.

⁴⁶¹ ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts; Stockholm Center for Freedom, Turkish teacher under UN protection detained in Azerbaijan for deportation to Turkey, wife says, 10 June 2017 (<https://stockholmcf.org/turkish-teacher-under-un-protection-detained-in-azerbaijan-for-deportation-to-turkey-wife-says/>).

⁴⁶² Turkish minute, Turkish teacher under UN protection detained in Azerbaijan for deportation to Turkey, wife says, 10 June 2017 (https://www.youtube.com/watch?time_continue=13&v=jDu5rWqE0IA&feature=emb_title).

on his way to Turkey, an officer of UNHCR was able to prevent the deportation. Mr. Taci Şentürk was then taken back to the detention facility.⁴⁶³

- The same day, his lawyer wanted access to Taci Şentürk. However, he was denied access.⁴⁶⁴
- On 8 June 2017, without informing his family, Taci Şentürk was put on a plane to Ankara.⁴⁶⁵
- Upon arrival, he was arrested by the Turkish police and sent to Konya where he was placed in custody.⁴⁶⁶
- The wife of Taci Şentürk, who was not aware of the deportation, applied to various authorities concerning his whereabouts.⁴⁶⁷ She was not able to obtain any information concerning the whereabouts of her husband.⁴⁶⁸ On 23 June 2017, 15 days after his disappearance, she was informed that her husband had been deported to Turkey.⁴⁶⁹
- The circumstances of the deportation are currently under review by the European Court for Human Rights.⁴⁷⁰ The case was communicated for observation to the Azerbaijan government.⁴⁷¹

⁴⁶³ ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts.

⁴⁶⁴ ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts.

⁴⁶⁵ ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts.

⁴⁶⁶ ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts.

⁴⁶⁷ Stockholm Center for Freedom, Turkish teacher under UN protection detained in Azerbaijan for deportation to Turkey, wife says, 10 June 2017 (<https://stockholmcf.org/turkish-teacher-under-un-protection-detained-in-azerbaijan-for-deportation-to-turkey-wife-says/>).

⁴⁶⁸ Turkish minute, Turkish teacher under UN protection detained in Azerbaijan for deportation to Turkey, wife says, 10 June 2017 (https://www.youtube.com/watch?time_continue=13&v=jDu5rWqE0IA&feature=emb_title).

⁴⁶⁹ ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts.

⁴⁷⁰ ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts.

⁴⁷¹ ECHR, n° 41326/17, *Taci Shenturk v. Azerbaijan*, communicated on 5 July 2018, statement of facts.

5. GABON: CASES OF OSMAN ÖZPINAR, İBRAHİM AKBAŞ AND ADNAN DEMİRÖNAL

- On 15 March 2018, at 11:00 PM, the Gabonese police came to the school in Libreville (Gabon) where Osman Özpınar and İbrahim Akbaş were working and arrested them.⁴⁷² On the 16 March 2018, the two men were handed over to the Turkish police and taken to Turkey.⁴⁷³ Adnan Demirönel was arrested one week later.⁴⁷⁴
- The Turkish nationals were held *incommunicado* and without access to their lawyers, with little, if any, clarity on charges or allegations against them.⁴⁷⁵ After receiving a text message to friends in Gabon saying “*the police are here, they want to take us into custody,*” their friends never heard from them again.⁴⁷⁶ Hence, the normal legal procedures were not followed.⁴⁷⁷
- A French human rights lawyer (Richard Sedillot) confirmed that he saw two employees of the Turkish embassy at the police headquarters in Libreville where the men were held.⁴⁷⁸
- In relation to such abductions President Erdoğan’s lawyer Hüseyin Aydın stated that Turkish intelligence officers could be involved in more abductions around the world in the coming days. He added: “*fugitive Gülenists will walk looking behind their backs all*

⁴⁷² Stockholm Center for Freedom (SCF), 3 detained Turkish educators and their families handed over to Turkey by Gabon, 8 April 2019 (<https://stockholmcf.org/3-detained-turkish-educators-and-their-families-handed-over-to-turkey-by-gabon/>).

⁴⁷³ SCF, 3 detained Turkish educators and their families handed over to Turkey by Gabon, 8 April 2019 (<https://stockholmcf.org/3-detained-turkish-educators-and-their-families-handed-over-to-turkey-by-gabon/>).

⁴⁷⁴ SCF, 3 detained Turkish educators and their families handed over to Turkey by Gabon, 8 April 2019 (<https://stockholmcf.org/3-detained-turkish-educators-and-their-families-handed-over-to-turkey-by-gabon/>); Journalists and Writers Foundation, Escaping the witch hunt from Turkey & around the world: the right to leave, April 2018 (<http://jwf.org/jwf/wp-content/uploads/2018/05/Escaping-the-Witch-Hunt-from-Turkey-and-Around-the-World-JWF-Report-April-2018.pdf>), p. 63.

⁴⁷⁵ Journalists and Writers Foundation, Escaping the witch hunt from Turkey & around the world: the right to leave, April 2018 (<http://jwf.org/jwf/wp-content/uploads/2018/05/Escaping-the-Witch-Hunt-from-Turkey-and-Around-the-World-JWF-Report-April-2018.pdf>), p. 63.

⁴⁷⁶ SCF, 3 detained Turkish educators and their families handed over to Turkey by Gabon, 8 April 2019 (<https://stockholmcf.org/3-detained-turkish-educators-and-their-families-handed-over-to-turkey-by-gabon/>).

⁴⁷⁷ SCF, 3 detained Turkish educators and their families handed over to Turkey by Gabon, 8 April 2019 (<https://stockholmcf.org/3-detained-turkish-educators-and-their-families-handed-over-to-turkey-by-gabon/>).

⁴⁷⁸ SCF, Turkey tries to snatch Gülen supporters in Gabon, 3 April 2018 (<https://stockholmcf.org/turkey-tries-to-snatch-gulen-supporters-in-gabon/>); SCF, 3 detained Turkish educators and their families handed over to Turkey by Gabon, 8 April 2019 (<https://stockholmcf.org/3-detained-turkish-educators-and-their-families-handed-over-to-turkey-by-gabon/>).

*the time. The National Intelligence Organization will continue its operations everywhere.*⁴⁷⁹

- On 8 April 2018, at 8:30 PM, their spouses (Nesibe Özpinar, Fikriye Akbaş, and Darya Demiroňal) and children were taken into custody following coordinated actions by Gabonese and Turkish authorities and immediately transferred to the Libreville airport, where they were forced to board a plane heading to Istanbul.⁴⁸⁰
- Osman Özpinar, Ibrahim Akbaş, and Adnan Demiroňal were arrested upon arrival, while their spouses and children were released.⁴⁸¹

479 SCF, 3 detained Turkish educators and their families handed over to Turkey by Gabon, 8 April 2019 (<https://stockholmcf.org/3-detained-turkish-educators-and-their-families-handed-over-to-turkey-by-gabon/>).

480 SCF, Turkey tries to snatch Gülen supporters in Gabon, 3 April 2018 (<https://stockholmcf.org/turkey-tries-to-snatch-gulen-supporters-in-gabon/>); SCF, 3 detained Turkish educators and their families handed over to Turkey by Gabon, 8 April 2019 (<https://stockholmcf.org/3-detained-turkish-educators-and-their-families-handed-over-to-turkey-by-gabon/>).

⁴⁸¹ Journalists and Writers Foundation, Escaping the witch hunt from Turkey & around the world: the right to leave, April 2018 (<http://jwf.org/jwf/wp-content/uploads/2018/05/Escaping-the-Witch-Hunt-from-Turkey-and-Around-the-World-JWF-Report-April-2018.pdf>), p. 63.

6. SUDAN: CASE OF MEMDUH ÇIKMAZ

- On 6 September 2017, Memduh Çıkmaç was arrested in Sudan and immediately deported to Turkey where he was further detained.⁴⁸²
- The abduction is the result of a joint operation between Sudan's National Intelligence and Security Service and the Turkey's National Intelligence Organization (MIT).⁴⁸³ Memduh Çıkmaç was arrested in the morning at his home, where he was interrogated by MIT.⁴⁸⁴
- After 15 July 2016, the Turkish government had been sending letters to the Sudanese government requesting the deportation of Mr. Memduh Çıkmaç.⁴⁸⁵
- His lawyer and family had urged domestic authorities not to deport Mr. Çıkmaç as he might face persecution in Turkey.⁴⁸⁶
- Their call was not responded positively.⁴⁸⁷ He was detained and, after deportation, arrested in Turkey.
- At his first appearance before the 2nd High Criminal Court, Memduh Çıkmaç declared, via an audio and video information system, that he was very tired because he had not been able to sleep for days and that his head "was throbbing due to the air pressure in the plane", thus rendering him physically incapable to defend himself.⁴⁸⁸
- In May 2018, he was sentenced to 10 years in prison and remains detained.⁴⁸⁹

⁴⁸² Anadolu Ajansı, Red Action, FETÖ'nün "para kasası" Memduh Çıkmaç tutuklandı, 27 November 2017 (<https://www.redaction.media/tr/articles/fetonun-para-kasasi-memduh-cikmaz-tutuklandi/>).

⁴⁸³ Haberler, FETÖ'nün Para Kasası Memduh Çıkmaç, MIT Operasyonu ile Türkiye'ye Getirildi (<https://www.dailymotion.com/video/x6aniwv>); Stockholm Center for Freedom, Report: Turkey's MIT abducts Turkish businessman from Sudan, 27 November 2017 (<https://stockholmcf.org/report-turkeys-mit-abducts-turkish-businessman-from-sudan/>).

⁴⁸⁴ TRT Haber, FETÖ'nün 'para kasası' Memduh Çıkmaç MIT operasyonu ile Türkiye'ye getirildi, 27 November 2017 (<https://www.trthaber.com/haber/gundem/fetonun-para-kasasi-memduh-cikmaz-mit-operasyonu-ile-turkiyeye-getirildi-342007.html>).

⁴⁸⁵ Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 4-5.

⁴⁸⁶ Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 4-5.

⁴⁸⁷ Turkish Minute, Sudan arrests Gülen-linked businessman at Turkey's request, 9 September 2017 (www.turkishminute.com/2017/09/09/sudan-arrests-gulen-linked-businessman-at-turkeys-request/).

⁴⁸⁸ Anadolu Ajansı, Red Action, FETÖ'nün "para kasası" Memduh Çıkmaç tutuklandı, 27 November 2017 (<https://www.redaction.media/tr/articles/fetonun-para-kasasi-memduh-cikmaz-tutuklandi/>).

⁴⁸⁹ Anadolu Ajansı (AA), FETÖ'nün 'para kasası'na 10 yıl hapis, 25 May 2018 (<https://www.aa.com.tr/tr/turkiye/fetonun-para-kasasina-10-yil-hapis/1157072>).

7. **KOSOVO: CASES OF CIHAN OZKAN, KAHRAMAN DEMIREZ, HASAN HUSEYIN GUNAKAN, MUSTAFA ERDEM, OSMAN KARAKAYA AND YUSUF KARABINA**

- On 29 March 2018 Cihan Ozkan, Kahraman Demirez, Hasan Huseyin Gunakan, Mustafa Erdem, Osman Karakaya And Yusuf Karabina were arrested and within 24 hours deported to Turkey by private jet.⁴⁹⁰
- President Erdogan confirmed that that the Turkish National Intelligence Organization (MIT) in cooperation with the Kosovo Intelligence Agency⁴⁹¹ snatched and brought back 6 Turkish nationals living in Kosovo.⁴⁹² It concerns⁴⁹³:
 - Mustafa Erdem, General Director of Mehmet Akif College;
 - Mr. Yusuf Karabina – Deputy Director of Mehmet Akif College;
 - Mr. Kahraman Demirez - Director of Gjakova/Djakovica Branch of Mehmet Akif College;
 - Mr. Cihan Ozkan – Biology teacher at Mehmet Akif College;
 - Mr. Hasan Hüseyin Günakan – Chemistry teacher at Mehmet Akif College;
 - Prof. Osman Karakaya – Turkish medical doctor visiting on a tourist visa.
- All six Turkish nationals had legal residence in the country or stayed with a legitimate tourist visa.⁴⁹⁴ Their residence permits were unilaterally annulled on public security grounds by the Kosovo Intelligence Service.⁴⁹⁵
- The abduction of Mr. Yusuf Karabina, on the morning of 29 March 2018, was caught on surveillance cameras. Mrs. Yasmine Karabina, his wife and also a teacher at Mehmet

⁴⁹⁰ Advocates of Silenced Turkey (AST), Report: Erdogan's long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 11-12.

⁴⁹¹ T24, Erdoğan'dan MIT'in Kosova'daki operasyonu hakkında açıklama, 30 March 2018

(<https://t24.com.tr/haber/erdogandan-mitin-kosovadaki-operasyonu-hakkinda-aciklama,593613>).

⁴⁹² DW, Turkey abducts Erdogan opponents in Kosovo (<https://www.dw.com/en/turkey-abducts-erdogan-opponents-in-kosovo/av-43780323>).

⁴⁹³ Journalists and Writers Foundation, Escaping the witch hunt from Turkey & around the world: the right to leave, April 2018 (<http://jwf.org/jwf/wp-content/uploads/2018/05/Escaping-the-Witch-Hunt-from-Turkey-and-Around-the-World-JWF-Report-April-2018.pdf>), p. 66-67.

⁴⁹⁴ Advocates of Silenced Turkey (AST), Erdogan Dissidents face risk of abduction and extradition (<https://silencedturkey.org/tag/deportation>).

⁴⁹⁵ Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, AL TUR 5/2020, 5 May 2020

(<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25209>).

Akif College, and their son were on their way to school when they were stopped by two vehicles. Mrs. Yasmine Karabina declared that they first dragged her son out of the car, grabbed him by the neck and threw him on the ground. She ran after her son, while in the meantime her husband was being overpowered.⁴⁹⁶

- They were arbitrarily detained and expelled within 24 hours.
- Lawyers of the teachers have complained to the local media that they are not being informed about the whereabouts of their clients.⁴⁹⁷
- The six Turkish nationals were held into custody and accused of international espionage and management of a terror organization.⁴⁹⁸ The prosecution is demanding sentences ranging from 16 years and six months to 28 years and six months.⁴⁹⁹
- In Kosovo, these abductions led to a governmental crisis, resulting in the removal of the Minister of Internal Affairs and the Intelligence Chief from duty.⁵⁰⁰

⁴⁹⁶ DW, Turkey abducts Erdogan opponents in Kosovo (<https://www.dw.com/en/turkey-abducts-erdogan-opponents-in-kosovo/av-43780323>).

⁴⁹⁷ Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 11-12.

⁴⁹⁸ Handan Kazanci, Anadolu Ajansi (AA), Turkish Court remands six senior FETO members, 12 April 2018 (<https://www.aa.com.tr/en/todays-headlines/turkish-court-remands-six-senior-feto-members/1115494>).

⁴⁹⁹ Die Morina, Balkan Insight, Ankara indicts six Turks deported from Kosovo, 13 March 2019 (<https://balkaninsight.com/2019/03/13/ankara-indicts-six-turks-deported-from-kosovo/>); Ipa News, Prosecution seeks up to 22 years in jail for Turkish nationals deported to Kosovo, 21 February 2020 (<https://ipa.news/2020/02/21/prosecution-seeks-up-to-22-years-in-jail-for-turkish-nationals-deported-from-kosovo/>)

⁵⁰⁰ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 79.

8. MYANMAR: CASE OF MUHAMMET FURKAN SÖKMEN

- On 24 May 2017, Muhammet Furkan Sökmen was detained and two days later, on 26 May 2017, he was deported to Turkey.⁵⁰¹
- Myanmar authorities subsequently confirmed that they had cooperated in the deportation of Muhammet Furkan Sökmen, based on a request from the Turkish government.⁵⁰²
- Muhammet Furkan Sökmen had been working as an administrator at Horizon International Schools in Myanmar.⁵⁰³
- On 24 May 2017, officials at Yangon International Airport prevented Muhammet Furkan Sökmen, his wife and their daughter from boarding a flight from Yangon to Bangkok.⁵⁰⁴ Muhammet Furkan Sökmen and his family were subsequently detained at the airport for approximately 24 hours, during which time they were questioned by a Turkish embassy official.
- He was not allowed to board the plane and had issues with Myanmar's immigration officers. In a video posted on social media, Muhammet Furkan Sökmen said that the Turkish Ambassador had pressured the Myanmar police to confiscate the family's passports.⁵⁰⁵
- On the evening of 25 May 2017, Muhammet Furkan Sökmen was forced to board a Myanmar International Airways flight to Bangkok, while his wife and daughter were released from custody.⁵⁰⁶

⁵⁰¹ Human Rights Watch, Burma/Thailand: Deported Turkish Man at Risk, 1 June 2017 (<https://www.hrw.org/news/2017/06/01/burma/thailand-deported-turkish-man-risk>).

⁵⁰² Amnesty International, Between a rock and a hard place, 2017 (<https://www.amnesty.org/download/Documents/ASA3970312017ENGLISH.PDF>).

⁵⁰³ Advocates of Silenced Turkey (AST), Report: Erdogan's long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 8; Amnesty International, Between a rock and a hard place, 2017 (<https://www.amnesty.org/download/Documents/ASA3970312017ENGLISH.PDF>).

⁵⁰⁴ Amnesty International, Between a rock and a hard place, 2017 (<https://www.amnesty.org/download/Documents/ASA3970312017ENGLISH.PDF>).

⁵⁰⁵ Jacob Goldberg, Coconuts Yangon, Myanmar-based family abducted by Turkish embassy from Yangon Airport, 25 May 2017 (<https://coconuts.co/yangon/news/turkish-teacher-abducted-embassy-officials-yangon-airport/>).

⁵⁰⁶ Amnesty International, Between a rock and a hard place, 2017 (<https://www.amnesty.org/download/Documents/ASA3970312017ENGLISH.PDF>).

- At Bangkok's Suvarnabhumi International Airport, Muhammet Furkan Sökmen was taken into the custody of Thai immigration officials.⁵⁰⁷
- Before his phone was confiscated, Muhammet Furkan Sökmen, while in custody in Myanmar, had sent two videos into the world in which he said⁵⁰⁸:
 - *"I am calling everyone, please help me. I am in the terminal area; they are pushing me. They are trying to give me to the Turkish Embassy. Please help me, all over the world, please help me."*
 - *"Please help me, now I am in Bangkok Suvarnabhumi Airport in the terminal area. They are pushing me to give me to Turkish Embassy staff, they are pushing me to go to Turkey. I don't want to go to Turkey, I want to stay here. Please help me— all over the world please help me."*
- The imminent deportation of Muhammet Furkan Sökmen was also flagged at the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other UN agencies. It was argued that, if he would be deported, he would face an imminent risk of human rights abuse upon his return to Turkey. The case was never examined and Muhammet Furkan Sökmen was deported to Turkey.⁵⁰⁹
- Muhammet Furkan Sökmen subsequently told family members that he was handcuffed and that tape was placed over his mouth before he was physically forced onto the plane.⁵¹⁰
- On 27 May, Muhammet Furkan Sökmen was pictured disembarking from a plane in Istanbul, handcuffed and in the custody of a Turkish Interpol official.⁵¹¹

⁵⁰⁷ Amnesty International, Between a rock and a hard place, 2017

(<https://www.amnesty.org/download/Documents/ASA3970312017ENGLISH.PDF>).

⁵⁰⁸ Human Rights Watch, Burma/Thailand: Deported Turkish Man at Risk, 1 June 2017

(<https://www.hrw.org/news/2017/06/01/burma/thailand-deported-turkish-man-risk>).

⁵⁰⁹ Human Rights Watch, Burma/Thailand: Deported Turkish Man at Risk, 1 June 2017

(<https://www.hrw.org/news/2017/06/01/burma/thailand-deported-turkish-man-risk>).

⁵¹⁰ Amnesty International, Between a rock and a hard place, 2017

(<https://www.amnesty.org/download/Documents/ASA3970312017ENGLISH.PDF>).

⁵¹¹ Anadolu Ajansı (AA), FETO'nun 'Myanmar imami' Türkiye'ye getirildi, 27 May 2017 (aa.com.tr/tr/gunun-basliklari/fetonun-myanmar-imami-turkiyeye-getirildi/827416).

9. SAUDI ARABIA: THE NAMES WERE KEPT ANONYMOUS FOR SECURITY REASONS⁵¹²

- On 15 March 2017, 16 Turkish nationals, living in Saudi Arabia and involved in the organization of Hajj pilgrimage events, were arrested. They were kept in custody for weeks in Medinah before they were deported to Turkey on 4 May 2017.⁵¹³
- Among those deported, the children and women were reportedly released in Turkey.⁵¹⁴ 4 of the 16 detainees were, upon arrival in Turkey, put in pre-trial detention.⁵¹⁵ At first, the whereabouts of the men remained unknown.⁵¹⁶
- They were deported with a plane sent by the Turkish government.⁵¹⁷ Turkey's National Intelligence Organization (MIT) played an active role in their arrests.⁵¹⁸
- Saudi Arabia had put travel bans on Turkish nationals in their country who had links to the Gülen movement.⁵¹⁹
- Based upon a letter received by news outlet 'Turkey Purge', the deported never saw a prosecutor or a judge nor were they informed on the grounds of their arrests. The letter also states that they did not have access to their lawyers, nor to their families.⁵²⁰

⁵¹² Turkey Purge, 11 Gülen sympathizers held hostage at Saudi hotel deported to Turkey, 4 May 2017 (<https://turkeypurg.com/15-gulen-sympathizers-held-hostage-at-saudi-hotel-deported-to-turkey>).

⁵¹³ Stockholm Center for Freedom, Saudi Arabia deports members of 16 Turkish families to Turkey over alleged links with Gülen movement, 4 May 2017 (<https://stockholmcf.org/saudi-arabia-deported-members-of-16-turkish-families-to-turkey-over-alleged-links-with-gulen-movement/>).

⁵¹⁴ Stockholm Center for Freedom, Saudi Arabia deports members of 16 Turkish families to Turkey over alleged links with Gülen movement, 4 May 2017 (<https://stockholmcf.org/saudi-arabia-deported-members-of-16-turkish-families-to-turkey-over-alleged-links-with-gulen-movement/>).

⁵¹⁵ Stockholm Center for Freedom, Saudi Arabia deports members of 16 Turkish families to Turkey over alleged links with Gülen movement, 4 May 2017 (<https://stockholmcf.org/saudi-arabia-deported-members-of-16-turkish-families-to-turkey-over-alleged-links-with-gulen-movement/>).

⁵¹⁶ Stockholm Center for Freedom, Saudi Arabia deports members of 16 Turkish families to Turkey over alleged links with Gülen movement, 4 May 2017 (<https://stockholmcf.org/saudi-arabia-deported-members-of-16-turkish-families-to-turkey-over-alleged-links-with-gulen-movement/>).

⁵¹⁷ Stockholm Center for Freedom, Saudi Arabia deports members of 16 Turkish families to Turkey over alleged links with Gülen movement, 4 May 2017 (<https://stockholmcf.org/saudi-arabia-deported-members-of-16-turkish-families-to-turkey-over-alleged-links-with-gulen-movement/>).

⁵¹⁸ Stockholm Center for Freedom, Saudi Arabia deports members of 16 Turkish families to Turkey over alleged links with Gülen movement, 4 May 2017 (<https://stockholmcf.org/saudi-arabia-deported-members-of-16-turkish-families-to-turkey-over-alleged-links-with-gulen-movement/>); Fatma Bulubul, Anadolu Ajansi (AA), Saudi Arabia arrests 16 Turks over suspected FETO links, 6 May 2017 (<https://www.aa.com.tr/en/middle-east/saudi-arabia-arrests-16-turks-over-suspected-feto-links/812492>).

⁵¹⁹ Hizmet Movement News Archive, 4 Turks deported from Saudi Arabia sent to jail over donations to Gülen movement, 18 May 2017 (<https://hizmetnews.com/22426/4-turks-deported-saudi-arabia-sent-jail-donations-gulen-movement/#.X0oSXy2YMdU>).

⁵²⁰ Stockholm Center for Freedom, Saudi Arabia deports members of 16 Turkish families to Turkey over alleged links with Gülen movement, 4 May 2017 (<https://stockholmcf.org/saudi-arabia-deported-members-of-16-turkish-families-to-turkey-over-alleged-links-with-gulen-movement/>); Fatma Bulubul, Anadolu Ajansi (AA), Saudi Arabia arrests 16 Turks

- Their case was also flagged to the Office of the United Nations (Riyadh), however without success.

10. BULGARIA: CASE OF ABDULLAH BÜYÜK

- On 10 August 2016, Abdullah Büyük was deported to Turkey.⁵²¹
- Abdullah Büyük, a Turkish national and businessman, was subject to an extradition request of 15 February 2016 from the Istanbul Prosecutor General's Office.⁵²²
- The Bulgarian courts rejected the extradition request and confirmed that the request was based on Büyük's political views and that there were no guarantees that he would enjoy a fair trial.⁵²³
- During the Bulgarian proceedings on the extradition request, Abdullah Büyük, was detained for 41 days in a Bulgarian detention centre, where he was allegedly kept under inhuman and degrading circumstances.⁵²⁴
- On 10 August 2016, he was suddenly arrested by the Bulgarian police.⁵²⁵
- He was taken to the Turkish border without being able to communicate with the authorities in a language he understood and without the legal procedures being followed.⁵²⁶ He was then surrendered to the Turkish authorities and since then he remains detained by them.⁵²⁷

over suspected FETO links, 6 May 2017 (<https://www.aa.com.tr/en/middle-east/saudi-arabia-arrests-16-turks-over-suspected-feto-links/812492>).

⁵²¹ ECtHR, *Abdullah Büyük v. Bulgaria*, Application No. n° 23843/17, communicated on 29 March 2018, statement of facts.

⁵²² ECtHR, *Abdullah Büyük v. Bulgaria*, Application No. n° 23843/17, communicated on 29 March 2018, statement of facts.

⁵²³ ECtHR, *Abdullah Büyük v. Bulgaria*, Application No. n° 23843/17, communicated on 29 March 2018, statement of facts.

⁵²⁴ ECtHR, *Abdullah Büyük v. Bulgaria*, Application No. n° 23843/17, communicated on 29 March 2018, statement of facts.

⁵²⁵ NDTV, Outcry as Bulgaria deports Fethullah Gulen Supporter To Turkey, 11 August 2016

(<https://www.ndtv.com/world-news/outcry-as-bulgaria-deports-fethullah-gulen-supporter-to-turkey-1443059>).

⁵²⁶ Journalists and Writers Foundation, Escaping the witch hunt from Turkey & around the world: the right to leave, April 2018 (<http://jwf.org/jwf/wp-content/uploads/2018/05/Escaping-the-Witch-Hunt-from-Turkey-and-Around-the-World-JWF-Report-April-2018.pdf>), p. 62.

⁵²⁷ ECtHR, *Abdullah Büyük v. Bulgaria*, Application No. n° 23843/17, communicated on 29 March 2018, statement of facts.

- The circumstances of the deportation are currently under review by the European Court for Human Rights.⁵²⁸ The case was communicated for observation to the Bulgarian government.⁵²⁹

⁵²⁸ ECtHR, *Abdullah Büyük v. Bulgaria*, Application No. n° 23843/17, communicated on 29 March 2018, statement of facts.

⁵²⁹ ECtHR, *Abdullah Büyük v. Bulgaria*, Application No. n° 23843/17, communicated on 29 March 2018, statement of facts.

11. BAHRAIN: CASE OF METIN TEKECI

- On 25 April 2017, Metin Tekeci, the national manager for a Turkish bank in Bahrain, was deported to Turkey.⁵³⁰
- Turkey had an arrest warrant pending concerning his person. Metin Tekeci came on the radar of the domestic police after he had contacted Turkey's Manama Embassy in January 2017.⁵³¹
- His passport was seized by Bahrain and he was handed over to the Turkish Interpol police and arrested.⁵³²

12. INDONESIA: CASE OF MUSTAFA KENEL

- On 16 December 2017, Mustafa Kenel, a Turkish businessman, was deported to Turkey by the Indonesian government.⁵³³
- Mustafa Kenel was detained, together with 4 other Turkish citizens, by the Indonesian authorities after a list of 10 people was given to the Indonesian government by the Turkish government.⁵³⁴
- While the other 4 detainees were later released, Mustafa Kenel was deported to Turkey.⁵³⁵

⁵³⁰ Hizmet Movement News Archive, Turkey's Erdogan Regime extends post-coup witch hunt targeting Gülen followers abroad, 25 April 2017 (https://hizmetnews.com/22175/turkeys-erdogan-regime-extends-post-coup-witch-hunt-targeting-gulen-followers-abroad/#.X0uHvC2YM_U).

⁵³¹ Hizmet Movement News Archive, Turkey's Erdogan Regime extends post-coup witch hunt targeting Gülen followers abroad, 25 April 2017 (https://hizmetnews.com/22175/turkeys-erdogan-regime-extends-post-coup-witch-hunt-targeting-gulen-followers-abroad/#.X0uHvC2YM_U).

⁵³² Sabah, Interpol FETÖ'cü hainlerin ensesinde, 20 April 2017 (<https://www.sabah.com.tr/gundem/2017/04/20/interpol-fetocu-hainlerin-ensesinde>).

⁵³³ Stockholm Center for Freedom, Indonesia deports Turkish businessman to Turkey over Erdogan(regime's request, 19 December 2017 (<https://stockholmcf.org/indonesia-deports-turkish-businessman-to-turkey-over-erdogan-regimes-request/>); MC EU TV, Indonesia returned a Turkish businessman to Turkey unlawfully, 20 December 2017 (<https://www.youtube.com/watch?v=DB-DTC5w9k>).

⁵³⁴ Stockholm Center for Freedom, Indonesia deports Turkish businessman to Turkey over Erdogan(regime's request, 19 December 2017 (<https://stockholmcf.org/indonesia-deports-turkish-businessman-to-turkey-over-erdogan-regimes-request/>); TR724, Haber Merkezi, Endonezya'daki Türk işadamları Türkiye'ye iade edildi, 19 April 2017 (<http://www.tr724.com/endonezyadaki-turk-isadami-turkiyeye-iade-edildi/>).

⁵³⁵ Stockholm Center for Freedom, Indonesia deports Turkish businessman to Turkey over Erdogan(regime's request, 19 December 2017 (<https://stockholmcf.org/indonesia-deports-turkish-businessman-to-turkey-over-erdogan-regimes-request/>).

- In May 2018, he was sentenced to 10 years in prison and he remains detained.⁵³⁶

13. KAZAKHSTAN: CASES OF ENVER KILIÇ AND ZABIT KİŞİ

- On 30 September 2017, Enver KILIÇ and Zabit KİŞİ were abducted. Zabit KİŞİ disappeared for 108 days.⁵³⁷ As to 15 July 2020, Enver KILIÇ remains missing.⁵³⁸
- On 30 September 2017, Enver KILIÇ and Zabit KİŞİ were detained at Kazakhstan airport. The two men were about to board the Air Astana Airways flight number KG 109 from Almaty to Bishkek (Kyrgyzstan) at 18:00.⁵³⁹ Both were denied access to the plane because their passports were allegedly cancelled.⁵⁴⁰
- There was no information about Zabit KİŞİ for 108 days after his disappearance. During this period, the Turkish government did not admit to his family and his lawyer that he was in custody.⁵⁴¹ Through his family's efforts in Kazakhstan, Kazakhstan's Intelligence Directorate issued an official document that included information about Zabit KİŞİ's delivery to MIT personnel and stated that he was taken to Turkey on the Turkish Airlines Almaty-Ankara plane with flight number TT-4010, on September 30, 2017 at 23:32.⁵⁴²
- Zabit KİŞİ testified on what happened to him during his court proceedings.

⁵³⁶ Anadolu Ajansı (AA), FETÖ'nün 'para kasası'na 10 yıl hapis, 25 May 2018 (<https://www.aa.com.tr/tr/turkiye/fetonun-para-kasasina-10-yil-hapis/1157072>).

⁵³⁷ Cevheri Güven, Bold Medya, Zabit KİŞİ işkencede geçen 108 günü anlattı: İntihar edenleri artık; yadırgamıyorum, 26 June 2019 (<https://boldmedya.com/2019/06/26/zabit-kisi-iskencede-gecen-108-gunu-anlatti-intihar-edenleri-artik-yadrigamiyorum/>).

⁵³⁸ Stockholm Center for Freedom, Enforced disappearances in Turkey, 15 July 2020 (<https://stockholmcf.org/enforced-disappearances-in-turkey-2/>).

⁵³⁹ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 80.

⁵⁴⁰ Ecol.net, Kazakhstan: The Fethullah Gülen movement (Hizmet movement), including activities and regions of operation; treatment by society and authorities; state protection (2016-July 2018) [KAZ106139.E], 13 July 2018 (<https://www.ecoi.net/de/dokument/2015738.html>).

⁵⁴¹ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 80.

⁵⁴² Cevheri Güven, Bold Medya, Zabit KİŞİ işkencede geçen 108 günü anlattı: İntihar edenleri artık; yadırgamıyorum, 26 June 2019 (<https://boldmedya.com/2019/06/26/zabit-kisi-iskencede-gecen-108-gunu-anlatti-intihar-edenleri-artik-yadrigamiyorum/>).

- He declared that he was very brutally tortured and that he was delivered to plainclothes Turkish agents on the same night, and forcibly taken to a non-scheduled aircraft with military camouflage patterns.⁵⁴³
- He identified his abductors as members of the Turkish National Intelligence Organization (MIT). This was later confirmed.⁵⁴⁴
- After arriving in Turkey, he was placed into a cell where he was detained and tortured for months.⁵⁴⁵ After his landing in Ankara, he was detained in a container that was in an unknown location about a 6-minute drive from the airport. He was stripped naked. He was electrocuted and not given water for days. He was sexually abused. He was continuously beaten. He was watched while he was performing toilet needs. When he was nearing death, torture continued after being injected with medications that he did not know.⁵⁴⁶ He asked that the individuals responsible for the torture be investigated. In spite of the information he gave, the court committee did not start any legal procedures for investigation. The torture case was not filed.⁵⁴⁷
- On 18 January 2018, around 20:00 PM, after being tortured for 108 days, Mr. Zabit Kişi was brought to the Ankara Courthouse by the Counterterrorism Unit of the Ankara Police Department. He was brought before a prosecutor.⁵⁴⁸ The police asserted that Mr.

⁵⁴³ Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, AL TUR 5/2020, 5 May 2020

(<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25209>).

⁵⁴⁴ Cevheri Güven, Bold Medya, Zabit Kişi işkencede geçen 108 günü anlattı: İntihar edenleri artık; yadırgamıyorum, 26 June 2019 (<https://boldmedya.com/2019/06/26/zabit-kisi-iskencede-gecen-108-gunu-anlatti-intihar-edenleri-artik-yadrigamiyorum/>); MC EU TV, It is officially announced MIT abducted people, 18 December 2017

(<https://www.youtube.com/watch?v=Zw5Y11vtkqo>); Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 80.

⁵⁴⁵ Cevheri Güven, Bold Medya, Zabit Kişi işkencede geçen 108 günü anlattı: İntihar edenleri artık; yadırgamıyorum, 26 June 2019 (<https://boldmedya.com/2019/06/26/zabit-kisi-iskencede-gecen-108-gunu-anlatti-intihar-edenleri-artik-yadrigamiyorum/>).

⁵⁴⁶ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020

(<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 80.

⁵⁴⁷ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020

(<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 80.

⁵⁴⁸ Cevheri Güven, Bold Medya, Zabit Kişi işkencede geçen 108 günü anlattı: İntihar edenleri artık; yadırgamıyorum, 26 June 2019 (<https://boldmedya.com/2019/06/26/zabit-kisi-iskencede-gecen-108-gunu-anlatti-intihar-edenleri-artik-yadrigamiyorum/>).

Kişi surrendered himself, although he refuted the claim and stated that he was kidnapped, flown to Turkey and detained at the Kandiri F-type High Security Prison.⁵⁴⁹

- Mr. Zabit Kişi wrote an extensive letter reiterating the abduction and detention.⁵⁵⁰
 - *"(...) I was detained by Kazakh officials at Kazakhstan Almati Airport. After judicial procedures based on Kazakhstan justice system, a decision was made to return me to Kyrgyzstan. Regardless, me and my friend named Enver Kilic²⁸ were kidnapped by MIT by a MIT plane: On the return trip from Almati to Kyrgyzstan on September 30th, 2017, I was detained once again. My belongings were confiscated, and I was locked into a room. Around 22.30, when the runway was completely empty, I was given to civilian looking individuals who came from Turkey."⁵⁵¹*
 - *"(...) Thereafter, the container cell where I would struggle for my life for 108 days. An area that is 3 square meters that does not receive any sunshine, just enough to turn around one's own circumference like a closed box without any windows. It was no different from grave to me. They stripped me naked as soon as I entered the place. I am ashamed to write the molestation and the foul language I experienced while they took off my clothes. Two people crashed me to a wall-like place while holding my arms. Starting from my upper body, they electrocuted my feet and different parts while increasing the voltage from time to time. While I was in sitting position, they pushed the bottom of my feet facing upwards and crushed my toes one by one. Meanwhile they continued cursing by saying "We*

⁵⁴⁹ Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, AL TUR 5/2020, 5 May 2020

(<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25209>).

⁵⁵⁰ Cevheri Güven, Bold Medya, Zabit Kişi işkencede geçen 108 günü anlattı: İntihar edenleri artık; yadırgamıyorum, 26 June 2019 (<https://boldmedya.com/2019/06/26/zabit-kisi-iskencede-gecen-108-gunu-anlatti-intihar-edenleri-artik-yadrigamiyorum/>).

⁵⁵¹ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020

(<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 83.

*will bring your generation to extinction, we will ... your wife, you will never be able to see... ”.*⁵⁵²

- *“(…) During torture, they said: “Here, we are both the judge and the prosecutor. Here, there is no lawyer, no police. The way out of here is by accepting what we say, accepting everything. Do what we say, we will torture as long as you do not die. If you die, we will bury you. You would become an unresolved case. If you do not accept, we would give you medication from your back and your mouth. We would inject you; they would not be able to detect it in autopsy. They would report heart attack and forget about it”.*⁵⁵³
- On 21 June 2018, he was sentenced to 13 years and 6 months in prison.⁵⁵⁴

⁵⁵² Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 84-85.

⁵⁵³ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 88.

⁵⁵⁴ Cevheri Güven, Bold Medya, Zabit Kişi işkencede geçen 108 günü anlattı: İntihar edenleri artık; yadırgamıyorum, 26 June 2019 (<https://boldmedya.com/2019/06/26/zabit-kisi-iskencede-gecen-108-gunu-anlatti-intihar-edenleri-artik-yadrigamiyorum/>).

14. PAKISTAN: CASES OF MESUT KAÇMAZ, HIS WIFE MERAL KAÇMAZ AND THEIR TWO CHILDREN

- On 27 September 2017, Mesut Kaçmaz, his wife Meral Kaçmaz and their two children were abducted by Pakistani state intelligence, held in secret or incommunicado detention for 17 days, and then involuntarily returned to Turkey on 14 October 2017.⁵⁵⁵
- The house of the Kaçmaz family was raided by intelligence agents in the middle of the night while the family was asleep, presumably after days of surveillance. Allegedly the agents behaved brutally, having pushed, shoved and slapped the parents and their children.⁵⁵⁶
- According to the Human Rights Commission of Pakistan, the family was taken by “20 armed people in plain clothes.” A neighbour and a fellow friend of the family stated the family was “restrained, blindfolded and hustled into unmarked pickup trucks in Lahore.” Moreover, that only because he wanted to intervene, he too was taken to a secret facility and released after several days.⁵⁵⁷ Pakistani police officers stated that they had no information regarding the family which directed suspicions to intelligence agencies.⁵⁵⁸
- The family was deprived of any contact with the legal counsel or the extended family, while their identification documents were forcibly taken during the arrest.⁵⁵⁹
- Mesut Kaçmaz and his wife Meral Kaçmaz were reportedly transferred to Ankara for interrogation.⁵⁶⁰

⁵⁵⁵ <https://stockholmcf.org/pakistan-government-deports-abducted-kacmaz-family-to-turkey/>

⁵⁵⁶ Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, AL TUR 5/2020, 5 May 2020 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25209>), p. 4.

⁵⁵⁷ Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 6.

⁵⁵⁸ Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 6.

⁵⁵⁹ Stockholm Center for Freedom, Pakistan government deports abducted Kaçmaz family to Turkey, 14 October 2017 (<https://stockholmcf.org/pakistan-government-deports-abducted-kacmaz-family-to-turkey/>).

⁵⁶⁰ Stockholm Center for Freedom, Pakistan government deports abducted Kaçmaz family to Turkey, 14 October 2017 (<https://stockholmcf.org/pakistan-government-deports-abducted-kacmaz-family-to-turkey/>).

- Whilst being held incommunicado, the family was reportedly subjected to physical and verbal abuse aimed at coercing them to voluntarily return to Turkey. They were blindfolded and boarded on an unmarked flight from Islamabad for Istanbul in the morning of 14 October 2017.⁵⁶¹

15. UKRAINE: CASES OF YUSUF INAN AND SALIH ZEKI YIGIT

- On 11 July 2018, Salih Zeki Yigit was arrested by the Turkish MIT and four days later he was deported to Turkey by private jet.⁵⁶² On 12 July 2018, Yusuf Inan too was arrested and on 15 July 2018, he was deported to Turkey.⁵⁶³
- Yusuf Inan is a Turkish journalist and Salih Zeki Yigit was active as a businessman.
- On 14 July 2018, in daytime, Salih Zeki Yigit was seen being forced into a car by two Turkish officials who had put a sack onto his head.⁵⁶⁴
- The wife of Yusuf Inan described the arrest: *"I saw a crowd in the field, my daughter went running, and two men grabbed him. They hit him."*⁵⁶⁵ According to her, the police officers did not show their documents, nor did they identify themselves.⁵⁶⁶ Neither the wife, nor the lawyers of Yusuf Inan were informed concerning his whereabouts or the fact that he was deported to Turkey.⁵⁶⁷

⁵⁶¹ Stockholm Center for Freedom, Pakistan government deports abducted Kaçmaz family to Turkey, 14 October 2017 (<https://stockholmcf.org/pakistan-government-deports-abducted-kacmaz-family-to-turkey/>).

⁵⁶² Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 13; Turkey Purge, [VIDEO] Gulenist abducted from Ukraine says he feared torture in Turkey, 20 July 2018 (<https://turkeypurge.com/video-gulenist-abducted-from-ukraine-says-he-feared-torture-in-turkey>).

⁵⁶³ Kyiv Post, Turkish security forces allegedly abduct two Erdogan critics from Ukraine, 16 July 2018 (<https://www.kyivpost.com/ukraine-politics/turkish-security-forces-allegedly-abduct-two-erdogan-critics-from-ukraine.html>); Kemel Karadag, Anadolu Ajansi (AA), Key FETO suspect brought back to Turkey, 15 July 2018 (<https://www.aa.com.tr/en/europe/key-feto-suspect-brought-back-to-turkey/1204965>); Hromadske International, Turkish Journalist Extradited from Ukraine in Covert Operation, 21 July 2018 (<https://en.hromadske.ua/posts/turkish-journalist-extradited-from-ukraine-in-covert-operation>).

⁵⁶⁴ Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 13; Turkey Purge, [VIDEO] Gulenist abducted from Ukraine says he feared torture in Turkey, 20 July 2018 (<https://turkeypurge.com/video-gulenist-abducted-from-ukraine-says-he-feared-torture-in-turkey>).

⁵⁶⁵ Hromadske International, Turkish Journalist Extradited from Ukraine in Covert Operation, 21 July 2018 (<https://en.hromadske.ua/posts/turkish-journalist-extradited-from-ukraine-in-covert-operation>).

⁵⁶⁶ As above

⁵⁶⁷ As above

- Yusuf Inan’s residence permit had been cancelled, making him eligible for deportation. He had never received an official notice of the cancellation.⁵⁶⁸ Yusuf Inan requested political asylum; he was, however, extradited to Turkey before the end of the procedure.⁵⁶⁹
- The Ukrainian Ministry of Justice and State Border Services assert that they did not receive any request for extradition, nor did they have any information concerning the extradition.⁵⁷⁰
- On 19 July 2018, Yusuf Inan was brought before a court in the western Aegean province of Izmir. It decided to keep him in custody.⁵⁷¹

16. LEBANON: CASE OF AYTEN OZTURK

- On 8 March 2018, Ayten Ozturk was arrested at Lebanon Airport. She was brought to Turkey on 13 March 2018, where she disappeared for six months and resurfaced on 28 August 2018.⁵⁷²
- The official records of the Ankara Counter Terrorism Branch indicate that she was arrested on 28 August 2018. However, she had been illegally transferred to Turkey on 13 March 2018. One night she was handed over to the police in a rural area.⁵⁷³
- She was handed over to the Turkish authorities by the Lebanese officials and she was brought to Turkey by a private jet.⁵⁷⁴

⁵⁶⁸ As above.

⁵⁶⁹ As above

⁵⁷⁰ As above

⁵⁷¹ Hurriyet Daily News, Ukraine criticized by OSCE for extraditing Turkish coup suspect, blogger, 20 July 2018 (<https://www.hurriyetdailynews.com/ukraine-criticized-by-osce-for-extraditing-turkish-coup-suspect-blogger-134801>).

⁵⁷² Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 61-62.

⁵⁷³ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 62.

⁵⁷⁴ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 62.

- On 13 June 2019, during her hearing before the Istanbul 3rd High Criminal Court, Ms. Ozturk submitted to the court a 12-page petition about her conditions of detention, torture and ill-treatment⁵⁷⁵:
 - *"In the Ankara indictment my arrest date is written as August 28, 2018. This is the official date in the police records. But I was kept and tortured at a secret location illegally for six months before this date. Therefore, the date in custody report is wrong and fake."*
 - *"I was arrested by the Lebanese authorities at the Lebanon Airport on March 8, 2018. While I was under custody, someone named "Kadri" from the Turkish Embassy came and talked to me and took my pictures by his smartphone."*
 - *"Lebanese authorities said they would release me. But they brought me to the airport pell-mell on March 13 evening. I was brought these my eyes tied and hands rear cuffed. (...) And put me into the plane with the same speed as if they were running in panic. I understood that it was a private jet since it was working silent."*
 - *"I was blindfolded, handcuffed from behind, and with a sack over my head for almost 25 days."*
 - *"They were saying: "There is no lawyer, judge, or prosecutor here. No one will ever know if you die here. Nobody will care. No one is looking for you outside anyhow. They gave up hope on you. There is no record about you anywhere"."*
 - *"They were frequently saying: "The government trained us. We have every equipment here. If you have a fracture or broken bone, we'll apply a cast; if you have an organ failure, we'll transplant it. We'll treat you, you'll recover and then we'll continue with the torture. This will go on like that. There is no end to it. This is the bottom of the hell. You can't get out of here. We know everything about human anatomy. We are professionals. You will not die, you will beg to die. If you ever get out of here one day, you will remain insane.""*

⁵⁷⁵ Advocates of Silenced Turkey (AST), Systematic Torture & Ill-Treatment in Turkey, January 2020 (<https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>), p. 63-76.

- Ayten Ozturk remains, as per 29 April 2020, in pre-trial detention.⁵⁷⁶
- There has been no effective investigation into the circumstances of her detention, the forcible disappearance and the torture.⁵⁷⁷ She filed an official complaint, but the prosecutor issued a decision not to prosecute and no probe was launched into her allegations of torture.⁵⁷⁸

⁵⁷⁶ Human Rights Watch, Turkey: enforced disappearances, Torture, 29 April 2020 (<https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture>).

⁵⁷⁷ Human Rights Watch, Turkey: enforced disappearances, Torture, 29 April 2020 (<https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture>).

⁵⁷⁸ Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, AL TUR 5/2020, 5 May 2020 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25209>), p. 6.

17. MALAYSIA: CASES OF TURGAY KARAMAN, IHSAN ASLAN AND ISMET OZCELIK

- On 12 May 2017, Turgay Karaman, Ihsan Aslan and Ismet Özçelik were deported to Turkey.⁵⁷⁹
- On 2 May 2017, Turgay Karaman, principal of Time International School, had been abducted.⁵⁸⁰ Closed-circuit television footage revealed that Turgay Karaman was forced into a car by five unidentified persons in an underground parking garage.⁵⁸¹ He was on his way to a meeting with his lawyer when he was bundled into a car by five unknown plain clothed men.⁵⁸²
- Ihsan Aslan has gone missing the same day as Turgay Karaman.⁵⁸³
- Within the same week, Ismet Özçelik, former academic at the Mevlana University, was abducted from his car.⁵⁸⁴ He was arrested by the Malaysian police on 4 May 2017.⁵⁸⁵ Ismet Özçelik was waiting for a resettlement by the United Nations High Commissioner for Refugees (UNHCR) after earlier having been the victim of an attempted abduction from the home of his son in Kuala Lumpur. Unidentified gunmen, who appeared to be linked to the security services of Malaysia, then attempted to kidnap him and send him to Turkey. The local police intervened and halted this extraordinary rendition. Mr. Ismet

⁵⁷⁹ Human Rights Committee 28 May 2019, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2980/2017*; Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 8-9.

⁵⁸⁰ Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 8-9.

⁵⁸¹ Human Rights Committee 28 May 2019, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2980/2017*.

⁵⁸² Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 9.

⁵⁸³ Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 8-9.

⁵⁸⁴ Advocates of Silenced Turkey (AST), Report: Erdogans long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 9.

⁵⁸⁵ Human Rights Committee 28 May 2019, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2980/2017*.

Özçelik was nevertheless kept in jail for 50 days before Malaysian authorities decided to release him, pending trial.⁵⁸⁶

- Turgay Karaman, Ihsan Aslan and Ismet Özçelik did not have access to a lawyer or to their case files. Their Malaysian lawyer immediately filed a request to obtain such access. On 9 May 2017, brief contact with a lawyer was allowed. The request for access to the case file was denied.⁵⁸⁷
- On 12 May 2017, they were removed to Turkey despite the fact that no extradition hearing had been held and no judicial decision to that effect had been taken.⁵⁸⁸
- The Turkish Foreign Minister, Mr. Mevlüt Çavuşoğlu, in one of his speeches openly bragged about these cases and revealed that these abductions were effectuated by Turkey with the personal consent of the Malaysian Prime Minister.⁵⁸⁹
- Similarly, it became clear that the kidnapping of Mr. Turgay Karaman was executed by a special team from Turkey composed of intelligence officers, police officers and even an anaesthetist.⁵⁹⁰
- Upon arrival in Turkey, Turgay Karaman and Ismet Özçelik were held in incommunicado detention at an unknown location. Afterwards it appeared that at first, they were held at DSI Sport Center. This unofficial detention center is notorious for its practices of torture and abuse. Subsequently, some time in May 2017 (exact date unknown, since no family members were informed of this transfer), they were brought to the Sincan T Type prison in Ankara. On 3 June 2017 they were transferred to the Denizli T Type prison in Denizli (Southwest Turkey).
- The only information the relatives of these Turkish nationals were given, was that they had been interrogated by the anti-terror unit of the Ankara police department on 14 May 2017. Their relatives had no information as to where they were detained nor

⁵⁸⁶ Human Rights Committee 28 May 2019, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2980/2017.*

⁵⁸⁷ Human Rights Committee 28 May 2019, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2980/2017.*

⁵⁸⁸ Human Rights Committee 28 May 2019, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2980/2017.*

⁵⁸⁹ The Stockholm Center For Freedom, *Erdogan's long arms: the case of Malaysia*, May 2017, p. 3.

⁵⁹⁰ The Stockholm Center For Freedom, *Turkey's Espionage Activities In Malaysia Exposed As More Details Uncovered*, 23 May 2017.

whether they had been brought before a judge or whether they had access to a lawyer and to their case files.

- Ismet Özçelik has been subject to ill-treatment. He suffers from a heart condition, which drastically worsened during the detention. He was also threatened with solitary confinement.⁵⁹¹
- On 28 May 2019, the UN Human Rights Committee examined the cases of Mr. Özçelik and Mr. Karaman. The Committee concluded that they were arbitrarily detained and deprived of their liberties by Turkey.⁵⁹²

⁵⁹¹ Human Rights Committee 28 May 2019, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2980/2017.*

⁵⁹² Human Rights Committee 28 May 2019, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2980/2017.*

18. MALAYSIA: CASES OF ARIF KOMIS, ULKU KOMIS AND THEIR FOUR MINOR DAUGHTERS (BEYZA KOMIS, AZRA KOMIS, SALIHA KOMIS AND HAFZAK KOMIS)

- On 28 August 2019 Arif Komis, Ulku Komis and their four minor daughters were arrested and detained in an immigration center near Putrajaya (Malaysia). On 29 August 2019, they were deported to Turkey.⁵⁹³
- On 28 August 2019, around 10:30 PM, the Komis family was detained in a house raid by 30 individuals. They were taken by Turkey's National Intelligence Services (MIT).⁵⁹⁴
- Arif Komis was a renowned chemistry teacher at The Hibiscus International School in Kuala Lumpur (Malaysia).⁵⁹⁵
- Before his abduction, Arif Komis had been aware of a number of suspicious events. He noticed that he repeatedly was being followed and that an unknown man was taking pictures of his car and school. In light of his profile as a teacher and the previous abductions of Turkish citizens in Malaysia on the instructions of the Turkish authorities (see cases of Turgay Karaman, Ihsan Aslan and Ismet Özçelik), Arif Komis was concerned for the safety of himself and his family and therefore alerted the national authorities.
- The Komis family could not leave Malaysia, since the Turkish Embassy of Malaysia refused to deliver a passport to the youngest daughter of the family.⁵⁹⁶
- Arif Komis alerted the Director of The Hibiscus International School of his suspicions. When then the morning of the arrest, Arif Komis did unexpectedly and without any notice not attend school, the Director took immediate action and sent one of his employees to Arif Komis' house to verify his whereabouts and those of his family. It is there that they learned from the Condominium Security Staff that the entire Komis family had been arbitrarily detained.

⁵⁹³ Stockholm Center for Freedom, Turkish nationals under UN protection deported: report, 30 August 2019 (<https://stockholmcf.org/turkish-nationals-under-un-protection-deported-report/>).

⁵⁹⁴ Dilara Hamit, Anadolu Ajansi (AA), Turkish intelligences captures FETO member in Malaysia, 30 August 2019 (<https://www.aa.com.tr/en/asia-pacific/turkish-intelligences-captures-feto-member-in-malaysia-/1569092>); Malay Mail, Turkish teacher nabbed, brought back to Turkey, 30 August 2019 (<https://www.malaymail.com/news/malaysia/2019/08/30/turkish-teacher-nabbed-brought-back-to-turkey/1785916>).

⁵⁹⁵ Stockholm Center for Freedom, Turkish nationals under UN protection deported: report, 30 August 2019 (<https://stockholmcf.org/turkish-nationals-under-un-protection-deported-report/>).

⁵⁹⁶ Bold Medya, Malaysia has disregarded UN protection: Arif Komis has been sent to Turkey, 29 August 2019, (<https://boldmedya.com/en/2019/09/12/malaysia-has-disregarded-un-protection-arif-komis-has-been-sent-to-turkey/>).

- After contact with the national authorities, they were only willing to confirm that the Komis family was indeed being detained. They refused to provide any additional information on the situation of the Komis family to their family, friends or lawyers – more precisely why and by whom they were arrested and detained.
- Via informal contacts, it was learned that the family was to be deported to Turkey on 29 August 2019 at 23:00 local Malaysian time. This was also confirmed by one of the daughters, Mss. Beyza Komis, who succeeded to contact – without being caught by the national authorities – a family member via Whatsapp. In a message she confirms that they will be taken to the airport the evening of 29 August 2019 ("*aksam gidicez havalalnina*").⁵⁹⁷
- Arif Komis and his family members are all Turkish nationals who were registered with the Office of the United Nations High Commissioner for Refugees in Malaysia. They all enjoyed the status of registered asylum-seeker.⁵⁹⁸
- Their current status is unknown.

19. MALAYSIA: CASES OF TAMER TIBIK AND ALETTIN DUMAN

- On 13 October 2016, two other Turkish nationals, Tamer Tibik and Alettin Duman, have also been abducted in Malaysia and been deported to Turkey.⁵⁹⁹
- Alettin Duman is one of the founders of the Time International School.⁶⁰⁰
- Alettin Duman left his house in the Jalan Sentul Indah district on 13 October 2016, around 16:00 h, for the afternoon prayer in the mosque. When he did not return home as expected, his family notified his friends. Malaysian citizen Mukhlis Amir Nordin (29),

⁵⁹⁷ Asia Pacific Refugee Rights Network, Press release: Malaysia returns UNHCR-recognized refugee to Turkey despite serious protection concerns, 2 September 2019 (<http://aprrn.info/press-release-malaysia-returns-unhcr-recognised-refugee-to-turkey-despite-serious-protection-concerns/>).

⁵⁹⁸ Turkey Purge, Turkish family, detained by Malaysian police, deported to Turkey Friday morning: report, 30 August 2019 (<https://turkeypurge.com/turkish-family-detained-by-malaysian-police-deported-to-turkey-friday-morning-report/>); Asia Pacific Refugee Rights Network, Press release: Malaysia returns UNHCR-recognized refugee to Turkey despite serious protection concerns, 2 September 2019 (<http://aprrn.info/press-release-malaysia-returns-unhcr-recognised-refugee-to-turkey-despite-serious-protection-concerns/>).

⁵⁹⁹ Stockholm Center for Freedom, Erdogan's long arms: the case of Malaysia, May 2017 (<https://stockholmcf.org/wp-content/uploads/2017/05/Erdogans-Long-Arms-The-Case-Of-Malaysia.pdf>), p. 10.

⁶⁰⁰ Stockholm Center for Freedom, Cellmate: teacher abducted by Turkey's MIT from Malaysia subjected to torture in Ankara, 1 April 2018 (<https://stockholmcf.org/cellmate-teacher-abducted-by-turkeys-mit-from-malaysia-subjected-to-torture-in-ankara/>).

who served as a board member with Alettin Duman in the company that owns the school, reported him missing to the police. The police said they could not act until 24 hours elapsed. On 14 October 2016, when Alettin Duman did not show up after 24 hours, the police launched an investigation by sending detectives to the mosque to talk to witnesses and take statements. Despite the investigation, the police could not locate him.⁶⁰¹

- Tamer Tibik had been going to the Elite Language Center in Kuala Lumpur every day to take English classes. And so did he on 13 October 2016, but this time he did not return to his home. When his family could not reach him on his mobile phone, the police was notified. Since both missing cases were recorded on the same day, friends and family members suspected that the two men were abducted by the same people, but they had no clue about the identity of the people nor of the motive.⁶⁰²
- Alettin Duman and Tamer Tibik were taken to a remote wooded area, subjected to torture and abuse and later turned over to Turkish officials to be taken back to Turkey.⁶⁰³
- On 14 October 2016, Turkish Foreign Minister Mevlüt Cavusoglu issued a statement: *"Last night we received three terrorists from Malaysia."*⁶⁰⁴ He also said: *"Last week we met with the Malaysian Prime Minister in Thailand, Bangkok, they said they would deliver three people at the Asia Dialogue Meeting. After I returned, I gave information to the President, the Prime Minister, the relevant institutions. As a result of mutual contacts, three people were handed over last night."*⁶⁰⁵

⁶⁰¹ Stockholm Center for Freedom, Erdogan's long arms: the case of Malaysia, May 2017 (<https://stockholmcf.org/wp-content/uploads/2017/05/Erdogans-Long-Arms-The-Case-Of-Malaysia.pdf>), p. 11-12.

⁶⁰² Stockholm Center for Freedom, Erdogan's long arms: the case of Malaysia, May 2017 (<https://stockholmcf.org/wp-content/uploads/2017/05/Erdogans-Long-Arms-The-Case-Of-Malaysia.pdf>), p. 11-12.

⁶⁰³ Stockholm Center for Freedom, Cellmate: teacher abducted by Turkey's MIT from Malaysia subjected to torture in Ankara, 1 April 2018 (<https://stockholmcf.org/cellmate-teacher-abducted-by-turkeys-mit-from-malaysia-subjected-to-torture-in-ankara/>).

⁶⁰⁴ Stockholm Center for Freedom, Erdogan's long arms: the case of Malaysia, May 2017 (<https://stockholmcf.org/wp-content/uploads/2017/05/Erdogans-Long-Arms-The-Case-Of-Malaysia.pdf>), p. 11-10.

⁶⁰⁵ Stockholm Center for Freedom, Erdogan's long arms: the case of Malaysia, May 2017 (<https://stockholmcf.org/wp-content/uploads/2017/05/Erdogans-Long-Arms-The-Case-Of-Malaysia.pdf>), p. 11-10.

- Alettin Duman has been subjected to beating, torture, death threats and staged executions during his pre-trial detention in Ankara. When his cellmate, S.T., was released he testified on the detention circumstances of Alettin Duman.⁶⁰⁶

⁶⁰⁶ Stockholm Center for Freedom, Cellmate: teacher abducted by Turkey's MIT from Malaysia subjected to torture in Ankara, 1 April 2018 (<https://stockholmcf.org/cellmate-teacher-abducted-by-turkeys-mit-from-malaysia-subjected-to-torture-in-ankara/>).

20. SWITZERLAND: UNIDENTIFIED BUSINESSMAN (ATTEMPT)

- On 15 March 2018, lawmakers from the Swiss Parliament requested a strong reaction from the Swiss government in response to active preparations by two Turkish diplomats to kidnap (and subject to rendition in Turkey) a dual citizen and Swiss-based businessman, who was allegedly active in the Gülen movement.⁶⁰⁷
- The existence of the plot was confirmed by the Office of the Swiss Attorney General based *“on suspicion of political intelligence gathering...and prohibited acts for a foreign state.”*⁶⁰⁸

21. MONGOLIA: CASE OF VEYSEL AKCAY (ATTEMPT)

- On 27 July 2018, Veysel Akcay was abducted by Turkey’s National Intelligence Organization (MIT).⁶⁰⁹
- He was abducted in front of his house in the capital city of Ulan Bator. Veysel Akcay left his home at 9:00 AM and was stopped by a minibus right in front of his house. At Ulan Bator Airport, a private jet plane was waiting to transfer him to Turkey.⁶¹⁰
- Around 12:00 AM, Veysel Akcay was returned home. Resistance from citizens and politicians prevented the illegal transfer to Turkey.⁶¹¹

⁶⁰⁷ Journalists and Writers Foundation, Escaping the witch hunt from Turkey & around the world: the right to leave, April 2018 (<http://jwf.org/jwf/wp-content/uploads/2018/05/Escaping-the-Witch-Hunt-from-Turkey-and-Around-the-World-JWF-Report-April-2018.pdf>), p. 76.

⁶⁰⁸ Journalists and Writers Foundation, Escaping the witch hunt from Turkey & around the world: the right to leave, April 2018 (<http://jwf.org/jwf/wp-content/uploads/2018/05/Escaping-the-Witch-Hunt-from-Turkey-and-Around-the-World-JWF-Report-April-2018.pdf>), p. 76.

⁶⁰⁹ Advocates of Silenced Turkey (AST), Report: Erdogan’s long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 14.

⁶¹⁰ Advocates of Silenced Turkey (AST), Report: Erdogan’s long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 14.

⁶¹¹ Advocates of Silenced Turkey (AST), Report: Erdogan’s long arms abroad and recommendations to governments, July 2018 (https://silencedturkey.org/wp-content/uploads/2018/07/AST_7-28-18_REPORT10_Erdogans-long-arms-abroad.pdf), p. 14.

22. AZERBAIJAN: CASE OF MEHMET GELEN⁶¹²

- On 29 December 2018, Mehmet Gelen, a teacher in Azerbaijan, was abducted in Azerbaijan.
- Mehmet Gelen was initially detained by Azerbaijani security forces in Azerbaijan at the request of Turkey and consequently transferred to the Turkish MIT teams bringing him back to Turkey.
- On 4 January 2019, Mehmet Gelen was brought back by MIT to Turkey without any form of process where he was immediately handed over to the Anti-Terrorism Branch Directorate.

23. AZERBAIJAN: CASE OF IBRAHIM EKER⁶¹³

- Ibrahim Eker was the owner of the printing house of Zaman Newspaper in Azerbaijan.
- In January 2019, Ibrahim Eker was initially located and followed in Azerbaijan by the Turkish MIT. Eventually he was arrested by a joint-operation by MIT-Azerbaijan secret services and without any form of process transferred to Turkey.

⁶¹² Hurriyet, MiT'in Azerbaycan'dan getirdiđi kritik isme dava: 15 yıl hapis talebi, 6 June 2019 <https://www.hurriyet.com.tr/gundem/mitin-azerbaycandan-getirdigi-kritik-isme-dava-15-yil-hapis-talebi-41236234>; TR724, Azerbaycan'dan kaçırılan öğretmen Mehmet Gelen tutuklandı, 5 January 2019 <https://www.tr724.com/azerbaycandan-kacirilan-ogretmen-mehmet-gelen-tutuklandi/>; Internethaber, Azerbaycan'da yakalanmıřtı! Mehmet Gelen hakkında flař gelişme, 4 January 2019 <https://www.internethaber.com/azerbaycanda-yakalanmisti-mehmet-gelen-hakkinda-flas-gelisme-1932069h.htm>.

⁶¹³ YeniSafak, TEMMUZ DARBE GİRİřİMİ FETÖ'nün sözde Azerbaycan sorumlusu tutuklandı, 31 January 2019 <https://www.yenisafak.com/gundem/fetonun-sozde-azerbaycan-sorumlusu-tutuklandi-3444223>; Soczu, FETÖ'nün kritik ismi tutuklandı!, 31 January 2019, <https://www.sozcu.com.tr/2019/gundem/fetonun-kritik-ismi-tutuklandi-3346375/>; Solidarity With Others, Illegal Deportation Procedures and decisions of refusal of extradition <https://www.solidaritywithothers.com/illegal-deportations-extraditions/>.

24. KENYA: CASE OF SELAHADDIN GÜLEN⁶¹⁴

- Selahaddin Gülen, a nephew of Fethullah Gülen, was living in Kenya where he was a registered asylum seeker. He is also a permanent US resident.
- Selahaddin Gülen travelled to Nairobi from the US to meet his fiancée on 17 October 2020 on a Kenyan tourist visa. In spite of the fact that he was initially admitted to the country, shortly afterwards immigration officers arrested and detained him, saying he was wanted under a Red Notice Alert by Interpol from Turkey.
- On 19 October 2020, Kenyan authorities opened extradition proceedings against him, but later substituted that with a deportation order to Turkey. The court, which released him on bail, directed Gülen to deposit his travel documents with the court and to report weekly to the Directorate of Criminal Investigations headquarters in Nairobi.
- In March 2021, a Kenyan judge eventually issued orders barring Kenyan authorities from continuing deportation proceedings against Mr. Gülen and concluding that his return to the US had to be allowed.
- On 3 May 2021, Selahaddin Gülen went to the Directorate of Criminal Investigations head office in Nairobi for his weekly reporting but consequently disappeared. Another Turkish national who accompanied Mr. Gülen to the agency headquarters and disappeared along with him, was released by Kenyan authorities on 5 May 2021.
- Mr. Gülen's whereabouts remained unknown until 31 May 2021. On that day, the Turkish state news agency Anadolu confirmed that Selahaddin Gülen had been captured and brought back to Turkey by MIT.⁶¹⁵

⁶¹⁴ Human Rights Watch, Kenya: Investigate Deportation of Turkish National Hold Officials Responsible to Account, 1 July 2021 (<https://www.hrw.org/news/2021/07/01/kenya-investigate-deportation-turkish-national>); Middle East Eye, Turkey spies detain Fethullah Gulen's nephew in Kenya: Reports, 31 May 2021 (<https://www.middleeasteye.net/news/turkey-fethullah-gulen-nephew-selahuddin-kenya>); Anadolu, FETÖ üyesi Selahaddin Gülen yurt dışında MIT operasyonu ile yakalanarak Türkiye'ye getirildi, 31 May 2021 (<https://www.aa.com.tr/tr/fetonun-firarileri/feto-uyesi-selahaddin-gulen-yurt-disinda-mit-operasyonu-ile-yakalanarak-turkiye-ye-getirildi-/2259115>).

⁶¹⁵ Anadolu, FETÖ üyesi Selahaddin Gülen yurt dışında MIT operasyonu ile yakalanarak Türkiye'ye getirildi, 31 May 2021 (<https://www.aa.com.tr/tr/fetonun-firarileri/feto-uyesi-selahaddin-gulen-yurt-disinda-mit-operasyonu-ile-yakalanarak-turkiye-ye-getirildi-/2259115>).

- On 19 May 2021, President Erdogan already hinted at this abduction by publicly stating “we will soon announce the capture of a very important FETO member. He is in our hands”.⁶¹⁶
- Selahaddin Gülen was brought back to Turkey in spite of a Kenyan court order prohibiting his deportation.

25. KYRGYZSTAN: CASE OF ORHAN INANDI⁶¹⁷

- Orhan Inandi was born a Turkish citizen but obtained the Kyrgyz nationality in 2012. He has been living in Kyrgyzstan since the 1990s and has been the founder of the Sapat organization, a network of prestigious schools in Kyrgyzstan.
- On 1 June 2021 Orhan Inandi’s car was discovered with its doors open in the courtyard of a high-rise residential complex in Bishkek, the capital of Kyrgyzstan. Inandi’s son, who filed a missing person report, said that the last time he had heard from his father was at 6 p.m. on 31 May, 2021.
- Orhan Inandi was initially detained in the Turkish embassy in Bishkek. Since 1 April, 2021 a Turkish plane was parked at the Kyrgyz national airport. On the day of the abduction the plane was readied allegedly to “perform a training flight”⁶¹⁸ but observers considered it was there to bring Mr. Inandi back to Turkey.⁶¹⁹
- On 5 July 2021, President Erdogan confirmed that Mr. Inandi was illegally brought back in the context of an MIT operation: “As a result of genuine and patient work, MIT has

⁶¹⁶ Middle East Eye, Turkey spies detain Fethullah Gulen’s nephew in Kenya: Reports, 31 May 2021 (<https://www.middleeasteye.net/news/turkey-fethullah-gulen-nephew-selahuddin-kenya>).

⁶¹⁷ The Diplomat, Abducted From Kyrgyzstan, Educator Orhan Inandi Paraded in Turkey as a ‘Terrorist’, 6 July 2021 (<https://thediplomat.com/2021/07/abducted-from-kyrgyzstan-educator-orhan-inandi-paraded-in-turkey-as-a-terrorist/>); Al Monitor, Kyrgyzstan denies role in Turkey’s rendition of Gulen-linked educator, 7 July 2021 (<https://www.al-monitor.com/originals/2021/07/kyrgyzstan-denies-role-turkeys-rendition-gulen-linked-educator>); Human Rights Watch, Kyrgyzstan: Missing Dual Turkish-Kyrgyz Citizen Risks Torture, Removal to Turkey Authorities Should Investigate; Guarantee Safety, 9 June 2021 (<https://www.hrw.org/news/2021/06/09/kyrgyzstan-missing-dual-turkish-kyrgyz-citizen-risks-torture-removal-turkey#>).

⁶¹⁸ <https://www.facebook.com/aliya.kurbanova.3/posts/10219422591463226>.

⁶¹⁹ Eurasianet, Kyrgyzstan: Turkish-born founder of Gulen-backed schools goes missing, 1 June 2021 (<https://eurasianet.org/kyrgyzstan-turkish-born-founder-of-gulen-backed-schools-goes-missing>).

brought a top Central Asian leader of FETO, Orhan Inandi, to our country to face justice".⁶²⁰

- Mr. Inandi appeared in pictures in handcuffs before a pair of Turkish flags. Experts examining these pictures concluded that Mr. Inandi had been tortured, particularly due to his hands being particularly swollen, bruised and clasped together.⁶²¹

⁶²⁰ TRT Haber, MIT'ten FETÖ'ye bir darbe daha: Orhan Inandı yakalandı, 5 July 2021

<https://www.trthaber.com/haber/gundem/mitten-fetoye-bir-darbe-daha-orhan-inandi-yakalandi-593503.html>.

⁶²¹ Al Monitor, Kyrgyzstan denies role in Turkey's rendition of Gulen-linked educator, 7 July 2021 (<https://www.al-monitor.com/originals/2021/07/kyrgyzstan-denies-role-turkeys-rendition-gulen-linked-educator>).

26. UKRAINE: CASE OF ISA OZER⁶²²

- Isa Ozer was a former local candidate of the largely Kurdish and left-wing Peace and Democracy Party (BPD).
- In September 2020 he was brought to Turkey from Odessa, Ukraine in what the Turkish state press described as an intelligence operation by MIT. This happened without any form of legal or due process.

⁶²² U.S. Department of State, '2019 Country Reports on Human Rights Practices: Turkey', 30 March 2021 (<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/turkey/>); Anadolu, Turkey brings back PKK terrorist from Ukraine, 11 September 2020, (<https://www.aa.com.tr/en/europe/turkey-brings-back-pkk-terrorist-from-ukraine/1969704>); Freedom House, Turkey: transnational repression case study: special report 2021 (https://freedomhouse.org/report/transnational-repression/turkey#footnote26_kgfwgg).



TURKEY TRIBUNAL

Because Silence is the Greatest Enemy of
Fundamental Human Rights



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Press Freedom in Turkey Today

JULY 2021



PHILIPPE LERUTH

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**INTERNATIONAL
OBSERVATORY
HUMAN RIGHTS**

Executive Summary

Press Freedom in Turkey Today

BY PHILIPPE LERUTH

Press freedom is the foundation stone of democracy and is the basic indicator of the health of a functioning democracy. Without the checks and balances guaranteed by a free press, no democracy can survive.

Press freedom is under immense pressure in Turkey. Too many journalists have already faced long convictions for the content of critical articles. The legal framework that has been put in place is imprecise and is open to interpretation and manipulation. Therefore, journalists and other media professionals find themselves being prosecuted under organised crime and terrorism legislation, simply for doing their job. Every critical journalist, by law, is suspected of terrorism. The same can be said about the penal provision that criminalises an insult to the president, the national anthem, the national flag and the institutions and the organs of the state. Based on this provision, between 2014 and 2017, a large number of persecutions took place; 12 300 cases occurred, leading to long prison penalties.

Numerous journalists have been arbitrarily detained, arrested under the terrorism laws and sent to prison. Several received life sentences with no possibility of pardon, while others received draconian penalties. Often, journalists are released only to be re-arrested as a censorship mechanism. At any one time there is a general prison population of journalists and media professionals of at least a hundred people. There is almost no effective legal recourse once a journalist has been convicted as a “terrorist” to appeal their convictions.

The State shut down or expropriated nearly two hundred media outlets that were critical of the regime. A pro-government conglomerate bought Turkey’s largest media group. In Turkey today, there are almost no media platforms or media groups who are critical of the Government and those very few that try are harassed and live under the constant threat of persecution. Turkey is branded 154th in the World Press Freedom index out of a world ranking of 180 due to this silencing of any journalists or media platforms that do not follow the party line.

Digital media that had maintained some freedom of expression has now been ruthlessly censored and neutered by recent legislative modifications. Even before the introduction of the new media laws in October 2020, over 40,000 websites had been blocked and online social media faces an ever-expanding list of topics that are censored, such as migrants and Turkish militia involvement in Syria.

It is no wonder that the European Court of Human Rights condemned the Turkish state 154 times between 2000 and 2019.

After the failed *coup d'état*, the restrictions and prosecutions intensified. The scope of the limitations and the prosecutions clearly indicate that the fight against terrorism has been the mere justification on the part of the Turkish Government before the ECtHR and the different international commissions and rapporteurs. It is clear that this justification cannot serve valid grounds for all the violations committed by the Turkish Government; some of which have been documented in this report.

The examples given in the report show that the repression of a free media in Turkey started before the failed *coup d'état*. It is clear that many journalists and media outlets were already on the Turkish Government's watch list well before the failed coup, as they were targeted for round up within a matter of days after the coup attempt, which was the catalyst to execute these long-established plans.

As the Venice Commission stated, if the government's intention was to react against a threat of terrorism or to avoid new coup attempts, then another method should have been used. The closure and the expropriation of media outlets can only be seen as a strategy on the part of the Turkish Government to destroy critical voices and further cripple freedom of the press and expression. The Kavala judgment by the ECtHR – although not a press case- is important in this regard. The Court clearly found that the Turkish state abused the judicial prosecution to muffle its critics by limiting their freedoms and rights for ulterior purposes (Article 18 ECHR). In particular, the Court considered it *“to have been established beyond reasonable doubt that the measures complained of in the present case pursued an ulterior purpose, contrary to Article 18 of the Convention, namely that of reducing the applicant to silence”*. Authorities to end his detention.

In January 2020, the United Nations Universal Periodic Review (UPR) cycle revolved around to Turkey. Press Freedom and the protection of journalists was once again raised by many countries as area of concern and in particular the lack of progress following the emergency decrees issued four years after the alleged coup. The submissions to the UN called for reform to enable press freedom to flourish in Turkey and to review anti-terror legislation and to protect freedom of expression online. In response to the UPR, the delegation of Turkey noted that a provision had been added to the anti-terror legislation to ensure that the expression of thoughts did not go beyond news reporting or did not simply amount to criticism should not constitute an offence. It noted, nonetheless, that:

“Freedom of expression was not an absolute right and did not protect terrorist propaganda, incitement to hatred or violence. Freedom of expression could be subjected to restrictions, as provided for in international human rights treaties.” Turkey went on to state that, *“no profession, including journalism, gave persons immunity from prosecution if there was reasonable suspicion that a crime had been committed.”*

Taking into account all these elements, the ultimate, yet unfortunate, conclusion of the present report, is that the violations of freedom of the press, committed by the Turkish government can no longer be considered a reaction linked to the *“coup d'état”* or aiming at fighting political violence and terrorism. The clear purpose is to silence all critical voices in Turkey as much as possible, whereby prosecution and long-term imprisonment are used as a frequent method to reach that goal.

Turkey has been condemned for violation of article 10 ECHR 154 times since 2000 by the ECtHR. This report shows many prosecutions and severe convictions for insult or defamation of the president or the state. The number of journalists kept in pretrial or convicted for long-term imprisonment, marks Turkey as the worst jailor of journalists worldwide. Closing down around 200 media outlets, having blocked more than 40 000 websites, and organising a strict system of permits for classical radio and for online broadcasters and digital media, again is in clear contradiction with Article 10 ECHR and the basic rules of democracy.

Against this background, it can only be concluded that Turkey currently cannot be considered as a country within which a sufficient degree of freedom of the press and freedom of expression is guaranteed. As result, the conclusion must also be that Turkey is no longer acting in compliance with the standards of a functioning democracy, because a functioning democracy without an effectively guaranteed freedom of the press is impossible. The organisation of the elections, the unequal access to publicity, criminalisation of political opponents, the eviction of a large number

of mayors, cast doubt on the electoral process as such. But even if we accept that Turkey still has free and fair elections, we can't say that Turkey still is a real democracy. Democracy does not exist without a press freedom and freedom of speech. The legal restrictions, the administrative measures of blocking and expropriating, the judicial persecutions and the convictions have collectively destroyed the freedom of press in Turkey. At the best we can consider Turkey as a "competitive authoritarian system". But not as a democracy.

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14. CONCLUSION AND ANSWERS TO THE QUESTIONS

1 - INTRODUCTION

Freedom of the press in Turkey has been a highly debated topic since the creation of the modern Turkish Republic. During certain periods, notably when the military has exercised power, this freedom has been particularly limited. In retrospect, Kurdish-speaking journalists, (far) left-wing journalists and independent investigative journalists have been particularly targeted. What is the state of freedom of the press in Turkey today? Has the lack of respect for the freedom of the press become a fundamental marker of Turkey's legal and political landscape? Has the state of freedom of the press deteriorated since Recep Tayyip Erdogan took office, first as Prime minister and then as head of State, and especially since the attempted coup of 15 July 2016? This report aims to shed significant light on the current state of freedom of the press in Turkey.

This analysis will allow us to answer two important questions:

- **Can Turkey currently be considered a country within which a sufficient degree of freedom of the press and freedom of expression is guaranteed, so it can follow the standards of a functioning democracy?**
- **Can the decisions taken by the Turkish government still be considered as a reaction linked to the “coup d'état” or do they need to be evaluated as a way to “destroy” the voices and/or organisations critical of the government?**

This report will firstly take a short look at the international legal obligations of Turkey, with a specific focus on those issues that are particularly relevant to the current legal-political situation in Turkey (Section 2). Secondly, it then highlights the number of cases concerning freedom of expression and press freedom before the European Court of Human Rights (ECtHR) in Section 3. Next, a short summary of Turkey's constitutional obligations (Section 4), and an historical overview (Section 5) is given. Comment is then given on the report of the Venice Commission (Section 6), the report of the special rapporteur on the promotion of the right to freedom of opinion and expression (Section 7), the IPI report 2019 (Section 8) and the annual report of the Platform to Strengthen the Protection of Journalism and the Safety of Journalists (Section 9).

Additionally, the situation of foreign journalists (Section 10) is examined, with some analysis of the limitations imposed on digital media (Section 11) and the specific incrimination of insult of the president or the state (Section 12) and gives a number of academic cases of violations of the freedom of the press (Section 13).

Finally, in the conclusion, answers to the two research questions of the present report are given.

In this report the names of journalists and media outlets are in bold. This makes the reading of the report a bit easier, but the reader can see this also as a symbolic gesture towards all these journalists and media outlets who suffered due to violations of their fundamental rights.

2 - INTERNATIONAL LEGAL OBLIGATIONS

Freedom of expression and press freedom are “traditional” human rights. Freedom of expression is a right that was declared by the UN as part of the International Human Rights Declaration, that was signed and accepted by Turkey, like many other countries, on 6 April 1949. Turkey signed and affirmed the International Covenant on Civil and Political Rights (Turkey signed the agreement on 15 August 2000 and it was confirmed on 23 September 2013) and signed and accepted the European Convention on Human Rights, which regulates Freedom of Expression at Article 10 and Article 19. Article 10 stipulates:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In addition, Turkey is also signatory to the International Covenant on Civil and Political Rights of 1966 (ICCPR). Article 19(2) of the ICCPR entitles “everyone has the freedom of expression” including “the freedom to seek, receive, and impart information and ideas of all kinds.”

Turkish authorities declared on 21 July 2016 to the European Council’s General Secretary that some of the measures taken after the coup might include derogation of some of obligations predicated by the European Council of Human Rights. However, in terms of ICCPR and European Covenant of Human Rights, the right of freedom of expression is exempt from any limitation of obligations, whether in normal conditions or extraordinary conditions.

The provision is rather straightforward. The jurisprudence is also clear that freedom of the press and expression are of fundamental importance for a fully functioning democratic society. Therefore, it is not only a personal right, but also a functional democratic right:

“In this connection, the Court makes reference to the essential function which the press fulfils in a “reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas, with regard to the print media as well as to the audio-visual media; the public also has a right to receive them”.¹

In line with Article 10/2 (“the exercise of these freedoms, since it carries with it duties and responsibilities”) it is evident that journalists carry responsibilities. They are an integral part of a functioning democracy, and therefore enjoy greater protection. For instance, they have the right not to disclose their sources, but must also fulfil their journalistic duty, taking into account the good practices of the profession.

The European Court of Human Rights famously held in the Handyside judgement:

“The Court’s supervisory functions oblige it to pay the utmost attention to the principles characterizing a “democratic society”. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is

1 Van Rijn, Arjen, Chapter 14. Freedom of Expression. In : Van Dijk, P., Van Hoof, F. and Zwaak, L. (Eds.), Theory and Practice of the European Convention on Human Rights, Intersentia, 2018, p. 767.

applicable not only to “information” or “ideas” that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society. – own underlining-”²

While it is impossible to define the exact limits of this time-honoured point of view from the Court, as far as the political or societal discussions are concerned, the Court rarely accepts national decisions that limit freedom of the press and expression. Political discussions must be widespread in a functioning democracy and limitations to them are almost always condemned by the court.

A salient case is the *Castells* judgement. Importantly, the case has clear implications for the current state of freedom of press and expression in Turkey. **Castells** was a Basque lawyer and senator for **Herri Batasuna**, a political movement in favor of Basque independence. He had written an article in a newspaper stating that a lot of Basque killings remain unsolved. Castells clearly stated that everyone knew that extreme right-wing paramilitary groups were responsible for those killings, and added that the fact there were no judicial prosecutions was not only the responsibility of the government, but that it was also impossible to think that these paramilitary groups could have acted without the knowledge and support of the government. He was subsequently convicted for insulting state institutions.

The Spanish government tried to justify the conviction:

“The government stressed that freedom of expression was not absolute, it carried with it ‘duties’ and ‘responsibilities’. Mr. Castells had overstepped the normal limits of political debate. He had insulted a democratic government in order to destabilise it, and during a very sensitive, indeed critical, period for Spain, namely shortly after the adoption of the Constitution, at a time when groups of differing political persuasions were resorting to violence concurrently.”³

The European Court did not accept this justification and considered the conviction a violation of Article 10 and held that:

² ECtHR., *Handyside v. the UK*, 7 December 1976, §49.

³ ECtHR, *Castells v. Spain*, 23 April 1992, §41.

“The limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings,....Interferences with the freedom of expression of an opposition member of parliament, like the applicant, call for the closest scrutiny of the Court.”⁴

The European Court issued a similar judgement in the recent case of Altan v Turkey:

“The Court is prepared to take into account the circumstances surrounding the cases brought before it, in particular the difficulties facing Turkey in the aftermath of the attempted military coup. The coup attempt and other terrorist acts have clearly posed a major threat to democracy in Turkey. In this connection, the Court attaches considerable weight to the conclusions of the Constitutional Court, which noted, among other things, that the fact that the attempt had taken place at a time when Turkey had been under violent attack from numerous terrorist organizations had made the country even more vulnerable (...). However, the Court considers that one of the principal characteristics of democracy is the possibility it offers of resolving problems through public debate. It has emphasized on many occasions that democracy thrives on freedom of expression (...). In this context, the existence of a “public emergency threatening the life of the nation” must not serve as a pretext for limiting freedom of political debate, which is at the very core of the concept of a democratic society. In the Court’s view, even in a state of emergency – which is, as the Constitutional Court noted, a legal regime whose aim is to restore the normal regime by guaranteeing fundamental rights (...) – the Contracting States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness.

In this context, the Court considers that criticism of governments and publication of information regarded by a country’s leaders as endangering national interests should not attract criminal charges for particularly serious offences such as belonging to or assisting a terrorist organization, attempting to overthrow the government or the constitutional order or disseminating terrorist propaganda. Moreover, even where such serious charges

⁴ Ibid., §46.

have been brought, pre-trial detention should only be used as an exceptional measure of last resort when all other measures have proved incapable of fully guaranteeing the proper conduct of proceedings. Should this not be the case, the national courts' interpretation cannot be regarded as acceptable.

The Court further notes that the pre-trial detention of anyone expressing critical views produces a range of adverse effects, both for the detainees themselves and for society as a whole, since the imposition of a measure entailing deprivation of liberty, as in the present case, will inevitably have a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices (...). The Court further notes that a chilling effect of this kind may be produced even when the detainee is subsequently acquitted (...)."⁵

Several investigations are initiated on the basis of 'insult', as exemplified by the high number of cases of 'insults' against the President.

On 21 February 2012, in the case of *Tusalp v Turkey*⁶, the European Court was asked to consider whether two defamation actions taken by the Prime Minister against a journalist for protection of his personality rights were compatible with Article 10 of the European Convention. Dirk Voorhoof and Rónán Ó Fathaigh (from Ghent University) penned an excellent analysis on this case,⁷ which merits to be quoted in extenso:

*"The applicant was **Erbil Tuşalp**, a journalist and author, who had published two articles in the **Birgün** newspaper concerning alleged illegal conduct and corruption in Turkish public life. The articles severely criticized the Prime Minister, Mr. Recep Tayyip Erdoğan, including such statements as "From teachers to judges ... the man uses these posts like the property of his own party", and "I consider it useful for both his and the public's mental health to investigate whether he had a high-fevered illness when he was young ... I suspect he is suffering from a psychopathic aggressive illness. I wish him quick recovery".*

The Prime Minister brought civil proceedings against the applicant and the publishing company on the ground that certain remarks in the articles constituted an attack on his personality rights. The Turkish courts considered that the remarks went beyond the limits of

5 **Mehmet Hasan Altan v Turkey**, ECtHR, 20 March 2018.

6 **Tusalp v Turkey**, ECtHR, 21 February 2012.

7 'Yes Prime Minister!' Strasbourg Observers, 23 February 2012, <https://strasbourgobservers.com/2012/02/23/yes-prime-minister>

acceptable criticism and “belittled the Prime Minister in the public and the political arena”. According to the domestic courts, the applicant had published “allegations of a kind one cannot make of a Prime Minister”, holding that the impugned remarks had alleged that the Prime Minister had psychological problems and was mentally ill. The applicant and publishing company were ordered to pay 10,000 Turkish liras (€4,300) in compensation.

The European Court of Human Rights however disagreed with the findings of the Turkish courts. The Court considered that the articles concerned the applicant’s comments and views on current events, and were very important matters in a democratic society which the public had an interest in being informed about and fell within the scope of political debate.

The Court also considered the balance between the applicant’s interest in conveying his views, and the Prime Minister’s interests in having his reputation protected and being protected against personal insult. In this regard, the Court held that even assuming that the expressions used in the articles could be classed as provocative, inelegant, and offensive, they were mostly value judgments, and had a sufficient factual basis.

In an important passage, the Court held as a matter of principle that offensive language may fall outside the protection of freedom of expression if it amounts to “wanton denigration”, where the sole intent of the offensive statement is to insult. However, the Court added that the use of vulgar phrases in itself is not decisive in the assessment of offensive expression as it may well serve merely stylistic purposes, as “style constitutes part of communication as a form of expression and is as such protected together with the content of the expression”.

The European Court held that the Turkish courts had not set the impugned remarks within the context and the form in which they were conveyed, with the European Court holding that the strong remarks in the articles could not be construed as a gratuitous personal attack on the Prime Minister. The Court concluded that the Turkish courts had failed to establish any “pressing social need” for putting the Prime Minister’s personality rights above the right to freedom of expression and the general interest in promoting press freedom. There had thus been a violation of Article 10.

While Article 10/1 provides that broadcasting, television and cinema enterprises may be subjected to a license, the European Court explained that this only allows the state “to control the way in which the broadcasting is organized, especially with regard to ‘technical aspects’, but that otherwise the licensing measures had to comply with the requirements of the second paragraph”.⁸ According to this jurisprudence, a state license system cannot be used in a way to introduce censure on these media outlets.

3 - DECISIONS BY THE ECTHR ON ARTICLE 10, CONCERNING TURKEY

Year	Judgements on Art.10	Judgements on Art. 10 against Turkey	Judgements on Art. 10 against Turkey, related to journalists or media	Convictions
2000	113	6	4	4
2001	58	3	0	
2002	117	12	4	1 (3 transactions)
2003	141	16	4	1 (3 transactions)
2004	190	24	8	7 (1 transactions)
2005	261	58	24	24
2006	278	44	26	24
2007	354	32	23	23
2008	270	20	8	8
2009	300	14	4	4
2010	198	20	10	10
2011	197	7	4	4
2012	271	9	5	5
2013	224	9	4	4
2014	241	24	19	19
2015	326	10	3	3
2016	251	9	2	2
2017	208	7	1	1
2018	242	12	8	8
2019	100	9	3	2

⁸ ECtHR, *Groppera Radio AG and Others v. Switzerland*, 28 March 1990, §53.

Since 2000, the European Court has been seized of 164 cases relating to freedom of expression and involving Turkish journalists and/or media. It condemned Turkey in 154 of these cases, i.e. in 93.90% of the cases. In the early 2000s, seven cases were struck off the list following compensatory agreements between the Turkish State and the complainants. This practice subsequently disappeared, and it can be observed that the years 2005, 2006, 2007, 2010, and 2014 registered particularly higher number of cases being decided in Strasbourg. The judgements refer to facts or decisions that happened four to seven years before. This also means that for facts that happened, or for decisions taken after the 2016 failed coup, only a few decisions have been taken by the European Court. As a matter of fact, the European Court of Human Rights can only be seized of cases once all appeals before the national courts have been exhausted and the procedure before the court itself also takes a lot of time in most cases.

According to data from the European Court of Human Rights (ECtHR) regarding its legal work in 2018, Turkey breached Article 10 of the ECtHR regarding the protection of freedom of expression in 40 court cases. As it stands, Turkey has been delivered the highest number of sentences in trials concerning freedom of expression cases at the European Court of Human Rights. Many of the cases that came in front of the ECHR relate to the legal framework restrictions of deliberate misinterpretation of the Turkish Penal Code (TCK) and the Prevention of Terrorism Act (TMK).

4 - TURKEY'S CONSTITUTIONAL OBLIGATIONS

The Constitution of the Republic of Turkey guarantees freedom of thought and opinion (Article 25), freedom of expression and dissemination of thoughts and opinions (Article 26), freedom of press and inadmissibility of censorship (Article 28) and unacceptability of confiscation of printing houses and their annexes on grounds of having been used in a crime (Article 30).

5 - A HISTORY OF REPRESSION

5.1 - FROM 1980 TILL 2008

Violations of press freedom in Turkey are not new. During the military regime in the aftermath of the 1980 coup freedom of the press was severely limited. Gradually after the restoration of democracy, freedom of press gained momentum. However, violations of press freedom continued to exist.

Since Recep Tayyip Erdogan came into power there has been limited improvement in human rights protections in Turkey. Yet, problems regarding press freedom have never been addressed seriously.

Historically, the journalists prosecuted have mostly been Kurdish, which was in part due to the Turkish state's policy of denial of ethnic or linguistic minorities.

An emblematic case that illustrates this repression is the case of **Hrant (Firat) Dink**, a Turkish-Armenian journalist and writer.⁹ Between 7 November 2003 and 17 February 2004, he wrote eight articles devoted to the identity of Turkish citizens of Armenian origin. In his articles he stated that the identity of the Armenians was too heavily built on the desire to see the Armenian genocide recognised by the Turks. Dink thought that this had to change, and that Armenians should build their future independently and replace their blood, "poisoned by the Turks", with blood coming from the link with the Armenians in Armenia. "Poisoned by the Turks" meant the negative impact on the Turkish-Armenian population coming from their unmet desire of recognition of the genocide that dominated the identity of the Turkish Armenians. This phrase however caused a lot of reaction from some Turkish nationalist groups. At a certain moment, the prefect of Istanbul informed **Dink** that if he continued to publish articles of this kind, he could not guarantee his security.

Dink was prosecuted and finally condemned to six months detention in 2006 and was later murdered by a young Turkish nationalist in Istanbul on 19 January 2007, in front of the offices of his bi-lingual weekly newspaper **Agos**.

On 25 July 2011, his killer, **Ögün Samast**, was sentenced to 22 years imprisonment for premeditated murder and illegal possession of a firearm by the Istanbul Children's Criminal Court. Initially, Dink's lawyers stated that the police forces were informed about the plan to kill Dink and even were helping to organize it. The prosecution against a large number police officers however did not lead to any indictment or conviction. The ECtHR condemned Turkey for not guaranteeing the security and the life of **Dink**.¹⁰

His sons, **Arat Dink**, and **Serkis Seropyan**, respectively managing editor and editor of **Agos**, were found guilty of "insulting Turkish identity" on 11 October 2007 and were given a one-year suspended prison sentence by a Turkish court, under Article 301 of the Turkish Penal Code.

⁹ **Dink** was awarded the 2006 Oxfam/Novib PEN prize for freedom of expression.

¹⁰ **Dink v Turkey**, ECtHR, 14 September 2010

They were charged for having reproduced, part of the comments made by **Hrant Dink** in the summer of 2007 which had led to his prosecution.

5.2 - THE ERGENEKON/ODA TV CASE

Gradually, the repression extended to left-wing or extreme left-wing journalists, nationalist journalists and investigative journalists. An important event in this evolution was the Ergenekon/**ODA TV** case.

Ergenekon was the name of an alleged criminal network, that is said to associate with high-ranking officers of the army and gendarmerie, extreme right-wing and nationalist left-wing activists, mafia groups, academics and journalists, that were allegedly preparing to overthrow the government. Between June 2007 and November 2009, some 300 people, including journalists, were arrested and 194 prosecuted in various capacities in this context.

In his opening speech, delivered on 10 January 2011 at the “International Law Congress 2012” organised by the Ankara Bar Association, **Metin Feyzioglu**, the president of the Ankara Bar Association stated (see Annex 1):

“We no longer have freedom of press in Turkey. Tens of journalists who express their thoughts were taken under custody in open-ended inquiries. The newspapers, televisions, radios are forced to implement self-censor. Implementations of tax audits, penal inquiries and civilian authorities put pressure on the press and media. Local press and media whose screams are not heard in Ankara and Istanbul is left to the following predicament: ‘Obey or perish’. In fact, there is no freedom of expression in a country where there is no freedom of press”.

In this context, the cases of **Nedim Sener** and **Ahmet Sik** are exemplary. Both were investigative journalists of a high level¹¹, they were also very critical towards the government. They were criticising the Ergenekon case as an attempt at the leading party, with the help of members of the Gülen movement in the judiciary, to shut down the opposition against the government. Both were arrested on 3 March 2011 and spent over a year in prison when they were released on 12 March 2012. Worse still, the investigation (indictment) never reached the trial stage. The

11 **Nedim Sener** for instance won the award “Hero of the Freedom of the press 2010, decided by the International Press Institute and was awarded the International PEN Price 2011.

ECtHR in a judgement of 8 July 2014 stated that there had been a violation of Articles 5 and 10 of the ECHR.¹²

By the end of 2012, Turkey held 80 journalists in jail.¹³ This number fluctuated in the following years.

5.3 - THE REPORT OF THE EUROPEAN COMMISSION OF 10 OCTOBER 2012.

The European Commission addressed a report on Turkey's application for membership of the European Union to the Parliament and the Council on 10 October 2012.¹⁴

The following extract is particularly important:

“As regards freedom of expression, a number of journalists were released pending trial after excessively long periods spent in pre-trial detention. The third judicial reform package prohibits the seizure of written work before publication. It also eases restrictions on media reporting of criminal investigations. There continues to be room for debating some topics perceived as sensitive, such as the Armenian issue or the role of the military, and opposition views are regularly expressed.

However, these reforms fall short of a significant improvement regarding freedom of expression. The increasing incidence of violations of freedom of expression raise serious concerns, and freedom of the media continued to be further restricted in practice. The increasing tendency to imprison journalists, media workers and distributors fueled these concerns. The European Court of Human Rights received a large number of applications concerning violations of freedom of expression by Turkey.

12 **Sener v Turkey**, ECtHR, 8 July 2014 and **Sik v Turkey**, ECtHR, 8 July 2014.

13 2019 Joint International Press Freedom Mission to Turkey – Mission Report, p.10.

14 https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf

A large number of cases were brought against writers, academics and journalists writing and working on the Kurdish issue, but also scholars and researchers. Several left-wing and Kurdish journalists were arrested on charges of engaging in propaganda for terrorism, others remained in prison.

The legal framework on organized crime and terrorism is still imprecise and contains definitions which are open to abuse, leading to numerous indictments and convictions. Moreover, its interpretation by prosecutors and courts is uneven and is not in line with the European Convention on Human Rights or the case-law of the European Court of Human Rights. Turkey needs to amend its penal code and anti-terror legislation to make a clear distinction between the incitement to violence and the expression of nonviolent ideas.

The application of Articles 6 and 7 of the Anti-Terror Law in combination with Articles 220 and 314 of the Turkish Criminal Code leads to abuses; in short, writing an article or making a speech can still lead to a court case and a long prison sentence for membership or leadership of a terrorist organization.

High-level government and state officials and the military repeatedly turn publicly against the press and launch court cases. On a number of occasions journalists have been fired after signing articles openly critical of the government.

All of this, combined with a high concentration of the media in industrial conglomerates with interests going far beyond the free circulation of information and ideas, has a chilling effect and limits freedom of expression in practice, while making self-censorship a common phenomenon in the Turkish media.

(...)

Website bans of disproportionate scope and duration continued. Since May 2009 the Telecommunications Communication Presidency (TİB) has published no statistics on banned sites. Court cases are ongoing against the You Tube video-sharing website and other web portals. The Law on the Internet, which limits freedom of expression and restricts citizens' right to access to information, needs to be revised. An Information Technologies and Communication Board (ICTA) decision introducing optional internet filters entered into force. It is essential that it is implemented in line with European standards with regard to the right to receive and impart information and ideas without interference by public authorities. The Supreme Board of Radio and Television (RTÜK) issued warnings to

television stations and imposed fines on them, in particular for representing superstitious beliefs, denigrating morals and national values and the protection of the family, representing obscenity and praising terrorism.

Overall, the increase in violations of freedom of expression raises serious concerns, and freedom of the media was further restricted in practice. The legal framework, especially as regards organized crime and terrorism, and its interpretation by the courts, leads to abuses. Together with pressure on the press by state officials and the firing of critical journalists, this situation has led to widespread self-censorship. Frequent website bans are a cause for serious concern and there is a need to revise the law on the internet.”¹⁵

The report mentioned that according to figures by the OSCE, there were 95 journalists in prison, compared to 57 in April 2011. Twenty of the journalists on the 2012 lists had been released since, 10 of them as a consequence of the entry of the 3rd judicial reform package.

“By 2015 many of the journalists had been released save a group of approximately 20 to 30 Kurdish journalists accused of affiliation with the banned PKK (Kurdistan Workers’ Party). The June 2015 national elections that threatened to unseat the AKP then led to a new period of tensions. During this period Can Dündar and Erdem Gül of the secular daily Cumhuriyet were prosecuted for exposing the military’s role in arming rebels in Syria, spending 92 days in jail before being released by the Constitutional Court in February 2016. They were later sentenced to five years in prison for attempted violent overthrow of the government. Gül was eventually acquitted in 2018, while Dündar remains in exile in Germany.

Meanwhile the judiciary’s attention had also turned to media considered to be associated with the Gülen movement, including the daily Zaman. The first arrests of journalists of Zaman took place in December 2014 and the company was eventually seized by court order in March 2016.¹⁶

15 Ibid, p. 21.

16 2019 Joint International Press Freedom Mission to Turkey – Mission Report, p.11.

5.4 – THE SWORD OF DAMOCLES AND THE ABUSE OF PRE-TRIAL DETENTION AS A TACTICAL CHOICE

Some journalists remained in detention for an exceptionally long time and were released without their trials having resulted in an acquittal or dismissal. These suspended trials thus remained like a sword of Damocles hanging over their heads; resuming their activity, they remained at risk of getting arrested again without the slightest notice. For instance, this was the case of **Bariş Terkoğlu** and **Bariş Pehlivan**, working for the OdaTV website (see infra). Both were released on 14 September 2012 after 578 days in detention. Their trial in the Ergenekon case, for revealing that the prosecutor in charge of the case had had lunch with the president of the court, never reached its conclusion. Others suffered a less favorable fate; on 2 November 2013, Turkish-Dutch journalist-writer **Fusun Erdoğan**, and journalists **Baraym Namaz**, **Sedat Senoğlu**, **Ibrahim Çiçek**, **Ziya Ulusoy**, and **Arif Çelebi**, were sentenced to life imprisonment for membership of a terrorist organisation. The founder of Özgür Radyo, **Fusun Erdoğan** was arrested on September 12, 2006 and prosecuted on 296 charges, including that of being a member of an illegal organization, the MKLP, the Marxist-Leninist Communist Party. Released from prison pending her appeal trial, after nearly eight years of detention, **Fusun** found refuge in the Netherlands.

The systematic use of pre-trial detention has been condemned several times by the ECtHR. In the *Kavala* case the ECtHR was very clear about the abuse of pre-trial detention as a way to silence opponents of the regime.

“This document (the bill of indictment – PL), 657 pages in length, does not contain a succinct statement of the facts. Nor does it specify clearly the facts or criminal actions on which the applicant’s criminal liability in the Gezi events is based. It is essentially a compilation of evidence – transcripts of numerous telephone conversations, information about the applicant’s contacts, lists of non-violent actions –, some of which have a limited bearing on the offence in question. It is important to note, as emphasized above (...), that the prosecutor’s office accused the applicant of leading a criminal association and, in this context, of exploiting numerous civil-society actors and coordinating them in secret, with a view to planning and launching an insurrection against the Government. However, there is nothing in the case file to indicate that the prosecuting authorities had objective information in their possession enabling them to suspect, in good faith, the applicant at the time of the Gezi events (...). In particular, the prosecution documents refer to multiple and completely lawful acts that were related to the exercise of a Convention right and were carried out in cooperation with Council of Europe bodies or international institutions (exchanges with Council of Europe bodies, helping to organize a visit by an international delegation). They also refer to ordinary and legitimate activities on the part of a human-

rights defender and the leader of an NGO, such as conducting a campaign to prohibit the sale of tear gas to Turkey or supporting individual applications.

In the Court's view, the inclusion of these elements undermines the prosecution's credibility. In addition, the prosecution's attitude could be considered such as to confirm the applicant's assertion that the measures taken against him pursued an ulterior purpose, namely to reduce him to silence as an NGO activist and human-rights defender, to dissuade other persons from engaging in such activities and to paralyse civil society in the country.

(...)

In addition, the Court considers it crucial in its assessment under Article 18 of the Convention that several years elapsed between the events forming the basis for the applicant's detention and the court decisions to detain him. No plausible explanation has been advanced by the Government for this lapse of time. Furthermore, and importantly, the bulk of the evidence relied upon by the prosecutor in support of his request for the applicant's pre-trial detention, which began on 1 November 2017, had already been collected well in advance of that date; the Government have not provided any cogent explanation for this chronology of events. Moreover, notwithstanding the lapse of more than four years between the Gezi events and the applicant's detention, the Government have been unable to furnish any credible evidence which would allow an objective observer to plausibly conclude that there existed a reasonable suspicion in support of the accusations against the applicant. Finally, the Court points out that after the applicant's placement in detention, he was not officially charged until 19 February 2019, that is, five and a half years after the facts, and solely in relation to the Gezi events. The Government have also failed to demonstrate that any investigative acts of significance took place in relation to the Gezi events between the time the applicant was initially detained in November 2017 and subsequently charged in February 2019.

It is also significant that those charges were brought following the speeches given by the President of the Republic on 21 November and 3 December 2018. On 21 November 2018 the President stated: "Someone financed terrorists in the context of the Gezi events. This man is now behind bars. And who is behind him? The famous Hungarian Jew G.S. This is a man who encourages people to divide and to shatter nations. G.S. has huge amounts of money and he spends it in this way. His representative in Turkey is the man of whom I am speaking, who inherited wealth from his father and who then used his financial resources to destroy this country. It is this man who provides all manner of support for these acts of

terror...” On 3 December 2018 the President openly cited the applicant’s name and stated as follows: “I have already disclosed the names of those behind Gezi. I said that its external pillar was G.S., and the national pillar was Kavala. Those who send money to Kavala are well known ...” The Court cannot overlook the fact that when these two speeches were given, the applicant, who had been held in pre-trial detention for more than a year, had still not been officially charged by the prosecutor’s office. In addition, it can only be noted that there is a correlation between, on the one hand, the accusations made openly against the applicant in these two public speeches and, on the other, the wording of the charges in the bill of indictment, filed about three months after the speeches in question (...).

(...)

In the light of above-mentioned elements, taken as a whole, the Court considers it to have been established beyond reasonable doubt that the measures complained of in the present case pursued an ulterior purpose, contrary to Article 18 of the Convention, namely that of reducing the applicant to silence. Further, in view of the charges that were brought against the applicant, it considers that the contested measures were likely to have a dissuasive effect on the work of human-rights defenders. In consequence, it concludes that the restriction of the applicant’s liberty was applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence, as prescribed by Article 5 § 1 (c) of the Convention”.¹⁷

5.5 – THE ATTEMPTED COUP OF 15 JULY 2016 AND THE INCREASING REPRESSION

The number of imprisoned journalists is extremely high in Turkey and many of them remain under threat of prosecution, even after they have been released from prison. Yet, the attempted coup on the night of 15–16 July 2016 and the declaration of a state of emergency on 20 July gave rise to a campaign of increased repression for which journalists and the media were largely victims among others including, lawyers, trade unionists, academics, magistrates). In addition to the traditional targets, Kurdish or Armenian journalists, or those speaking out on Kurdish or Armenian issues, left-wing and far-left journalists, “nationalist” journalists, investigative journalists, “Gülenist” journalists and media outlets were targeted. The Gülen Movement, named after its exiled leader, a Turkish scholar, Fethullah Gülen, is accused by the Turkish

¹⁷ Kavala v Turkey, ECtHR, 10 December 2019, paragraphs 223–232.

authorities of organising the 15 July attempted coup and of having infiltrated the entire Turkish state apparatus.

“On 27 July 2016, on the basis of emergency decrees No. 667 and No. 668, the authorities ordered the closure of over 130 media outlets and publishers. On 28 September 2016, another 12 television and 11 radio stations (owned or operated by members of the Kurdish or Alevi communities) were shut down, without the involvement of the judiciary or any review procedure, on charges that they spread “terrorist propaganda”. 28 On 29 October 2016, another 11 Kurdish newspapers, two news agencies and three magazines were shut down on the basis of emergency decree No. 676.”¹⁸

As the Mission Report of the Joint International Press Freedom Mission to Turkey states:

“Within weeks over 160 journalists were behind bars, hundreds more facing prosecution, over 170 media had been closed and over 3 000 journalists were out of work”¹⁹

Under OHAL (the declared state of emergency), Turkey invented iltisak (coherence) is a form of terrorist activity. Accordingly, “Coherence, i.e. to moving as conjoined to one another, voluntarily submitting, facing the same direction, interpreting circumstances from the same viewpoint, conducting oneself with suggestions, instructions and directions of an organization or structure, and in doing so anticipating worldly or unworldly gains; as well as communication i.e. establishing voluntarily or involuntarily and for personal gains, one’s own course of action by taking into account messages one receives either through personal contact or through the press, mass media or social media.” (Decision of Ankara Regional Court of Appeals, No: 2019/246, 24 April 2019).

By the end of 2016, 178 media outlets including news agencies, newspapers and television channels were closed by the Executive Decrees.²⁰ A further 30 publishers were closed down and their books banned.²¹ The total number of books banned through these closures reached the thousands and people apprehended while in acquisition of books, magazines and journals faced prison sentences. OHAL decrees closed 19 labour unions, one of which was Ufuk-Haber Sen,

18 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, A/HRC/35/22/Add.3, No. 38.

19 2019 Joint International Press Freedom Mission to Turkey – Mission Report, p.10

20 Bianet, <https://m.bianet.org/bianet/medya/182458-kapatilan-basin-yayin-radyo-televizyon-ve-haber-ajanslari>

21 “OHAL’de 30 yayınevi kapatıldı”, Susma, 7 June 2017, <http://susma24.com/ohalde-30-yayinevi-kapatildi/>

one of the largest media workers union and membership to Ufuk-Haber Sen was recognized by the Supreme Court of Appeals as evidence of collaboration with a terror organization.²²

According to Reporters Without Borders (RSF) The number of journalists detained only in the first year of the state of emergency surpassed 100.²³ Other organizations gave much larger figures, with Free Journalists Initiative claiming that 187 journalists were under arrest by the end of the OHAL on July 2018.²⁴ The discrepancies among numbers given by different organizations underline a more dangerous trend of churn in Turkish jails and lack of information about the fate of journalists in the country.²⁵ By the time this submission was prepared the Free Journalists Initiative's number was 154,²⁶ and of RSF was 34.²⁷ A further 167 journalists were under search warrant and had to flee Turkey to escape arrest according to the Stockholm Centre for Freedom's database.²⁸

6 - REPORT OF THE VENICE COMMISSION

On 10 - 11 March 2017 the Venice Commission adopted an opinion on the measures provided in the recent emergency decree laws with respect to freedom of the media.²⁹ The Venice Commission has a tradition of balanced and well thought opinions and in what follows, we will devote extra attention to its findings. The Venice Commission began its report with an important remark:

"During the emergency regime the Government should take only such measures which are connected to the reasons and goals behind the state of emergency. This is of particular importance given the fact that the criteria used to assess the links of concerned

22 <https://www.memurlar.net/haber/728893/yagitay-in-bank-asya-ve-sendika-uyeliklerine-dair-kararinin-tam-metni.html>

23 <https://rsf.org/en/reports/2016-round-number-journalists-detained-worldwide-continues-rise>

24 <https://ipa.news/tr/2018/09/03/ogi-raporuna-gore-turkiyede-187-gazeteci-tutuklu>

25 Kerim Balci, "How many journalists are behind bars in Turkey?" 18 February 2019,

https://observatoryhr.org/priority_posts/how-many-journalists-are-behind-bars-in-turkey

26 http://www.cumhuriyet.com.tr/haber/turkiye/1465423/Ozgur_Gazeteciler_insiyatifi__154_gazeteci_tutuklu.html

27 https://rsf.org/en/barometer?year=2019&type_id=235#list-barometre

28 <https://stockholmcf.org/updated-list>

29 CDL-AD(2017)007

individuals and legal entities to the “FETÖ/PDY” (or other organizations which allegedly represent a threat to national security) have not been made public, at least not officially. The “connections” with “terrorist organizations” are loosely defined and not individually substantiated. So far it has not been possible to effectively challenge this lack of verifiable evidence of such “connections” in individual cases before the domestic courts.”³⁰

It then focused on the ‘permanent’ character of the emergency measures:

“In the context of the present opinion the Venice Commission observes that, for example, Decree Law no. 680 introduced several permanent changes to Law no. 6112 on radio and television; in particular it gave to the regulatory authority (the Supreme Council) a right to suspend broadcasting temporarily, or, in cases of repeated violations, permanently (new Article 7, as amended by Article 17 of the Decree Law). It also formulated a new principle of coverage of terrorist attacks, which prescribes that such coverage should not “produce results serving the interests of terrorism” (Article 18 of the Decree Law). Another amendment concerns the examination by the Supreme Council of broadcasting license applications; it gives to the Supreme Council quasi-unlimited discretion to reject such applications on the grounds of national security and public order, on the basis of information (provided by the national intelligence bodies) that top executives of the media outlet concerned (and even its “partners”) have “affiliation” or “relation” to a terrorist organization (Article 19 of the Decree Law).”³¹

The Commission criticised the Turkish Government’s assertion that these measures were ‘necessary’ to fight against terrorism in the country:

“Many official interlocutors whom the delegation of the Venice Commission met in Ankara argued that the measures taken by the authorities had nothing to do with freedom of expression because the action was taken in the fight against terrorism. To the great regret of the Venice Commission, such rhetoric reflects profound misapprehension of the concept of free speech. Where the authorities take measures against mass media or journalists in connection with their publications, statements, broadcasts etc. a question under Article 10 always arises, even if the authorities pursue a legitimate aim (fighting against propagation of terrorist ideas). Certain types of speech may be legitimately suppressed, but the authorities are always bound to examine those cases through the prism of Article

30 Ibidem, No. 13.

31 Ibidem, No. 15.

10 of the ECHR (and similar provisions of Turkish Constitution or of the international human rights law).”³²

The Venice Commission was also critical towards the ensuing policy of the Turkish government:

“The Venice Commission is prepared to acknowledge that it could be necessary, in times of emergency, for a State to take preventive measures based on more or less extensive presumptions about future behaviors. Thus, the authorities may wish to avoid a panic reaction among the population, or stop hate speech that foments inter-communal violence. Temporary suspension of broadcasting or a temporary ban on distribution of printed press may be justified in such extreme situations, even though, in normal conditions, such measures are not likely to withstand a (strict) judicial scrutiny.

However, this logic is not applicable in casu. There should be an immediate need for such preventive measures to prevent certain media content. From the text of the emergency decree laws it is not possible to learn what sort of danger the liquidation of media outlets was supposed to address. The formula used by the emergency decree laws (which speak of “connections”, “affiliation” etc. to the “terrorist organizations”) is not specific enough to describe these dangers. Neither the emergency decree laws, nor any other official document develop those terms in more detail. In the Opinion on the Emergency Decree Laws the Venice Commission already expressed concern that such broad definitions imply that any sort of link to the “FETÖ/PDY” (or other “terrorist organizations”) lead to the liquidation of the legal person concerned. Whatever are the exact terms in Turkish, it is clear that these formulas are not specific enough to assess where the line is to be drawn between potentially dangerous media outlets and those which represent no risk for the public order and security.

The existence of any potential threat, represented by the media outlets at issue, should be demonstrated with reference to some specific facts – for example, be inferred from the content of the specific previous publications of the media outlet concerned. When speaking about the dismissal of public servants, the Venice Commission insisted that such decision should be based on a “combination of factual elements which clearly indicate that the public servant in a way which objectively cast serious doubts on his or her loyalty to the democratic legal order” (§ 131). The Government’s decision to liquidate media outlets

32 Ibidem, No. 32.

did not refer to any such specific factual elements. The allegations that certain mass media were used to pass “encrypted messages” to the members of the illegal networks have never been corroborated by evidence, and have never been seriously examined.

The Venice Commission does not assert that all closures of media outlets were unjustified. Some of those measures might have been justified by the “exigencies of the situation”, but the problem is that the closures were done directly by the decree laws and without individualized decisions based of verifiable evidence.”³³

“Another argument speaking against such measures relates to the pre-eminent role of the media in a democratic society. The Venice Commission previously observed that mass dismissals of public servants (especially in the Army and Police) may be legitimate, accepting that public servants have a duty of loyalty towards the State. However, unlike public servants, the journalists, newspapers, TV stations etc. have no such duty. Quite the contrary, one of the journalistic virtues is to keep a critical attitude towards the authorities and the politicians. Due to the role of the media as a “public watchdog” they enjoy a higher level of protection than any other business; in addition, in assessing the impact of those measures the authorities should also take into account a potential chilling effect these measures may have on the media market as a whole, and not only on the particular group of journalists or their readers.”³⁴

“In sum, the Venice Commission considers that mass liquidation of media outlets by emergency decree laws (and hence without individualized reasoning) is incompatible with Article 10 of the ECHR, even taking into account the very difficult situation in which the Turkish authorities found themselves after the failed coup.”³⁵

The Commission also expressed serious unease regarding the confiscation of the property of media outlets:

“Even if it was the case, instead of definitely confiscating all assets of organizations, it may suffice to temporarily freeze large amounts on their bank accounts or prevent important transactions, to appoint temporary administrators and to allow only such economic activity which may help the organization in question to survive until its case is examined

33 Ibid, No. 48–50.

34 Ibid, No. 53.

35 Ibid, No. 57.

by a court following normal procedures, where the origin of those assets and funds and their possible use will be established with certitude.”³⁶

Finally, the Commission warned that journalistic activities should not be prosecuted nor considered membership of a terrorist organisation.

“Radical dissidents and fierce critics of the regime may be sanctioned for exceeding the limits of permissible speech, notwithstanding the little scope under Article 10 § 2 of the Convention for restrictions on political debate, but at least they should not be placed on the same footing with the members of terrorists groups. The Venice Commission thus considers that the “membership” concept (and alike) should not be applied to the journalists, where the only act imputed to them is the content of their publications.”³⁷

7 – THE REPORT OF THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION ON HIS MISSION TO TURKEY, 21 JUNE 2017

From 14 to 18 November 2016, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression conducted an official visit to Turkey at the invitation of the Government. The visit took place just months after the attempted coup d'état in July 2016.

The report gives a clear overview of the attacks against the press freedom:

“Media outlets subject to the emergency decrees are not limited to media allegedly affiliated to Gülen. The closure of Özgür Gündem and the book publisher Evrensel, and police raids on Cumhuriyet are examples of how the state of emergency has been deployed against critical or independent media outlets and publishers. On 16 August 2016, the daily Özgür Gündem was closed following a decision by the 8th criminal court of peace in Istanbul, on the basis of allegedly publishing terrorist propaganda and serving as a broadcasting

36 Ibid, No. 61

37 Ibid, No.72.

organ for the PKK. The same day, the paper's headquarters in Istanbul were raided and 22 media workers detained on charges of "resisting the police". They were released after giving testimony before prosecutors.

On 28 August 2016, the central offices of Azadiya Welat, in Diyarbakir, were raided by police and 23 employees were detained. Eight remained in detention as of January 2017.

Several interlocutors commented that the media landscape was dominated by close ties between business interests and political actors. Journalists who were critical of the Government have been gradually fired from these media organs and mild criticism is subject to reprisals through demonization by pro-Government columnists. In addition to the arrest of journalists and police raids on critical media, the use of financial pressure or economic ties with private media companies has led to a higher concentration of media that is directly or indirectly under government control.

The authorities exert pressure on media outlets to change their editorial policies by threatening journalists with dismissal. News coverage that is perceived as negative to the State may be subject to punishment by the authorities"³⁸

The report concludes with a serious warning:

"The situation of the right to freedom of expression in Turkey is in grave crisis and requires immediate steps for Turkey to be compliant with its obligations under international human rights law. The Special Rapporteur is not alone in his assessment. The recommendations that follow are largely consistent with those made by, among others, the Parliamentary Assembly of the Council of Europe, the Council of Europe Commissioner for Human Rights and the OSCE Representative on Freedom of the Media.

(...)

The Special Rapporteur is seriously concerned at the deterioration of media freedom in Turkey, which predates the attempted coup. The state of emergency cannot justify the adoption of disproportionate and arbitrary measures representing a severe blow to freedom of expression, media freedom and access to information in Turkey."³⁹

38 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, A/HRC/35/22/Add.3, No. 41-43

39 Ibid, No. 75-76.

8 – THE IPI’S REPORT ON TURKEY 2019

From 11 to 13 September 2019, a joint International Press Mission composed of the International Press Institute (IPI); Article 19, the European Federation of Journalists (EFJ), the Committee to Protect Journalists (CPJ); PEN International; Norwegian PEN; Reporters without Borders; and the European Centre for Press and Media freedom (ECPMF) visited Turkey. They held meetings with the Turkish Constitutional Court, the Supreme Court of Cassation, the Turkish Ministry of Justice; the Delegation of the European Union in Turkey; Foreign diplomatic missions in Turkey; and held a round table meeting with Turkish civil society and journalism groups. Their report⁴⁰ published as part of IPI’s “#FreeTurkeyJournalists” campaign, supported by the European Union and the Consulate General of Sweden in Turkey, highlights many structural problems underlying the declining situation of freedom of press and expression in Turkey:

- *“Central to this crisis are the 120-plus journalists behind bars and the hundreds more facing prosecution on terrorism-related charges. While the names in jail have fluctuated over the past three years, the overall figures have barely declined since a high of over 160, marking Turkey out as the undisputed leading jailor of journalists worldwide – a title it has held for almost a decade. Behind those figures lies a story of egregious violations of fundamental rights, with dozens of journalists held on the most serious terrorism-related charges for months, sometimes years, pending trial, in many cases without an official indictment. When their day in court eventually arrives the prosecution’s case invariably hangs on the flimsiest of evidence where legitimate critical journalism has been conflated with terrorist propaganda, part of a campaign to silence opposition voices and close down free speech.”*⁴¹
- *The mission recognizes the terrorist threat in Turkey but rejects arguments made by the Supreme Court of Cassation that this justifies exceptional measures outside ECtHR jurisprudence and that fundamental freedoms need to be compromised in the name of security. The state’s actions clearly demonstrate that the existence of a terrorist threat is being instrumentalized to serve an indiscriminate crackdown on critical voices. The continued conflation – by the Turkish government, prosecutors and courts – of journalistic work with terror propaganda underscores this fact and was a consistent theme in the mission’s meetings with the authorities.*⁴²

40 Turkey’s journalists in the dock, Mission Report of the Joint International Press Freedom Mission to Turkey, <https://peninternational.org/app/uploads/Turkey-joint-report-free-expression-2019.pdf>

41 Ibid, p.5.

42 Ibid, p.7.

- *The accreditation of journalists and system of issuing press cards is in need of substantial reform. In the past three years it has seen the refusal of thousands of applications and removal of hundreds of press cards on security grounds and has been further abused to restrict the work of foreign correspondents in the country.*⁴³
- *Three years of prosecutions and trials of Turkey's journalists have exposed systemic failings in the judicial system and key issues in need of radical reform. (...). Key elements taken up by the mission include: (...)*
 - *Pre-trial detention for hundreds of journalists has lasted for months and sometimes years before investigations are completed and the trials can begin. The state of emergency enabled judges to hold defendants without sufficient justification. The appeals process for individual cases has been exceedingly slow, with the Constitutional Court taking years to eventually take up and rule on individual cases.*
 - *Anti-terrorism legislation is for the most part poorly defined, leaving room for prosecutors to conflate criticism of government with terrorist propaganda. Moreover, there is no defined threshold of evidence that needs to be obtained in order for the courts to first launch prosecutions and then for judges to assess when a terrorist act has been committed. Evidence presented in journalist cases has invariably been based on the defendants' professional work, revealing perhaps inadvertently the desire to silence journalism as the true motivation for the prosecution.*
 - *Defamation and insult contained in articles 299 (of the president) and 301 (of the State) have been used to excess since long before the state of emergency in order to tie up critical journalists in expensive and withering legal cases. Between 2014 and 2017 an astonishing 12,300 cases were filed under these two articles.*
 - *The Radio and Television High Council (RTÜK) expanded its powers and reach this summer when new legislation came into force on August 1 extending its oversight to online broadcasters, one of the most important remaining areas of free speech in Turkey. Online broadcasters were given one month to apply for a license, which in some cases costs up to 100,000 Turkish liras (16,000 euros) annually, a figure that poses an existential threat to many small and medium-sized broadcasters. The extent of the new powers is still to*

43 Ibid, p.8.

be determined as there is no clear definition of what constitutes an online broadcaster, nor are there published guidelines on what content the council monitors and how. The potentially boundless scope of the law leaves the system open to enormous abuse.

(...)

- *Prison visits to jailed journalists have been restricted by the government, increasing the journalists' isolation. IPI applied for permission to visit the Cumhuriyet journalists held in Kandıra Prison on the first day of the mission and received a positive initial response. However, when the official decision eventually came on the eve of the planned visit IPI was informed that foreign nationals could not attend, and that if Turkish nationals were to apply separately permission could be granted. There was no time to re-apply. (The author of this report had the same experience back in 2011).⁴⁴*
- *Journalists charged with terrorism offences have family visits and phone calls heavily restricted, and access to letters and books prohibited. The removal of procedural safeguards relating to access to lawyers in police detention through the decrees passed during the state of emergency from 2016 to 2018 has led to rising numbers of allegations of torture and other cruel, inhumane or degrading treatment in pre-trial detention, most notably in the southeast, including against journalist Nedim Türfent.*
- *In relation to anti-terror legislation, the mission noted "particular concerns with:*

(...)

44 Ibid, p. 12-13.

- Article 220(8) (of Anti-Terrorism Law (Law no.3713) provides for one to three years' imprisonment for anyone who makes "propaganda for an organization in a manner which would legitimize or praise the terror organization". The article increases the penalty by half if the propaganda is expressed through the press or broadcasting. Individuals' posts and shares on social media have been relied on as evidence of terrorist propaganda, among other offences. The wording of the article is so vague that legitimate commentary or criticism of the government can lead to prison. For example, journalists Hayri Demir and Sibel Hürtaş were detained for their social media posts reporting on a military operation in Syria and convicted of spreading "terrorist propaganda" online.
 - Article 220(7) criminalizes committing an offence on behalf of a proscribed group and sets out that any individual who commits such an act be automatically classified as a member of the proscribed organization, making them liable to five to 10 years' imprisonment under article 314. This provision has allowed the authorities to vastly expand the concept of membership in terrorist groups, often without credible evidence, targeting persons for the exercise of their right to freedom of expression. Simply working, or having previously worked for, newspapers aligned, or perceived to be aligned with the Gülen movement has been used to label journalists as "members". Similarly, working for media outlets considered pro-Kurdish has seen journalists charged with membership of a terrorist organization or proscribed organization under Turkish law such as the PKK. Ahmet Altan and Nazlı Ilıcak were charged under this article in their retrial.
 - Article 220(6) criminalizing committing crimes in the name of a terrorist organization despite not being a member of it. **The Cumhuriyet** defendants were charged under this article
 - Article 314 criminalizes membership of armed groups. It is punishable by five to 10 years' imprisonment. Six journalists previously working with Zaman newspaper were sentenced under this article".⁴⁵

45 Ibid, 29-30.

9 – THE ANNUAL REPORT OF THE PLATFORM TO STRENGTHEN THE PROTECTION OF JOURNALISM AND THE SAFETY OF JOURNALISTS – 2020.

The “Platform to Strengthen the Protection of Journalism and the Safety of Journalists”⁴⁶, was created by the Council of Europe on April 2, 2015. The platform includes the International and European Federations of Journalists (Brussels), the European Association of Journalists (Brussels), Reporters Without Borders, (Paris), Article 19 (London), the International News Safety Institute (INSI) (London), the Committee to Protect Journalists, Index on Censorship, the International Press Institute (IPI), the Rory Peck Trust, the European Broadcasting Union (EBU), Pen International, the European Centre for Press and Media Freedom, Free Press Unlimited, and the Open Society Institute (OSI-Media) (London).

In its annual Report 2020, the Platform called on the Turkish authorities to stop treating critical journalism as criminal terrorist activity:

“As of 31 December 2019, there were 103 active alerts and 24 resolved alerts on Turkey. These include 91 journalists in detention and four impunity cases. 18 new alerts were submitted in 2019. Turkey has not responded to any of the 2019 alerts. The 2019 alerts included incidents of violent attacks on journalists, the expulsions of four foreign correspondents, arbitrary arrests during attempts to report on demonstrations in southeastern Turkey and criminal investigations for criticism of Turkey’s incursion into northern Syria.

*Significant developments took place in some of the most prominent cases, often illustrating the arbitrariness and political interference that characterizes the Turkish justice system. In September, the Supreme Court of Cassation vacated the convictions of 13 former Cumhuriyet journalists convicted in April 2018 of terrorism charges. The case was returned to a lower court, which largely ignored the Supreme Court’s ruling and acquitted only one of the defendants. Previously, in May, the Turkish Constitutional Court delivered contradictory rulings in which it found that the authorities had violated the constitutional rights of only some of the Cumhuriyet defendants despite the identical nature of these cases. In July, the Supreme Court also overturned the convictions of journalists and writers **Ahmet Altan, Nazlı Ilıcak and Mehmet Altan** on charges of 134 Alert “Impunity in the Case of the Murder of Dada Vujasinovic”, posted 28 April 2015. In November, all three were retried on*

46 www.coe.int/en/web/media-freedom/home

lesser charges of assisting a terrorist organisation. Ahmet Altan was sentenced to ten-and-a-half years and **Nazlı Ilıcak** to eight years and nine months. **Mehmet Altan** was acquitted. **Ahmet Altan** and **Nazlı Ilıcak** were subsequently released for the first time in over three years. Within a week, however, **Ahmet Altan** was re-arrested after the public prosecutor successfully argued that he was a flight risk despite an existing travel ban against him. Judgments in the cases of about 10 journalists remained pending at the European Court at the time of writing. **İdris Sayılğan**, a Kurdish journalist who was held in pre-trial detention for over two years before being sentenced to eight years and three months in prison on charges of membership in a terrorist organisation, was released without advance notice on 27 November. The Court is due to rule on whether Sayılğan was afforded domestic remedy after the Turkish Constitutional Court had failed to take up his case since July 2018.

Journalists in Turkey continue to suffer violations of the rule of law and their right to a fair trial, including insufficient evidence to justify arrest and detention, limits on access to defence lawyers, restrictions on appearing personally in court and extensive pre-trial detention in violation of European Court jurisprudence.

2019 saw a significant effort by the Turkish government to convince international partners that it is engaging in serious reforms of the judicial system. Some elements of a “judicial reform package” have brought relief to some journalists, in particular the lifting of a ban on journalists sentenced to less than five years from appealing to the Supreme Court, a change that has led to the release of a number of defendants pending appeal. However, the package largely fails to address the most significant demands made of Turkey by institutions such as the Venice Commission, including ensuring that journalists are not subject to antiterror charges based on their writing and that the authorities demonstrate “relevant and sufficient” reasons for the detention of journalists.

Meanwhile, the powers of the Radio and Television High Council (RTÜK) have been extended to online broadcasters, which are now required to apply for expensive licenses. The lack of clarity on what is deemed an “online broadcaster” means that RTÜK could potentially begin to police critical social media.

The readiness of the authorities to regulate critical speech and information online was brought into sharp focus in October when, within 48 hours of the launch of the military actions in northern Syria, over 120 investigations had been launched against social media users, including journalists, on terrorist propaganda grounds for publicly criticizing the

military intervention. This followed a RTÜK statement warning radio and TV broadcasters “including online media” to be mindful of their reporting, which if determined to contain “anti-operation propaganda sourced by terrorist organizations” would not be tolerated.

Although the number of jailed journalists in Turkey according to Platform figures declined from 110 to 91 in 2019, Turkey remains a highly repressive environment for the press. Turkish authorities and courts continue to treat critical journalism as criminal terrorist activity. This pattern can effectively not be challenged until the politicization of the courts is ended”.⁴⁷

As of 29 July 2020, the platform’s website⁴⁸ announces that 93 journalists are detained in Turkey and there are four cases of impunity for murder. It showed 117 unresolved alerts and 25 resolved alerts targeting Turkey. Fifty-five alerts were about the detention of journalists; 37 actions having “a chilling effect on press freedom”; 28 harassment or intimidation of journalists; 17 attacks on physical safety and integrity of journalists; and five on impunity.

10 – THE SITUATION OF FOREIGN JOURNALISTS

The situation of foreign journalists, reporting on Turkey, is of particular interest for the protections of freedom of the press. The Mission report of the Joint International Press Freedom Mission to Turkey regrets that, “mounting pressure on foreign journalists in Turkey, following numerous arrests, prosecutions and deportations in recent years. Examples of the harassment and persecution of foreign journalists range from refusing the renewal of press cards to deportations and prosecutions under anti-terror laws”.⁴⁹

The report continues highlighting some of the specific cases of foreign journalists in Turkey:

*“The authorities have used press cards to pressure foreign journalists, with several correspondents compelled to leave Turkey in recent months after their press accreditations were not renewed. On March 10, 2019, long-term German correspondents **Jörg Brase** and **Thomas Seibert** had to leave after the authorities refused to renew their press credentials*

47 Ibid, p.49–51.

48 <https://www.coe.int/en/web/media-freedom/turkey>

49 Mission Report of the Joint International Press Freedom Mission to Turkey, p. 43.

without explanation. The decision was subsequently reversed following a national and international outcry.

Vaguely worded anti-terror laws are also used against foreign journalists and dual nationals. In September 2018, the authorities detained Austrian journalist **Max Zirngast** at his home in Ankara and charged him with being a member of an unknown leftist terrorist organization, based on his writing. He spent three-and-a-half months in pre-trial detention before being released from jail with a travel ban imposed until the conclusion of the trial. He was eventually acquitted of all charges in September 2019.

German-Turkish journalist **Deniz Yücel** was held for over a year on espionage charges before being released in February 2018. In May 2019, Turkey's Constitutional Court found that the pre-trial detention had violated Yücel's right to personal liberty and security, and his right to freedom of expression and freedom of the press. Nevertheless, Yücel remains on trial in absentia on charges of "terrorist propaganda" and "provoking the public to hatred and animosity" carrying up to 18 years in prison.

Dozens of foreign journalists have been expelled from Turkey following the breakdown of a fragile peace process between the PKK and Turkish state forces in July 2015. French journalist **Olivier Bertrand** was deported in November 2016 after being arrested while reporting in Gaziantep province. Italian journalist **Gabriele Del Grande** was arrested in April 2017 near the Syrian border and deported three weeks later. French journalist **Mathias Depardon** was arrested in May 2017 while taking pictures in Batman province and deported the following month.

Turkish journalists living in exile also reported being subject to verbal abuse, including death threats on social media. **Can Dündar**, former editor-in-chief of Cumhuriyet, said he is being routinely insulted while pictures and videos of him walking in the streets of Berlin have been uploaded online. A Turkish TV crew even visited his office, filmed him and put his address on the internet. He currently lives under police protection".⁵⁰

50 Mission Report of the Joint International Press Freedom Mission to Turkey, p. 43–44.

11 – LIMITATIONS IMPOSED ON THE DIGITAL MEDIA

The mission report of the Joint International Press Freedom Mission to Turkey also devoted an entire section on the regulation of online broadcasters by the Radio and Television High Council (RTÜK), which provides further limitation on digital media:

“In March 2018, RTÜK, in charge of monitoring, regulating and sanctioning radio and television broadcasts, was authorized to control online broadcasters as well. The Regulation on Radio, Television and Voluntary Online Broadcasts, entered into force on August 1, 2019. It requires online broadcasters to obtain transmission authorization and a broadcast license from RTÜK. At present, the license fees amount to 10,000 liras (1,600 euro) for radio broadcasting and 100,000 liras (16,000 euro) for TV broadcasting and on-demand platforms such as Netflix, to be renewed annually. In the absence of a license, a court can deny access to specific content within 24 hours after a complaint is filed by RTÜK.

However, article 29/a also states that media service providers who already hold a valid broadcast license from RTÜK can broadcast their content online with their existing license, thereby exempting mainstream broadcasters (largely pro-government) of a cost that is to be imposed exclusively on more independent online broadcasters. Moreover, according to a recent news report, RTÜK is not monitoring pro-government broadcasters, reportedly per the instructions of RTÜK’s chair.

A primary concern of the process is that one of the conditions for a license is to pass a “security check” by the National Intelligence Organization (MIT) and the police, a requirement that is clearly open to misuse.

These excessive license fees and transmission regulations pose a severe threat to media pluralism. The regulation gives RTÜK the power of censorship and allows it to close unlicensed broadcasters. Small media operators in economically difficult times can be easily put out of business. It remains to be seen whether Turkey’s audio-visual regulator will impose sanctions on personal broadcasters that use platforms like Facebook or YouTube that form a significant portion of Turkey’s “alternative media”. But the vaguely worded

legislation clearly leaves open the possibility for this to be selectively wielded against social media in the future even if it is not the official intended purpose”⁵¹

Meanwhile a new bill has been approved by the Turkish Parliament on 29 July 2020 on media platforms. The new law amends the Turkish Law No. 5651 on the *Regulation of publications on the internet and suppression of crimes committed by means of such publication*. The new regulation compels social media companies with over one million users a day to have representatives based in Turkey who are Turkish nationals. In case of non-compliance, they might impose fines of up to 40 million Turkish Lira (approximately 5 million euros), advertising bans and the reduction of Internet bandwidth by up to 90%, effectively blocking access to their platforms.

Tech companies are forced to store their data locally. This means that it will be easier for the Turkish Government to demand that companies hand over data about their customers that could well lead to their prosecution for what they have said or even just shared online.

Platforms are also obliged to respond to requests to block or remove content within 48 hours or face fines of 5 million Turkish Lira, which could increase to 10 million Turkish Lira if they fail to respond.

It should be stressed that the online freedom of expression was already under threat before the adoption of this new law. An Article 19 report⁵² for example notes that as of the end of 2019, Turkey had blocked access to 408.494 websites.

In the report of the United Nations High Commissioner for Human Rights on the impact of the state of emergency on human rights in Turkey, including an update on the South East, from March 2018, the High Commissioner also notes that:

“Over 100 000 websites were reportedly blocked in Turkey in 2017, including a high number of websites and satellite TVs in Kurdish. Wikipedia was blocked to a content criticizing the involvement of the Government of Turkey in the conflict in the Syrian Arab Republic. Turkey was reportedly the country that submitted the highest number of requests to Twitter to censor individual accounts.”⁵³

51 Mission Report of the Joint International press Freedom Mission to Turkey, p. 37–38.

52 www.article19.org/resources/turkey-new-internet-law-threatens-freedom-of-expression-online

53 Report of the United Nations High Commissioner for Human Rights on the impact of the state of emergency on human rights in Turkey, including an update on the South East, No. 95.

12 – INSULT OF THE PRESIDENT OR THE STATE

A specific element on the limitation of freedom of the press and expression in Turkey can be found in the provisions of the Turkish Penal Code, that criminalises insult of the President, the national anthem, the national flag and the institutions and organs of the State.

Turkey is not the only country to have this kind of legislation, but what is different from most countries is the over-reliance on these articles.

The Special Rapporteur on the promotion and protection of the right of freedom of opinion and expression expresses serious warnings in this regard:

“The civil and criminal law provide for the suppression of defamation, even of public authorities. Article 125 of the Penal Code criminalizes insult: paragraph 3 concerns defamation against “a public officer due to the performance of his public duty” as well as insults against beliefs, including religious ones, with penalties of at least one year in prison. Part 3 of the Penal Code criminalizes “insult” of the President, the national anthem, the national flag and the institutions and organs of the State and increases the penalty for such crimes by one sixth if made in public. Article 299 of the Penal Code criminalizes defamation of the President, with sentences of one to four years in prison. Although the Minister of Justice must formally initiate cases, prominent officials, including the President, frequently bring criminal defamation cases against journalists, artists and academics. Reports indicate that the Ministry of Justice has initiated up to 2,000 defamation cases for “insult” of the President.”⁵⁴

The mission report of the Joint International Press Freedom Mission to Turkey gives more actual figures:

“Defamation and insult contained in articles 299 (of the president) and 301 (of the state) have been used to excess since long before the state of emergency in order to tie up critical journalists in expensive and withering legal cases. Between 2014 and 2017 an astonishing 12,300 cases were filed under these two articles. To date the Constitutional Court has failed to take up any of the appeals against conviction which might otherwise

54 Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, A/HRC/35/22/Add3, No. 18.

provide an opportunity to set a precedent against such abuse of the laws. The ECtHR and the Venice Commission have both criticized Turkey's libel laws as violating international standards on freedom of expression.”⁵⁵

13 – ACADEMIC CASES OF VIOLATING THE FREEDOM EXPRESSION AND THE FREEDOM OF THE PRESS.

- On 26 November 2015, at the request of Istanbul prosecutor's office, **Can Dündar**, editor of the daily **Cumhuriyet** and its Ankara representative **Erdem Gül** were taken before a judge and placed in pre-trial detention on charges of membership of a terrorist organization, espionage and divulging state secrets. **Dündar** and **Gül** were investigated in connection with an article published in May 2015 about allegations that Turkey's National Intelligence Organization (MIT) had been delivering arms to rebels in Syria. The newspaper produced a video and photos to support the claim. On 6 May 2016, the Istanbul 14th High Criminal Court convicted **Can Dündar** and **Erdem Gül** --the former for 'obtaining and revealing state secrets', the latter for 'revealing state secrets'. They were respectively sentenced to five years and 10 months and five years in prison. On 16 July 2018, the 14th Heavy Penal Court in Istanbul ruled to acquit **Erdem Gul** of charges of 'publishing state secrets'. He remained on trial in another case over the MIT trucks stories, in which he was charged of 'helping a terrorist organisation'. On 15 May 2019, the Istanbul 14th High criminal court dismissed the case of **Erdem Gül** as it was opened after the 4 months period prescribed in the Press Law regarding statute of limitations.
- One of the most ancient and still unresolved case are the arrest warrants issued by the Istanbul prosecutor for 47 former executives and columnists of Zaman newspaper. Zaman, a so-called Gulenist newspaper was shut down in July 2016, and in September 2017, the trial began but was split in two as journalists were separated from media workers and business people involved in **Zaman**. On 6 July 2018, six journalists were declared guilty of 'being a member of an armed [terrorist] organization'. **Ali Bulaç**, **Şahin Alpay**, and **Ahmet Turan Alkan** were sentenced to 8 years and 9 months in prison; **Mümtaz'er Türköne** and **Mustafa Ünal** 10 years and 6 months, and **İbrahim Karayeğen** to 9 years.

55 Mission Report of the Joint International press Freedom Mission to Turkey, p.12.

- On 31 October 2016, the Turkish police detained at least 12 employees of **Cumhuriyet** newspaper, Turkey's largest secular, left-leaning paper, and one of the remaining critical voices towards the Turkish Government. The detained media workers were accused of membership of, and committing crimes on behalf of, two terrorist organizations: the Kurdistan Workers' Party (PKK) and the Fethullah Terrorist Organization (FETÖ), which the government accused of being behind the failed coup attempt. On 21st November 2019, the Istanbul 27th High Criminal Court upheld the conviction of 12 former Cumhuriyet employees (**Akın Atalay, Ahmet Şık, Aydın Engin, Bülent Utku, Güray Öz, Hakan Kara, Musa Kart, Hikmet Çetinkaya, Murat Sabuncu, Orhan Erinç, Mustafa Kemal Güngör and Önder Çelik**), despite the earlier Turkish Court of Cassation ruling issued in September 2019 that had acquitted the 12 defendants, with the exception of journalist **Ahmet Şık**, who the court had said should be tried for a different crime. The High Criminal Court also ruled for the continuation of judicial supervision imposed on the 12 defendants, and acquitted the 13th defendant, journalist **Kadri Gürsel**.
- **Ahmet Şık** was detained before the attempt coup (see here above), mostly for his journalistic investigation work where he denounced the infiltration of the Turkish institutions by the Gülen Movement. After the attempt coup of 15 July 2016, the Turkish Government launched a relentless campaign against the members of the Gulen Movement and Ahmet Şık was detained on 29 December 2016 and held in solitary confinement in Metris prison until 2 January 2017. He was only released on appeal on 9 March 2018. One possible motive for its detention is the investigation work he had produced in-between on corruption cases involving AKP, the ruling party, members. He was later elected as deputy for HDP (People's Democratic Party) on 24 June 2018 but left the HDP in April this year.
- Following the attempted coup, the RTÜK held an extraordinary meeting on 19 July and decided to cancel the broadcasting license of 24 TV channels and radio stations because of their alleged ties with the Gülen Movement. The measure concerned **STV, Samanyolu Haber, Samanyolu Haber Radyo, Can Erzincan TV, Kanal 124, Yumurcak TV, Hira TV, MC TV, Dünya TV, Kanal Türk, Bugün TV, Mehtap TV, Berfin FM, Kanal Türk Radyo, Burç FM, Samanyolu Haber Radyosu, Radyo Mehtap, Haber Radyo Ege, Dünya Radyo, Radyo Küre, Merkür TV, Esra Radyo, Tuna Shopping TV, and Samanyolu Haber Radyo Anadolu**.

- A court in Istanbul ordered on August 16, 2016 the closure of **Özgür Gündem** newspaper for spreading alleged 'propaganda on behalf of the outlawed terrorist organization'. Shortly after the announcement of the newspaper's closure by authorities, police raided its office in İstanbul's Beyoğlu district. During the police raid, the newspaper's editor-in-chief **Zana Kaya**, journalists **Günay Aksoy, Kemal Bozkurt, Reyhan Hacıoğlu, Önder Elaldı, Ender Önder, Sinan Balık, Fırat Yeşilçınar, İnan Kızılkaya, Özgür Paksoy, Zeki Erden, Elif Aydoğmuş, Bilir Kaya, Ersin Çaksu, Mesut Kaynar, Sevdiye Gürbüz, Amine Demirkıran, Bayram Balcı, Burcu Özkaya, Yılmaz Bozkurt, Gülfem Karataş, Gökhan Çetin, Hüseyin Gündüz and Aslı Erdoğan** were taken in custody by the investigating authorities. On 10 November 2016, a prosecutor in Istanbul asked for life sentences for nine journalists and executives from **Özgür Gündem**. All nine defendants in the case, author **Aslı Erdoğan**, linguist **Necmiye Alpay**, journalists **Ragıp Zarakolu, Bilge Contepe, Filiz Koçali**, editor-in-chief **Bilir Kaya**, the holder of the newspaper's publication rights, **Kemal Sancılı**, the paper's Responsible Managing Editor **İnan Kızılkaya** and lawyer and former co-editor-in-chief **Eren Keskin**, were charged with 'membership in a terrorist organisation', 'damaging the unity of the state', 'conducting propaganda for a terrorist organisation' and 'establishing an organisation for the purpose of committing crime'.
- On Saturday 29 October 2016, the Turkish government issued two decrees (No 675 and 676) shutting down 15 pro-Kurdish media outlets. More precisely, 11 newspapers, two news agencies and three magazines were disbanded. These are **Özgür Gündem, Azadiya Welat, Batman Çağdaş, Cizre Postası, Güney Express, İdil Haber, Kızıltepe'nin Sesi, Prestij Haber, Urfanatik and Yüksekova Haber**; News agencies: **Dicle News Agency (DİHA)** and **Jin News Agency**; Magazines: **Tiroji, Özgürlük Dünyası** and arts and culture magazine **Evrensel Kültür**.

- On 28 February 2017, the Turkish-German journalist, **Deniz Yücel**, correspondent of the German newspaper **Die Welt** was arrested on charges of “spreading terrorist propaganda” and “stirring enmity”. He was released on 16 February 2018 and subsequently allowed to present his defense statement in a Berlin court. On 16 July 2020, he was sentenced in absentia to 2 years, 9 months and 22 days jail by the Istanbul 32nd Criminal Court for “terror propaganda”.

On 16 July 2019, the 3rd Peace Judge at Ankara, Hasan Demirtaş, ordered the blocking of access to 136 internet resources, including “**Bianet**” and “**Gazete Fersude**” news portals, under Article 8/A of the Internet Act relating to grounds of “national security”. The ban targeted 15 websites and dozens of social media accounts on Facebook, Instagram, Twitter, Youtube, Pinterest. It prevented access to at least 200,000 news stories on “**Bianet**”, which had been broadcasting since November 2000.

- Three German journalists were compelled to leave Turkey on Sunday, 10 March 2019, after their press accreditations were not renewed for 2019 without any explanation. **Thomas Seibert**, reporter at the Tagesspiegel newspaper, was a long-term correspondent in the country. **Jörg Brase** was head of public broadcaster ZDF’s Istanbul office. A third journalist, **Halil Gülbeyaz**, with public broadcaster NDR also had his accreditation refused and was not allowed return to Turkey. On 13 March 2019, **Brase’s** accreditation was renewed, after 20 freedom of expression and human rights organizations had urged Turkey to rescind the decisions. On 11 June 2019, the accreditations of all journalists were renewed.
- On 17 January 2019, the journalist **Ans Boersma**, Turkey correspondent for the Dutch financial paper Het Financieel Dagblad, was deported from Turkey. **Ans Boersma** was apprehended by Turkish police the day before, following her visit to the migration office to renew her residence permit as a foreign correspondent. Nine days before her arrest, she had received her accreditation and press card from the Turkish authorities for the year 2019. **Ans Boersman** was detained in a police office in Bakırköy for over five hours, before being transferred to another police station close to Atatürk airport, where she spent the night. The police told the journalist that she was posing a threat to Turkey’s national security without any formal explanation or evidence. She has not even been provided with any legal document confirming her deportation.

- In March 2020, OdaTV editor-in-chief **Bariş Pehlivan** and news director **Bariş Terkođlu** were once again imprisoned on charges of “violating intelligence service law”. OdaTV reported on the funeral of a KIA secret service member which had already been covered by many publications, and whose identity had already been revealed by İyİ Parti MP **Ümit Özdađ** in the National Assembly. Objection filed at the beginning of March was denied. Days before the arrest, in his presidential plane, upon a question about OdaTV, President Recep Tayyip Erdoğan said “Here, I report to prosecutors a criminal offence.” The funeral in question had already been reported by many media institutions and had even been broadcasted live on social media. It was one week later that OdaTV covered the event after which certain public figures working in media networks close to the AKP government launched a lynch campaign on the social media against OdaTV. Following the statement of Erdoğan a negative campaign on the social media ensued, and the prosecutors used the funeral report as a pretext to act against the OdaTV. The real motive might be found elsewhere: **Bariş Pehlivan** and **Bariş Terkođlu** published a book titled *Metastaz* (Metastasis) in 2019. The book shed light on the problem of organizations and religious sects illegally infiltrated into the state bureaucracy. It included corrupted judges who were bribed to give order for release, and prosecutors who closed cases of rich businessmen. The two journalists were about to publish their new book. If they had not been imprisoned, the book would have been out in the market by the beginning of April. In their new book, they would disclose the Pelikan network connected to Berat Albayrak, the Minister of Finance and Treasury, and son-in-law of Tayyip Erdoğan. One of the focuses in the book was the deeds and actions of judicial cadres related to the Pelikan network. In the course of their research for the book, Pehlivan and Terkođlu made interviews with the people involved in such cases. That is to say, people connected to Pelikan network knew such a book would be published. **Bariş Terkođlu** was arrested by police who knocked his door at 4.00 am, on the verbal order of the prosecutor. Both were released in July 2020. OdaTV, which is one of the most popular news websites in Turkey with over 1 million daily readers, was consequently blocked upon the request of the Interior Ministry, following the arrest of **Bariş Terkođlu** and **Bariş Pehlivan**. The news site tried to continue its broadcast under different domain names, each of which has subsequently been banned seven times, but it managed to continue its activities under a new domain name. In April 2020, fearing for the life of imprisoned journalists after the outbreak of Covid-19 pandemic, relatives of detained journalists launched a campaign for their release, as the Turkish authorities planned the release of number of detainees in their overcrowded jails. Journalists were not among the beneficiaries of anticipated liberation.

14 – CONCLUSION AND ANSWERS TO THE QUESTIONS

14.1 – CAN TURKEY AT THIS STAGE BE CONSIDERED AS A COUNTRY WITHIN WHICH A SUFFICIENT DEGREE OF FREEDOM OF THE PRESS AND FREEDOM OF EXPRESSION IS GUARANTEED, SO IT CAN BE IN COMPLIANCE WITH THE STANDARDS OF A FUNCTIONING DEMOCRACY?

To answer this question the following elements must be considered.

1. Turkey has been condemned for violation of article 10 ECHR by the ECtHR 154 times since 2000. This is a significant number of times.
2. Our report shows many prosecutions and severe convictions for insult or defamation of the president or the state. The Mission Report of the Joint International Press Freedom Mission mentions 12 300 cases from 2014 till 2017 only. As indicated, this is clearly in violation of the guarantees of Article 10 ECHR.
3. The number of journalists kept in pretrial or convicted for long-term imprisonment, making Turkey one of the “undisputed leading jailor of journalists worldwide” is again clearly not in accordance with human rights guarantees.
4. The ECtHR clearly stated that pretrial arrest is abused to silence critical voices in Turkey.
5. Closing down around 200 media outlets, having blocked more than 400 000 websites, and organising a strict system of authorizations for classical radio and for online broadcasters again is in clear contradiction with human rights, in particular Article 10 ECHR.

Against this background, it can be concluded that, Turkey cannot currently be considered as a country within which a sufficient degree of freedom of the press and freedom of expression is guaranteed. Turkey is not acting in compliance with the standards of a functioning democracy, because a functioning democracy without an effectively guaranteed freedom of the press is impossible. Turkey is a country which conducts democratic elections, but it is no longer a country with a free press. Elections on their own are not sufficient to guarantee democracy.

14.2 – CAN THE DECISIONS TAKEN BY THE TURKISH GOVERNMENT (STILL) BE CONSIDERED AS A REACTION LINKED TO THE “COUP D’ÉTAT” OR NEED THEY TO BE EVALUATED AS A WAY TO “DESTROY” THE VOICES AND/OR ORGANISATIONS CRITICAL OF THE GOVERNMENT IN TURKEY?

The failed coup d'état and the fight against terrorism has been the mere justification on the part of the Turkish Government before the ECtHR and the different international commissions and rapporteurs. It is clear that this justification cannot serve valid grounds for all the violations committed by the Turkish Government – some of which have been documented in this report.

The second question requires a further discussion that goes much beyond from the content of violations to the ultimate strategies/goals of the Turkish Government. First, the examples given in the report show that the repression did not start after the failed coup d'état. The procedures against **Dink** and the procedures, against **Cumhuriyet** just to name those two, started way before. Also, the timing of targeting a long list of journalists and media outlet (only a few days after the failed coup) shows that that these journalists have been on the Turkish Government's list well before the failed coup. The failed coup was therefore an excellent opportunity to execute these long-established plans.

As the Venice Commission stated, if the government's intention was to react against a threat of terrorism or to avoid new coups to occur, then another method should have been used. The closure and the expropriation of media outlets can only be seen as a strategy on the part of the Turkish Government to destroy critical voices and further cripple freedom of the press and expression. To recall from the above section, the case of **Ahmet Sik** is a salient example. He spent years of detention merely on the account of his journalistic activities which were in essence critical of the Turkish Government's controversial acts. The fact that the constant abuse of pre-trial detention has a “chilling effect” on critical voices was several times repeated by the ECtHR, for instance in the **Altan** Case. The **Kavala** judgment by the ECtHR comes a case of higher importance in this regard. The Court clearly found that the Turkish state abused the pre-trial and the judicial prosecution to muffle its critics by limiting their freedoms and rights for ulterior purposes (Article 18 ECHR). In particular, the Court considered it *“to have been established beyond reasonable doubt that the measures complained of in the present case pursued an ulterior purpose, contrary to Article 18 of the Convention, namely that of reducing the applicant to silence”*. This rings a clear warning bell for the deteriorating rule of law problem in Turkey. As of September 2020, however, **Kavala** unfortunately still remains in jail despite the ECtHR's clear call on the Turkish authorities to end his detention.

Taking into account all these elements, the ultimate yet unfortunate conclusion of the present report, is that the violations of freedom of the press, committed by the Turkish government can no longer be considered a reaction linked to the “*coup d'état*” or aiming at fighting political violence and terrorism. The clear purpose is to silence all critical voices in Turkey as much as possible, whereby prosecution and long-term imprisonment are used as a frequent method to reach that goal.

ANNEX 1

OPENING SPEECH DELIVERED BY DR. METIN FEYZIOĞLU, PRESIDENT OF ANKARA BAR ASSOCIATION, ON THE OCCASION OF THE “INTERNATIONAL LAW CONGRESS, 2012” ORGANIZED BY ANKARA BAR ASSOCIATION

Ankara, 10 January, 2011

1. Coups had enormously damaged the Turkish society. Each time, non-governmental organizations were seriously injured. In the aftermath of the coup of 1980, political parties were shut down and political culture, which was onerously created by the society, was erased. The entire society was driven apart from politics because of dissolution of political parties, abolishment of youth and woman branches of political parties, prohibition of civil servants and university students to become a member of a political party. Moreover, politics and political parties were introduced to the new generations as “pestilent of the society”. On the other hand, establishment and membership of associations were complicated, union rights were restricted, union organizations were trimmed, universities were subordinated to the government by the Higher Education Institution (YÖK), jurisdiction was exposed to the influence of the government by the Supreme Board of Judges and Prosecutors (HSYK). Therefore, Aren't we totally daydreaming to believe that we are living in a democratic system just because an election is called in every 4 years in this country where non-governmental organizations are so weakened, universities are appeased and lost their scientific autonomy, democratic protests are severely punished firstly by police and then by jurisdiction?
2. People are quite paranoid in Turkey. Almost everybody, even bagel and tea sellers, question whether they are monitored or not. Perceptions are as important as the facts. If there is such a perception in the society, the government is responsible for changing it. Trust cannot be spread in the society by brushing the issue aside through expressions such as “Let's trust to the justice” or “Some people are deliberately spreading such fears”. According to official numbers, telephone lines of over 70 thousand people are tapped. Assuming that every person talks to approximately 100 different person in three months, accordingly telephone lines of 7 million people are tapped. This is equal to 1/7 of the population of this country. However, there is no way to calculate unofficial tapping. The saddest thing is that it is now assumed to be normal when personal meetings and images that are alleged to belong to the people who are somehow seen

as a threat disseminated on the internet or press. Even highly reputable people who are expected to lead and guide the society make hypocritical expressions that start with “we respect personal life, but...” instead of asking who made the recording by using what kind of right. This is being an accessory to a criminal act. How can one politically lynch people by assuming the content of a video tape, to be authentic and to constitute a crime, although recorded by an unknown source.

3. I assert that 99% of the arrests in Turkey are contrary to universal standards of law. In spite of statutory provisions of the European Convention on Human Rights, the Constitution of the Republic of Turkey and the Code of Criminal Procedure, no justification is stated in any arrest warrant; it is avoided by just inscribing abstract provisions of the legislation in the court decision. So, could you tell me how the people taken under custody can know why they were arrested or plead not to be guilty if justification is not included in the decision? Unfortunately, arrest is enforced like a prejudged arbitrary punishment imposed most of the time. Sadly, presumption of innocence remains to be a pleasant tune in the Constitution. For instance, in our society, people are expected to prove not to be guilty in one hand when they are claimed to be “guilty”, on the other hand, it is the claimant who is obliged to prove when someone owes him 100TL. Individual freedom and life of individuals are invaluable. I hope that the process called to be “Ergenekon” will result with a social awareness in this regard. Unfortunately, sufferings of the people of Anatolia at courthouses for years has become the most important item in the agenda of the press, and as a result of this process the society has learned, the importance of right of defence, presumption of innocence and that arrests are only precautions, through negative examples. I wish this learning process could have been based on positive, contemporary, fine examples.
4. Today, State Security Courts continue to function in the name of Specially Authorized Aggravated Felony Courts. The truth is tried to be found at courts and justice is sought. A court cannot be established to protect the state against an individual. The courts which are established to protect the state or government are as if they are the continuation of the tribunals of the Inquisition of the middle ages. At this point, specially authorized prosecutors and courts started to question and arrest the people stipulated in Article 148 by omitting explicit statutory provision of the Constitution of the Republic of Turkey assigning the Constitutional Court and Chief Public Prosecutor of the Supreme Court of Appeals. Despite all efforts to disguise, it is clear that such unlawfulness is extremely grave and dangerous. Now, people stipulated in Article 148 of the Constitution such as the President of the Republic of Turkey, the President of the Turkish Grand National Assembly, all Members of the Council of Ministers, the

President and the Members of the Council of State and the Supreme Court of Appeals, the President and the Members of the Supreme Board of Judges and Prosecutors and all others stipulated thereon can be questioned and taken under custody by specially authorized aggravated felony prosecutors and courts. This is the establishment of a “combination of specially authorized prosecutors and courts” as the 4th force over legislation, law enforcement and justice. If the 4th force is a force other than press and media in a country, it is no longer possible to call it a democracy, but fascism.

5. From my point of view, there is no advanced or regressed democracy. It is absurd talking about more or less democracy. Either there is democracy or there isn't. Nowadays, we live in the illusion of democracy. In the referendum, the provisions which regulate the justice system were presented and accepted with a *fait accompli*. Clearly, people who said “yes” or who said “no” were not aware what they were voting for. However, it was the duty of the government to impartially explain to the people the meaning of those amendments, which may impact the forthcoming 100–150 years of this society and the future of their unborn children. The government has not been successful in the examination. I am not talking about the result of the referendum. I am trying to explain that the government has not fulfilled the fundamental principles of democracy.
6. We no longer have freedom of press in Turkey. Tens of journalists who express their thoughts were taken under custody in open-ended inquiries. The newspapers, televisions, radios are forced to implement self-censor. Implementations of tax audits, penal inquiries and civilian authorities put pressure on the press and media. Local press and media whose screams are not heard in Ankara and Istanbul is left to the following predicament: “Obey or perish”. In fact, there is no freedom of expression in a country where there is no freedom of press. How can we all think if the press and media do not provide us data by which we think and discuss? It is said that there is “stability”. Could there be stability in a country where there is no freedom of thought! In a country where freedom of press is abolished and the people are afraid to criticize the government, individuals understand that there is no stability when they are fired, left hungry and homeless, or unduly arrested. But it is too late then! If you are not convinced that there is no freedom of press in Turkey, I urge you to listen to remarks of the directors of 8 international press organizations, who came to Turkey upon an invitation of the Platform for Freedom of Journalists. The said journalists are stating that; “the press and media are under pressure of the government in Turkey”. It is not fair to accept the positive statements of Europe and America and reject or ignore their criticism. This is not right. The people of Anatolia deserve to enjoy democracy in universal standards. No one is entitled to take this right away from us.

7. There is nothing more meaningless and contradictory to rely on the army to protect democracy. Democracy cannot be entrusted to an institution which does not have democracy inside. No wise person can accept a conflicting thought to wish for coup in the name of democracy. The protector of democracy is non-governmental organizations and political parties. On the other hand, it is not possible to attack to army just for depressing, breaking down and eliminating. It cannot be considered as an accomplishment to say “we have touched the untouchables”. The important thing is to touch to the necessary ones. Today, civil society keeps quiet in Turkey; universities keep quiet and are silenced. The press is silenced. The justice, including appeal courts, is exposed to the influence of the government. Therefore, politics should reach to a common mind by finding a democratic solution for democracy, rule of law and freedom. At this point, the mission firstly falls to the Esteemed President of the Republic and the Esteemed President of the Turkish Grand National Assembly.
8. We have never lost our hopes. When you lose hope, you should quit fighting. Every morning we wake up with a new hope and are excited for the day ahead of us. At this point, I can point out that as the Ankara Bar association, we are peaceful because we fight for the people of our country and the future of our children mainly together with our board of directors, each of whom are my true friends, and masses composed of millions of people, circle by circle, longing for freedom. We have never lost our hopes. We have been to every corner of Anatolia. They were not protocol visits; we are always among the people. Some might call it “descend to the people”. If you know the people, you try to ascend to the level of people instead of descending. Please do not bother to serve to the society, if you do not care for others and if you are not open to learn from people. A person who loves and wishes to serve to people should stay focused on the target as a whole together with colleagues and coworkers. The person who focuses on the target succeeds. Teamwork and supporting each other is necessary. We reach nowhere if we try to pull each other down.
9. We closely follow up the efforts for the new Constitution. Months ago, we have established our commissions, but we are concerned since political parties who are eager for change did not put down what do they wish to change and how. Any modification in the Constitution cannot be conducted like a bargaining; there shouldn't be (a) plans, (b) plans. We have the right to expect full sincerity from everyone.
10. Presidential system is a disaster for Turkey. There is no country other than the United States of America to benefit from democratic consequences of presidential system. This system has led to dictatorships in all countries other than the USA.

11. Lastly, some might ask why the topic regarding modification on the Attorneys' Code was not included in the Law Congress while it is taken into the agenda and our works and efforts, as Ankara Bar Association, are clear for having substantial and effective contributions. The topic of our Congress is "The State Governed by the Rule of Law and Democracy". Is it possible to consider the rule of law and democracy in a process where the main aim is to create the silent attorney model without including the attorneys therein, where attorneys are economically dependent, legally weak, and de facto ineffective, the procedure where mediation without attorneys is deemed to be the new face of qadi (Muslim judge) system, similarly where efforts are made to permit free activity of foreign law firm partnerships, where law apprenticeship is regulated under surveillance of the Ministry of Justice?

The rule of law and democracy cannot be present in a law/state/society order without attorneys and where attorneys are excluded from the system; in such a system, judges and prosecutors shall be converted into bureaucrats in gowns.

In this regard, each day, each session and each speech of the Law Congress titled "The State Governed by the Rule of Law and Democracy" is actually about advocacy. As long as people at certain positions become aware of and accept the function of an advocate and the bar association and cooperate with attorneys; and as long as they serve no purpose other than advocacy, the rule of law and democracy and they decide to take the effective path to fight for the rule of law and democracy by addressing advocacy as the main target and hand in hand with fellow lawyers.

I hope that International Law Congress of Ankara Bar Association will serve to the best interest of all legal practitioners both in Turkey and all around the world, and I would like to thank sincerely to all participants and audiences as well as sponsor organizations who supported us to organize our Congress and to institutional entity of the Union of Turkish Bar Associations, the institution which is improved and promoted by the the efforts of legendary presidents Att. Faruk Erem, Att. Eralp Özgen, and Att. Özdemir Özok, respectively.

Metin FEYZİOĞLU, Attorney at Law

THE PRESIDENT OF ANKARA BAR ASSOCIATION



TURKEY TRIBUNAL

Because Silence is the Greatest Enemy of
Fundamental Human Rights



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**INTERNATIONAL
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Impunity in Turkey Today

SEPTEMBER 2020

YVES HAECK
EMRE TURKUT

in collaboration with



**INTERNATIONAL
OBSERVATORY
HUMAN RIGHTS**

Executive Summary

Impunity in Turkey Today

BY YVES HAECK & EMRE TURKUT

This report addresses the persistent problem of impunity in Turkey in respect of serious human rights violations committed by state officials. More particularly, it aims to provide answers to two overarching questions:

- I. Is there an internal system of preventing and monitoring torture or mistreatment, and if yes, how does it function in reality?
- II. Is there an efficient system of sanctioning possible torture or mistreatment, or can we speak of an organised impunity towards torture or mistreatment against people held in detention?

The findings of the report shed a clear light on the prevailing impunity problems in Turkey. The pervasive culture and overwhelming legacy of impunity for serious human rights violations lasted through the 1980s in the aftermath of the 12 September 1980 military coup and through the 1990s in the context of the Kurdish 'Troubles' in the Eastern and Southeastern part of Turkey. Despite some of the most flagrant human rights abuses against the Kurdish people, including systematic torture, kidnapping, enforced disappearances, extra-judicial killings, the Turkish state authorities showed no willingness to react to these grave human rights violations. The entrenched practice of impunity and the allegations of torture and ill-treatment have reached unprecedented levels in more recent years, especially the period that started after the 7 June 2015 parliamentary elections and continued until the aftermath of the 15 July 2016 attempted coup. Despite increasingly persistent allegations, rare formal investigations and prosecutions continue to create a strong perception of impunity for acts of torture and other forms of ill-treatment.

The report concludes that the impunity in Turkey has virtually become the norm, as far as the human rights violations committed against individuals state officials are concerned. As highlighted throughout the report, the impunity issue is emblematic of many structural and

inextricably intertwined problems in Turkey. In this regard, each problem is either a result or a cause of one another – factors that cumulatively contribute to the entrenched culture/practice of impunity. The report identifies (some of these) factors as follows:

- (a) Gaps in the legal structure
- (b) Political rhetoric reinforcing patterns of impunity
- (c) Lack of political will to hold state officials/agents accountable
- (d) Ineffective and delayed investigations by prosecutors; and finally
- (e) Complicit judiciary

In short, the report provides a chilling reminder of the organised, institutionalised and entrenched impunity problem in Turkey. It urges the Turkish authorities to combat effectively the impunity of state officials for serious human rights violations by conducting adequate, effective and independent investigation and a fair trial, on the basis of which perpetrators face justice, but whether that will become reality nonetheless remains very uncertain.

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1. Introduction

This report, written for the Turkey Tribunal, addresses the persisting problem of impunity in Turkey in respect of serious human rights violations. More particularly, it aims to provide answers to two overarching questions:

- I. Is there an internal system of preventing and monitoring torture or mistreatment, and if yes, how does it function in reality?
- II. Is there an efficient system of sanctioning possible torture or mistreatment, or can we speak of an organised impunity towards torture or mistreatment against people held in detention?

Some methodological points are in order. For the purposes of this report, we define impunity as

“the impossibility, *de jure* or *de facto*, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings.”¹

Immunity may be caused or facilitated by many systematic factors, including the lack of appropriate legal mechanisms and the failure of states to react to, and investigate serious human rights violations. As used in this report, “serious human rights violations”² encompass grave breaches of internationally protected human rights that are crimes under international law and/or that require States to penalise, such as torture, enforced disappearance, extrajudicial, summary or arbitrary execution.³ Under international law, States are under an obligation to “combat impunity

¹ United Nations, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005.

² Throughout the report, terms such as ‘gross’, ‘grave’, ‘flagrant’, ‘systematic’ and ‘widespread’ will be used interchangeably.

³ For a detailed account on the definitional question of what constitutes a serious violation of human rights law, See Takhmina Karimova, ‘What amounts to ‘a serious violation of international human rights law’?’, Academy Briefing No. 6, Geneva Academy of International Humanitarian Law and Human Rights, August 2014, available at <https://repository.graduateinstitute.ch/record/295203?ln=en>.

In his working paper to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Chernichenko explains that “[t]he main point of declaring gross and large-scale human rights violations ordered or sanctioned by a Government to be international crimes is to highlight the fact that the responsibility of the State cannot be kept separate from the criminal responsibility of the individuals who perpetrate such violations”. See, ‘Definition of Gross and Large-scale Violations of Human Rights as an International Crime’, Working Paper submitted by Mr Stanislav Chernichenko in accordance with Sub-Commission Decision 1992/109, UN doc. E/CN.4/Sub.2/1993/10, 8 June 1993, para. 42.

as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system.”⁴

In general, the report addresses the issue of impunity for crimes of torture and ill-treatment as well as use of deadly force, which are allegedly committed by the Turkish security forces. Additionally, and where appropriate, the report also mentions other types of impunity for crimes of enforced disappearances and extrajudicial killings, which are believed to be perpetrated by state agents. It draws upon information collected from an assessment of relevant legal provisions and court cases, statements by the Turkish authorities, detailed reports of intergovernmental organisations and human rights NGOs and a survey of relevant literature/research on impunity issues.

In terms of the report’s time frame, the particular focus will be on recent years, especially the period after the 7 June 2015 parliamentary elections, which led the ruling Justice and Development (AKP) Government to scrap a two year peace process with the PKK (Kurdistan Workers’ Party - *Partiya Karkerên Kurdistanê*) and which continued in the aftermath of the 15 July 2016 attempted coup, while reference will also be made to the overwhelming legacy of impunity for mass human rights violations in Turkey in the aftermath of the 12 September 1980 military coup and throughout the 1990s in the context of the Kurdish ‘troubles’ in the Eastern and Southeastern part of Turkey. The report zooms in on three recent cases of impunity with special emphasis on more recent years. These are the most widely reported, exemplary cases of the torture and killing.

- **Case 1:** The killing of Gokhan Acikkollu
- **Case 2:** The notorious torture incidents that took place in Urfa
- **Case 3:** Torture incidents in Ankara

The report also includes two annexes:

- **Annex I** details (the outcomes of) many court cases especially from 1990 onwards.
- **Annex II** provides a table based on the official judicial statistics on Article 94 (torture), Article 95 (severe torture) and Article 96 (torment / deliberate injury – not amounting to

⁴ Directorate General of Human Rights and Rule of Law (COE), Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations, Provision I. (‘The need to combat impunity’) p. 7.

torture) of the Turkish Criminal Code released by the Turkish Ministry of Justice for the years between 2013 and 2018.

2. The Legacy of Impunity in Turkey: Past and Present

In the aftermath of the 1980 military coup, martial law was extended throughout the country and until 1983 and Turkey was governed under repressive military rule, leading to devastating consequences for human rights. As an illustration, more than half a million people were arbitrarily detained on political grounds and thousands were subjected to widespread torture and mistreatment.⁵ Additionally, more than two hundred extrajudicial killings and fifty court-ordered executions occurred during that era.⁶ Despite these massive numbers, in a provisional article the 1982 Turkish Constitution adopted under the military rule provided full immunity to the leaders of the military coup, as well all as military-public officials, from any form of prosecution.⁷ This provision was revoked in the 2010 referendum and criminal cases were initiated in respect of the 1980 coup leaders, including Kenan Evren and Tahsin Sahinkaya, in 2012. They were later convicted of crimes against the state for setting the stage for the army intervention and for conducting the 1980 coup, and sentenced to life imprisonments in 2014, but both defendants died during the appeal procedure.⁸

This pervasive culture of impunity lasted through the late 1980s and 1990s. At that time, Turkish state security forces and the PKK engaged in violent confrontations, at times verging on full-scale warfare. A state of emergency was thus declared where the fighting between Turkish state forces and the PKK was most intense.⁹ Regional governors in each emergency province and in the adjacent provinces, with all private and public security forces under their command, were

⁵ 1,683,000 persons were investigated, with 650,000 detained and 52,000 charged; 30,000 persons were removed from their positions; and 14,000 persons lost their citizenship. See, “12 Eylül Darbesinin Korkunç Bilançosu” (The horrendous tool of 12 September) *BIRGUN News*, 10 May 2015, available at <https://www.birgun.net/haber-detay/12-eylul-darbesinin-korkunc-bilancosu-78576.html>.

⁶ Amnesty International, *Turkey: Human Rights Denied*, London, 1988, p. 1.

⁷ See the Provisional Article 15 of the 1982 Turkish Constitution.

⁸ See, ‘Kenan Evren, 97, Dies; After Coup, Led Turkey With Iron Hand’ *The New York Times*, 9 May 2015 available at <https://www.nytimes.com/2015/05/10/world/europe/kenan-evren-dies-at-97-led-turkeys-1980-coup.html>

⁹ Turkey, Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms Notification (ETS No.5), 6 August 1990, available at <http://www.coe.int/en/web/conventions/search-on-reservations-and-declarations/>.

responsible for taking any and all necessary measures under the state of emergency regime.¹⁰ These ‘quasi-martial law’ exceptional powers included the authority to impose curfews, to prohibit persons whose activities were deemed detrimental to public order from entering the concerned region, and to evacuate villages.¹¹ The exercise of arbitrary and sweeping powers by the Turkish state agents resulted in the most flagrant human rights abuses against the Kurdish people, including systematic torture, kidnapping, enforced disappearances, extra-judicial killings, forced evacuation of villages, destruction of homes and similar human rights infringements.¹² Alas, the state authorities showed no willingness to react to these grave human rights violations. One of the fundamental (*de jure*) reasons for this is that the decrees adopted in this period also provided full immunity to the regional governors for all actions taken¹³, lacking any mechanism for impartial judicial review. As such, the protection of human rights became increasingly fraught with difficulty to deliver in practice in Turkey.

Against this backdrop, the European Court of Human Rights (ECtHR) examined a large number of applications alleging grave human rights violations, including torture, extrajudicial killings and enforced disappearances that arose out of state officials’ activities in the 1990s in Turkey’s Kurdish southeastern region. The Court has repeatedly found Turkey violating the European Convention on Human Rights (ECHR) in over 175 cases concerning the right to life (Art. 2), the freedom from torture, inhuman and degrading treatment or punishment (Art. 3), the right to liberty and security (Art. 5), the right to a fair trial (Art.6), the right to an effective remedy (Art. 13) and the protection of property (Art. 1 of Protocol No.1).¹⁴ The findings of the ECtHR in these cases shed clear light

¹⁰ The Legislative Decree on the Establishment of a State of Emergency Special Governor, No. 285, 10 July 1987. By Decree No. 285, a state of emergency was initially declared in eight provinces: Bingol, Diyarbakir, Elazig, Hakkari, Mardin, Siirt, Tunceli and Van.

¹¹ See generally Decree no. 285 of 1987; Decree no 424 of 1990 and Decree no. 425 of 1990.

¹² As Amnesty International’s 1996 Report clearly expresses, “[r]epression has long been the response to security problems in Turkey, but in 1991 certain elements in the security forces went even further. They stepped outside the law and began to wage a full-scale dirty war. An unprecedented wave of political murder swept through the southeast...” Amnesty International, *Turkey: No security without human rights*, London - October 1996, p. 20, available at <https://www.amnesty.org/en/documents/EUR44/084/1996/en/>.

¹³ See Article 8 of Decree 430 of 16 December 1990 which states: “No criminal, financial or legal responsibility may be claimed against the State of Emergency Regional Governor or a Provincial Governor within a state of emergency region in respect of their decisions or acts connected with the exercise of the powers entrusted to them by this decree, and no application shall be made to any judicial authority to this end.” See also, Article 5 and 7 of Decree No. 413.

¹⁴ See cases concerning the actions of the Turkish security forces bundled into four groups of cases: Aksoy group of cases (287 cases), Bati group of cases (117), Erdoğan and Kasa group of cases (30). The Committee of Ministers decided to close the issue in 2008 on the ground that the follow-up steps taken by the Turkish state authorities were deemed satisfying to guarantee efficient and adequate investigations. See, Interim Resolution CM/ResDH (2008) 69, Committee of Ministers, Council of Europe, 18 September 2008. See also Ataman group of cases (46 cases) that involve excessive force used during public demonstrations, most cases also concerning the issue of ineffectiveness of investigations under Articles 2, 3 and 13 of the ECHR.

on the prevailing impunity problems in Turkey. In almost all cases before the Court, the Turkish Government completely and repeatedly denied all sorts of atrocities conducted by its agents against the Kurdish population. In turn, the Court has consistently found that the Turkish state authorities failed to conduct a thorough and effective investigation into the incidents (procedural element of Art.2 ECHR) arising from a great many factors, including the reluctance to seek evidence/statements from complainants¹⁵ and witnesses¹⁶; the failure to collect material evidence from the crime scene¹⁷; the ban on complainants' access to the investigation file¹⁸; the lack of the necessary information in post-mortem examinations (autopsies) required to enable a meaningful conclusion¹⁹; the laxity in investigation of offenses (mostly on the part of Turkish prosecutors)²⁰; and finally, the non-prosecution and non-competence verdicts in the absence of evidence²¹. In many other cases, the Court considered that the sufferings of the relatives of forcibly disappeared persons caused by their disappearance constituted a breach of the prohibition of inhuman treatment contrary to Article 3 ECHR.²²

In the last decade, the Turkish Government has taken some legal and institutional steps²³ with a view to giving effect to the ECtHR's judgments, and in response to shortcomings identified by the

¹⁵ *Akdeniz and others v. Turkey*, App. No. 23954/94 (ECtHR, 31 May 2001) para. 91; *Ikincisoy v. Turkey*, App. No. 26144/95 (ECtHR 27 July 2004) para. 78; *Nesibe Haran v. Turkey*, App. No. 28299/95 (ECtHR, 6 October 2005) para. 77.

¹⁶ See inter alia *Kurt v. Turkey*, App. No. 24276/94 (ECtHR 25 May 1998) para. 106; *Mahmut Kaya v. Turkey*, App. No. 22535/93 (ECtHR, 28 March 2000) para. 106; *Ipek v. Turkey*, App. No. 25760/94, (ECtHR, 17 February 2004), para. 176; *Türkoğlu v. Turkey*, App. No.34506/97, (ECtHR17 March 2005) para. 126.

¹⁷ *Nuray Şen v. Turkey*, App. No. 25354/94, (ECtHR, 20 March 2004) para. 177; *Ipek v. Turkey*, App. No. 25760/94, (ECtHR, 17 February 2004) para. 176; *Şeker v. Turkey*, App. No. 52390/99 (ECtHR, 21 February 2006) para. 73.

¹⁸ *Çakıcı v. Turkey*, App. No. 23657/94 (ECtHR, 8 July 1999) paras. 112-113; *Koku v. Turkey*, App. No. 27305/95, (ECtHR, 31 May 2005) para. 157.

¹⁹ *Tepe v. Turkey*, App. No. 27244/95 (ECtHR, 9 May 2003) para. 18; *Ikincisoy v. Turkey*, App. No. 26144/95 (ECtHR, 27 July 2004) para.78.

²⁰ *Tekdağ v. Turkey*, App. No. 27699/95 (ECtHR, 15 January 2004) para. 80. *Osmanoğlu v. Turkey*, App. No. 48804/99 (ECtHR, 24 January 2008) para. 91.

²¹ *Mahmut Kaya v. Turkey*, App. No. 22535/93 (ECtHR, 28 March 2000) para.103.

²² *Günay and others v. Turkey*, App. No. 51210/99 (ECtHR, 21 October 2008) paras. 103-104; *Osmanoğlu v. Turkey*, App. No. 48804/99 (ECtHR, 24 January 2008) paras. 97-98; *Enzile Ozdemir v. Turkey*, App. No. 54169/00 (ECtHR, 8 January 2008) paras. 64-65; *Canan v. Turkey*, App. No. 39436/98 (ECtHR, 26 June 2007) para. 84; *Taniş and others v. Turkey*, App. No. 65899/01 (ECtHR, 2 August 2005) para. 124; *Ipek v. Turkey*, App. No. 25760/94 (ECtHR, 17 February 2004) paras. 182-183; *Orhan v. Turkey*, App. No. 25656/94 (ECtHR, 18 June 2002) paras. 359-360; *Çiçek v. Turkey*, App. No. 25704/94 (ECtH, 27 February 2001) paras. 173-174; *Timurtaş v. Turkey*, App. No. 23531/94 (ECtHR, 13 May 2000) paras. 96-98; *Kurt v. Turkey*, App. No. 24276/94 (ECtHR, 25 May 1998) paras. 133-134.

²³ In particular, the applicants were given the opportunity to claim compensation before a special compensation commission or before administrative courts on the basis of a new Law on Compensation of 2004 which provided a right to compensation on the grounds of the State's liability for losses caused in the fight against terrorism. This law supplemented and gave more precise effect to the State's liability for damages caused by administrative acts, as a special *lex temporalis*, stipulating that the provisions of this legislation were retroactively applicable to events taking place after 1987 and before 2004. See, Department for the Execution of Judgments of the ECtHR, Effective Investigation into Death and Ill-Treatment Caused by Security Forces, Thematic Factsheet, July 2020, available at <https://rm.coe.int/thematic-factsheet-effective-investigations-eng/16809ef841>. On a more general level, the AKP Government -largely owing to the official membership negotiations with the European Union- engaged in an ambitious program of legal reforms, which include the adoption of a new Turkish Penal Code, Law No 5237 and a new Code of Criminal Procedure Law No 5271 – both came into force on 1 June 2005, as well as considerable numbers of changes to a variety of laws. These changes provided greater safeguards for individuals in detention including such changes of significant reduction in detention periods and the right to immediate access to legal counsel etc. For a detailed analysis on the improvements and setbacks in the legal framework, see: Amnesty International, 'Turkey: The Entrenched Culture of Impunity Must End' 5 July 2007, available at <https://www.amnesty.org/download/Documents/64000/eur440082007en.pdf>.

Council of Ministers in its supervision of the execution of these judgments²⁴, but those “served merely a “band-aid” on prevailing impunity problems, rather than having a real impact on the ongoing investigative, prosecutorial and judicial practice”.²⁵ This is mainly due to the fact that these steps were not supported by diligent reaction and political will of the Turkish state authorities to hold state agents accountable. Accordingly, the mere formal adoption of legislative measures proved to be inadequate and inefficient, and there is still a huge accountability gap for grave and systematic human rights violations, which have occurred in the 1990s against Kurdish civilians. For instance, in his report of 2015, the then UN Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, Christof Heyns underlined that,

“the fight against impunity remained a serious challenge in Turkey...Vulnerable groups remain particularly at risk. The lack of fully independent mechanisms for accountability and the great challenges experienced in the judicial system feed into the practice as well as the perception of impunity in the country”.²⁶

Similarly, the UN Committee against Torture has repeatedly highlighted serious concerns “about a pattern of delays, inaction and otherwise unsatisfactory handling [...] of investigations, prosecutions and conviction of police, law enforcement and military personnel for violence, ill-treatment and torture offences”.²⁷ Such problem is most apparent in countless ‘acquittal, dismissal or non-prosecution’ verdicts at the Turkish domestic level as can be seen in detail in **Annex I**.

This problem has increasingly persisted in more recent years, especially in the aftermath of the June 2015 parliamentary elections, which led to the collapse of a two-year peace process with the PKK. Since July 2015, the Turkish Government has adopted a policy reminiscent of the violence

²⁴ See also footnote (n 14).

²⁵ Hafiza Merkezi & ECCHR, Monitoring Report (15 January 2016), para.8, available at https://hakikatadalethafiza.org/wp-content/uploads/2016/03/Rule-9-2-Communication-on-TurkeyJan.-2016-HM_ECCHR.pdf.

²⁶ Christof Heyns, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, Follow-up to country recommendations: Turkey, 6 May 2015, A/HRC/29/37/Add.4.

²⁷ See Concluding observations of the UN Committee against Torture, CAT/C/TUR/CO/3, 20 January 2011 and Concluding observations of the UN Committee against Torture, CAT/C/TUR/CO/4, 2 June 2016.

of the 1990s, which is marked by a campaign of counter-insurgency, the declaration of open-ended curfews and anti-terrorism operations that killed and displaced a large number of civilians²⁸ and caused destruction in the Kurdish region. Reports of severe human rights violations and violence by security forces have become commonplace over that period.²⁹ A particularly striking case concerns the killing of Hacı Lokman Birlik – a Kurdish militant whose body was filmed by the Turkish security officials as it was dragged behind a police car on the streets of Şırnak in October.³⁰

In the wake of the 15 July 2016 attempted coup, the entrenched practice of impunity and the allegations of torture and ill-treatment have reached an unprecedented level. On 15 July 2016, Turkey experienced an attempted military coup allegedly perpetrated by a faction within the Turkish army loyal to the so-called ‘Gülen Movement’³¹, leaving 246 killed and 2,194 wounded, and sending a shockwave through Turkish society. On 21 July 2016, the Turkish Government declared a nationwide State of Emergency pursuant to – then in force³² – Articles 119 to 121 of the Turkish Constitution and the 1983 Turkish State of Emergency Law. On the same day, referring to the failed coup and ‘other terrorist attacks’, it informed the Council of Europe (CoE) of its intention to derogate from ECHR pursuant to Article 15.³³ A similar notification was lodged with

²⁸ “According to official figures related to Sur (a district in Diyarbakir province of Turkey), for example, 22 000 persons were displaced for 50 terrorists rendered ineffective; a ratio of 440.” See, Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey, Council of Europe Commissioner for Human Rights, Comm.DH (2016) 39, 2 December 2016, para.28.

²⁹ International Crisis Group, A Sisyphean Task? Resuming Turkey-PKK Peace Talks, 17 December 2015, available at <https://d2071andvip0wj.cloudfront.net/b77-a-sisyphean-task-resuming-turkey-pkk-peace-talks.pdf>.

³⁰ Ibid, p.9.

³¹ The Gülen Movement – named after its exiled leader Fethullah Gülen – was originally regarded as a religious (liberal Islamist) organisation – see Bülent Aras and Ömer Çaha, ‘Fethullah Gulen and his liberal ‘Turkish Islam’ movement’ (2000) 4(4) Middle East Review of International Affairs 30. Since the 1990s, the movement had gained a wide support base in social, political and economic landscapes in Turkey and abroad, and developed into a broad transnational network of individuals and institutions, including educational establishments, cultural foundations and charities. With the rise to power of the AKP in 2002, the AKP and the Gülen Movement formed an alliance. Over time, the AKP’s political power reinforced the Gülen Movement’s social and bureaucratic power until this marriage (of convenience) ended and gradually turned into a fierce power struggle in late 2013 – see Hakkı Taş, ‘A history of Turkey’s AKP-Gülen conflict’ (2018) 23(3) Mediterranean Politics 395. The 15 July 2016 failed coup is widely believed to be the result of this struggle. While the group’s reach and activities largely remain a matter of speculation, Turkish authorities have for some time (prior to the 2016 coup) denounced what is termed the ‘Fetullahist Terrorist Organisation/Parallel State Structure’ (‘FETÖ/PDY’) as a threat to national security and an ‘armed terrorist organisation’ – see Turkey, ‘Memorandum prepared by the Ministry of Justice of Turkey for the visit of the delegation of the Venice Commission to Ankara on 3 and 4 November 2016 in connection with the emergency decree laws’, CDL-REF(2016)067, 23 November 2016, 5.

³² That framework used to enable the Turkish government to declare a state of emergency ‘in the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order’, and to adopt emergency decrees on ‘matters necessitated by the state of emergency’ (*sic*). On 16 April 2017, the Turkish people voted in favour of a package of constitutional amendments in the constitutional referendum, which *inter alia* established an executive presidential system. Under the amended Turkish Constitution, the power to declare a state of emergency now resides with the President of the Republic. See, Article 119 of the Turkish Constitution, as amended on April 16, 2017; Act No. 6771, available at https://global.tbmm.gov.tr/docs/constitution_en.pdf.

³³ See also Turkey, *Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms Notification* (ETS No.5), J8187C TR/005-191 22 July 2016.

the United Nations pursuant to Article 4 of the International Covenant on Civil and Political Rights (ICCPR).³⁴ Since the initial declaration, the state of emergency was prolonged seven times for a total period of 24 months, until it was eventually lifted on 17 July 2018.³⁵

In the wake of the 21 July 2016 emergency declaration, the Turkish authorities adopted numerous emergency decrees,³⁶ introducing sweeping measures affecting a broad range of human rights. The numbers³⁷ are mind-boggling: more than 130,000 persons, including military personnel, police officers and teachers, were detained, and more than 90,000 people were charged. More than 3,000 institutions, including some 190 media outlets as well as schools, dormitories, associations and foundations, were disbanded and liquidated with immediate effect. Furthermore, more than 150,000 judges, prosecutors, military personnel, police officers, teachers and other civil servants were collectively dismissed from their positions.

Importantly, the emergency decrees imposed drastic procedural and substantive restrictions in the field of pre-trial detention, many with serious repercussions for key protection entailed in Articles 5 and 6 of the ECHR. As early as 22 July 2016, the first emergency Decree No. 667 was issued, which authorised detention without access to a judge for up to 30 days ‘due to the difficulty of collecting evidence or a higher number of suspects’.³⁸ This 30-day period of unsupervised detention applied to all terror-related organised crimes substantially exceeded the outer limit the ECtHR has held to be justifiable in times of derogation under Article 15 of the ECHR.³⁹ While

³⁴ See Turkey, *Notification under Article 4(3) ICCPR*, C.N.580.2016.Treaties-IV.4, 2 August 2016 (‘measures taken may involve derogation from obligations under the [ICCPR] regarding Articles 2/3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27, as permissible in Article 4 of the said Covenant.’).

³⁵ See, Turkey, *Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms Notification* (ETS No.5), JJ8719C TR/005-223, 8 August 2018.

³⁶ Since the first Decree (No 667) of 23 July 2016, a total of 32 emergency decrees were adopted during the 24-month emergency rule.

³⁷ This report (compared and) used both the data compiled by the Turkish Purge, a website established set up by a group of young Turkish journalists, with the aim of tracking the human rights abuses in Turkey (<https://turkeypurge.com/>) and the data released by the Turkish Ministry of Interior on 15 July 2020. See, “Bakan Soylu: FETO ile mucadelede 99 bin 66 operasyon yapildi (Minister Soylu: 99.066 operation conducted in the fight against FETO) Cumhuriyet, (15 July 2020) <https://www.cumhuriyet.com.tr/haber/bakan-soylu-feto-ile-mucadelede-99-bin-66-operasyon-yapildi-1751629>

³⁸ See, Article 6 (1) of Decree No. 667.

³⁹ In exceptional circumstances, for instance under a state of emergency, the ECtHR has acknowledged that a longer period of detention may be justified – see *inter alia*, *Magee and Others v. the United Kingdom*, App. Nos. 26289/12, 29062/12 and 29891/12 (12 May 2015) para. 74; *Brogan and Others v the United Kingdom* App. Nos. 11209/84; 11234/84; 11266/84 and 11386/85, paras. 60 et seq.; *Demir and Others v. Turkey*, App. No. 34503/97 (23 September 1999) para. 49 et seq. However, even under such circumstances, the ECtHR, in *Aksoy v. Turkey* (App. No. 21987/93, 18 December 1996, paras. 70-78), held that holding a suspect for fourteen days, and in *Nuray Sen v. Turkey* (App. No. 41478/98, 17 June 2003, para. 28) for eleven days, without judicial intervention, was not a proportionate derogation from Article 5 ECHR.

another Decree No. 684 of 23 January 2017 reduced the unsupervised detention to seven days, with the possibility of an extension of a further seven days (thus 14 days in total), the period of time within which a suspect had to be brought before a competent judicial authority,⁴⁰ the Turkish authorities persisted in employing unsupervised detention periods of 30 days over six months during which an overwhelming number of criminal proceedings were conducted. In August 2017, Decrees No. 693 and 694 increased the maximum period of pre-trial detention for terror charges from five years to seven,⁴¹ giving rise to valid concerns that its use had become a form of summary punishment.⁴²

The emergency decrees in Turkey also imposed significant restrictions on the right to access to effective legal defence. Decrees No. 667 and 668 authorised, *inter alia*, a five-day initial period of incommunicado detention,⁴³ the recording of meetings between a detainee and his/her lawyer, and judicial powers to stop a detainee from consulting his/her lawyer.⁴⁴ The ability of lawyers to examine the contents of the case file was limited; any documents exchanged with a detainee could be seized.⁴⁵ Defendants were prevented from hearing all the evidence brought against them and, in some cases, from having a lawyer present during their trial.⁴⁶ Family visits and phone calls had also been strictly limited, rendering detainees yet more vulnerable to torture, abuse and ill-treatment.⁴⁷

⁴⁰ Decree No. 684 on Specific Regulations Under the State of Emergency, 23 January 2017.

⁴¹ Article 100(2) of the TCPL stipulates that “[w]here the crime is under the jurisdiction of the court of assize, the maximum period of detention is two years. This period may be extended by explaining the reasons in necessary cases, but the extension shall not exceed 3 years”. Decrees Nos. 693 and 694 increased the maximum detention period to 7 years – see Decree Law nos. 693 and 694 on Specific Regulations under the State of Emergency, 23 August 2017.

⁴² Human Rights Watch, World Report of 2018, ‘Turkey: Events of 2018’ available at hrw.org/world-report/2019/country-chapters/turkey

⁴³ Article 3(1)(m) of Decree No. 668. This five-day period was later revoked in January 2017 – see Article 11 of Decree No. 684. In *Salduz v. Turkey*, (App. No. 36391/02, 27 November 2008, para. 63) the ECtHR stated that access to a lawyer is at the core of the concept of a fair trial and found that Turkey violated the European Convention because “the absence of a lawyer while [the applicant] was in police custody irretrievably affected [the applicant’s] defence rights”.

⁴⁴ See generally Article 6 (1) of Decree No. 667 and Article 3 (1) of Decree No. 668.

⁴⁵ Article 3(1(l)) of Decree No. 668.

⁴⁶ See Article 6(1(d)) of Decree No. 667.

⁴⁷ A detainee’s vulnerability was addressed by the ECtHR in *Aksoy v. Turkey* (n 39, para. 78) when it concluded that the period of fourteen days for holding a suspect in custody ‘is exceptionally long, and left the applicant vulnerable not only to arbitrary interference with his right to liberty but also to torture’.

3. (Inter)national Reactions

From the very first days following the 2016 attempted coup, disturbing images have fueled allegations of torture and ill-treatment of detainees in Turkey and have been widely reported by the media and international organisations. Despite the fact that the Turkish government strenuously denied these claims (in official occasions), avowing their commitment to “zero tolerance for torture” and labelling them part of a “misinformation campaign”⁴⁸, they have failed to adequately respond to the allegations.⁴⁹ There are now credible reports from reputed international human rights monitoring bodies and national organisations and NGOs which call into question the government’s commitment to prevent torture and ensure accountability for abuse. The section will now turn to these reports.⁵⁰

The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer, in his report of December 2017 at the conclusion of his mission to Turkey expressed serious concerns about the rising allegations of torture and other ill-treatment in Turkish police custody, noting that he heard persistent reports of widespread torture and other forms of ill-treatment including severe beatings, electrical shocks, extended blindfolding, handcuffing, sleep deprivation, threats and verbal abuse, insults and sexual assault.⁵¹ He also

⁴⁸ Responding to a July 2016 Amnesty International report detailing allegations of torture and ill-treatment, for example, the then Turkish Minister of Justice Bekir Bozdağ, said in an interview, the transcript of which was later posted on the ministry’s website, that “Whoever says that there is torture in Turkey’s prisons is lying, defaming. There is no possibility that we have torture in our prisons.” See, “Bozdağ: Cezaevlerinde İşkence Kesinlikle Yoktur” (There is definitely no torture in prisons”), Ministry of Justice website posting, 2 August 2016, available at <http://www.basin.adalet.gov.tr/Etkinlik/bozdag-cezaevlerinde-iskence-kesinlikle-yoktur>. Former Prime Minister Binali Yıldırım similarly denied such allegations. See, “Turkish Premier Demands US Help with Gulen”, *Wall Street Journal*, 26 July 2016, available at <http://www.wsj.com/articles/turkish-premier-demands-u-s-help-with-gulen-1469555265>

⁴⁹ It should be also noted that on some non-official occasions, such as television interviews and rallies, the Government officials have appeared to encourage torture and ill-treatment, thus contributing to the climate of impunity. For instance, President Erdogan at a rally on 4 April 2017 said: “We are purging every Gülenist in the army, in the police and in state institutions, and we will continue cleansing [these organisations of] them because we will eradicate this cancer from the body of this country and the state. They will not enjoy the right to life. They divided this nation, this Ummah [Islamic nation]. Our fight against them will continue until the end. We won’t leave them wounded” – see, ‘President Erdogan: Gülenists will not enjoy right to life in Turkey’ Turkey Purge, 5 April 2017 available at <https://turkeypurge.com/president-erdogan-gulenists-will-not-enjoy-right-to-life-in-turkey>. Similarly, the then Economy Minister, Nihat Zeybekci said of the coup plotters: “We will put them into such holes [jails] for punishment that they won’t even be able to see the sun of God as long as they breathe. They will not see the light of day. They will not hear a human voice. They will beg for death, saying ‘just kill us’” – see, “Economy Minister Says Government will Make Coup Plotters Beg For Death”, *Turkish Minute*, 1 August 2016, available at <https://www.turkishminute.com/2016/08/01/economy-minister-says-govt-will-make-coup-plotters-beg-for-death/>.

⁵⁰ See also the report ‘Torture in Turkey Today’ prepared by Eric Sottas and Johan Vande Lanotte for the Turkey Tribunal, available at <https://turkeytribunal.com/executive-summary-torture-in-turkey-today/>.

⁵¹ UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey, A/HRC/37/50/Add.1, 18 December 2017, para.26, available at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/50/Add.1

regretted that, despite these persistent allegations, “formal investigations and prosecutions in respect of such allegations appear to be extremely rare, thus creating a strong perception of de facto impunity for acts of torture and other forms of ill-treatment”⁵².

In a report of March 2018 on the impact of the state of emergency on human rights in Turkey, the UN High Commissioner for Human Rights highlighted that his office had “documented the use of different forms of torture and ill-treatment custody”, generally aimed at “extracting confessions or forcing detainees to denounce other individuals” and found that perpetrators included “members of the police, gendarmerie, military police and security forces”⁵³. A particular concern in the report was devoted to the fact that “emergency decrees foster impunity and lack of accountability by affording legal, administrative, criminal and financial immunity to administrative authorities acting within the framework of the decrees”⁵⁴. (On the impunity clauses introduced by the emergency decrees, see Section 4) In his report of November 2019 to the UN Human Rights Council in the context of the Universal Periodic Review (Third Cycle 2017-2021), the UN High Commissioner noted that one of the common threads in over 100 stakeholders’ submissions was “the escalation of torture and violence against detainees while, at the same time, security personnel who may have committed crimes on behalf of the government, enjoyed immunity from prosecution both during and after the attempted coup”⁵⁵. As such, the Commissioner urged the Turkish Government “to tackle the numerous root causes of impunity” in the country.

The consistent allegations of torture and ill treatment and the long-standing problem of impunity in Turkey have been one of the most notable features of the work carried out by the Office of the Commissioner for Human Rights of the Council of Europe. Nils Muižnieks, the then Commissioner, in his memorandum following the 2016 attempted coup was particularly concerned by the “on-going criminal proceedings, among the most immediate human rights concerns are

⁵² Ibid, para. 23

⁵³ UN Office of the High Commissioner for Human Rights (OHCHR), Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, March 2018, paras77-80, available at <https://www.refworld.org/docid/5ab146c14.html>

⁵⁴ Ibid, para. 5.

⁵⁵ See, Human Rights Council Working Group on the Universal Periodic Review, ‘Summary of Stakeholders’ submissions on Turkey, Report of the Office of the United Nations High Commissioner for Human Rights’, A/HRC/WG.6/35/TUR/3 (12 November 2019) para. 26.

consistent reports of allegations of torture and ill-treatment.”⁵⁶ In another report of December 2016, Muižnieks devoted a long section on ‘the need for effective investigations and the risk of impunity’ in Turkey and urged the Government “to establish an effective and independent complaint mechanism” in order to combat impunity among members of law enforcement forces, mostly because the structural problems surrounding the impunity problem are not easy to be overcome.⁵⁷ In February 2020, the current Commissioner for Human Rights Dunja Mijatovic saw the prevailing attitude within the Turkish judiciary to give precedence to the protection of perceived interests of the state over individuals’ human rights as one of the core reasons of the long-standing immunity problem in Turkey.⁵⁸

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) conducted four visits (three *ad hoc* and one periodic) to Turkey since 2016.⁵⁹ During these visits, the CPT delegations examined the conditions of prisons, detention centres, psychiatric hospitals and social welfare institutions and interviewed several hundreds of prisoners detained by law enforcement agencies (in each visit). However, in the CPT’s work, the consent of the government is required in order to publish the actual visit report. As reportedly, the Turkish Government refused to authorise the publication of the final reports of the CPT visits for years.⁶⁰ However, on 5 August 2020, the reports of the CPT’s 2017 periodic visit⁶¹ and 2019 *ad hoc* visit⁶² have been eventually published. In its 2017 periodic visit report, the CPT noted that its delegation had received “a considerable number of allegations from detained persons (including women and juveniles) or recent physical ill-treatment by police and gendarmerie officers”⁶³ which were

⁵⁶ CoE Commissioner for Human Rights, ‘Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey’, Comm.DH (2016) 35, 7 October 2016, para. 15, available at [https://rm.coe.int/ref/CommDH\(2016\)35](https://rm.coe.int/ref/CommDH(2016)35).

⁵⁷ CoE Commissioner for Human Rights, ‘Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey’, 2 December 2016, CommDH(2016)39, paras. 73-106, available at <https://www.refworld.org/docid/58c68e9f4.html>.

⁵⁸ CoE Commissioner for Human Rights, ‘Country Report following her visit to Turkey from 1 to 5 July 2019’, CommDH(2020)1, 19 February 2020, para. 38, available at <https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>.

⁵⁹ See, ‘The CPT and Turkey’ Activities, available at <https://www.coe.int/en/web/cpt/turkey>.

⁶⁰ European Anti-Torture Committee says Ankara does not allow report on Turkey to be published, Hurriyet Daily News, 21 April 2017 available at <https://www.hurriyetdailynews.com/european-anti-torture-committee-says-ankara-does-not-allow-report-on-turkey-to-be-published-112277>.

⁶¹ CPT, Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017, CPT/Inf (2020)22, available at <https://rm.coe.int/16809f209e>.

⁶² CPT, Report to the Turkish Government on the visit to Turkey from 6 to 17 May 2019, CPT/Inf (2020)24, available at <https://rm.coe.int/16809f20a1>.

⁶³ CPT Report (n 61) p. 4.

“supported by medical evidence”⁶⁴ and which, in its view, “was of such severity that it could be considered as amounting to torture”.⁶⁵ The CPT also regretted that “the specific recommendations repeatedly made in this regard by the Committee after previous visits have not been implemented.”⁶⁶ In its 2019 *ad hoc* visit report, the CPT had the impression that, “compared to the findings of the 2017 visit, the severity of alleged police ill-treatment has diminished. However, the frequency of allegations remains at a worrying level.”⁶⁷

At the time of writing, the reports of the CPT’s two *ad hoc* visits in 2016 and 2018 have remained unpublished. It should be noted that under certain conditions – as an *ultima ratio* in the case of a state party (that either fails to co-operate or) refuses to improve the situation in the light of the CPT’s recommendations) –, the CPT may resort to a ‘public statement’.⁶⁸ In December 1992⁶⁹ and December 1996⁷⁰, this measure was taken in relation to the situation in Turkey, in both cases due to a failure to improve the situation in light of the CPT reports which “found persuasive evidence of the continuation of acts of torture and other forms of severe ill-treatment by the police against both persons suspected of ordinary crimes and suspected terrorists”.⁷¹ Especially as regards the two unpublished CPT reports, it remains a valid question as to why the CPT has not resorted to this measure in more recent years.⁷²

The European Commission in its 2019 report similarly underlined that the impunity for alleged cases of abductions and enforced disappearances, as well as for credible allegations of torture and ill-treatment, remains a serious concern in Turkey – noting that the Government “failed to take steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses”.⁷³

⁶⁴ Ibid, p. 12

⁶⁵ Ibid.

⁶⁶ Ibid, p. 4

⁶⁷ CPT Report (n 62) p. 3.

⁶⁸ See Article 10(2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT), CoE, Text amended according to the provisions of Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) which entered into force on 1 March 2002, CPT/Inf/C(2002)1.

⁶⁹ CPT, Public statement on Turkey (Adopted on 15 December 1992), CPT/Inf(93)1, available at <https://rm.coe.int/16806981a6>.

⁷⁰ CPT, Public statement on Turkey (Adopted on 6 December 1996), CPT/Inf(96)34, available at <https://rm.coe.int/16806981d8>.

⁷¹ See, CPT, Report to the Turkish Government on the visit to Turkey from 22 November to 3 December 1992, CPT/Inf(2007)5, para18 available at <https://rm.coe.int/16806981a4>.

⁷² The CPT also indicated that an excessive delay in providing an interim response as an official reply to its report could lead it to make a public statement under Article 10 (2) ECPT. See, CPT, Sixth General Report, CPT/Inf (96)21, para 10.

⁷³ European Commission, Turkey 2019 Report (2019 Communication on EU Enlargement Policy) SWD(2019)220, 29 May 2019, p. 30, available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

These persistent allegations and the lack of accountability have also been addressed by human rights NGOs. In a detailed report of 25 October 2016 based on interviews with more than 40 lawyers, human rights activists, former detainees, medical personnel and forensic specialists, Human Rights Watch (HRW) documented the use of ‘torture and ill-treatment’ methods ranging from stress positions and sleep deprivation to severe beating, sexual abuse and threat of rape.⁷⁴ Importantly, the report observed that “a pattern of impunity for acts of torture and ill-treatment continued and successive AKP governments notably failed to ensure the prosecution of law enforcement officers and members of the security forces implicated in abuses”.⁷⁵ In a more recent report in 2020, HRW again noted that “[p]rosecutors do not conduct meaningful investigations into such allegations and there is a pervasive culture of impunity for members of the security forces and public officials implicated.”⁷⁶ Amnesty International similarly and repeatedly called on the Turkish authorities “to initiate a prompt, impartial, independent and effective investigation into the allegations of excessive use of force, torture and other ill-treatment committed by police officers.”⁷⁷

4. Turkey’s International Commitments and its Counter-Terrorism Law and Emergency Decree Framework

As detailed above, torture and ill treatment of individuals held in detention by police remains as one of the most serious human rights problems in Turkey. Despite the Turkish Government’s repeated attempts to ignore and downplay the scope of the problem, credible accounts offered by victims and their lawyers as well as reports of (inter)national organisations and human rights NGOs indicate that the use of torture by security forces is systematic and widespread and there is an entrenched culture of impunity within the country.

⁷⁴ HRW, ‘A Blank Check: Turkey’s Post-Coup Suspension of Safeguards Against Torture’ 24 October 2016, available at https://www.hrw.org/sites/default/files/report_pdf/turkey1016_web.pdf.

⁷⁵ Ibid, p. 14.

⁷⁶HRW, ‘World Report 2020’ (Turkey), p. 578, available at https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf.

⁷⁷ Amnesty International, ‘Turkey: Authorities must immediately investigate torture allegations of student protestors’, 11 June 2018 available at <https://www.amnesty.org/download/Documents/EUR4485672018ENGLISH.pdf> and “Turkey: Deepening Backslide in Human Rights” Submission for the UN Universal Periodic Review, 35th session of the UPR Working Group, January 2020, available at <https://www.amnesty.org/download/Documents/EUR4408342019ENGLISH.pdf>.

Under international (human rights) law, Turkey has obligations not only to eliminate the use of torture, but also to provide an effective means of redress for victims of torture and police abuse. Accordingly, a claim for torture/abuse and the failure to investigate/prosecute it give rise to multiple violations. Under Article 3 ECHR (counterpart to Article 7 ICCPR, which Turkey ratified in 2003), “[n]o one shall be subjected to torture or to inhuman and degrading treatment or punishment.” Article 5 ECHR (counterpart to Article 9 ICCPR) moreover addresses police abuse more generally and stipulates that “[e]veryone is entitled to liberty and security of person.” Article 13 ECHR (counterpart to Article 2 (3)) guarantees that “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

The UN Convention against Torture, which Turkey ratified in 1998, requires State parties to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (under Article 2); to “ensure that all acts of torture are offences under its criminal law” (Article 4); to “ensure that any individual who alleges he has been subjected to torture.., has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities” (Article 13) and to “provide redress and adequate compensation” to torture victims (Article 14). Turkey is also a party to both the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁷⁸ and to European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁷⁹, under which it has similar additional obligations.

From a formal perspective, the Turkish domestic law has a strong level of compatibility with its international legal standards. Article 17 of the Turkish Constitution provides that,

“[n]o one shall be subjected to torture or ill-treatment incompatible with human dignity.”⁸⁰

⁷⁸ Turkey signed it on 14 September 2005 and ratified on 27 September 2011. See, Ratification Status for CAT-OP - Optional Protocol of the Convention against Torture, available at

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CAT-OP&Lang=en.

⁷⁹ Turkey signed it on 11 January 1988 and ratified it on 26 February 1998. See, Chart of signatures and ratifications of Treaty 126, available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/126/signatures?p_auth=tItrNfE3.

⁸⁰ See, Turkish Constitution, official translation available at https://global.tbmm.gov.tr/docs/constitution_en.pdf.

The Turkish Criminal Code similarly prohibits the use of torture by the police – establishing under its Article 94 (para.1) that

“[a]ny public officer who causes severe bodily or mental pain, or loss of conscious or ability to act, or dishonours a person, is sentenced to imprisonment from three years to twelve years”

and abolishing (para.6, added on 11 April 2013) the statute of limitation for that offence.⁸¹ Moreover, Article 95 protects against ‘severe torture’ and Article 96 punishes acts of torment (those acts not amounting to torture).

Notwithstanding these proscriptions of torture and police abuse in its domestic law, especially in cases involving enforcement of the Turkish Anti-Terrorism Law (ATL)⁸², there is a heightened risk of torture and abuse. Turkey’s broad-reaching ATL offers only a vague definition of terrorism, lacking the level of legal certainty required by international human rights standards.⁸³ This has been used widely and arbitrarily to designate and criminalise many instances of peaceful activity of political opponents, human rights defenders and journalists as terrorist activity (in particular for alleged “membership of a terrorist organisation”); as per the succinct conclusion of an Amnesty International report, “when correctly viewed, everyone’s a terrorist” in post-coup Turkey.⁸⁴

Moreover, one core problem, which frustrates the investigation/prosecution of complaints of torture and ill-treatment, are the impunity clauses under Turkish law. As a principle, under Article 160/1 of the Turkish Code of Criminal Procedure, public prosecutors “shall immediately investigate the factual truth in order to make a decision on whether to file public charges” as soon

⁸¹ See for an English translation of the Turkish Criminal Code on the Venice Commission website, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e).

⁸² Turkey, The Law on Fight against Terrorism, No. 3713, adopted on 12 April 1991, published in the Official Gazette of Turkey on 12 April 1991 and amended in 1995, 1999, 2003, 2006 and 2010.

⁸³ The ECtHR has most recently condemned Turkey’s legal framework on terrorism in two important judgments. In *Imret v. Turkey* (No. 2) (App. No. 57316/10, 10 July 2018, para. 55) and *Işıkırık v. Turkey* (App. No. 41226/09, 14 November 2017, para. 41), the Court held that Sections 6 and 7 of Article 220 of the Turkish Criminal Code imputing membership of an illegal organisation to the mere fact of a person having acted ‘on behalf of’ that organisation or for having ‘aided an illegal organisation knowingly and willingly’ respectively, were not ‘foreseeable’ in their application since they did not afford the applicants legal protection against arbitrary interference with their rights to freedom of assembly and association under Article 11 ECHR.

⁸⁴ Amnesty International, ‘Punishment Without Trial: Pre-Trial Detention in Turkey’ 5 May 2017, available at [amnestyusa.org/punishment-without-trial-pre-trial-detention-in-turkey/](https://www.amnestyusa.org/punishment-without-trial-pre-trial-detention-in-turkey/).

as they are “informed of a fact that creates the impression that a crime has been committed either through a report of crime or any other way”⁸⁵. However, as noted, there are a spate of laws providing impunity to state officials:

- I. Under the Law No. 4483 on the Prosecution of Civil Servants and Other Public Officials, Turkish civil servants, including police cannot be prosecuted without the permission of relevant administrative authorities for crimes that are not excluded from the scope of the law⁸⁶ and that have been committed in the course of the civil servant’s duties.⁸⁷ While the crime of torture is excluded from the scope of the law – meaning that prosecutors do not need an authorisation to investigate⁸⁸, the distinction between ‘judicial and administrative law enforcement’ gives rise to conflicting practice. The duty of the administrative law enforcement is to prevent the disturbance of public order (such as maintaining public order, crowd control, etc.), whereas the judicial law enforcement is tasked with the duty to collect criminal evidence in the event of any act that may be considered a crime, to apprehend the perpetrators and deliver them to judicial authorities, and to ensure the conditions for a sound investigation.⁸⁹ An authorisation by the highest-ranking civil administrator **must be issued** for crimes committed by security forces during the execution of **their administrative law enforcement** duties. For crimes committed during their **judicial law enforcement duties**, such authorisation **is not needed**. Such a vague and abstract distinction is very difficult to maintain in practice in terms of the structure, organisation and duties of the law enforcement agencies. Most often, the investigations into crimes allegedly committed by security officers are hindered by subjecting them to an administrative authorisation, thereby contributing to the climate of impunity in the country. This procedural protection has the effect of considerably delaying if not removing certain police misconduct cases from the judicial process entirely. To give one striking example,

⁸⁵ Turkish Code of Criminal Procedure, Law No. 5271, 2005 available at https://www.legislationline.org/download/id/4257/file/Turkey_CPC_2009_en.pdf.

⁸⁶ Excluded crimes involve corruption, bribery, embezzlement, and treason.

⁸⁷ This protection is included in a general way in Article 120 of the Turkish Constitution that provides that “[p]rosecution of public servants and other public officials for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law.”

⁸⁸ Within the framework of the harmonization package prepared as part of Turkey’s EU membership process, an amendment was made in the Law No. 4483 in 2003.

⁸⁹ On this distinction, see Mehmet Atılğan, and Serap Işık. Disrupting the Shield of Impunity: Security Officials and Rights Violations in Turkey, TESEV Publications, 2012, p. 12, available at https://www.tesev.org.tr/wp-content/uploads/report_Disrupting_The_Shield_Of_Impunity_Security_Officials_And_Rights_Violations_In_Turkey.pdf

in the case of Hrant Dink (a journalist and human rights defender), there were clear indications that the police and gendarmerie officers of Trabzon and Istanbul had been involved in Dink’s murder through (at least) negligence – which has been corroborated by the investigation reports (probes) by the Chief Inspectors of the Ministry of Interior. However, (most of) the investigations have been considerably delayed (and prevented) by withholding administrative authorisations.⁹⁰ Moreover, the trials have also been “marred with serious shortcomings and have failed to fully elucidate these murders so far”.⁹¹

- II. The Turkish Law No. 2937 of 2011 on the State Intelligence Services and the National Intelligence Agency (MIT) – as amended by the Law No. 6532 of 2014 gives MIT personnel effective immunity from persecution unless the head of the intelligence agency issues an authorisation. The public prosecutor thus has no authority to initiate direct criminal investigations.⁹² Since 2012, the MIT has allegedly been involved in a high number of crimes, including enforced disappearances, torture and ill-treatment.⁹³ Such an authorisation is also required by the President to put the Chief of the General Staff and Chief of Staff of the Land, Sea and Air Forces on trial for crimes they allegedly committed in the course of their duties under the Turkish Law No.353 on Military Criminal Procedure Law.⁹⁴
- III. Importantly, the Turkish Law No. 6722 of 2016, which amended the Law No. 5442 on Provincial Administration, granted Turkish security forces a *de facto* immunity from prosecution for acts carried out in the course of their operations in the Turkish South-east (especially in 2015 and 2016). The law applies retroactively and introduces the requirement to seek authorisation from relevant authorities (in particular ministries) before any public

⁹⁰ HRW, ‘Closing Ranks against Accountability, Barriers to Tackling Police Violence in Turkey’, 2008 at p.16.

⁹¹ Commissioner for Human Rights (n 58) para. 165.

⁹² See, HRW, ‘Turkey Spy Agency Law Opens Door to Abuse’ 29 April 2014, available at <https://www.hrw.org/news/2014/04/29/turkey-spy-agency-law-opens-door-abuse#>.

⁹³ See, for instance, the very recent case of Yusuf Bilge Tunc. At the time of writing, the fate and whereabouts of Mr. Tunç, who disappeared in August 2019 under suspicious circumstances, are unknown. See, Amnesty International, ‘Turkey 2019’, available at <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/>. However, there are credible reports that the enforced disappearance incidents were carried out by the Turkish intelligence service officials and the victims were subjected to torture at black sites that belong to the Turkish MIT. For investigation reports on Turkey’s ‘extraordinary renditions’, see: ‘Black Sites: Turkey’ CORRECTIV, available at <https://correctiv.org/en/top-stories-en/2018/12/06/black-sites/>.

⁹⁴ Turkey: Law No. 353 of 1963 on Establishment of Military Courts and Tribunal Procedure (Military Criminal Procedure Law), 25 October 1963, available at <https://www.refworld.org/docid/3ae6b4d12c.html>.

officials taking part in counter-terrorism operations can be prosecuted for any offences committed while carrying out their duties. This legislation has received harsh criticism from a wide swath of international community.⁹⁵

IV. Notwithstanding the potential for abuse created by the Turkish post-coup emergency (see above Section 2), the Emergency Decrees also increased the risk of impunity. Decree No. 667 of 22 July 2016 granted full immunity from legal, administrative, financial and criminal liabilities to state officials who would otherwise be subject to criminal investigation and prosecution.⁹⁶ Article 37 of Decree No. 668⁹⁷ and its subsequent amendment, (Article 121 of) Decree No.696⁹⁸, extended this immunity to civilians - those ‘who have adopted decisions and executed decisions or measures with a view to suppressing the coup attempt and terrorist actions performed on 15/7/2016 and the ensuing actions’ ... ‘without having regard to whether they held an official title or were performing an official duty or not’. This effectively prevented accountability for any and all abuses that might have been perpetrated during this time,⁹⁹ and also raised concerns of pro-state vigilantism.¹⁰⁰ These decrees were later approved by the Turkish Parliament as Laws Nos. 6749, 6755 and 7079 and added to Turkey’s broad counter-terrorism arsenal.¹⁰¹ In an application on the constitutionality of these impunity clauses, the Turkish Constitutional

⁹⁵ The UN Special Rapporteur, Nils Melzer criticized that the legislation has the potential of “rendering investigations into allegations of torture or ill-treatment by the security forces involved more difficult, if not impossible” See, Report of the Special Rapporteur supra n. 51 at para. 69. The CoE Human Rights Commissioner, Dunja Mijatovic similarly noted it “further strengthened the shield of impunity” in Turkey. See COE, Human Rights Commissioner Third party intervention by the Council of Europe Commissioner for Human Rights, CommDH(2017)13 25 April 2017 para. 32, available at <https://rm.coe.int/168070cff9>.

⁹⁶ See, Article 9 of Decree No. 667 of 22 July 2016: “Legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and fulfil their duties within the scope of this Decree Law.”

⁹⁷ Article 37 of Decree No. 668 of 25 July 2016: “Legal, administrative, financial and criminal liabilities of the persons who have adopted decisions and executed decisions or measures with a view to suppressing the coup attempt and terrorist actions performed on 15/7/2016 and the ensuing actions, who have taken office within the scope of all kinds of judicial and administrative measures and who have adopted decisions and fulfilled relevant duties within the scope of the decree laws promulgated during the period of state of emergency shall not arise from such decisions taken, duties and acts performed”.

⁹⁸ Article 122 of Decree No. 696 of 24 December 2017: The following paragraph has been added to Article 37 of Law No. 6755 on the Adoption of the Amendments of the Decree Law on Measures to be Taken Under the State of Emergency and Arrangements Made on Certain Institutions and Organisations, dated 8 November 2016: “(2) Provisions of paragraph 1 shall also be applicable to those individuals who acted with the aim of suppressing the coup attempt and the terrorist activities that took place on July 15, 2016 and actions that can be deemed as the continuation of these, without having regard to whether they held an official title or were performing an official duty or not”.

⁹⁹ See Article 6 (1 (e)) of Decree No. 667.

¹⁰⁰ See, Critics Say Turkey’s New Emergency Decree Could Incite Vigilante Groups, VOA NEWS (25 December 2017), available at voanews.com/a/critics-say-turkish-new-emergency-decree-could-incite-vigilante-groups/4178637.html.

¹⁰¹ It must be noted that they have become part of legal framework, but whether they have become an ordinary law is questionable in the doctrine.

Court (TCC) ruled that they aim at protecting state agents in fulfilling their legally mandated duties in the fight against a terrorist organisation (“FETO”) which poses a grave threat to survival and security of the nation through its clandestine infiltration to state mechanisms.¹⁰² Accordingly, the Court dismissed the application.

5. Recent Cases: Torture, Ill-Treatment and Impunity

Despite the prevalence of torture and ill treatment along with unprecedented mass arrests and detentions in Turkey in recent years, the Turkish state authorities have failed to adequately and thoroughly investigate, prosecute and punish perpetrators.¹⁰³ It is clear that the low number of investigations initiated in response to allegations of torture and ill-treatment remains flagrantly disproportionate given the alleged frequency and the greater number of such violations. **In Annex II**, the present authors provide a detailed table showing the official judicial statistics on Article 94 (torture), Article 95 (severe torture) and Article 96 (torment / deliberate injury – not amounting to torture) of the Turkish Criminal Code between the years of 2013-2018. To put it in a nutshell, the table clearly indicates the insufficient determination or unwillingness on the part of the responsible authorities to investigate claims of torture, much less to hold the perpetrators to account and take such cases forward. This section will now focus on a number of recent cases (of impunity) – most of which have been concluded and closed (with a non-prosecution decision) where perpetrators have not been brought to justice despite clear evidence against them.

A. Case 1: The torture and killing of Gökhan Açikkollu

Gökhan Açikkollu, a purged history teacher, was detained on 24 July 2016 within an investigation into the 2016-attempted coup over his alleged membership in the “FETO”. Throughout his police custody, he was subjected to torture and different forms of ill-treatment and abuse until he suffered

¹⁰² TCC Constitutionality Review, Plenary Assembly, Docket No. 2016/205, Decision No. 2019/63, 24 July 2019, paras. 130-137.

¹⁰³ The Stockholm Center for Freedom (SCF), for example, in a report of March 2017, investigated and documented 53 deaths in custody and detention since the 15 July 2016 attempted coup. These cases were registered as ‘suicides’, but the Turkish Government has refused to share (any) the details of these suspicious cases. To the best of knowledge of the present report’s authors, no investigation has been carried out. See, SCF, ‘Suspicious Deaths and Suicides in Turkey’, March 2017, available at https://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey_22.03.2017.pdf.

a heart attack into the 13th day of detention, resulting in his death.¹⁰⁴ Striking as it is, Açikkollu was never officially interrogated by police. Yet, the police took him from his cell every day and due to the torture he faced, every day he was rushed to the hospital. The medical reports gathered by the Stockholm Center for Freedom (SCF), a Sweden-based advocacy organisation, clearly highlighted severe beatings including broken ribs and blunt force trauma to his head and body.¹⁰⁵ Despite the fact that he had chronic disorders, he was not given his insulin and because of this, Acikkollu suffered two diabetic comas during the 13 days of detention.

On 5 August 2016, Acikkollu died of a heart attack (acute myocardial infarction). On the same day, and without even waiting for the conclusion of the official investigation into the death, including autopsy reports, the Istanbul Chief Public Prosecutor’s Office issued a statement denying the allegations of torture and noting that the necessary medical treatment had been administered.¹⁰⁶ A number of human rights NGOs strongly criticised this statement and called for accountability for the death of Acikkollu. In a joint statement, the Turkish Medical Association and the Human Rights Foundation of Turkey highlighted that “[n]ews accounts in the media based on the chief public prosecutor’s office’s statement contain strong evidence that the state violated the right to life of a person in its custody and deprived Gökhan Açikkollu of his right to not be subjected to ill-treatment and torture”¹⁰⁷. In a subsequent report, Prof. Şebnem Korur Fincancı, a human rights defender and an expert in forensic medicine who also acts as the President of the Human Rights Foundation, pointed to the aggravating factors that led to Acikkollu’s heart attack:

“When the injuries that conform with the definition of rough beating and acute stress disorder detected in mental evaluations are considered together, the case should be classified as torture.”¹⁰⁸

¹⁰⁴ For a detailed account of the torture and death of Acikkollu, See SCF, ‘Tortured to Death: Holding Gokhan Acikkollu’s killers to account’ November 2017, available at <https://stockholmcf.org/wp-content/uploads/2017/11/Tortured-to-death-holding-gokhan-acikkollu-killers-to-account-report-21.11.2017.pdf>

¹⁰⁵ Ibid, p.14-24.

¹⁰⁶ ‘Bassavciliktan Gokhan Acikkollu Aciklamasi (A Statement by the Chief Prosecutor Office regarding Gokhan Acikkollu)’ *Hurriyet*, 5 August 2016, available at <https://www.hurriyet.com.tr/gundem/bassavciliktan-gokhan-acikkollu-aciklamasi-40764588>

¹⁰⁷ ‘Gokhan Acikkollu Gozaltinda Olmustur’ (Gokhan Acikkollu died in detention), Human Rights Foundation of Turkey, 7 August 2016, available at <https://tihv.org.tr/basin-aciklamalari/gokhan-acikkollu-gozaltinda-olmustur/>

¹⁰⁸ Prof. Fincancı’s interview to the SCF; see: SCF Report (n 104) p. 31.

On 20 December 2016, the Istanbul Public Prosecutor, Burhan Gorgulu, who led the investigation into allegations of torture, decided ‘not-to-prosecute’ them, stating that “there was no malicious intent or negligence; the death was not deliberate; and there was no external reason behind Açıkkollu’s death.”¹⁰⁹ Soon afterwards, Erol Bayram, the lawyer of Açıkkollu’s family, objected to this decision. He claimed that an effective investigation had not been conducted into Açıkkollu’s death due to the prosecutor’s failure to take into account some of the evidence including the CCTV surveillance records, medical reports and witness statements. In a decision seven months later (circa July 2017), the Turkish Assize Court ruled that the non-prosecution decision must be reversed and ordered a fresh investigation. The Court also ruled that Acikkollu’s death should be evaluated in light of a new expert report from the Supreme Council of Health at the Ministry of Health or from the Council of Forensic Medicine on the causal link between illnesses reported in prior medical reports and his death. In February 2018, the Istanbul Chief Public Prosecutor’s Office issued a new statement in which it stated that such a new report was demanded. In May 2019 however, the Istanbul Chief Public Prosecutor’s Office decided to drop the investigation into the death of Gokhan Acikkollu after years of investigation.¹¹⁰

B. Case 2: The torture and sexual abuse of several detainees in Urfa

On 18 May 2019, in the wake of an armed clash between the Turkish security forces and the PKK, which caused the death of a police officer, a group of 54 people, including men, women and three children were taken into custody as part of the investigation launched by the Şanlıurfa Chief Public Prosecutor’s Office. During the custody, the detainees reported, through their lawyers, that they had been subjected to torture and ill-treatment, including electrocution of the genitals.¹¹¹ In response to the public outcry, the Prosecutor’s Office issued a public statement, in which it denied the allegations.¹¹²

¹⁰⁹ ‘Savcilik Gozaltinda Olume ‘Dogal Yollarla’ Dedi, Avukatinin Itirazi Kabul edildi’ (The Prosecutor Office said the Death was Natural, The objection of the Lawyer was accepted) *BIANET*, 28 February 2018, available at

<https://bianet.org/bianet/insan-haklari/194733-savcilik-gozaltinda-olume-dogal-yollarla-dedi-avukatinin-istirazi-kabul-edildi>.

¹¹⁰ Istanbul Chief Public Prosecutor’s Office, Investigation No: 2017/10439, Decision No: 2020/4015. See also, SCF, Turkey drops investigation into demise of teacher who was tortured to death, 19 May 2020, available at <https://stockholmcf.org/turkey-drops-the-investigation-into-the-death-of-a-teacher-who-was-tortured-to-death/>.

¹¹¹ See Press Release by the Sanliurfa Bar Association, available at <http://www.sanliurfabarosu.org.tr/Detay.aspx?ID=118920>. See also Amnesty International, ‘Urgent Action: Dozens at Risk of Torture in Police Detention’, 24 May 2019 available at <https://www.amnesty.org.uk/resources/urgent-action-dozens-risk-torture-police-detention>.

¹¹² The press release (in Turkish) is available at <http://www.sanliurfa.adalet.gov.tr/manset/halfetitor21052019.pdf>.

In a report of late May 2019, which draws on interview with lawyers, detainees, and eyewitnesses, as well as judicial reports, detailed accounts, observations and examinations, the Foundation for Society and Legal Studies, a Turkish civil society organisation, highlighted that the detainees were interrogated in the absence of lawyers and documented the practices of torture and ill-treatment including rear-handcuffing, blindfolding, hooding, electric shocks, beating, bastinado, sexual torture, verbal insults, threats against the individuals and their relatives (especially concerning their daughters and wives).¹¹³ The report concluded that this has long become “a method of interrogation and punishment” of the enforcement forces in Turkey. In a report of 3 June 2019 (interviews with lawyers and detainees), the Sanliurfa Bar Association reached similar conclusions.¹¹⁴

Despite the credible allegations, however, as per the general pervasive climate of impunity within the country, the authorities have failed to take the initiative proactively to investigate the torture incident in Urfa. Turkey’s Human Rights Foundation (HRF), in a report of February 2020, regretted “[t]he fact that an effective investigation has not yet been carried out against torture offenders and those responsible indicates that the impunity policy is applied without compromise in any case.”¹¹⁵

C. Case 3: The torture of purged diplomats in Ankara

Between 20-31 May 2019, a group of 249 persons, all are former Ministry of Foreign Affairs officials, were detained as part of investigations launched by the Ankara Chief Public Prosecutor’s Office in relation to crimes of “membership of a terrorist organisation, aggravated fraud and

¹¹³ See, Foundation for Society and Legal Studies (TOHAV), Preliminary Report on the Human Rights Violations in Urfa from 18 May onwards, 31 May 2019, available at <http://www.tohav.org/Content/UserFiles/ListItem/Docs/katalog1427tohavs-report-on-torture-in-urfa.pdf>.

¹¹⁴ Şanlıurfa Bar Association “Torture Report on the Incidents in Halfeti” (only in Turkish) available at https://www.raporlar.org/wp-content/uploads/2019/06/UrfaBarosu_Halfeti_iskence_Raporu.pdf.

¹¹⁵ See HRF, Report on Human Rights Violations of 2019 in Eastern and Southeastern of Turkey (in Turkish), 7 February 2020, available at https://www.ihd.org.tr/wp-content/uploads/2020/02/20200207_2019YiliInsanHaklariIhlalleriRaporu-Rapor.pdf.

forgery for terrorism purposes”.¹¹⁶ Soon afterwards, claims of torture (of at least 46 detainees) have arisen, including stripping people naked, beatings, and threats of being raped with batons.¹¹⁷

At the application of the detainees’ lawyers, the Ankara Bar Association prepared a report based on interviews with six detainees.¹¹⁸ The report notes that the detainees “were taken to meetings under the pretext of ‘interviews’ where they were forced to become informants”, and that they were “stripped completely [*or some of them, partially*] naked ... were handcuffed in the back, put in fetus position, had truncheons brush their anal areas; they were subjected to threats and insults all the while.”¹¹⁹ Five detainees also noted that the law enforcement officers accompanied them during the medical examination and one detainee stated that the doctor refused to register the evidence of the torture (and wrote in the medical report that “there is no mark of battery of force”).

On 1 January 2020, a coalition of national human rights organisations made a joint statement regarding the increasing number of torture and ill-treatment incidents in Turkey with the aim of exerting pressure on people, punishing, intimidating and forcing them to confess.¹²⁰ The statement highlighted that the Human Rights Foundation of Turkey alone received a total of 840 applications in the first 11 months of 2019 in which the applicants claimed that they were exposed to torture and other forms of ill-treatments. It also noted that “[i]n the case of Ankara [*referring to the torturing of the purged diplomats*], these practices have unfortunately become systematic” and concluded that “[a]ll these applications regarding torture and ill-treatment remain inconclusive due to impunity policy, ineffective investigations and those responsible are not punished.” Indeed, despite a number of official complaints, no meaningful steps were taken by the Turkish authorities to investigate the incidents and end the ongoing practice of torture in Ankara. Against this

¹¹⁶ Turkish lawyers’ group says foreign ministry staff tortured in custody, *Reuters*, 28 May 2019, available at <https://www.reuters.com/article/us-turkey-security-torture/turkish-lawyers-group-says-foreign-ministry-staff-tortured-in-custody-idUSKCN1SY26O>.

¹¹⁷ Amnesty International, Turkey: Deepening Backslide in Human Rights, August 2019, available at <https://www.amnesty.org/download/Documents/EUR4408342019ENGLISH.pdf>.

¹¹⁸ Ankara Bar Association (Center for Attorney Rights, Penal Institution Board and Center for Human Rights of the Ankara Bar Association), Report on the Claims of Torture in Ankara Police Headquarters, (in Turkish), 28 May 2019, available at http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?BASIN_ACIKLAMASI&=3099.

¹¹⁹ A summary translation of the Ankara Bar Association Report is available at <https://arrestedlawyers.files.wordpress.com/2020/01/joint-report-ankara-bar-28-may-2019.pdf> (emphasis added)

¹²⁰ The coalition consisted of the Ankara Medical Chamber (ATO), the Human Rights Association, the Lawyers Association for Freedom, the Contemporary Lawyers’ Association, the Rights Initiative Association, the Revolutionary 78’ers’ Federation, the Human Rights Agenda Association, the SES Ankara Branch, and the Human Rights Foundation of Turkey (HRF). See, ‘Torture is a crime against humanity without exception and is strictly prohibited!’ 1 January 2020 available at <https://hakinsiyatifi.org/torture-is-a-crime-against-humanity-without-exception-and-is-strictly-prohibited.html>.

backdrop, it came as no surprise that the Ankara Chief Public Prosecutor's Office eventually gave a non-prosecution decision on 6 August 2020.¹²¹

6. Discussion and Conclusion: Answers to the key research questions

This report addressed the persisting problem of impunity in Turkey in respect of serious human rights violations committed by state officials. In what follows, we aim to provide answers to its two research questions. To reiterate, these are:

- Is there an internal system of preventing and monitoring torture or mistreatment, and if yes, how does it function in reality?
- (II) Is there an efficient system of sanctioning possible torture or mistreatment, or can we speak of an organised impunity towards torture or mistreatment against people held in detention?

The findings of the present report shed clear light on the prevailing impunity problems in Turkey. At the outset, it is clear that the impunity problem in Turkey has an entrenched legacy. In the aftermath of the 1980 military coup which brought about devastating consequences for human rights, a provisional article in the 1982 Turkish Constitution provided full immunity to the leaders of the military coup, as well all as military-public officials, from any form of prosecution.

This pervasive culture of impunity lasted through the late 1980s and 1990s. Despite some flagrant human rights abuses against the Kurdish people, including systematic torture, kidnapping, enforced disappearances, extra-judicial killings, forced evacuation of villages, destruction of homes and similar human rights infringements, the Turkish state authorities showed no willingness to react to these grave human rights violations. In almost all cases before the ECtHR, moreover, the Turkish Government completely and repeatedly denied all sorts of atrocities conducted by its agents against the Kurdish population. In turn, the ECtHR consistently found in over 175 cases that Turkey violated multiple ECHR provisions with most cases concerning the issue of ineffectiveness of investigations under Articles 2, 3, and 13 of the ECHR.

¹²¹ SCF, 'Turkish authorities drop investigation into torture of former diplomats' 26 August 2020, available at <https://stockholmcf.org/turkish-authorities-drop-investigation-into-torture-of-former-diplomats/>.

The entrenched practice of impunity and the allegations of torture and ill-treatment have reached unprecedented levels in more recent years. Despite increasingly persistent allegations, rare formal investigations and prosecutions continue to create a strong perception of impunity for acts of torture and other forms of ill-treatment.

Against this background, we should regrettably note that the impunity in Turkey has virtually become the norm, as far as the human rights violations committed against individuals state officials are concerned. In other words, to recall from our second research question, we can certainly speak of an organised and institutionalised impunity towards torture or mistreatment against people held in detention. As highlighted throughout the report, however, the impunity issue is emblematic of many structural and inextricably intertwined problems in Turkey. In this regard, each problem is either a *result* or a *cause* of one another – factors that cumulatively contribute to the entrenched culture/practice of impunity. Some of these factors can be identified as follows:

- a. **Gaps in the legal structure:** When it assumed office in 2002, the AKP Government avowed its commitment to “zero tolerance policy against torture and ill-treatment”. As a result of this policy which has been informed in part by the above mentioned ECtHR cases, the Government has taken some legal and institutional steps in the last decade with a view to bringing better safeguards to protect suspects against torture and ill-treatment. Yet, as noted above, these changes served merely as a ‘band-aid’ solution on prevailing impunity problems and did not have a real impact on the ongoing investigative, prosecutorial and judicial practice. As such, the shortcomings in ensuring accountability and reparation, and the inadequate and inefficient procedural safeguards at domestic legal level still persist. This culture of impunity and the ensuing lack of accountability are further fostered/perpetuated via laws/emergency decrees that operate as amnesties and impunity clauses (See Section 4). These legal regulations afforded legal, administrative, criminal and financial immunity to public authorities and created insurmountable obstacles for investigation and prosecution. The harsh political climate in the context of state of emergencies often served as fertile backgrounds for these legal regulations.

- b. Political rhetoric reinforcing patterns of impunity:** Despite the official discourse, the patterns of impunity are clearly reinforced by the political rhetoric, which resulted in a moral legitimisation towards state officials who violate the absolute prohibition on torture and other ill-treatment. In many cases in the aftermath of the 2016 attempted coup, Turkish state authorities have made public pronouncements on cases by either labelling them part of a ‘misinformation campaign’ or strongly implying that the result of the investigation has already been decided and absolving members of the security forces of blame. Moreover, in many other non-official occasions, such as television interviews and rallies, they have appeared to encourage torture and ill-treatment, thus contributing to the climate of impunity (See footnote (n 49)).
- c. Lack of political will to hold state officials/agents accountable:** While a ‘zero tolerance policy’ for torture and ill-treatment per definition must mean that perpetrators are brought to justice by being thoroughly and independently investigated, prosecuted and convicted to custodial sentences commensurate with the gravity of their crimes, the implementation of such a policy requires a clear commitment and a strong political will to hold state officials/agents accountable. As examined more particularly in case studies (See Section 5), despite the prevalence of torture and ill treatment along with unprecedented mass arrests and detentions in Turkey in more recent years, the Turkish state authorities have failed to adequately and thoroughly investigate, prosecute and punish perpetrators. One can rightly argue that nothing short of a fully-implemented policy of “zero tolerance for impunity” will end the spectre of torture and ill-treatment in Turkey.
- d. Ineffective and delayed investigations by prosecutors:** As again noted in case studies (See Section 5), the low number of investigations initiated in response to allegations of torture and ill-treatment remains flagrantly disproportionate given the alleged frequency and the greater number of such violations. The table in Annex II clearly indicates the insufficient determination or unwillingness on the part of the prosecutors responsible for investigations claims of torture and ill-treatment, much less to hold the perpetrators to account and take such cases forward. As demonstrated in the case of the torture of Gokhan Acikkolu and of the purged diplomats in Ankara, the investigations into the incidents been

concluded and closed (with non-prosecution decisions) where perpetrators have not been brought to justice despite clear evidence against them.

- e. **Complicit judiciary:** The attitude of Turkish judges coupled by the great challenges experienced in the judicial system inter alia the political pressure, the chilling effect of dismissals and forced transfers, the widespread self-censorship among judges and prosecutor, feed into the practice as well as the perception of impunity in the country. As shown in detailed in Annex I, judges frequently exercise greater discretion in arbitrarily rejecting cases as exemplified in countless ‘acquittal and dismissal verdicts.’

In conclusion, for every system where people lose their freedom and are kept in detention, the risk of mistreatment or torture is present. The most important guarantee to avoid this to happen in a regular way, is the fact that these who commit these acts and these who are responsible for that, know they will be punished when the facts are discovered. If a system of impunity is *de jure* or *de facto* installed torture and mistreatment will occur, that is nearly a certitude. Without doubt, such is the case in Turkey. As shown in the report, we cannot state that there is an effective preventive or sanctioning mechanism towards acts of torture and ill-treatment in Turkey. The legal safeguards are insufficient, often not respected and/or easily circumvented. The Turkish authorities moreover show no willingness to adequately and thoroughly investigate, prosecute, and punish perpetrators. It is also clear that the Turkish criminal justice system is in serious crisis. Given valid concerns over the Turkish Government’s enhanced control over the whole judiciary in Turkey, it should be noted that the independence of the judiciary cannot be trusted. The kernel of that justice system needs to be rebuilt to establish faith and trust in the rule of law and the judicial independence. In short, this report provides a chilling reminder of the organised, institutionalised and entrenched impunity problem in Turkey. It urges the Turkish authorities to combat effectively the impunity of state officials for serious human rights violations by conducting adequate, effective and independent investigation and a fair trial on the basis of which perpetrators face justice, but whether that will become reality nonetheless remains very uncertain.

ANNEX I:

The following table was extracted from a report, entitled “Impunity: An Unchanging Rule in Turkey” prepared by the Human Rights Defenders e.V, the Arrested Lawyers Initiative and the Italian Federation for Human Rights – Italian Helsinki Committee. The report is based on data gathered from a digital archive (*Faili Belli* – Perpetrator Not-unknown) that documents the results revealed in the trial monitoring work on gross human rights violations occurred in Turkey’s recent history conducted by the Truth Justice Memory Center (*Hafıza Merkezi*). The *Hafıza Merkezi*, founded in 2011, is an independent human rights organisation based in Istanbul, Turkey, that aims to uncover and document the truth concerning gross violations of human rights that have taken place in the past, strengthen collective memory about these violations, and support survivors in their pursuit of justice.

The *Hafıza Merkezi* gathered data on judicial proceedings regarding the extra-judicial killing or enforced disappearance of 363 individuals. Of those, only 81 have proceeded to become criminal cases while prosecutor decided not to pursue investigation regarding 282 victims. 15 cases have managed to reach the trial stage about the 81 victims, but of those, only two continue while the rest 13 concluded with acquittal or dismissal decisions due to the statute of limitations.

Case	Summary	Outcome
The Trial against Cemal Temizöz and others	21 people were tortured, forcibly disappeared or extra-judicially killed in 1993 in the Şırnak Province.	The indictment was filed in 2009 after the ECtHR had ordered that this should be done. The case was transferred to Eskişehir from Diyarbakir for so-called security reasons. On 5 November 2015, the case ended with acquittal and dismissal decisions due to the statute of limitation.
The Trial on the murder of Musa Anter and Ayten Öztürk (The Main Jitem Case)	This trial was about the murder of the journalist and author Musa Anter, in 1992, the abduction and murder of Ayten Öztürk in 1994 and state-sponsored murder, sabotage and bombing carried out by JITEM (the Intelligence Service of the Turkish Gendarmerie)	Three indictments were filed in 2010 (The Main Jitem Case), 2013 (Musa Anter) and 2019 (Ayten Öztürk). The case was transferred to Ankara from Diyarbakir for so-called security reasons. The trial (2015/64) continues in the Ankara 6th Heavy Penal Court.
The Trial of Jitem Ankara	19 people, including Abdulmecit Baskin, who was head of the Ankara-Altindag Registry Office, were forcibly disappeared or extra-judicially killed in Ankara between 1993 and 1996.	Two indictments were filed, in 2011 and 2013, after the ECtHR had ordered that this should be done in 2002, 2004 and 2006. On 13 December 2019, the case ended with an acquittal decision (Ankara 1st Heavy Penal Court, 2014/163)

The Trial on the enforced disappearance of Nezir Tekçi	The enforced disappearance of Nezir Tekçi after he was arrested by soldiers.	The indictment was filed in 2011. The case was transferred to Eskisehir from Hakkari for so-called security reasons. Eskisehir 1st Heavy Penal Court acquitted all of the defendants in 2015.
The Trial against Musa Çitil and others	13 people were tortured, forcibly disappeared or extra-judicially killed in the Derik district of Mardin Province between 1992 and 1994.	The indictment was filed in 2012. The case was transferred to Çorum from Mardin for so-called security reasons. Çorum 2nd Heavy Penal Court acquitted the defendant, Musa Citil, on 21 May 2014. The Court of Cassation and the Turkish Constitutional Court upheld the acquittal. Musa Citil was promoted to Deputy Chief Commander of the Turkish Gendarmerie Forces.
The Trial against Mete Sayar (The Village of Görümlü)	The murder and enforced disappearance of 6 people in Görümlü village in the Şırnak Province in 1993.	The indictment was filed in 2013. The case was transferred to Ankara from Şırnak for so-called security reasons. Ankara 9th Heavy Penal Court acquitted all of the defendants on 6 July 2015.
The Trial of Lice	In 1993, 14 civilians lost their lives during a military operation in the district of Lice in the Diyarbakir Province. This operation was led by the Gendarmerie Regiment's Commander, Esref Hatipoglu. Many houses and workplaces were also damaged, and hundreds were forcibly displaced.	The indictment was filed in 2013 after the ECtHR had ordered that this should be done in 2004. The case was transferred to Izmir from Diyarbakir for so-called security reasons. The Izmir 1 st Heavy Penal Court acquitted all of the defendants on 7 th December 2018 (2015/58).
The Trial against Naim Kurt	In 1993, about 60 villagers from the evacuated and burnt down village of Kızılağaç, in the Muş Province, went back there to get what remained of their belongings, but they were detained by the Kızılağaç Gendarmerie Command and taken to the Muş Province Gendarmerie Regiment Command Post. While some of the detainees were released after being subjected to torture for three days, Mahmut Acar, Ali Can Öner, Yakup Tetik and Mehmet Emin Bingöl remained in detention in the Regiment's Command Post. On 6 November 1993, their bodies were found near a water trench not far from the Muş Province Gendarmerie Regiment's Command Post.	The indictment was filed in 2013. The Muş 1st Heavy Penal Court acquitted Naim Kurt on 22 December 2014.
The Trial of Vartinis	Nine persons, all members of the same family, were killed in the Vartinis (Altınova) hamlet in the Muş Province on 3 October 1993, when their house	The indictment was filed in 2013. The case was transferred to Kirikkale from Muş for so-called security reasons.

	was set on fire following allegations that they had aided and abetted a terrorist organisation	Kirikkale 1 st Heavy Penal Court acquitted all of the defendants on 1 March 2016.
The Trial against Yavuz Ertürk	In 1993, during a military operation carried out in the villages of the Province of Muş, 11 people who were detained were never heard from again. On November 5, 2004, a mass grave was found in which 11 individuals were buried.	The indictment was filed in 2013 after the ECtHR had ordered that this should be done in 2001. The case was transferred to Ankara from Diyarbakir for so-called security reasons. In 2018, the case ended with a decision for acquittal and dismissal due to the statute of limitation. (Ankara 7 th Heavy Penal Court, 2014/139.)
The Trial of Jitem Kiziltepe	On the grounds of the enforced disappearance, or extrajudicial killing, of 22 persons in the Kiziltepe district of the Mardin Province between the years 1992-1996.	The indictment was filed in 2014. The case was transferred to Ankara from Mardin for so-called security reasons. On 9 September 2019, the Court dismissed the case against İzzettin Yiğit, Yusuf Çakar, Abdurrahman Öztürk, Mehmet Ali Yiğit, Abdülbaki Yiğit, Abdülvahap Yiğit, Mehmet Nuri Yiğit, Tacettin Yiğit due to the statute of limitation. The other defendants were acquitted for the other crimes of disappearance or killing, and for forming a criminal organisation to commit those crimes, due to lack of evidence. (Ankara 5 th Heavy Penal Court, 2014/367)
The Trial of Jitem Dargeçit	The case concerning the enforced disappearance of eight persons, including three children, in the Dargeçit district of the Mardin Province between 29 October 1995, and 8 March 1996.	Two indictments were filed in 2014 and 2015 after the ECtHR ordered that this must be done in 2004. The case was transferred to Adıyaman from Mardin for so-called security reasons and goes on in the Adıyaman 1 st Heavy Penal Court.

ANNEX II:

The following table is based on the official judicial statistics on Article 94 (torture), Article 95 (severe torture) and Article 96 (torment / deliberate injury – not amounting to torture) of the Turkish Criminal Code released by the Turkish Ministry of Justice for the years between 2013 and 2018.¹²²

Judicial Statistics on Article 94 of the Turkish Criminal Code (Torture)					
		Investigation Phase		Trial Phase	
Year	Total	Non-Prosecution	Filing a Public Case (Indictment)	Acquittals	Imprisonment
2013	1774	1111	210	86	20
2014	1688	1004	246	88	8
2015	1438	868	293	65	14
2016	1343	901	118	52	11
2017	1181	795	98	144	7
2018	952	646	83	38	10
Total	8376	5325	1048	473	70

Judicial Statistics on Article 95 of the Turkish Criminal Code (Severe Torture)					
		Investigation Phase		Trial Phase	
Year	Total	Non-Prosecution	Filing a Public Case (Indictment)	Acquittals	Imprisonment
2013	52	37	1	-	-
2014	31	25	2	11	5
2015	37	26	1	-	3
2016	16	2	10	-	-
2017	10	9	-	-	-
2018	8	6	-	-	-
Total	154	105	14	11	8

Judicial Statistics on Article 96 of the Turkish Criminal Code (Torment)					
		Investigation Phase		Trial Phase	
Year	Total	Non-Prosecution	Filing a Public Case (Indictment)	Acquittals	Imprisonment
2013	1518	683	536	275	248
2014	3072	2408	522	270	285
2015	1044	410	470	299	280
2016	979	332	445	215	177
2017	1173	417	536	161	179
2018	1235	383	683	282	261
Total	9021	4633	3192	1502	1430

¹²² These statistics are available in English on the website of the Turkish Ministry of Justice, <http://www.adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arsivi>



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FEBRUARY 2021

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PROLOGUE

THE RUIN OF RULE OF LAW IN TURKEY

Since July 2016, the 96-year old Republic of Turkey, under the rule of its President Recep Tayyip Erdoğan¹, has gained the fame of a Country where fundamental rights and liberties are trampled: in the last five years, more than 300 journalists, party co-chairs and tens of elected mayors of HDP (the pro-Kurdish People's Democratic Party), thousands of judges, prosecutors and lawyers, the head of the dissolved association of judges (YARSAV) and President of Progressive Lawyers Association (ÇHD) as well as more than 263,000, including academicians, writers and free minds, have been detained upon the allegation of terrorism-related charges.

Not surprisingly, what we see today is a Country that ranks 107th among 128 in rule of law index of 2020², whereas, it was still 59th in 2014, in the aftermath of violent repression of Gezi protests³.

Although the Turkish Constitution, in its Article 2, describes the Republic of Turkey as “a democratic, secular and social state governed by the rule of law”, Turkish courts have not been capable to effectively protect the fundamental rights of persons, leaving citizens under the arbitrary exercise of power by the Executive.

The rule of law is a conception of the State in which all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts.

Under the rule of law, courts thus operate as the ultimate guardians of the respect of the law by public authorities and the State accepts courts' authority.

Consequently, the rule of law has a direct impact on the life of every citizen because it is a precondition for ensuring equal treatment before the law and the defence of individual rights and

¹ Recep Tayyip Erdoğan is the President of the Republic of Turkey since 2014; from 2003 to 2014 he held the office of Prime Minister.

² [WJP-ROLI-2020-Online_0.pdf \(worldjusticeproject.org\)](#)

³ On 28 May 2013, a wave of civil demonstrations began in Istanbul initially to contest the urban development plan for Istanbul's Taksim Gezi Park. The peaceful demonstrations were violently repressed by the police. The reaction of police triggered the spreading of protests and strikes across Turkey, at the core of which were issues of freedom of the press, expression, and assembly, as well as the Islamist government's erosion of Turkey's secularism. Protested lasted for almost 20 days until 16 of June. The Gezi events were unprecedented both in terms of their geographic scope and the numbers of participants: according to the estimates of the Ministry of the Interior, over the course of the events, 2.5 million persons had participated in demonstrations in 79 of Turkey's 81 provinces. Nils Muižnieks Commissioner for Human Rights of the Council of Europe visited Turkey in July 2013, and “received a large number of serious and consistent allegations of human rights violations committed by law enforcement forces against demonstrators during the Gezi events. Many of these allegations were supported by witness accounts, reports of reputable national or international NGOs, photos, videos, and forensic evidence, as well as the number of deaths and injuries over the course of the events. According to the information available to the Commissioner, six persons had thus lost their lives as a result of the events, including one police officer and a demonstrator shot to death by a police officer. While the number of injuries is a point of contention, the Turkish Medical Association stated on 15 July 2013 that 8 163 demonstrators in 13 provinces had sought medical attention in the context of the Gezi events, with 63 serious injuries (three of which were in critical condition), 106 cases of head trauma, 11 persons losing an eye, and one splenectomy” - Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe Following his visit to Turkey from 1 to 5 July 2013.

for preventing abuse of power by public authorities. Respect for the rule of law is also essential for citizens to trust public institutions.

Having these concepts in mind, in this report I will display facts, and especially actions by public authorities, that occurred in Turkey since 2010 and which relate to the role of the Turkish Judiciary and the abrupt changes that have shaken it after 2013.

The final aim of the report is to answer the two following questions.

- 1) Can we evaluate the judiciary system of Turkey as corresponding to internationally protected standards of independence and impartiality?*
- 2) Can we evaluate the judicial system of Turkey as ensuring full access to justice and effective judicial protection in case of human rights violations?*

I have consistently divided the report into two parts:

- the first one is devoted to JUDICIAL INDEPENDENCE
- The second to ACCESS TO JUSTICE AND EFFECTIVE JUDICIAL PROTECTION.

Before entering the core of the report, a premise is needed about the period of the “judicial history” that I have considered.

My report starts from 2010 when Turkey adopted important constitutional reforms that reinforced the independence of the judiciary and the protection of fundamental rights of citizens. Those reforms aimed to align Turkish justice to the standard of European democracies and the requirements of the European Convention of Human Rights⁴. They were adopted along the path for the accession of Turkey to the European Union⁵.

The constitutional reforms represented the landing, at the constitutional level, of waves of legal reforms, adopted by the Republic of Turkey in the previous years, aimed at reinforcing access to justice and the protection of fundamental rights. These waves positively continued in 2012 and 2013, when “the third and the fourth package of judicial reform” were adopted.

Unexpectedly, 2013 signed an irreversible turning point for the protection of human rights in Turkey and for the Turkish judiciary.

In May 2013, the violent reaction by the police to the peaceful Gezi protest, that mobilised Turkish civil society at large, unveiled the authoritarian nature of the Government.

Then, in December 2013, when some prosecutors started to investigate in the secret rooms of the Government in a corruption scandal, the Executive decided, in few days, to shatter the independent High Judicial Council of Judges and Prosecutors (HYSK) and to regain political control over the judiciary. December 2013 signs the start of the race to the bottom for the rule of law in Turkey.

⁴ Turkey is a member of the Council of Europe since 1949.

⁵ Turkey was officially recognised as a candidate for full membership to the European Union on 12 December 1999, at the Helsinki summit of the European Council.

Illegitimate forced transfer of judges and prosecutors but even detention of judges and prosecutors, who investigated in Government affairs⁶, occurred much before July 2016, when the state of emergency was declared; they continued also after July 2018, when the extraordinary long state of emergency was revoked.

The rapid decline of rule of law in Turkey is, therefore, not connected with the attempted *coup d'état* of 15 July 2016. On the contrary, the attempted *coup d'état* was a “*gift from God*”, as President Erdoğan declared shortly after the facts, an invaluable occasion for the Government to implement wide purges against an independent judiciary, political opponents, and critical voices.

This has also been confirmed by the following statement of the Parliamentary Assembly of the Council of Europe in the debate held on 25 April 2017: *Considering the scale of the operations undertaken, the Assembly is concerned that the state of emergency has been used not only to remove those involved in the coup from the State institutions but also to silence any critical voices and create a climate of fear among ordinary citizens, academics, independent nongovernmental organisations (NGOs) and the media, jeopardising the foundations of a democratic society*⁷.

PART I

Can we evaluate the judiciary system of Turkey as corresponding to internationally protected standards of independence and impartiality?

JUDICIAL INDEPENDENCE

JUDICIAL INDEPENDENCE

To answer the question, the definition of the scope of judicial independence and impartiality, according to the international standards, is necessary.

Judicial independence is protected by the constitutions of European democracies, by the European Convention of Human Rights (art. 6), by the Charter of Fundamental Rights of European Union (art. 47) and by many international instruments regarding justice. Judicial independence is an essential component of the right to an effective remedy in situations where rights and freedoms are violated.

The Turkish Constitution protects it too in its article 9. It states that the judicial power is exercised by “*independent and impartial courts on behalf of the Turkish nation.*” The independence of the Turkish courts is further guaranteed in article 138 of the Constitution, according to which: *Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the*

⁶ On 6 and 7 May 2015 former Adana Chief Public Prosecutor Süleyman Bağrıyanık, former Adana Deputy Chief Public Prosecutor Ahmet Karaca, Adana prosecutors Aziz Takçı and Özcan Şişman were detained based on orders issued by the Tarsus 2nd Heavy Criminal Court because they had been involved in a search of Syria-bound trucks which were found to belong to the National Intelligence Organisation (MİT).

⁷ [Erdogan says the coup was 'gift from God' to reshape the country, punish enemies – EURACTIV.com](https://www.euractiv.com/en/erdogan-says-the-coup-was-gift-from-god-to-reshape-the-country-punish-enemies/news/1000000)

⁸ Assembly debate on 25 April 2017 (12th Sitting), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteurs: Ms Ingebjørg Godsken and Ms Marianne Mikko).

Constitution, laws, and their personal conviction conforming with the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions. Article 139 establishes the security of tenure of judges and public prosecutors and stipulates that: Judges and public prosecutors shall not be dismissed, or unless they request, shall not be retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or a post.

The principles enshrined in the Turkish Constitution reflect the content of international standards on judicial independence, which provide that the independence of an individual judge requires an independent judiciary¹⁰ and precludes not only influence from outside but also from within the judiciary¹¹.

Judicial independence has therefore two main features: external and internal independence.

External independence protects judges from external political pressure. Judiciary must not be subject to any hierarchical constraint or subordinated to any other body. Independence is, therefore, guaranteed primarily vis-à-vis the other State's powers, especially the Executive¹².

Internal independence encompasses the independence of individual members of the judiciary and requires that judges designated to decide a case be free from directives or pressures from the fellow judges or those who have administrative responsibilities in the court such as the president of the court or the president of a division in the court or the Judicial Council. According to Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe (chapter III), the principle of internal independence implies four different aspects:

- a) in their decision-making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary.
- b) A hierarchical judicial organisation should not undermine individual independence.
- c) The allocation of cases within a court should follow objective pre-established criteria to safeguard the right to an independent and impartial judge.
- d) Judges should be free to form and join professional organisations whose objectives are to safeguard their independence, protect their interests and promote the rule of law.

⁹ According to the same article "exceptions can be provided by the law to those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties because of ill health, or those determined as unsuitable to remain in the profession, are reserved".

¹⁰ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, on Judge's independence, efficiency and responsibilities (hereinafter referred as CM/Rec(2010)12), para 4.

¹¹ European Court of Human Rights (hereinafter also referred to as ECtHR), judgment of 22.12.2009, application no. 24810/06, *Parlov-Tkalcic vs. Croatia*, para 86; *Agrokompleks vs. Ukraine*, judgment of 6 October 2011, No. 23465/03, para 137.

¹² ECtHR, judgment of 24 November 1994, application no 15287/89, *Beaumartin v. France*, paragraph 38; CJEU, Grand Chamber, judgment of 24 June 2019, C.573/17, *Popławski* paragraph 96.

Internal independence is linked to impartiality¹³. Judges should maintain equal distance from the parties to the proceedings and their respective interests with respect to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law.¹⁴ It also has two components. First, members of judicial bodies should be subjectively impartial, which means that they must not show any bias or personal prejudice in the case. Second, the judicial body must be objectively impartial, that is to say, it must offer guarantees sufficient to exclude any legitimate doubt in this respect.¹⁵

Further, many European democracies have incorporated a politically neutral High Council for the Judiciary into their legal systems, as an effective instrument to protect the autonomy and independence of the judiciary and the role of the judiciary in safeguarding fundamental freedoms and rights. It is generally assumed that the main purpose of the very existence of a High Council for the Judiciary is the protection of the independence of judges by insulating them from undue pressures from other powers of the State in matters such as the selection and appointment of judges and the exercise of disciplinary functions. The Turkish Constitution has incorporated a High Council of Judges and Prosecutors (HYSK) in its article 159.

In brief, as stated by the European Court of Human Rights, in interpreting and applying the right to a fair hearing under ECHR article 6, “[i]n determining whether a body can be considered to be ‘independent’—notably of the executive and of the parties to the case—the Court has had regard to the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence.”¹⁶

I intend to demonstrate, in the following chapters, that all principles mentioned above: external independence of the judiciary, internal independence in its four features (individual independence from internal and external pressure, individual independence from internal hierarchies, the principle of natural judge, and free rights of association), the appearance of impartiality of judges, and the autonomy and independence of the Council of Judges and Prosecutors, have been progressively demolished in Turkey, starting from 2013 with a dramatic acceleration after July 2016. The aspects highlighted by the Court of Human Rights -independence of the judiciary of the executive, the tenure of office, the manner of appointment of judges and the appearance of independence- are the most problematic in this context.

The provisions of the Turkish Constitution about judicial independence have not been sufficient to protect the judiciary from the arbitrary attack of the Government.

13 The ECtHR has long recognised that the concepts of independence and impartiality are closely related and may sometimes require joint examination (see, for example, ECtHR, Grand Chamber judgment of 6 November 2018, applications nos. 55391/13, 57728/13 and 74041/13, *Ramos Nunes de Carvalho e Sá v. Portugal*, paras 150 and 152).

14 See, for example, ECtHR, judgment of 9 January 2018, application no. 63246/10, *Nicholas v. Cyprus*, paragraph 49.

15 ECtHR, judgment of 25 September 2018, application no. 76639/11, *Denisov v. Ukraine*, paragraph 63.

16 ECtHR, judgment of 28 June 1984, application no. 7819/77, *Campbell and Fell v. the United Kingdom*, para. 78.

1. THE 2010 REFORMS THAT REINFORCED THE JUDICIAL INDEPENDENCE IN TURKEY

As anticipated above, the critical situation of rule of law in Turkey was determined in 2013 by an unexpected downturn that followed previous promising reforms adopted by the Turkish Parliament in the context of the negotiations for the accession of the Republic of Turkey to the European Union.

In March 2010, a constitutional reform package prepared by the Government was introduced in the Grand National Assembly and was confirmed by a referendum held on 12 September 2010. With a voter turnout of approximately 74%, the amendments were adopted by a margin of 58% yes to 42% no votes.

The core of the reform consisted of a series of amendments to Part Three of the Constitution¹⁷ and was focussed on the judiciary, being directly relevant to the independence and impartiality of the judiciary those amendments that changed the composition and extended the powers of the Constitutional Court and of the High Council of Judges and Public Prosecutors¹⁸.

1.1. THE INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT FOR THE PROTECTION OF HUMAN RIGHTS

In 2010, the powers of the Constitutional Court (hereinafter also referred to as CC)¹⁹ were extended considerably by the introduction of the individual application procedure for the protection of fundamental rights. Under Art. 148 (5) of the Constitution, anyone who claims that any of their fundamental rights and freedoms guaranteed by both the Constitution and the European Convention on Human Rights has been violated by the public authorities can apply to the Constitutional Court, provided that he or she has exhausted all the ordinary legal remedies. The aim for the introduction of the new system was to guarantee the effective protection of fundamental rights by granting individuals a domestic effective remedy²⁰.

This system of individual application started to be operational by 23 September 2012 and the remedy proved to be very effective during the first two years of its implementation.

Four clear cases show how, during those years, an independent Constitutional Court protected fundamental rights against the abuses of the State.

- 1) Decisions of 4 July 2013 about detention on remand in terror-related cases²¹.

17 Affecting Art. 144 – 149, 156 – 157, and 159.

18 See Thomas Giegerich, *Report on Independence, Impartiality and Administration of the Judiciary in Turkey*, August 1, 2011, page 8 [Professor Dr \(avrupa.info.tr\)](http://ProfessorDr(avrupa.info.tr))

19 The Turkish Constitutional Court was created by the 1961 Turkish Constitution that endowed it with the power to review the constitutionality of laws and decrees with the force of law. This system of constitutional review was preserved in the 1982 Constitution, with minor changes.

20 See: *Needs Assessment Report on The Individual Application to the Constitutional Court of Turkey*, coordinated by Luca Perilli in the context of a Council of Europe project [16806f2348 \(coe.int\)](https://www.coe.int/t/0900417800/16806f2348/16806f2348_en.pdf);

21 CC, judgment of 4.7.2013, no. E:2012/100, K:2013/84.

One of the main reasons for human rights violations in Turkey is the wide²² and prolonged use of detention on remand²³. The length of such detention has often been subject to the scrutiny of the ECtHR that repeatedly found a violation of Art. 5/4 of the Convention.²⁴

In 2013, the CC annulled a legal provision contained in the Anti-terror Law which allowed long pre-trial detention, up to 10 years. Although the CC found that 10 years in detention is a disproportionate time, it gave the Parliament one-year time to amend this rule, according to Article 153 (3) of the Constitution. The CC made also clear that detention time cannot exceed five years, even if a person is tried for more than one criminal offence in a single case²⁵.

2) The *Balbay* ruling²⁶.

The applicant had been detained for 4 years and 5 months on terrorism-related accusations. However, the CC indicated in its decision that the applicant may have been subject to legal control mechanisms as a result of the amendment of the Criminal Procedure Code by virtue of Law no. 6352 which entered into force on 5 July 2012. The CC also took into account the applicant's status as an MP since he was elected as an MP on 2 June 2011, having been detained since 6 March 2009.

Accordingly, the CC found that the legal control mechanisms were not duly taken into account by the trial court which eventually violated the principle of proportionality (paragraph 118 of decision) with regard to the applicant's right to liberty in conjunction with the applicant's right to carry out political activities as an MP.

After this decision, Mr. Balbay was released.

22 According to a 2021 report of the Commissioner for Human rights of the Council of Europe (Thomas HAMMARBERG, Commissioner of Human rights of the Council of Europe, "*Administration of justice and protection of human rights in Turkey*", dated 10 January 2012, § 30), Turkish prosecutors and courts continued to rely very heavily on remands in custody to the detriment of existing non-custodial supervision measures. The Commissioner pointed at the proportion of persons remanded in custody in percentage of the total prison population, which was 43% as of April 2011, as a telling sign of the extent of the problem. Furthermore, the Commissioner for Human rights of the Council of Europe reported that in several cases domestic courts had failed to take into account alternative, non-custodial restrictions on personal freedom (See also ECtHR, judgment of 24 July 2007, application no. 47043/99, *Mehmet Yavuz v. Turkey*, § 40), such as bans on leaving the country, release on bail or judicial controls, despite the fact that such measures are provided for in the criminal procedural code (Thomas HAMMARBERG report § 37.).

23 The term "detention on remand" relates to the time spent in detention by the suspect from the police arrest until the first instance conviction and to the further period spent in detention during first instance retrial, when the first instance decision is quashed by the Court of Cassation.

24 ECtHR, judgment of 11 October 2011, application no. 43654/05, *Kalaylı v. Turkey*, para. 21.

25 In a number of individual cases (amongst others, see CC, First Section, no. 2012/239, k.t. 2.7.2013, para. 54), the Court has stated that if the detention time, pending trial, is separately assessed for every single criminal charge, the total detention period becomes unforeseeable for the accused. Thus, it is also a violation of the principle of proportionality. The principle of proportionality can be infringed, according to the CC ruling, also if the total pre-trial detention time does not exceed five years. As to the latter category of cases, the CC leaves a certain margin appreciation to the first instance courts (B. No: 2012/239, para. 49). However, the Court also stated that if the first instance court decides to extend the detention period, the reasons for the extension must be relevant and sufficient with reference to the concrete conditions of the case (B. No: 2012/1137, 2/7/2013, para. 63). When the first instance court uses stereotype reasons for the extension, these criteria are not met (No. 2012/1158, 21.11.2103, para. 56.).

26 CC, decision of 4 December 2013, no. 2012/1272, *Mustafa Ali Balbay*. In its decision the CC referred to Article 19 par.7 (corresponding to Article 5 par. 3 of the European Convention) and Article 67 (partly corresponding to Article 3 of Protocol no.1 of the European Convention) of the Turkish Constitution.

3) The *Twitter* ban

The Twitter case is paradigmatic. It originates in the Turkish Government's decision to block access to the social networking and microblogging service Twitter. On March 26, Ankara's 15th administrative court ordered a stay of execution of the Government decision. The TİB - Turkey's telecoms authority- should implement the administrative court's ruling within the following 30 days. The Minister of Justice reportedly said that he expected to read the ruling, to establish whether "*implementing the court orders is contrary to the Constitution*"²⁷. In the aftermaths of the administrative court's stay of execution ruling, the CC ordered the Turkish authorities on April 2, 2014 to lift the ban on Twitter²⁸. The Prime Minister harshly slammed the decision and said publicly that the Government would not oppose it but that he personally did not "*respect it*". He furthermore criticised the CC for having handled the case with urgency whereas "*a number of cases are pending*" and for having decided although all legal remedies had not been exhausted yet.²⁹

4) The Can Dündar and Erdem Gül case.

In May 29, 2015, the journalists Can Dündar and Erdem Gül published an article in *Cumhuriyet*, titled "*Here are the weapons Erdoğan claims to not exist*", alleging that Turkey's National Intelligence Organisation (MIT- *Millî İstihbarat Teşkilâtı*) had been delivering arms to rebels in Syria. *Cumhuriyet* also published a video and photos supporting the claim. Following this, President Erdoğan publicly stated that they would '*not get away with it*'. On 26 November 2015, the journalists were arrested and held in pre-trial detention on charges of espionage (Article 337 Turkish Penal Code), divulging state secrets (Article 329 Turkish Penal Code) and membership of a terrorist organisation. Dündar, before testifying to prosecutors, said: "*We are not traitors, spies or heroes: we are journalists*".

The defendants applied to the Constitutional Court demanding to be released on the grounds that their pre-trial arrest was unconstitutional and that their lawyers had been unable to examine their files. They cited the 2014 European Court of Human Rights decision of *Ahmet Şık and Nedim Şener v. Turkey*³⁰, in which the Court found that Turkey had violated the right to freedom of expression and the right to a fair trial.

Dündar and Gül were held in Turkey's Silivri prison for 92 days until the Constitutional Court ruled in their favour, recognising that their right to personal liberty and security together with their right to freedom of expression were infringed under Articles No. 19 (the right to personal liberty and security), 26 (the right to express and disseminate one's thoughts and opinions) and 28 (freedom of the press) of the Turkish Constitution. Consequently, they were released on February 26, 2016, although the Turkish President of the Republic stated

27 <http://www.hurriyetdailynews.com/ankara-court-grants-stay-of-execution-for-governments-twitterban.aspx?pag.ID=238&nID=64121&NewsCatID=339>

28 CC, decision of April 2, 2014, no. 2014/3986, *Yaman Akdeniz et al.*

29 <http://www.hurriyetdailynews.com/constitutional-court-ruled-to-unblock-twitter-before-elections-chief-judgereveals.aspx?pag.ID=238&nid=64639>

30 ECtHR, decision of 8 July 2014, applications no. 53413/11 and no. 38270/11, *Nedim Şener v. Turkey*, and *Şık v. Turkey*.

that he would neither recognize nor obey the Constitutional Court's ruling. He said that "*the prosecutor may object the decision and an upper court may start a new process*". He further noted that Turkey is ready to pay compensation if an upper court's decision – detaining the two journalists again – would be appealed before the Strasbourg Court. "*The State can object to the European Court of Human Rights if it gives a decision supporting the Constitutional Court or it can pay the compensation*", he said³¹.

In December 2020, Can Dündar was convicted in absentia by a Turkish criminal court to 18 years and nine months in jail.

Fair CC decisions, though contested and slammed by the President, who already showed great intolerance versus the judicial control, proved to be still effective, because they were finally implemented by Turkish Authorities. In those years (2013-2015) the rule of law still prevailed in Turkey and the freedom of liberty of individuals and MPs and the freedom of expression were still protected by the Turkish courts.

However, the resilience of the Constitutional Court prepared the reaction of the Executive. On 16 July 2016, the day after the attempted *coup d'état*, the Government's action targeted immediately the Supreme Constitutional body, with the arrest of two of its members, Alparslan Altan and Erdal Tercan. The Detention of Alparslan Altan has been lately evaluated illegal by the Court of Human rights. Detention of Kurdish MP's, hundreds of journalists and thousands of judges was the next step.

1.2 AN INDEPENDENT HIGH COUNCIL OF JUDGES AND PROSECUTORS (HSYK)

The High Council of Judges and Prosecutors plays a crucial role in the promotion and transfer to other locations and disciplinary proceedings against judges and public prosecutors, including their removal from office and in the appointment and removal of presidents of courts and chief prosecutors.

According to Art. 159 of the Constitution, as amended by the 2010 constitutional reform package, the new High Council had 22 (instead of seven) regular and twelve (instead of five) substitute members. Due to the enlargement, the High Council became much more pluralistic and representative of the Turkish judiciary. The previous dominance of the Court of Cassation and the Council of State was eliminated, although they still sent five regular members (three coming from the Court of Cassation, two from the Council of State). This eased the hierarchical structure of the Turkish judiciary and protected judicial independence against threats from within the judiciary. A very positive development was that judges and public prosecutors of the lower courts, including the administrative courts, were for the first time represented in the body that has the power to decide about their professional life: seven regular and four substitute members of the Council were first category (i.e. experienced) judges or public prosecutors from the ordinary courts, three regular and

31 Global Freedom of Expression | *The Case of Can Dündar and Erdem Gül* - Global Freedom of Expression (columbia.edu)

two substitute members were first category administrative judges or public prosecutors from the administrative judiciary. Together, they made up the largest group in the High Council³².

Another very positive progress was the new rules on selection and appointment of Council's members because the selection of the sixteen regular and the twelve substitute judicial members of the High Council was entirely left to judicial organs without any interference from the executive or legislative branch of government. The appointment of regular and substitute members coming from the Court of Cassation and the Council was completely entrusted to the general assemblies of the high courts.

The elections of the members of the Council, according to the new rules, took place in 2010.

2. DECEMBER 2013 ARRESTS SHAKE THE GOVERNMENT

THE START OF THE RAPID DECLINE TO THE BOTTOM

An independent and independently elected Judicial Council had the effect to reinforce the sense of individual independence of individual judges and prosecutors, who started to have their career protected by a self-governing body.

This was evident in the decisions of first instance judges who started to "resist" to Yargitay (the Court of Cassation) when their decisions were quashed and sent back. This attitude of judges to act independently put into question not only the hierarchies in the judiciary but also the concept, guarded by Yargitay, that judges should protect the interest of the State vis a vis citizens' rights.

The awareness of self-independence finally induced the prosecutors to conduct their independent investigations in the heart of the State, in an attempt to unveil the corruption in the Government.

In the first days of December 2013, Turkish police arrested the sons of three cabinet ministers and at least 34 others. The detentions went to the core of the Erdoğan administration and included leading businessmen known to be close to the Government and officials said to be engaged in suspected corruption, bribery and tender-rigging. The sons of the interior minister, the economics minister and the environment and city planning minister were among those detained. Other detainees included the head of the state-controlled Halkbank, the mayor of an Istanbul district considered to be a stronghold of the ruling AK party as well as the three construction sector tycoons, Ali Agaoglu, Osman Agca and Emrullah Turanli. Agaoglu had recently made headlines with controversial mega-projects and works for the notoriously opaque state housing agency (Toki)³³.

The reaction of the Executive was violent and, since then, for the rule of law it was a quick descent to the bottom.

32 Thomas Giegerich, *Report on Independence, Impartiality and Administration of the Judiciary*, cit., page 21. Professor Dr (avrupa.info.tr).

33 The Guardian, 17 Dec 2013, *Turkish ministers' sons arrested in corruption and bribery investigation*.

2.1 THE GOVERNMENT REACTION. THE INDEPENDENCE OF THE COUNCIL OF JUDGES AND PROSECUTORS CURTAILED

December 2013 investigations against cabinet members and/or their close relative for suspicion of corruption were conducted by special prosecution offices of special heavy criminal courts³⁴. Special courts³⁵ had tried all high profile and controversial cases of recent years, such as Sledgehammer³⁶, Ergenekon³⁷, Oda TV, KCK.

Under Turkish criminal procedural law prosecutors are obliged to investigate in a neutral manner, collecting evidence for and against potential suspects.

The first reaction by the Government to those proceedings was an amendment of 26 December 2013 to the by-law on the Judicial Police, which required police investigators assisting prosecutors in the investigations to report those investigations to their police superiors first, instead of to prosecutors.

The HSYK thereupon issued a public statement in which it qualified such a reporting requirement as an interference in the independence of prosecution.

In February 2014 an Omnibus Law (Law n° 6526 amending the Anti-terror Law, the criminal procedure code and various laws) abolished the special courts set up under the umbrella of art. 10 of the Anti-terror Law, the so called “liberty judges”, and the special prosecutors, without further prorogations of their operations. These changes occurred while investigations and trials on high profile cases were going on³⁸.

34 The special courts were established by articles 250, 251 and 252 of the Turkish Criminal Procedural Code of 2005, as specially authorized heavy criminal courts equipped with special powers. Specially authorized prosecutors were attached to the special courts. The specially authorized heavy criminal courts were subsequently abolished by the third judicial reform package of 2 July 2012. Instead, special heavy criminal courts were set up under art. 10 of the Anti-terror Law (, together with special prosecutor offices and liberty judges, tasked to deal with the so-called “protective measures” (pre-trial detention orders, searches, interception of communications, undercover agents, seizures). The art. “250” courts had been authorized, by transitional provisions, to complete pending trials.

35 Special courts have been at the center of controversy since their establishment. Criticism has focused on the wide interpretation of their special powers, the imposition of a strict pre-trial detention regime, limitations on the rights of the defence, excessively long indictments, the role of the police in launching investigations and handling arrest decisions, the slow pace of judicial proceedings linked to the very large number of individuals tried by the courts. See Luca Perilli, report *on the findings and recommendations of the Peer Review Mission on criminal justice* (Istanbul and Ankara, 19-23 May 2014), page 3. [TABLE OF CONTENTS \(avrupa.info.tr\)](http://avrupa.info.tr)

36 In Sledgehammer case, a first instance court on 21 September 2012 sentenced a total of 323 (out of 365) suspects, being retired and active-duty military personnel including three former army commanders -250 of whom were under arrest-, to 13-20 years on charges of attempting to remove or prevent the functioning of the government through force and violence. The court handed down mass verdicts (information extracted from the EC 2012 Progress Report about Turkey).

37 Ergenekon case refers to a landmark trial of the 1990 and the following 1997 postmodern coup perpetrators. The armed forces former chief of the general staff was arrested in January 2012 on charges of attempting to overthrow the government and membership of a terrorist organisation. The trial began in April 2012. In 2013, the number of defendants was 279 of whom 65 were under arrest. On Monday 5 August 2013 an Istanbul court sentenced the former chief of general staff to aggravated life imprisonment without parole and handed down harsh sentences to nearly 250 defendants including many military force commanders accused of plotting to topple the government. 21 Defendants were acquitted. Four retired generals, one retired colonel, one journalist, one lawyer and one workers’ party leader were sentenced to aggravated life imprisonment.

38 See Luca Perilli, Report on the *findings and recommendations of the Peer Review Mission on criminal justice*, cit. pag. 3.

On 26 of February 2014, the Parliament adopted Law No 6524 that dramatically increased the control of the Government over the HSYK. Many provisions of this law were subsequently struck down by the Constitutional Court (decision of 10 April 2014).

On 6 of March 2014, the Law n° 6526, which abolished special courts and special prosecutors, entered into force.

Following the abolition of special courts and prosecution offices, special judges and prosecutors were relocated by HSYK to other tasks in only 15 days. The number and location of the new courts, their territorial jurisdiction, and judges and prosecutors assigned to the new courts were decided by the HSYK in only 6 days since the entering into force of the law. The proposal of the Ministry of Justice dated 09/07/2012 concerning the determination of the number and location of the new courts was discussed and voted on the same day by the general assembly of the HSYK, which decided to establish 13 high criminal courts in 11 places. The First Chamber of the HSYK, in charge of the appointment and transfer of judges and prosecutors, by decision no 1888 dated 10.07.2012, appointed unanimously: - 65 judges, including 13 presidents of courts, 26 members of courts, and 26 liberty judges; - 80 prosecutors, including 11 deputy prosecutors and 69 prosecutors. Only a small number of the judges and prosecutors of the former special courts had been appointed to the new ones³⁹.

The appointment of judges and prosecutors did not follow a public call for applications; judges and prosecutors were not consulted prior to their appointment; the reasons for their appointment were neither made public nor communicated to them. The HSYK decision about the appointment was not reasoned.

In the prosecution offices, the pending files, previously assigned to special prosecutors, were redistributed by the chief prosecutor and his deputies. The chief prosecutors of the most important prosecution offices (Ankara, Istanbul, Izmir) were transferred by HSYK to different locations before and after the abolishment of special courts.

In major cases, such as *Ergenekon*, *Sledgehammer*, and *KCK*, prosecutors in charge of the investigations were withdrawn from the case by the chief prosecutor and assigned to other tasks, and judges in on-going cases were subject to a disciplinary investigation⁴⁰ and transferred by HSYK to other duties before the formal adoption of a disciplinary sanction or were transferred to other duties

39 Out of 145 judges and prosecutors appointed to the new regional serious crime courts, 41 were selected among judges and prosecutors already working at the suppressed SAC. In more details: 3 out of 11 chief prosecutors; 29 out of 69 prosecutors; 1 out of 13 presidents of courts and 8 out of 52 judges came from previous specialized courts and prosecution offices.

40 Judge Zafer Baskurt, President of the 10th Istanbul court of assize, judge Erkan Canak and judge Koksal Sengun, involved in the Ergenekon case, were subject to disciplinary sanctions and “authorised to other duties” by HSYK. The Deputy Chief Prosecutor Turan Colakkadi and prosecutors Bilal Bayraktar and Mehmet Berk were removed from the case by former Chief Prosecutor Aykut Cengiz Engin, after issuing a motion for an arrest warrant of 95 military personnel. In the KCK case the prosecutor Sadrettin Sarikaya, who was investigating in the MIT (National Intelligence Organisation), was removed from the case by the chief prosecutors.

even without being subject to any prior disciplinary investigation and, thus, without being given the possibility to defend themselves⁴¹.

It goes without saying that the above process jarringly conflicted with the relevant standards about judicial independence. The HSYK practice to decide, pending investigations and trials, the mandatory and “express” relocation of judges and prosecutors is contrary to principle 52 of Recommendation CM/Rec(2010)12 of the Council of Europe, according to which a judge should not (..) be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions. But also the “express” appointment of judges and prosecutors to newly set up courts violated the same REC (2010)12, according to which decisions concerning the appointment of judges should be based on objective criteria pre-established by law or by the competent authorities, and on merit⁴², having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity⁴³. Not to say that the procedure to evaluate and weigh the qualifications, skills and capacity of the judges and prosecutors, would imply sufficient time and the possibility for candidates to participate in.

The Government intervention struck down the external independence of the Judicial Council - heavily interfering in its procedures through Law No 6524- and internal independence of judges, who were not protected from improper influence and pressure by the same Judicial Council and by the intervention of the Head of offices who reallocated the cases according to new instructions. Therefore, also, the principle of natural judges stayed severely affected.

2.2. LARGE SCALE TRANSFERS OF JUDGES AND PROSECUTORS WITHOUT THEIR CONSENT

Under Government pressure, between 2014 and 2016, the Council of Judges and Prosecutors continued to engage in large-scale transfers of judges and prosecutors without their consent.

Accredited sources of information report significant cases of forced transfers such as in the cases of Murat Aydın, a judge in Karşıyaka and Vice-President of the Judges and Prosecutors’ Association (YARSAV)⁴⁴; the Chief Judge of the Istanbul Regional Appeal Court, Sadık Özhan, was reassigned after he decided to reverse the CHP Deputy Enis Berberoglu’s conviction⁴⁵; judges İbrahim Lorasdağı, Barış Cömert and Necla Yeşilyurt Gülbiçim from the Istanbul Court, who released twenty-one detained journalists after eight months of pre-trial detention, were suspended by the

41 Judge Yılmaz Alp was transferred against his will by the HSYK from one Istanbul court of assizes to an ordinary court, without being subject to any prior disciplinary investigation and, thus, without being given the possibility to defend himself.

42 According to the Opinion n. 10 of the Consultative Council of European Judges in the process of appointment of judges by judicial councils, there must be total transparency in the conditions for the selection of candidates, so that judges and society itself are able to ascertain that an appointment is made exclusively on a candidate’s merit.

43 § 44 of the REC (2010)12.

44 He was reassigned and exiled to Trabzon, after he applied to the Constitutional Court for the annulment of the criminal provision providing the crime of “insulting the president. *Stockholm Center for Freedom. Descent into Arbitrariness. The End of the Rule of Law.* <https://stockholmcf.org/wp-content/uploads/2017/04/Turkey%E2%80%99s-Descent-Into-Arbitrariness-The-End-Of-Rule-Of-Law.pdf>

45 Cumhuriyet. Kemal Kilicdaroglu ve EnisBerberoglu’nundavalarinabakanhakimlergeceyarisigorevdenalindi. http://www.cumhuriyet.com.tr/haber/siyaset/895122/Kemal_Kilicdaroglu_ve_Enis_Berberoglu_nun_davalarina_bak_an_hakimler_gece_yarisi_gorevden_alindi.html

HYSK ⁴⁶; judges of the Istanbul 37th Heavy Penal Court were removed by the Council after the Court released seventeen detained lawyers⁴⁷; Ankara 20th Regional Appeal Court was dismantled a day after the Court acquitted a military officer charged of coup attempt: the three Judges of the Court were unseated and subjected to a disciplinary investigation; President Erdoğan accused them of being members of the terrorist organisation (so called) “FETO”, during a press conference⁴⁸.

According to *The Arrested Lawyers Initiative*⁴⁹, in the year 2014⁵⁰, hundreds of judges and prosecutors have been reassigned because of their decisions “which somehow displeased to the Government”. A similar trend has been reported in 2015⁵¹.

46 <https://www.turkishminute.com/2017/04/03/govt-suspends-judges-released-journalists/>

47 <https://odatv.com/turkiyenin-konustugu-karari-veren-hakimler-suruldu-mu-20091802.html>

48 <https://ipa.news/2020/01/19/general-re-arrested-as-erdogan-fumes-at-judges-for-freeing-him/>

49 The Arrested Lawyers Initiative is a rights group that consists of lawyers making advocacy to ensure that lawyers and human rights defenders perform their duty without fear of intimidation, reprisal and judicial harassment. The Arrested Lawyers Initiative is a member of the International Observatory for Lawyers. <https://arrestedlawyers.org/>

50 The Arrested Lawyers Initiative (*The Judiciary in Turkey: inefficient and under political control*) reports that: Judges Hülya Tıraş, Seyhan Aksar, Hasan Çavaç, Bahadır Çoşlu, Yavuz Kökten, Orhan Yalmanlı, Deniz Gül, Faruk Kırmacı, were the first Criminal Peace judges to be appointed to the Ankara Courthouse by the HSYK decree of 16 July 2014. In just a year, between 16 July 2014 and 28 July 2017, seven of the eight Criminal Peace judges were dismissed. Judges Yavuz Kökten and Süleyman Köksaldı were removed from office because of their decisions to acquit some police officers. Judge Orhan Yalmanlı was dismissed from the bench because of his refusal, on 1 March 2015, to arrest certain police officers. Hasan Çavaç, who dismissed an indictment against judge Orhan Yalmanlı's was also dismissed on 9 March 2015. The Judge of the 8th Criminal Court of Peace, Hülya Tıraş who released 110 officers who had been detained for 110 days, was relieved of her duty two weeks after her decision. Judges Yaşar Sezikli and Ramazan Kanmaz were dismissed for the same reasons on 23 July 2015. Judge Osman Doğan, who did not arrest 18 officers who were detained for alleged illegal wiretapping investigation, was also relieved of his duty.

51 The Arrested Lawyers Initiative (*The Judiciary in Turkey: inefficient and under political control*) reports that: - Kemal Karanfil, the former Criminal Justice of the Peace of Eskişehir, who questioned independence and impartiality of Criminal Peace Judgeships and raised the issue before the Turkish Constitutional Court for consideration, was moved to a court in Zonguldak on 15 January 2015, only 6 months after he took office in Eskişehir. - The 7th Assize Court Judges, İsmail Bulun and Numan Kılınç, who had dismissed a case about the wiretapping of the Prime Minister's office were removed from their posts shortly after their decision on 25th July 2015 by the HSYK. - Nilgün Güldalı, a judge in the Bakırköy 2nd Assize Court, who decided the release of the arrested judges, Mustafa Başer and Metin Özçelik, on 24 July 2015, was appointed to a Labour Court only a day later, by an HSYK resolution. - The 4th Administrative Court Chief Judge, Cihangir Cengiz, who granted a motion for a stay of execution regarding the TIB's (Turkey's Presidency of Telecommunication and Communication) decision to ban access to YouTube, was transferred to Konya Administrative Court before the end of his tenure. - The chief of the 4th Istanbul Administrative Court and two of its members were transferred to other cities for holding a motion for the stay of execution, which concerned the environmental impact assessment report for Istanbul's Third Airport, and the demolition of the 16/9 towers that spoil the Istanbul skyline. - The Chief Judge of the Istanbul 10th Administrative Court, Rabia Başer, and an associate judge, Ali Kurt, who repealed the Gezi Park & Taksim Square Projects, were moved to different courts and different cities after their decisions, and before the end of their tenure. - The chief of the 4th Istanbul Administrative Court and two of its members were transferred to other cities for holding a motion for the stay of execution, which concerned the environmental impact assessment report for Istanbul's Third Airport, and the demolition of the 16/9 towers that spoil the Istanbul skyline. - Shortly before the general elections that were held on the 1st November 2015, certain TV channels were arbitrarily removed from Digiturk, a digital TV platform. The Judge of the 1st Consumer Court of Mersin Province, Mustafa Çolaker, who upheld the claim of channels STV and Bugün TV against the Digiturk platform, was transferred to the Çorum Province and was subject to a disciplinary procedure. - The Court of Cassation prosecutor, Mazlum Bozkurt, who upheld the first instance criminal conviction of Colonel Hüseyin Kurtoglu and five other military officers, was suspended by the HSYK on 1 December 2015.

As highlighted by the ICJ in a report of June 2016⁵², transfers of judges between judicial positions in different regions of Turkey were being applied as a hidden form of disciplinary sanction and as a means to marginalize judges and prosecutors seen as unsupportive of Government interests or objectives.

2.3. PRESSURE ON JUDGES AND PROSECUTORS CLIMBS. AFTER THE RELOCATION, THE ARREST

On 30 May 2015, İstanbul's 29th Court of First Instance Judge Metin Özçelik and Judge Mustafa Başer from the İstanbul 32nd Court of First Instance were referred to the Bakırköy 2nd High Criminal Court for arrest, accused of “being members of a terrorist organisation”, the judges had previously authorised the release of journalist Hidayet Karaca and 63 police officials who had been under arrest for four and a half months. On 27 April the Judges had been suspended from the profession by the HYSK⁵³.

In 2015, the following case attracted particular attention from the press and public opinion. On 6 and 7 May 2015 former Adana Chief Public Prosecutor Süleyman Bağrıyanık, former Adana Deputy Chief Public Prosecutor Ahmet Karaca, Adana prosecutors Aziz Takçı and Özcan Şişman and former Adana provincial gendarmerie commander Col. Özkan Çokay were detained based on orders issued by the Tarsus 2nd Heavy Criminal Court. According to press⁵⁴ reports they faced charges of “attempting to topple or incapacitate the Turkish Government through the use of force or coercion and obtaining and exposing information regarding the security and political activities of the state”. The four prosecutors and the former gendarmerie commander had been involved in a search of Syria-bound trucks in January 2014. The trucks, which were found to belong to the National Intelligence Organisation (MİT), were stopped by gendarmes in two incidents in the southern provinces of Hatay and Adana after prosecutors received information that the vehicles were illegally carrying arms to Syria. What was discovered in the vehicles was not made available to the press, but MİT later said the trucks were carrying humanitarian aid to war-stricken Syrians. The prosecutors were earlier suspended from duty and transferred to other positions by the HSYK after the January 2014 search. The journalists Can Dündar and Erdem Gül who published, on May 29, 2015, an article in *Cumhuriyet* titled “*Here are the weapons Erdoğan claims to not exist*”, were subsequently arrested in November 2015, as above reported.

Arrest and detention of judges and prosecutors, who adopted decisions or performed investigations disliked by the Government, happened much before the attempted *coup d'état*; the charge was the same, before and after July 2016, “being a member of a terrorist organisation”.

In this context, the *coup d'état* was a timely pretext for a lethal attack on the rule of law.

⁵² ICJ, *Turkey: the Judicial System in Peril*, 2 June 2016, available at <https://www.icj.org/turkey-icj-raises-concerns-at-threats-to-the-independence-of-judges-prosecutors-and-lawyers/>

⁵³ Stockholm Center for Freedom, [Judges Özçelik and Başer sentenced with 10 years of prison over alleged Gülen links - Stockholm Center for Freedom \(stockholmcf.org\)](https://www.stockholmcf.org/en/news/judges-ozcelik-and-baser-sentenced-with-10-years-of-prison-over-alleged-gulen-links)

⁵⁴ Stockholm Center for Freedom, [Prosecutor who stopped MİT trucks in 2014 detained over coup involvement - Stockholm Center for Freedom \(stockholmcf.org\)](https://www.stockholmcf.org/en/news/prosecutor-who-stopped-mit-trucks-in-2014-detained-over-coup-involvement)

3. THE RESOLUTION 2021 (2016) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

Following the rapid deterioration of the rule of law in Turkey, on 22 June 2016, the Parliamentary Assembly of the Council of Europe adopted Resolution 2121 (2016) on the functioning of democratic institutions in Turkey⁵⁵, according to which the developments pertaining to freedom of the media and of expression, erosion of the rule of law and the alleged human rights violations in relation to the anti-terrorism security operations in south-east Turkey constituted a threat to the functioning of democratic institutions and the country's commitment to its obligations to the Council of Europe.

4. THE STATE OF EMERGENCY. PURGES OF JUDGES AND PROSECUTORS

Only a month later, the disruption of the rule of law became a full reality.

Following the 15 July 2016 attempted *coup d'état*, the state of emergency was declared on 20 July 2016 by the President.

Under the state of emergency, the Parliament's key function as legislative power was curtailed, as the Government resorted to emergency decrees with the "force of law", also to regulate issues that should have been processed under the ordinary legislative procedure.⁵⁶

During the state of emergency, fundamental rights were radically curtailed including freedom of expression, freedom of assembly, and defence rights, such as the right to a fair trial and the right to an effective remedy, expanding police powers⁵⁷.

Emergency decrees also amended key pieces of legislation which would have continued to have an effect when the state of emergency was lifted⁵⁸.

The decrees have not been open to judicial review.

As highlighted by the Parliamentary Assembly of the Council of Europe, during the state of the emergency, the protection of fundamental freedoms and the functioning of the democratic institutions have been severely affected with disproportionate and long-lasting effects⁵⁹

55 96 votes in favour, 20 against.

56 EC, commission staff working document, Turkey 2018 Report, 17.04.2018, Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic, and Social Committee, and the Committee of the Regions 2018 (hereinafter referred as EC 2018 report).

57 EC 2018 report.

58 EC 2018 report.

59 Assembly debate on 25 April 2017 (12th Sitting), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteurs: Ms Ingebjørg Godskesen and Ms Marianne Mikko). Text adopted by the Assembly on 25 April 2017 (12th Sitting). Paragraph 37 (...) *In the wake of the failed coup, which revealed serious dysfunctions within Turkey's democratic institutions, the Assembly believes that the post-coup developments, including the implementation of the state of emergency, have had large-scale, disproportionate and long-lasting effects on the protection of fundamental freedoms, the functioning of democratic institutions and all sectors of society. It notes that the disproportionate measures taken (150 000 civil servants, military officers, judges, teachers and academics dismissed; 100 000*

Since the introduction of the state of emergency⁶⁰, hundreds of thousands of people have been arrested and taken into custody based on terror-related charges. This includes a large number of critical voices. Relatives of suspects have been directly or indirectly targeted by a series of measures, including dismissal from public administration and confiscation or cancellation of passports⁶¹. According to the latest available figures of July 15, 2020, announced by the Minister of Interior, in the previous four years (since July 15, 2016), 99,066 police operations were carried out against alleged members or supporters of the Gülen movement, 282,790 people were taken into police custody, 94,975 of them were detained. The actual number -as of the date of the Minister's announcement- of people detained in prison on terror-related charges was 25,912. The Minister also announced that the number of people subject to judicial proceedings for this allegation is 597,783.⁶²

By 12 December 2016, the Monitoring Committee of the Council of Europe (set up in the context of the Post Monitoring Dialogue with Turkey), reported the following facts and figures about the price paid, in the aftermath of the failed coup, by the judiciary.

4. On 16 July 2016, the High Council of Judges and Prosecutors (HSYK) held an extraordinary meeting and decided to lay off 2,745 judges and remove 5 members of the HYSK allegedly linked to the Gülen Movement. Arrest warrants were issued for 140 members of the Supreme Court of Appeal as well as 40 Members of the State Council. By July 2016, 7,543 people were detained for their alleged participation in the coup, including 100 police officers, 6,038 soldiers of different ranks, 755 judges and prosecutors and 650 civilians.

5. Two members of the Constitutional Court, Alparslan Altan and Erdal Tercan were taken into custody on 16 July 2016. On 4 August, the Constitutional Court decided to dismiss them from the profession following the Decree-Law of 23 July 2016.

10. In the framework of the state of emergency, several "Decrees with the force of law" were published, which notably regulated:

10.1 The dismissal of (...) "members of the judiciary" (..) whose names appeared in the lists appended to the decree-laws, or those who were considered to be a member of, affiliated with or have cohesion or connection with "terrorist organisation" (...). Those dismissed from office shall not be employed again. They shall not, directly or indirectly, be assigned to public service. Their gun licenses were revoked and their passport cancelled.

10.4 The dissolution of the Association of judges and prosecutors (YARSAV, a member of the International Association of Judges) - and later the arrest of its board members, as its President Murat Arslan on 26 October 2016.

11. On 23 September 2016, the CHP decided to challenge some Articles of Decrees 668 and 669 before the Constitutional Court. On 12 October 2016, the Constitutional Court declined to review the constitutionality of these decree-laws due to "lack of jurisdiction".

individuals prosecuted and 40 000 of them detained), the prevailing legal uncertainty despite recent steps taken by the authorities, and the consequences of the emergency decree laws on individuals and their families have created a climate of suspicion and fear which is detrimental to social cohesion and stability.

⁶⁰ The state of emergency declared after the attempted coup of 15 July 2016 has been extended seven times, each time for a three-month period, until July 2018.

⁶¹ EC 2018 report, page 8.

⁶² <https://www.cnnturk.com/turkiye/15-temmuzdan-sonra-feto-bilancosu?page=2>

12. At the same time, 45,000 applications were sent to the Constitutional Court.

13. There were allegations of ill-treatment and torture during detention evoked by the CHO, the Human Rights Association of Turkey and Amnesty International. The CHP collected 37,000 complaints about unfair treatment.

Figures and timing speak by themselves being here impossible to report thousands of names of people, whose lives and families were destroyed by the action of the Government.

Based on one of the emergency decrees, the Supreme Court (with respect to its own members) and the HSYK (for all lower court judges and prosecutors) were given competencies to dismiss "suspect" judges and prosecutors⁶³.

The fact that the Council, without its dismissed members- the exact day following the attempted *coup d'état*, approved a proscription list of 2,745 judges and prosecutors is the evidence that the purge had been prepared much in advance. The mere compilation of such a list would have taken some days. It is reported that the list also included people who had died before the 15th of July.

The purges clearly targeted the independent voices in the Judicial Council and the Constitutional Court, as well as judges and prosecutors of the first instance and superior courts.

The dismissals and prosecutions included two (2) members of the Constitutional Court, five (5) present and ten (8) previous members of the High Council as well as sixteen (16) election candidates to the High Council.

All the sixteen (16) candidates⁶⁴ from the so-called "independent group", as opposed to the Government supported YBP group (Platform of Judicial Unity) in the October 2014 elections to the High Judicial Council, were dismissed and arrested with conditions of solitary confinement. It is also striking that eight (8) former members⁶⁵ of the previous High Council of 2010-2014, who received the most votes in 2010 elections, were dismissed and put in solitary confinement. In sum, the Judicial Council members who received the support of more than % 60 of their peers from the general jurisdiction and % 70 from the administrative jurisdiction in the October 2010 elections were dismissed and put under arrest. This action was clearly aimed at silencing the voices of those who, within and outside the Council, could speak in favour of the colleagues persecuted. It was further clearly aimed at submitting the Council to the total control of the Government.

When the Turkish Constitutional Court decided on 4th August 2016 on the dismissal of judges Alparslan Altan and Erdal Tercan, the decision did not refer to any evidence against the two judges

63 Report dated 17th July 2017 of the Platform for an Independent Turkish Judiciary, that assembles the four most representative associations of judges in Europe (AEAJ, EAJ, J4J and Medel) about the situation of the Turkish Judiciary [Situation-of-Turkish-Judiciary-Platform-Report.pdf \(medelnet.eu\)](https://www.medelnet.eu)

64 İlker ÇETİN (5312 votes), Orhan GÖDEL (5202), Levent ÜNSAL (5143), Yeşim SAYILDI (5009), İdris BERBER (5003), Yaşar AKYILDIZ (4943), Ayşe Neşe GÜL (4816), Mehmet KAYA (4864), Teoman GÖKÇE (4797), Nesibe ÖZER (4545), Hasan ÜNAL (4495), Ahmet BERBEROĞLU (735), Mahmut ŞEN (713), Sadettin KOCABAŞ (692), Ali BİLEN (651), Egemen DEVRİM DURMUŞ (626).

65 İbrahim OKUR (6401), Teoman GÖKÇE (6084), Nesibe ÖZER (5842), Ömer KÖROĞLU (5833), Hüseyin SERTER (5770), Ahmet KAYA (5692), Ahmet BERBEROĞLU (870), Resul YILDIRIM (821).

concerned. The reasoning shows that it sufficed for the majority of the Constitutional Court members to be subjectively persuaded that a link between a member of the Constitutional Court and the Gülenist network existed. This persuasion might be the consequence of fear.



The purges hit symbolically the Constitutional Court first, because, as said above, it was the Constitutional Court to act, in the years 2013-2015, as a shelter for the protection of human rights against the State's arrogance.

The Government's formal justification of the purges was targeting alleged members of the Gülen movement, a former ally of the ruling party operating legally until 2014, lately labelled as the "Fethullahist Terrorist Organisation/Parallel State Structure" and considered a terrorist organisation. This label was upheld first by an administrative organ, the National Security Council (MGK), in May 2016 and then by the courts.

A set of unofficial criteria were relied upon to determine alleged links to the Gülen movement, including the attendance of a child at a school affiliated with the organisation, the deposit of money in a bank affiliated with the organisation or the possession of the mobile messaging application ByLock. In September 2017, the Court of Cassation held that the possession of ByLock constitutes sufficient evidence for establishing the membership to the Gülen movement⁶⁶.

The extraordinary situation of violation of the independence of the judiciary in Turkey has induced all four European Associations of Judges⁶⁷ to join together in their activities and form a Platform for an Independent Judiciary in Turkey. Since its creation, the Platform has been working together to promote the independence of the judiciary in Turkey and the right to freedom and a fair trial to all the Judges and Prosecutors detained. In 2017, the Platform for an independent Turkish Judiciary

66 EC 2018 report, page 9.

67 • *The Association of European Administrative Judges (AEAJ)* • *Judges for Judges* • *"Magistrats Européens pour la Démocratie et les Libertés"* (MEDEL) • *The European Association of Judges (EAJ)*.

reported the following⁶⁸. "*The developments since 15th July 2016 with the following mass dismissals of more than 4000 Turkish judges and prosecutors as well as mass arrests of around 2450 Turkish judges and prosecutors are the climax of this constantly rising pressure and constitute an intolerable violation of the rule of law*".

The Platform for an independent Turkish Judiciary⁶⁹ has maintained that the mass dismissals and mass arrests without proper individualized accusations clearly have "*chilling effect*" within the judiciary. This means that those judges and prosecutors, who are still in power, fear being subject to such arbitrary measures themselves. These judges and prosecutors can no longer be seen to be independent, as the pressure is too high on them. As for the mass dismissals, no minimum procedural requirements (not even a hearing as a basic benchmark for adversarial procedures) were followed.⁷⁰.

Under this purge, thousands of judges and prosecutors have been sacked by the Government. They have been replaced by inexperienced newcomers, ill-equipped to handle the dramatic spike in workload from coup-related prosecutions. At least 45% of Turkey's roughly 21,000 judges and prosecutors have three years of experience or less, Reuters calculated from Ministry of Justice data⁷¹.

By 20 March 2018, the HYSK processed the objection and reconsideration requests of 3,953 dismissed judges and prosecutors. As a result, the dismissal decisions on 166 judges and prosecutors (4,19%) were revoked. The remaining 3,786 applicants' objections were rejected⁷².

As reported above, the Parliamentary Assembly of the Council of Europe in the debate held on 25 April 2017 issued the following statement: *Considering the scale of the operations undertaken, the Assembly is concerned that the state of emergency has been used not only to remove those involved in the coup from the State institutions but also to silence any critical voices and create a climate of fear among ordinary citizens, academics, independent non-governmental organisations (NGOs) and the media, jeopardising the foundations of a democratic society*⁷³.

The scale of the operations was particularly shocking with reference to the judiciary. The main actor of the purges was the politically controlled Judicial Council. Its action strike to death what remained of the external and internal judicial independence.

68 Report dated 17th July 2017 of the Platform for an Independent Turkish Judiciary *about the situation of the Turkish Judiciary*, cit.; [Situation-of-Turkish-Judiciary-Platform-Report.pdf \(medelnet.eu\)](#).

69 Report dated 17th July 2017 of the Platform for an Independent Turkish Judiciary *about the situation of the Turkish Judiciary*, cit.; [Situation-of-Turkish-Judiciary-Platform-Report.pdf \(medelnet.eu\)](#).

70 http://www.hurriyetdailynews.com/turkeys-board-of-judges-prosecutors-temporarily-suspends-four-forordering-release-of-gulen-suspects.aspx?pag_ID=238&nID=111576&NewsCatID=509

71 *How Turkey's courts turned on Erdogan's foes*, Reuters, 4 May 2020, page 3.

[Reuters_How Turkey's courts turned on Erdogan's foes.pdf](#).

72 European Commission 2018 Report, page 23.

73 Assembly debate on 25 April 2017 (12th Sitting), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteurs: Ms Ingebjørg Godsken and Ms Marianne Mikko), cit.

5. DETENTION OF THOUSANDS OF JUDGES WITHOUT SUPPORTING EVIDENCE ILL-TREATMENTS IF JUDGES DURING DETENTION



According to Human Rights Watch⁷⁴, Turkey's courts placed at least 1,684 judges and prosecutors in pre-trial detention only on the first days in the aftermath of the failed July 15, 2016 coup. They were detained on suspicion of being members of a terrorist organisation, and of their involvement in the coup attempt. Most lawyers were reluctant to represent the judges for fear that they would be tainted by association.

In cases examined by Human Rights Watch, decisions to arrest and detain someone pending investigation appeared to have been made simply because their names appeared in the list of alleged suspects. At a July 19, 2016 news conference, Mehmet Yılmaz, the deputy head of the Judicial Council, indicated that the Ankara Prosecutor's office had issued a decision to detain 2,740 judges and prosecutors.

According to the Venice Commission, among the tens of thousands of cases of detention decided by the criminal peace judgeships following the coup, the numerous detentions of judges are an important issue because the peace judgeships do not even have jurisdiction to detain other judges. Depending on their rank, judges can only be detained by the ordinary courts. However, following the failed coup, many judges were first dismissed and then detained, as ordinary citizens, by a decision of the peace judges.⁷⁵

⁷⁴ HRW, Report of 5 August 2016, *Turkey, Judges, Prosecutors Unfairly Jailed* (hereinafter referred as: HRW report), [Turkey: Judges, Prosecutors Unfairly Jailed | Human Rights Watch \(hrw.org\)](#).

⁷⁵ Venice Commission, Opinion No. 852/2016, page 20.

Further, judges and prosecutors were arrested without supporting evidence, according to the investigations made by HRW⁷⁶ who interviewed three judges, two lawyers, and two spouses of detained judges and prosecutors about the detentions.

HRW reports that a judge, who was released from preventive detention, said the following: “*The prosecutor had a list of 10 or 15 questions along the lines of which high school and private prep school [to supplement state education system] did you go to; where did you live during high school and university years; were you encouraged not to vote for the AKP during the elections; which candidates did you support in the Higher Council of Judges and Prosecutors election in 2014; during the Council election, were you on duty and there when the votes were counted? Did you make election propaganda for any name during the election period? Do you send your children to any prep school connected with the FETÖ/PDY? Have you participated in programs at your children's school? Which school did your wife go to? Have you ever paid money as charity? Beyond that, I was informed there was a secrecy order on the investigation.*”

The Platform for an Independent Turkish Judiciary issued the following statement on 19 July 2019 about the lack of evidence supporting the criminal conviction of Vaclav Havel Human Rights Prize Winner Murat Arslan, President of the Independent Turkish Judges Association YARSAV, convicted under charges of being a member of an armed terrorist organisation⁷⁷, in violation of the fair trial.



Mr. Murat Arslan is a Turkish judge and president of the Turkish Association of Judges and Prosecutors (YARSAV). He has been arrested in October 2016 and remains since then in (pre-trial) detention. He was awarded in October 2017 the Václav-Havel Human Rights Prize by the Parliamentary Assembly of the Council of Europe. In the course of the ongoing (first set of) criminal proceedings, evidence on the concrete use of the communication system ByLock (similar

⁷⁶ HRW report.

⁷⁷ Statement dated January 19th, 2019 of the Platform for an Independent Turkish Judiciary about the criminal conviction of Vaclav Havel Human Rights Prize Winner Murat Arslan, President of the Independent Turkish Judges Association YARSAV, convicted under charges of being a member of an armed terrorist organisation (namely of being an active member of FETÖ/PDY) and sentenced to 10 years imprisonment. Microsoft Word - Statement of Platform_EAJ, AEAJ, MEDEL and J4J - Murat Arslan (medelnet.eu)

to "WhatsApp" or other communication means) and its evidential value for the concrete accusations was neither carefully analysed nor thoroughly investigated. Furthermore, the many violations of the Turkish Criminal Procedural Code, characterizing these whole proceedings, have culminated in an unbelievable infringement of fundamental procedural rights in yesterday's hearing. Basic fundamental procedural rights, like proper representation or the right to appeal against biased judges, have been neglected and in this way also the procedural safeguards of the Turkish laws were ignored. Against the background of European standards, the evidence brought forward by the public prosecutor cannot be regarded as sufficient evidence and has been nothing more than an enumeration of unproven assertions. This ignorance of basic principles of a fair trial - which could be perceived immediately by European trial monitors in the hearings - shows clearly that this was a purely politically motivated judgment, again bringing to light the lack of rule of law in Turkey.

The vast majority of arrested judges, including two members of the Constitutional Court, are held in - overcrowded - prisons, some - especially the higher judges - are even held in solitary confinement. Basic fundamental rights, guaranteed under Art. 5 and 6 ECHR, are disregarded.

Recently the Platform for an Independent Judiciary has openly stressed that imprisoned Turkish judges and prosecutors face precarious situations and ill-treatments. It has particularly mentioned:

- judge Mehmet Tosun, who was detained under severe conditions despite his suffering from an autoimmune illness and reportedly had been mistreated in jail so that his state of health further deteriorated, finally leading to his death on 6th March 2017, aged only 29 years;
- judge Sultani Temel who has been jailed since 16th January 2017 (with the exception for the period of 5 October 2017 to 6 June 2018) - partly with her five-year-old daughter - and suffers from a major depression without having access to adequate medical treatment;
- judge Hüsametdin Ugur, who has been isolated in a one-person cell since July 2016 and reportedly has been beaten by four guards, who subsequently forged a medical report suggesting that it was judge Hüsametdin Ugur who would have attacked the guards.

In August 2020 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (further: CPT) of the Council of Europe published two reports on Turkey, namely on their periodic visit of 2017⁷⁸ and the ad hoc visit of 2019⁷⁹ to Turkey. In both reports, the CPT gives detailed examples of torture and ill-treatment and criticises the lack of a reliable system of medical controls. It is noteworthy that the Turkish Government has still not yet requested the publication of the report of the CPT about their ad hoc visit to Turkey from 28th August to 6th September 2016, so immediately after the mass arrests took place⁸⁰.

78 See Council of Europe, CPT/Inf (2020)22, *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 23 May 2017*, <https://rm.coe.int/16809f209e>.

79 See Council of Europe, CPT/Inf (2020)24, *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 17 May 2019*, <https://rm.coe.int/16809f20a1>.

80 Statement dated 31st August 2020 of the Platform for an Independent Turkish Judiciary, [Turkey-Anti-Torture-Committee-Appeal Platform 31.8.2020.pdf \(medelnet.eu\)](https://www.medelnet.eu/Turkey-Anti-Torture-Committee-Appeal-Platform-31.8.2020.pdf). Under Article 11 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the report relating to a visit remains confidential until the authorities of the state concerned request its publication. However, in the 2017 CPT report, it is made clear that the (unpublished) findings of the August/September 2016 visit showed a high number of allegations of physical ill-treatment by law enforcement officials from detained persons who had been detained

In August 2020, Special Rapporteurs of the UN OHCHR mechanism jointly penned a letter addressed to the Turkish Government. In this letter⁸¹, dated 26 August 2020⁸², it has been once again stressed that: Turkey's anti-terrorism legal framework grants the Government excessive authority over the judiciary, thus undermines its independence. In this connection, the Special Rapporteurs denounce Law No. 7145 which gives the Government the authority to dismiss any public official, judge, or prosecutor solely based on an "assessment" regarding their contact with terrorist organisations or structures, entities or groups. In the joint letter, it was also emphasised that the National Security Council (MGK) as a security entity being in a position to make such determinations without judicial oversight and review is extremely troubling. Last but not least, the letter urges the Turkish Government to comply with international human rights law, including by providing judicial guarantees to those facing charges of terrorism.

Judges, prosecutors and lawyers continue then to face unfair persecution simply because they stand for the values of rule of law. Those who are in jail face precarious conditions and ill-treatment⁸³.

6. THE DISSOLUTION OF THE ASSOCIATION OF JUDGES

The emergency also became a pretext to dismantle the free association of judges.

on suspicion of terrorism-related offences, in particular in connection with the military coup attempt of 15 July 2016. Therefore these published reports of the CPT, the expert organ of the Council of Europe, on their visits in 2017 and 2019 give sufficient reason to believe that the warnings of the Platform for an Independent Judiciary in Turkey against the ill-treatment of the judges (and prosecutors) deprived of their liberty which have been repeatedly voiced since 2016 were correct. These recent CPT-reports also give weight to the warnings of the Platform for an Independent Judiciary in Turkey that torture or ill-treatment has been used to get (false) confessions or information.

⁸¹ Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Fionnuala NíAoláin); the Working Group on Arbitrary Detention (Vice-Chair Elina Steinerte); the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Irene Khan); the Special Rapporteur on the rights to freedom of peaceful assembly and of association (Clement Nyaletsossi Voule); the Special Rapporteur on the situation of human rights defenders (Mary Lawlor); and the Special Rapporteur on the independence of judges and lawyers (Diego García-Sayán); Available at

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25482>

⁸² Reference Number OL TUR 13/2020.

⁸³ Report dated 17th July 2017 of the Platform for an Independent Turkish Judiciary, *about the situation of the Turkish Judiciary*, cit. [Situation-of-Turkish-Judiciary-Platform-Report.pdf \(medelnet.eu\)](#) MEHMET TOSUN, former rapporteur judge at the Council of State of Turkey, passed away at 29 years of age on March 6th, 2017. Like many other judges, he was dismissed and detained under severe conditions after the attempted coup with no evidence and solid reason. He suffered from an autoimmune illness. According to his lawyer, Hüseyin Aygun, Mehmet Tosun was mistreated in jail and his state of health deteriorated. Although he spent his last months at a hospital due to his heavy health problems, he was deprived of even his assets and personal savings, access to his bank accounts which were crucial for his medical treatment which cost an enormous amount of money for a dismissed person with no social security. Sultani Temel has been arrested (followed by pre-trial detention) since 16 January 2017 (with the exception for the period of 5 October 2017 to 6 June 2018), together, until recently, with her five-year-old daughter. Whereas judge Temel suffers from major depression without having access to adequate medical treatment, her daughter suffers equally, being denied to see her mother since February 2020. The most recent and worrying case is that of Judge Hüsametdin Uğur, a former member of Turkey's Supreme Court of Appeals, who has been isolated in a one-person cell in a Kırıkkale prison since July 2016. According to his daughter and the TR724 news website, Judge Uğur was beaten by four guards in a room without cameras on February 17. Judge Uğur's daughter tweeted: "When they left him alone after he collapsed on the ground, they said, 'Only your dead body will leave here'." further revealing that the guards subsequently forged a medical report suggesting that it was Hüsametdin Uğur who attacked them so that he cannot file a criminal complaint.

Pluralism in judges' associations was severely affected by the closure under the state of emergency of two important associations, the Association of Judges and Prosecutors (YARSAV) and the Judges Union.

YARSAV, the Turkish Association of judges and prosecutors, at the time of the attempted coup d'état had more than 1,800 members. YARSAV is a member of EAJ⁸⁴ and of MEDEL⁸⁵. Being a relevant member of IAJ⁸⁶ with several judges working actively in the different bodies within the organisation, YARSAV organised even a General Assembly of IAJ, gathering judges from all over the world. The event took place in Istanbul in 2011.

The President of YARSAV, Murat ARSLAN, was arrested and convicted to 10 years of imprisonment after a trial that did not meet the minimum requirements of a due process of law, as witnessed by MEDEL that sent observers to all the sessions of the trial⁸⁷. By appointment of MEDEL, Murat ARSLAN has been subsequently awarded by the Parliamentary Assembly of the Council of Europe the Vaclav Havel Human Rights Prize in 2017.

On August 2021, Filipe Marques, President of MEDEL released the following statement: *“The situation in Turkey is probably the most dramatic MEDEL had to face in its history. Our member association, YARSAV, was administratively disbanded immediately after the attempted Coup d'État of July 2016 and many of its members were arrested, dismissed, and deprived of freedom or property without any solid pieces of evidence, basic guarantees or procedural rights. Murat Arslan, the President of YARSAV, is in jail since October 2016 and was sentenced on January 18th, 2019 to 10 years imprisonment, after a trial that didn't meet any basic principles of a due process of law. MEDEL does not recognize the legitimacy of the dismantlement of YARSAV and still considers it a full member and its board members as its rightful representatives”*.⁸⁸

84 The EAJ is an organisation founded in the year 2000. Its membership comprises national associations, representing administrative judges from the Member States of the European Union and the Council of Europe; Individual members, being administrative judges from those countries in which such associations do not exist. Currently, national associations of administrative judges from 19 European countries have joined the EAJ. In addition, there are individual members from 13 more European countries.

85 MEDEL a Non-Governmental Organisation (NGO) established in 1985, gathering Judges' and Prosecutors' associations. One of the goals of MEDEL, according to article 2(2) of its statutes (available at www.medelnet.eu), is "the defence of the independence of the judiciary in the face of every other power". MEDEL has 24 member associations, coming from 16 different countries: Belgium, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Italy, Moldova, Montenegro, Poland, Portugal, Romania, Serbia, Spain and Turkey. In total, MEDEL's member associations represent more than 18.000 magistrates (judges and prosecutors). MEDEL is an active participant in many international organisations, having observer status in several bodies of the Council of Europe, such as the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE). MEDEL also actively and regularly meets with relevant bodies of the European Union in the field of Justice and is duly registered in the European Union Transparency Register, under ID nr. 981119221130-18.

86 The European Association of Judges - IAJ (<https://www.iaj-uim.org/european-association-of-judges/>) is a regional branch of the International Association of Judges and represents national associations of 44 countries, practically all the European countries. The International Association of Judges (www.iaj-uim.org) was founded in Salzburg (Austria) in 1953. It is a professional, non-political, international organisation, bringing together national associations of judges, not individual judges. The main aim of IAJ is to safeguard the independence of the judiciary, which is an essential requirement of the judicial function, guaranteeing human rights and freedom. The organisation currently encompasses 92 national associations or representative groups, from five Continents. IAJ is the largest association of judges in the world, representing directly more than 120.000 judges.

87 Reports can be found at <https://www.medelnet.eu/index.php/news/europe/426-report-of-medel-s-observer-to-the-ongoing-trial-of-murat-arслан-president-of-yarsav-in-german-and-english>

88 Interview with Filipe Marques, President of MEDEL by the “arrested lawyers initiative” on 21 august 2020.

The dissolution of the free judicial associations had a chilling effect on the members of the judiciary. Turkey's biggest association, the Association for Judicial Unity, which reached around 9,300 members, was perceived as being close to the Government. Newly recruited judges and prosecutors are handed a membership application to the Association for Judicial Unity automatically upon recruitment⁸⁹.

The reason why the Government violently targeted the association of judges is easily explained by considering the role of the judicial association in protecting judicial independence and fostering the rule of law.

The individual right to form and to join associations is ensured by many international instruments protecting human rights⁹⁰. The right for judges to associate is explicitly granted in the UN Basic Principles for the Independence of the Judiciary⁹¹, the Bangalore Principles of Judicial Conduct⁹² and the Universal Charter of the Judge⁹³.

The European Charter on the Statute for Judges⁹⁴ underlines the contribution of associations of judges to the defence of the status of judges. Recommendation (2010)12⁹⁵ of the CoE names the most central element of a judge's status, which is independence, and adds the promotion of the rule of law. The Magna Carta of Judges confers to the association of judges the task of the "defence of the mission of the judiciary in the society"⁹⁶.

The right to associate is, therefore, not only in the interest of a judge personally. This right is in the interest of the whole judiciary and the larger society as well⁹⁷.

The statutes of many associations of judges express, as central goals, two overriding objectives⁹⁸:

1) establishing and defending the independence of the judiciary; it encompasses among other factors defending judges and the judiciary against any infringements of independence, claiming sufficient resources and satisfactory working conditions, aiming for adequate remuneration and social security, rejecting unfair criticism and attacks against the judiciary and individual judges, establishing, promoting and implementing ethical standards, and safeguarding non-discrimination and gender balance.

89 EC, commission staff working document, Turkey 2020 Report, 6.10.2020, accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (hereinafter referred as EC 2020 report), page 25, [turkey_report_2020.pdf \(europa.eu\)](#)

90 *Universal Declaration of Human Rights* adopted by the UN General Assembly on 10 December 1948, Article 20/1. *International Covenant on Civil and Political Rights* adopted by the UN General Assembly on 16.12.1966. *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) of 4.11.1950, Article 11/1.

91 United Nations Basic Principles on the Independence of the Judiciary, endorsed by the General Assembly on 29.11.1985, para 9.

92 *Bangalore Principles of Judicial Conduct*, Principles 4-6.

93 *Universal Charter of the Judge*, adopted by the IAJ on 14.11.2017, article 3/5.

94 *European Charter on the Statute for Judges*: principles 1.7 and 1.8.

95 Recommendation (2010)12, para 25.

96 CCJE *Magna Carta of Judges* (Fundamental Principles), of 17.11.2010, para 12.

97 CCJE Opinion No. 23 (2020) *The role of associations of judges in supporting judicial independence* of 6 November 2020 (hereinafter referred to as CCJE Opinion No. 23(2020)).

98 CCJE Opinion No. 23 (2020), paras 16, 17, 18.

2) **Fostering and improving the rule of law.** It encompasses among other factors contributing to training, exchanging and sharing knowledge and best practices, contributing to the administration of justice in conjunction with those who are responsible for it, contributing to reforms of the justice system and law-making, fostering the knowledge and information of the media and the general public about the role of judges, the judiciary and the rule of law.

Striking down the free association of judges was therefore a fatal attack on judicial independence and the rule of law.

7. ENCJ DECISION TO SUSPEND THE TURKISH HIGH JUDICIAL FOR THE JUDICIARY

It is worth noting the reaction taken by the European Network of Councils for the Judiciary (ENCJ) concerning the Turkish High Council of Judges and Prosecutors (HSYK). On 8 December 2016, the ENCJ General Assembly suspended the observer status of the High Council for Judges and Prosecutors of Turkey (HSYK) as it no longer complied with the ENCJ Statutes and was no longer an institution that is independent of the executive and legislature ensuring the final responsibility for the support of the judiciary in the independent delivery of justice⁹⁹.

8. PACE REOPENS THE MONITORING PROCEDURE

On 25 April 2017, the Parliamentary Assembly of the Council of Europe (PACE) adopted the Resolution 2156(2017) through which it decided to reopen the monitoring procedure in respect of Turkey until “serious concerns” about respect for human rights, democracy and the rule of law “are addressed in a satisfactory manner”¹⁰⁰. As a result of this Resolution, Turkey has been downgraded to the league of Countries under monitoring status for the first time in European history. It is worth noting that, accession negotiations between EU and Turkey had commenced based on the European Council decision of 17 December 2004 that concluded that Turkey had met “the Copenhagen Criteria”¹⁰¹. It was the same time when the country was exempted from the scope of monitoring status under the mandate of the PACE. The reopening of the monitoring procedure put into question the persistence of the conditions for keeping open the door for Turkey to access the EU.

9. FORCED TRANSFER OF JUDGES CONTINUES AFTER THE CLOSURE OF THE STATE OF EMERGENCY

In 2020 the EC observed that in total, 4,399 judges and prosecutors have been dismissed since the attempted coup. In 2019, none were reinstated to their positions by the Council of Judges and Prosecutors¹⁰².

⁹⁹ *ENCJ Votes to suspend the Turkish High Council of Judges and Prosecutors*, available at <https://www.ency.eu/node/449>

¹⁰⁰ *Parliamentary Assembly reopens monitoring procedure in respect of Turkey - Council of Europe (coe.int)*.

¹⁰¹ Copenhagen criteria refer to the overall criteria which applicant countries (to the European Union (EU)) have to meet as a prerequisite for becoming members of the European Union were defined in general terms by the Copenhagen European Council in June 1993.

¹⁰² EC 2020 report, page 25.

At the same time, the Council of Judges and Prosecutors continued to engage in large-scale transfers of judges and prosecutors without their consent and no constitutional guarantees were introduced to prevent such transfers, which, according to European standards, can only be justified where courts are being reorganised. In May 2019, the Judicial Reform Strategy announced a guarantee of geographical tenure that should be introduced for judges with certain professional seniority and based on merits. A day after the announcement of the Strategy, the Council of Judges and Prosecutors published a decree through which the posts of 3,358 judges and prosecutors in the civil and criminal judiciary and 364 in the administrative judiciary were changed. Overall, 4,027 judges and prosecutors were transferred in 2019. No reason was given for the transfers apart from the requirements of the service. No action was taken to remedy the shortcomings identified in the December 2016 opinion of the Venice Commission, which stated that every decision regarding the career of a judge needs to be individual and reasoned and that the procedures before the Council of Judges and Prosecutors must respect standards of due process¹⁰³.

It is an obvious consideration that continuous forced transfers of judges make the judicial internal independence and the principle of natural judge vain. They also severely affect the quality and continuity of judicial work.

10. THE 2017 CONSTITUTIONAL AMENDMENTS PUT THE HIGH JUDICIAL COUNCIL UNDER FORMAL POLITICAL CONTROL

No measures were taken to restore legal guarantees ensuring the independence of the judiciary. On the contrary, constitutional changes in relation to the Constitutional Court and the Council of Judges and Prosecutors further undermined external judicial independence from the executive.¹⁰⁴.

On 20 January 2017, the Parliament approved eighteen amendments to the Constitution. A national referendum was held on 17 April 2017 to confirm the proposed reforms. A majority of 51.41% voted "yes" to approve the proposal with a turnout rate of 85.43%.

The amendments were assessed by the Venice Commission as lacking sufficient checks and balances as well as endangering the separation of powers between the executive and the judiciary.

The referendum itself raised serious concerns in relation to the overall negative impact of the state of emergency, the 'unlevel playing field' for the two sides of the campaigns and undermined safeguards for the integrity of the election.¹⁰⁵.

Following the 2017 constitutional amendments, the CC actually consists of 15 judges. Three of these judges are elected by the Parliament. A further 12 judges are selected by the President of the Republic. Also, the constitutional changes regarding the manner of appointment of the members of the High Council of Judges and Prosecutors have repercussions on the Constitutional Court. The Council is responsible for the elections of the members of the Court of Cassation and the Council of State. Both courts are entitled to choose two members of the Constitutional Court by sending

103 EC 2020 report, page 25.

104 EC 2018 report, page 25.

105 European Commission, [Key findings of the 2018 Report on Turkey \(europa.eu\)](https://ec.europa.eu/euro-justice/justice-reports/key-findings-of-the-2018-report-on-turkey)

three nominees for each position to the President, who makes the appointments. The influence of the executive over the Constitutional Court is therefore increased.

As regards the Council of Judges and Prosecutors, under the previous constitutional framework, the President only appointed 3 out of 22 members of the Council. Pursuant to the amendments, the President now has the power to appoint 4 members, that is almost a third of the members of the Council of Judges and Prosecutors, whose number is also decreased, from 22 regular (+ 12 substitutes) to 13 regular members. Two other members of the HYSK, the minister of justice and his/her undersecretary, are also appointed by the President (minister and undersecretary as a high official). The President, therefore, is now entitled to appoint almost half of the members of the Council.

The Venice Commission has stressed that the President is no more a *pouvoir neutre* but is engaged in party politics: his choice of the members of the Council is not politically neutral. The remaining members are appointed by the Grand National Assembly. If the party of the President has a three-fifths majority in the Assembly, it is able to fill all positions in the Council.¹⁰⁶

Further, although nine of the Council members are judges and prosecutors, none of them are elected by their peers. Instead, according to European standards, at least a substantive part of the members of a Judicial Council should be judges appointed by their peers. The Committee of Ministers of the Council of Europe in its Recommendation CM/Rec(2010)12 stated that: “*Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.*” [...] “*The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers*”.¹⁰⁷ Thus, a substantial element or a majority of the members of the Judicial Council should be elected by the judiciary itself. To provide for the democratic legitimacy of the Judicial Council, other members should be elected by Parliament among persons with appropriate legal qualification considering possible conflicts of interest¹⁰⁸.

Pursuant to this constitutional reform, HSK (previously HSYK) is now under full political control.

According to the US Department of State, the executive branch exerts a strong influence over the Board of Judges and Prosecutors. The ruling party controlled both the Executive and the Parliament when the current members were appointed in 2017.¹⁰⁹

106 European Commission for Democracy through Law (Venice Commission). *Turkey's opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017*, adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017), pages 26-27.

107CM/Rec(2010)12, paras. 27 and 46.

108 Venice Commission, *Report on Judicial Appointments*, CDL-AD(2007)028, paragraph 29; see also the *Report on the independence of the judicial system*, Part I: the independence of judges, CDL-AD(2010)004, § 32.

109 US Department of State, 2019, *Country Reports on Human Rights Practices: Turkey* (hereinafter referred as USDOS report); Turkey - United States Department of State

11. MASS RECRUITMENT OF NEW JUDGES AND PROSECUTORS/QUALITY OF JUSTICE

In this context of a Judicial Council deprived of its independence, Turkey has conducted massive recruitment of judges and prosecutors.

As of 15 July 2016, the day of the abortive coup, there were around 14,500 judges/prosecutors in Turkey. 4,560 of them were dismissed in a few weeks following 15 July. According to the EC 2020 report, as of December 2019, judges and prosecutors were 20,632 in total¹¹⁰.

That means that at least 45% of Turkey's roughly 21,000 judges and prosecutors have three years of experience or less. Hakki Koçlu, chairman of the Justice Commission in Turkey's Parliament and a lawmaker for Erdogan's AK Party, acknowledged to Reuters that some judges and prosecutors "have been appointed without adequate training." Koçlu said. "We see some of the rulings they make. Now we can only hope that the upper courts correct these rulings" upon appeal. But the Supreme Court of Appeals, the highest appeals court, has been hollowed out too. Cirit, the Court's President, told Reuters that the appointment of judges with less than five years' experience to the Supreme Court of Appeals "poses risks not only for the reasonable duration of proceedings but also for the right to a fair trial"¹¹¹.

This happens in a time when the purges have inflated the workload of Turkey's judicial system. More than half a million people have been investigated since the coup attempt. As of late 2019, around 30,000 were still awaiting trial as the courts try to process the vast number of coup-related cases. Some suspects have been jailed for months without an indictment or a trial date¹¹².

Vacancies continued to be filled by allowing most candidates to enter the system through a fast-track procedure and non-transparent selection process. The Council of Judges and Prosecutors is not independent of the executive and the Ministry of Justice runs the selection boards for new judges and prosecutors and manages their yearly appraisal¹¹³. The lack of objective, merit-based, uniform and pre-established criteria¹¹⁴ for recruiting and promoting judges and prosecutors has opened wide the door to the politicisation of the judiciary. This severely affects not only the independence but also the appearance of impartiality of judges.

The following testimony reported by the PACE rapporteur clearly depicts the situations: "The President of the Union of Turkish Bar Associations, whom I met, mentioned the lack of a minimum score in the entrance exam and the preponderant weight given to performance in subsequent unrecorded oral interviews involving politically biased questions: as a result, candidates with the "right" political profile who performed badly in the written tests were nevertheless recruited. Judges are also being appointed directly from the justice academy, without completing their training. 5 000

¹¹⁰ EC 2020 report, page 26.

¹¹¹ *How Turkey's courts turned on Erdogan's foes*, Reuters, 4 May 2002, page 8. [Reuters_How Turkey's courts turned on Erdogan's foes.pdf](#)

¹¹² *How Turkey's courts turned on Erdogan's foes*, Reuters, cit., page 7.

¹¹³ EC 2020 report, page 25.

¹¹⁴ CM/Rec(2010)12, par 44. *Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.*

of 15 000 first instance judges have less than one year's experience, and another 5 000 have less than five years".¹¹⁵

The Platform for an independent Turkish Judiciary¹¹⁶ observed that reliable reports say that 800 of the 900 newly appointed judges have direct links to the ruling Justice and Development Party (AKP)¹¹⁷.

A ceremony for 1,236 new judges and prosecutors was held in the presidential palace in March 2018 and contributed to the perception of an increased influence of the executive over the judiciary¹¹⁸.

In the light of the above-mentioned negative developments, the functioning of the justice system in Turkey is an area of serious concern. As highlighted in the report¹¹⁹ of PACE Monitoring Group, many issues, including the lack of independence of the judiciary and the insufficient procedural safeguards and guarantees to ensure fair trials, remain to be addressed.

¹¹⁵ *State of emergency: proportionality issues concerning derogations under article 15 of the European Convention on Human Rights*, PACE report, Doc. No. 14506, 27 February 2018 para. 98.

¹¹⁶ Report dated 17th July 2017 of the Platform for an Independent Turkish Judiciary, *about the situation of the Turkish Judiciary*, cit.; [Situation-of-Turkish-Judiciary-Platform-Report.pdf \(medlnet.eu\)](#)

¹¹⁷ <http://theglobepost.com/2017/05/11/top-judge-defends-purge-state-of-emergency-measures/>

¹¹⁸ EC 2018 report, page 25.

¹¹⁹ PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), 19 October 2020: *New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards*.

THE ANSWER TO THE QUESTION

Can we evaluate the judiciary system of Turkey as corresponding to internationally protected standards of independence and impartiality?

The answer to the question could be directly drawn by a recent statement dated 8 December 2020 of ENCJ that explained the failure of the HSK (previously HSYK) to guarantee access to independent, fair and impartial courts delivery. *"Four years later, unfortunately, the situation has not improved and has, instead, deteriorated considerably. The Council of Judges and Prosecutors is a Council in name only, as none of its actions or decisions demonstrate any concern for the independence of the judiciary. Without a Council to protect and guarantee the independent delivery of justice in Turkey, there is little hope for the rule of law in Turkey in general and for access to independent, fair and impartial courts for all who come before the courts including Turkish citizens."*¹²⁰

This statement fully reflects what I have reported in the chapters above.

A reformed Judicial Council has been the target of the Government since December 2013, when HYSK issued a public statement to protect the independence of prosecutors, who dared to exercise judicial control over the action of the Executive (chapter 2.1.). Since then, the external independence of the Council of Judges and Prosecutors was severely curtailed by the political majority until 2017, when the constitutional amendments dissolved the formal independence of the Council and put it under the complete political control of the Executive (chapter 10.). In the meantime, the Judicial Council acted as an instrument of the Government to spread pressure and fear among judges and prosecutors, who started to be forcibly moved from posts and cases, in contravention to the basic standards of judicial independence (chapter 2.2.). Some were even arrested (chapter 2.3.). This was a harsh attack on the internal judicial independence and the principle of the natural judge. The attempted *coup d'état* gave the Executive the occasion to finally prostrate the judiciary, purging thousands of judges and prosecutors, who were dismissed, detained and ill-treated, without a sustainable charge against them (chapters 4. and 5.). The first arrests hit the members of the Constitutional Court that, in the previous years, had bravely protected the fundamental rights of individuals against the State (chapter 1.1.). The dissolution, by decree, of the free associations of judges and the arrest of their leaders, demolished the last shelter of judicial independence and of the rule of law (chapter 7.). The annihilation of the judicial independence opened an avenue to the Executive for the persecution of journalists, political opponents, and critical voices (see later chapters 12, and 12.2.). The end of the state of emergency did not put an end to the political control of judges and prosecutors. Massive recruitment of young judges and prosecutors, who did not undergo transparent procedures of selection and proper initial training (chapter. 11.) and who are subject to constant forced transfers (chapter 9.), casts a shadow on the appearance of impartiality of large part of the judiciary and on its professional capacity to deal with a steady increase of cases involving the protection of fundamental rights.

120 ENCJ Board Statement on the Situation in Turkey; <https://www.encj.eu/node/578>.

PART TWO - EFFECTIVE JUDICIAL PROTECTION

In the previous chapter, I have assessed how judicial independence has been demolished, since December 2013, by progressive interventions of the political majority driven by President Recep Tayyip Erdoğan, which have struck both external and internal judicial independence, fired and detained thousands of judges and prosecutors and then replaced them with political controlled ones.

In this chapter, I will consider the consequence of the attack on the judiciary for the protection of fundamental rights, to answer the following question.

Can we evaluate the judicial system of Turkey as ensuring full access to justice and effective judicial protection in case of human rights violations?

The reply can be obvious if we consider the definition of effective judicial protection in the light of the international standards.

Under general international law, and including in times of crisis, the obligation to respect and ensure respect for human rights includes the duty to provide effective remedies to victims, including reparation. The right at issue is guaranteed by articles 13 and 41 of the ECHR and by article 19 of the Treaty on European Union and art. 47 of the Charter of Fundamental Rights of EU.

According to the ECtHR, an effective remedy should be accessible and should be provided by an independent and impartial judicial body and should prompt and effective in practice as well as in law and must not be unjustifiably hindered by the acts of State authorities¹²¹. It further must be enforceable and lead to cessation and reparation for the human rights violation concerned¹²².

The lack of an independent and impartial judiciary in Turkey vanishes the effectiveness of the remedy.

However, the incapacity of Turkey to ensure an effective domestic legal remedy in the sense of the European Court of Human Rights (ECtHR) or effective judicial protection in the sense of art. 19 of the Treaty on European Union becomes much more alarming if we enlarge the consideration to other relevant aspects, such as the role of lawyers and human rights defenders in Turkey, the access to justice, the right of the defence, the fairness of the procedure, the enforcement of the rulings of the European Court of Human rights, the fragmentation and weakness of further public institutions responsible for protecting human rights and freedoms¹²³.

¹²¹ ECtHR, judgment of 11 December 2008, application no 42502/06, *Muminov v. Russia* para. 100; judgment of 19 June 2008, application no. 20745/04, *Isakov v. Russia*, para. 136; judgment of 8 July 2010, application no. 1248/09, *Yuldashev v. Russia*, paras. 110-111; judgment of 10 June 2010, application no. 53688/08, *Garayev v. Azerbaijan*, paras. 82 and 84.

¹²² International Commission of Jurists, ICJ report, *Justice Suspended: Access to Justice and the State of Emergency in Turkey*, 2018 (hereinafter referred ICJ report), page 11.

¹²³ EC 2020 report, page 6

12. ACCESS TO JUSTICE IS DENIED

PERSECUTION OF LAWYERS AND HR DEFENDERS

ARBITRARY APPLICATION OF THE ANTI-TERROR LAW

Since the Gezi protests and even before, in high profile cases and cases regarding Kurdish defendants, the Human Rights Defenders (HRD) and especially lawyers have been a target of the Government.

As highlighted above in chapter 2.2. and 2.3, early 2014 marked the starting of an unprecedented phase for the Government in strengthening its control over the judiciary through arrest, dismissal, and arbitrary transfer of judges and prosecutors. The level and intensity of threats against lawyers and HRD increased parallel to this trend.¹²⁴

The abuse of the anti-terror criminal provisions has been the main tool in the hand of State's judicial authorities for the persecution of political opponents and free minds.

The Anti-terror Law is an old problem in Turkey¹²⁵. Since 2010 it has been extensively abused by the State to persecute Kurdish political opponents¹²⁶.

However, since July 2016 it is stunning the scale of systematic attacks on lawyers, human rights defenders and free and critical minds, including journalists and academicians.

Paragraph 1 of Article 314 of the Turkish Criminal Code criminalises forming and/or leading an armed terrorist organisation; paragraph 2 criminalises the membership to an armed organisation. Under the Criminal Code, the two offences carry a penalty of 7.5 to 22.5 years imprisonment. In a report following her visit to Turkey in July 2019, the Commissioner of Human Rights of Council of Europe, has observed that, only in 2018, “*according to official statistics there have been 43,553 convictions to prison sentences under Article 314 of the TCC concerning membership of armed criminal organisations and 2,280 under the Anti-Terrorism Law. The Commissioner also notes that this period was accompanied by the introduction into the Turkish legal order of new, poorly defined concepts such as acting in union or junction with a criminal organisation (“iltisak”) or having contacts with such an organisation (“irtibat”), which appear to have further blurred the lines between lawful and criminal actions*”¹²⁷.

¹²⁴ A/HRC/35/22/Add.3, paras. 68–69; available at <https://undocs.org/en/A/HRC/35/22/Add.3>

¹²⁵ Luca Perilli, report on the findings and recommendations of the Peer Review Mission on criminal justice (Istanbul and Ankara, 19-23 May 2014) cit., pages 45-52.

¹²⁶ In a report drafted by the NGO Human Rights Watch of 1 November 2010 and titled “*Protesting as a terrorist offence*”¹²⁶, [The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey | HRW](#), based on the examination of 50 cases of prosecutions of adult and child demonstrators in the Diyarbakir and Adana courts, it is reported that Anti-terror Law was applied to “many hundreds of people” whose “crime was to engage in peaceful protest, or to throw stones or to burn tires at protests”. The report states that adult demonstrators convicted under Articles 220 and 314 of the TCC have typically been sentenced to between seven and 15 years of prison. In addition to the charge of “membership in an armed organisation” and for “committing a crime on behalf of an organisation,” the defendant also faces other charges for violating the Law on Demonstrations and Public Meetings. The combination of charges, in theory, means that a defendant could face up to 28 years’ imprisonment and an even higher sentence if there are multiple violations.

¹²⁷ [168099823e \(coe.int\)](#), para, 40.

Vague definition and broad interpretation of Article 314 of the Turkish Criminal Code, which constitutes the basis for the intimidation and detention of hundreds of thousands of people, has been repeatedly found by the ECtHR to be contrary to the Convention principles and arbitrarily applied¹²⁸. Most recently, in its judgment dated 22 December 2020 in *Selahattin Demirtas v. Turkey*¹²⁹ (No. 2) case, the Court' Grand Chamber observed, in line with the Venice Commission's findings in its Opinion¹³⁰ on Articles 216, 299, 301, and 314 of the Criminal Code, that the Code does not define the concepts of an "armed organisation" and an "armed group".

This vague formulation of the said provisions, and the overly broad interpretation thereof by the Turkish judges and prosecutors, allows the criminalisation of harmless acts and even the exercise of fundamental rights.



12.1 ACCESS TO JUSTICE IS DENIED. PERSECUTION OF LAWYERS.

In the aftermath of July 2016, 615 lawyers were arrested and 1,600 faced prosecution based on terrorism-related accusations. 450 lawyers have been convicted so far to a total 2786 years in jail, according to "The Arrested Lawyers Initiative"¹³¹. Among persecuted lawyers, some were presidents (or former presidents) of provincial bar associations. Fevzi Kayacan - President of the Konya Bar Association -, Orhan Öngöz - President of the Trabzon Bar Association -, Cemal Acar - President of the Siirt Bar Association -, Ismail Tastan - President of the Gumushane Bar Association- were arrested and unseated. The Presidents of the Aksaray and Kahramanmaraş Bar Associations, Levent Bozkurt and Vahit Bagci, respectively, and the former Presidents of the Yozgat Bar Association, Hacı Ibis and FahriAcikgoz, were detained for a certain time before they were released on bail.¹³²

¹²⁸Inter alia, Court's recent judgment of 15.09.2020 Application no 15064/12, in *Ragip Zarakolu v. Turkey*¹²⁸.

¹²⁹ ECtHR, 22 December 2020, application no. 14305/17, *Selahattin Demirtas v. Turkey* para 277.

¹³⁰CDL-AD(2016)002-e, Opinion on articles 216, 299, 301 and 314 of the Penal Code of Turkey, adopted by the Venice Commission at its 106th plenary session (Venice, 11-12 March 2016), available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)002-e)

¹³¹ Arrested Lawyers, Mass Prosecution of Lawyers in Turkey, 2016-2021, available at <https://arrestedlawyers.files.wordpress.com/2021/01/report-2016-2021.pdf>, page 8.

¹³² Arrested Lawyers, Mass Prosecution of Lawyers in Turkey, 2016-2021, cit. page 5.

On 15 September 2017, the İstanbul 37th High Assize Court, which had decided, at the first trial hearing held in the previous day, the release of 17 lawyers, ruled to re-detain 12 of them¹⁸³, including the Chairman of the Association of Progressive Lawyers (ÇHD)¹⁸⁴, Selçuk Kozagaçlı¹⁸⁵. Lately, 14 lawyers from the Progressive Lawyers Association - involved in “terrorism-related” cases - were sentenced to heavy prison sentences. These verdicts were upheld by the Supreme Court of Cassation on 15 September 2020.¹⁸⁶



Ebru Timtik, among the twelve lawyers re-arrested in September 2017, later died¹⁸⁷, after 238 days into a hunger strike in Silivri prison demanding a fair trial. Friends said Ebru Timtik weighed only 30 kilograms when she and her colleague Aytac Ünsal were transferred to hospital in July 2020. Timtik’s death came after the death in April 2020 and May 2020, following a hunger strike, of the music band Grup Yorum members HelinBölek¹⁸⁸, İbrahim Gökçek¹⁸⁹ and Mustafa Koçak¹⁴⁰, who were also demanding a fair trial and had been represented by lawyer Ebru Timtik. As Timtik supporters approached a northern Istanbul cemetery chanting “*Ebru Timtik is immortal*” and the “*murderous state will be held to account*,” helmeted police with shields fired volleys of teargas¹⁴¹,

Another prominent lawyer and human rights defender, Eren Keskin, was subject to various forms of intimidation and persecution. For almost thirty years, she has been fighting for the rights of

¹³³ Ahmet Mandacı, AycanÇiçek, Aytac Ünsal, BarkınTimtik, BehiçAşçı, Ebru Timtik, Egin Gökoğlu, Naciye Demir, ÖzgürYılmaz, SelçukKozagaçlı, SüleymanGökten, and Şükriye Erden.

¹³⁴ The ÇHD was established in 1974 and is a member of the European Association of Lawyers for Democracy and Human Rights (ELDHR). It was closed by a Government decree under a state of emergency declared in the aftermath of July 15, 2016 events.

¹³⁵ [SelçukKozagaçlı detained | Front Line Defenders](#)

¹³⁶ PACE Committee on the Honouring of Obligations and Commitments by the Member States of the Council of Europe (Monitoring Committee), 19 October 2020: *New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards.*

¹³⁷ [Ebru Timtik Dies After 238-Day Hunger Strike \(nypost.com\)](#)

¹³⁸ [HelinBölek of Turkish band GrupYorum dies after hunger strike | Ahval \(ahvalnews.com\)](#)

¹³⁹ [Turkish folk singer dies two days after pausing 'death fast' | Middle East Eye](#)

¹⁴⁰ [Hunger striker Mustafa Koçak dies in Turkish prison | Ahval \(ahvalnews.com\)](#)

¹⁴¹ [Hunger-striking Turkish lawyer dies — denied fair trial, EU says | News | DW | 28.08.2020](#)

Kurdish people, the LGBTI community, and women's rights. She is currently the co-chair of the Human Rights Association (IHD). In an interview¹⁴² she recently released to Turkey Tribunal¹⁴³, she summarised her story as follows: *“Throughout years, I have been detained, arrested, attacked (...). There are currently 122 criminal prosecutions and cases filed against me. The initial number was 143, but some of them were merged in time. These are mainly cases with allegations of insulting the President, membership to armed terror organisations, making propaganda of terror organisations, defamation of military and security forces of the state, etc. Many of these cases are pending whereas some verdicts with total imprisonment of 17 years and 2 months are about to be finalised at the highest appeal court (Yargıtay) stage. Besides, I have been fined to pay 450.000 Turkish Liras (appr. €50.000).”*

In January 2021, the former president of Diyarbakir Bar Association, Mehmet Emin Aktar was sentenced to six years and three months in prison under Art. 314 of Penal Code¹⁴⁴.

Arrest and detention of lawyers have created a climate of fear among colleagues, making it very difficult for detainees to have access to a defence lawyer. Some lawyers stated they were hesitant to take cases, particularly those of suspects accused of PKK or Gülen movement ties, because of fear of Government reprisal, including prosecution.

In particular, lawyers providing legal assistance face considerable obstacles in performing their work and are at risk of arrest, detention, and prosecution. Lawyers have been often targeted due to the identity or affinity of their clients. Lawyers representing individuals who are accused of terrorism offences have largely been associated with their clients' alleged political views. Hence, they found themselves consequently being prosecuted for the same or other related offences of which their clients were being accused.

In a report issued in March 2018¹⁴⁵, the Office of the United Nations High Commissioner for Human Rights confirmed that “OHCHR identified a pattern of persecution of lawyers representing individuals accused of terrorism offences”. International NGO Freedom House in its “2018 Freedom in the World” report confirms that *“in many cases, lawyers defending those accused of terrorism offences were arrested themselves.”*¹⁴⁶ Evidently, this pattern of oppression constitutes a significant obstacle to the enjoyment of the right to fair trial and access to justice.¹⁴⁷

The main accusations imputed to arrested lawyers, as said above, are membership to an armed terrorist organisation and forming and leading an armed terrorist organisation¹⁴⁸. Further, article 314 of the criminal code is the basis for an arbitrary interpretation of the situation of *“in flagrante*

¹⁴² <https://www.youtube.com/watch?v=6lHDb1qkwcl>

¹⁴³ Turkey Tribunal – Because silence is the greatest enemy of fundamental human rights

¹⁴⁴ Arrested Lawyers, Mass Prosecution of Lawyers in Turkey, 2016-2021, cit., page 5.

¹⁴⁵ Office of the United Nations High Commissioner for Human Rights, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East*, January – December 2017, para 9.

¹⁴⁶ USDOS 2019 report.

¹⁴⁷ OHCHR, “Report on the impact of the state of emergency on human rights in Turkey, including an update on the south-east”, paras. 49–57. See also CAT/C/TUR/QPR/5, para. 17; available at https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf

¹⁴⁸ New Report: Mass Prosecution of Lawyers in Turkey – The Arrested Lawyers Initiative

*delicto*¹⁴⁹, which is the only condition, under the Code of Lawyers (Law No 1136), to prosecute a lawyer in the absence of the authorization of the Justice Minister.¹⁵⁰

It goes without saying that persecution of lawyers runs against international standards on the right to defence. Under international law, an accused person must be granted prompt access to counsel in accordance with the right to communicate with counsel¹⁵¹ and as part of the right to a fair trial¹⁵². Such access may serve as a preventive measure against ill-treatment, coerced self-incrimination and “confessions” or other violations of the rights of the suspect¹⁵³.

In this connection, the UN Basic Principles on the role of lawyers require governments to ensure that lawyers: “(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”. These protection measures are crucial to providing effective legal assistance to clients¹⁵⁴.

Recommendation R(2000) 21 of the Council of Europe Committee of Ministers identifies the obligations of States take all necessary measures “to respect, protect and promote the freedom of exercise of profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights”.¹⁵⁵

12.2 ACCESS TO JUSTICE IS DENIED

PERSECUTION OF HRD

Beyond lawyers, the Government action has also targeted HRD from the civil society and national and international NGOs, notably in the face of a large number of arrests of activists or of the closure of associations or organisations. Public stigmatisation and recurrent use of bans of demonstrations and other types of gatherings further shrank the space left for organisations working on fundamental rights and freedoms. The map of civil society organisations has started to change significantly, with a more visible role given to the pro-government organisations¹⁵⁶.

¹⁴⁹ In terms of misinterpretation of this principle, the situation of lawyers in terms of being subject to detention is no different than that of judges and prosecutors. European Court of Human Rights (ECHR) in the cases of *Alparslan Altan v. Turkey* (judgment of 16 April 2019, application no. 12778/17) and *Baş v. Turkey*, (judgment of 3 March 2020, application no. 66448/18,), has elaborated this issue and concluded that the interpretation of in flagrante delicto was arbitrary and in clear violation of the Convention (see below chapter 13.3).

¹⁵⁰ <https://arrestedlawyers.files.wordpress.com/2021/01/report-2016-2021.pdf>

¹⁵¹ UN Basic Principles on the Role of Lawyers, principle 1.

¹⁵² ECtHR, judgment of 27.11.2018, application no. 36391/02, *Salduz v Turkey*, paras. 54–55.

¹⁵³ ICJ report, page 40.

¹⁵⁴ UN Basic Principles on the role of lawyers, principles 16 (b), 22.

¹⁵⁵ UN HRC, General Comment No. 31, the *Nature of the General Obligations Imposed on State Parties to the Covenant*, CCPR/C/21/Rev. 1/Add. 13, 26 May 2004, para. 8; ECtHR, judgment of 28 October 1998, application No. 23452/94, *Osman v. UK*.

¹⁵⁶ EC 2020 report, page 14.

More than 1,400 associations were closed based on emergency decrees. These associations were active in a wide spectrum of activities, such as children's rights, women's rights, cultural rights, and victims' rights, among others. 358 were allowed to reopen following a re-examination of their case¹⁵⁷.

Many rights-based organisations remained closed as part of the measures under the state of emergency and they have not been offered any legal remedy in relation to confiscations¹⁵⁸.

Particularly eloquent are trials and persecutions against representatives of NGOs well known and active in the protection of human rights.

The HRA (Human Rights Association) reported that, as of June 2019, its members had cumulatively faced more than 5,000 legal cases, mostly related to terror and insult charges since the group's establishment. The HRA also reported that executives of their provincial branches were in prison¹⁵⁹.

The HRFT (Human Rights Foundation of Turkey) reported its founders and members were facing 30 separate criminal cases. The harassment, detention, and arrest of many leaders and members of human rights organisations resulted in some organisations closing offices and curtailing activities and some human rights defenders self-censoring¹⁶⁰.

A criminal trial was launched against a group of 11 human rights defenders in Büyükada Island for alleged links to a terrorist organisation. Four of them, including Idil Eser, the former director of Amnesty International Turkey, were convicted in July 2020¹⁶¹.

Persecution of Taner Kılıç and Osman Kavala have a particular symbolic value.



Ex-Amnesty International Turkey chair Taner Kılıç was sentenced to six years and three months for membership to a terrorist organisation. The activist had been accused of seeking to wreak “chaos in society”, a similar charge to the one brought against protesters in Gezi demonstrations. “*This is an*

¹⁵⁷ EC 2020 report, page 17.

¹⁵⁸ EC 2020 report, pag. 14.

¹⁵⁹ USDOS 2019 report.

¹⁶⁰ USDOS 2019 report.

¹⁶¹ EC 2020 report, page 31

*outrage. Absurd allegations. No evidence. After three-year trial Taner Kiliç convicted for membership of a terrorist organisation”, Amnesty’s senior Turkey researcher Andrew Gardner tweeted.*¹⁶²

Osman Kavala, a prominent philanthropist and civil society leader was detained in 2017 on charges of “attempting to overthrow the government” for involvement during the 2013 Gezi Park protests. The Government also prosecuted on similar charges 15 others loosely associated with Kavala, including human rights activists and academics. Local and international human rights groups criticized the detentions and trials as politically motivated and lacking evidentiary justification¹⁶³. In June 2019, the court hearings started against Osman Kavala and 15 other members of civil society organisations. While the Constitutional Court rejected Osman Kavala's application to end his pre-trial detention in May 2019, the ECtHR ruled in favour of his immediate release in December 2019. In February 2020, the local court acquitted the defendants who were not abroad and ruled for the release of Osman Kavala. However, only a few hours later, he was rearrested in relation to another investigation connected to the 2016 coup attempt despite the lack of credible grounds.¹⁶⁴

Persecution of lawyers and human rights defenders, both associations and individuals, has severely narrowed the access to a remedy in the many cases of violation of fundamental rights.

12.3 ACCESS TO JUSTICE IS DENIED

INSURMOUNTABLE OBSTACLES TO DEFENCE, ESPECIALLY IN ANTI-TERROR CASES

The emergency decree gave prosecutors the right to suspend lawyer-client privilege and to deny access to a lawyer to detainees for up to five days¹⁶⁵ -later reduced to 24 hours¹⁶⁶-; to observe and record conversations between accused persons and their legal counsel; to seize documents given by the defendant to lawyers; to limit days and hours for the interview between defendant and lawyer. Article 6.1. of the Emergency Decree-Law no. 667, even, provides for the removal of the right for a lawyer to exercise advocacy¹⁶⁷.

In some cases, as in that of lawyer Ömer Kavili, the latter power was further abused by the peace judge who imposed a general and permanent ban on exercising advocacy, instead of banning the advocate from acting as a defence counsel in a specific case¹⁶⁸. The Human Rights Joint Platform

¹⁶² [Former Amnesty Turkey leaders convicted on terror charges | Turkey | The Guardian](#)

¹⁶³ USDOS 2019 report.

¹⁶⁴ EC 2020 report, page 31.

¹⁶⁵ Emergency Decree no. 668 of 28 July 2016.

¹⁶⁶ Emergency Decree no. 684 of 23 January 2017.

¹⁶⁷ “*Within the scope of the investigations performed, the defence counsel selected under Article 149 of the Criminal Procedure Code no. 5271 of 4 December 2004 or assigned under Article 150 thereof may be banned from taking on his/her duty if an investigation or a prosecution is being carried out in respect of him/her due to the offences enumerated in this Article. The Office of Magistrates' Judge shall render a decision on the public prosecutor's request for a ban without any delay. Decision on banning shall be immediately served on the suspect and the relevant Bar Presidency with a view to assigning a new counsel.*”

¹⁶⁸ Venice Commission, Opinion No. 852/2016, page 19. In the case 2016/5120 M., the Istanbul Criminal Peace Judgeship No. 2 decided that Mr Ömer Kavili no longer has the right to exercise advocacy. This decision first explains that Mr Kavili was the advocate for five persons accused of the crime of "being member of FETÖ/PYD armed terrorist organisation". The fact which justifies the prohibition to act as an attorney at law is that "there

reported that also the 24-hour attorney access restriction is arbitrarily applied. The HRA reported that in terrorism-related cases, authorities often did not inform defence attorneys of the details of detentions within the first 24 hours, as stipulated by law. It also reported that attorneys' access to the case files for their clients was limited for weeks or months pending preparations of indictments, hampering their ability to defend their clients¹⁶⁹.

In April 2019 Human Rights Watch reported that authorities frequently denied detainees access to an attorney in terrorism-related cases until security forces had interrogated the alleged suspect¹⁷⁰.

12.4. INSURMOUNTABLE OBSTACLES TO DEFENCE

LACK OF EVIDENCE SUPPORTING DETENTIONS AND CONVICTIONS

ESPECIALLY IN ANTI-TERROR CASES

Emergency decrees imposed additional restrictions to rights of defence.¹⁷¹

The Parliamentary Assembly of the Council of Europe declared to be extremely worried about the high number of individuals arrested and kept in custody waiting for indictment, without access to their files.¹⁷²

Emergency Decree-Law no. 667 allowed detention without hearing, based on the case-file.¹⁷³

According to the EC 2020 report, indictments often reflected allegations that are not supported by credible evidence. The lack of established links between the evidence and the alleged crime is one of the many elements that raise serious concerns. In some cases, the evidence presented by the defence was not included in the court's assessment. In many cases, access to justice and the right of defence was limited due to the use of confidentiality decisions. In parallel, details of prosecution

are investigation files numbered 2014/104753 and 2016/7933 within our Chief Public Prosecutor's Office". In the decision, it is not even explicitly stated against whom these files are directed (the Government Opinion explains that they are directed against Mr. Kavili) and there is no indication relating to the content of the files. The very fact that according to the prosecutor a file exists is used to justify the decision on the merits. Besides, instead of banning the advocate from acting as a defence counsel in a specific case as foreseen in Article 6.1.g, the peace judge imposed a general and permanent ban on exercising advocacy. There is not a single argument of reasoning to justify such a drastic measure. The Government Opinion insists that "Offences against the security of the State, the constitutional order and the functioning of this order listed in the Volume Two, Chapter Four of the Turkish Criminal Code, are also among the offences that constitute an impediment to attorneyship pursuant to Article 5 titled 'impediments to admission into attorneyship' of the Attorneyship Law" and "This authority is only concerned with criminal courts, and there is no restriction on lawyers to exercise their profession in civil courts. The right to exercise advocacy of a lawyer who has been investigated for the mentioned offences shall not be automatically banned and shall be decided upon, where necessary after the separate evidence assessment has been made for each file." It seems that in practice, at least in the case at hand, the peace judgeships do not apply such limits.

¹⁶⁹ USDOS 2019 report.

¹⁷⁰ USDOS 2019 report.

¹⁷¹ EC 2020 report, page 6.

¹⁷² Assembly debate on 25 April 2017 (12th Sitting), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, cit..

¹⁷³ Venice Commission, Opinion No. 852/2016, page 19.

files continued to appear in the media, which resulted in smear campaigns in some cases and violated the presumption of innocence¹⁷⁴.

In most cases concerning arrested Turkish judges and prosecutors, the national judicial authorities adopted a broad interpretation of the offences provided for in Article 314 §§ 1 and 2 of the Criminal Code. As the Venice Commission observes in its Opinion dated 15 March 2016, in applying Article 314 of the Criminal Code, the domestic courts often tended to decide on a person's membership of an armed organisation based on very weak evidence¹⁷⁵. The exercise of rights, such as voting in the HSYK 2014 elections or supporting individual candidates in the elections, being a member of the executive of YARSAV or having worked at higher positions in the judiciary or Ministry of Justice, or even the use of a phone application were considered sufficient evidence for establishing a link between the defendant and an armed organisation. The national courts did not take into account the case-law of the Turkish Court of Cassation, according to which the membership to a terrorist organisation implies the evidence of "continuity, diversity and intensity" of acts within the structure of the organisation.

Secret witnesses were frequently used, particularly in cases related to national security.¹⁷⁶ Attorneys and the accused had no access or ability to cross-examine and challenge in court secret witnesses.¹⁷⁷

In a letter¹⁷⁸ penned and publicised by the Special Rapporteurs of the OHCHR, it has been once again voiced that the Anti-Terror Law undermines the right of the accused to present his or her defence. In the said letter, article 14 of the Anti-Terror Law has been criticised as it foresees that the identity of witnesses providing information against the accused is not required to be disclosed. This is explicitly against the right of the defendants, as provided by Article 14 (3)(e) of the International Covenant on Civil and Political Rights.

12.5 ACCESS TO JUSTICE IS DENIED

THE DISRUPTION OF THE RIGHT TO A FAIR PUBLIC TRIAL

The right to a fair public trial is protected by the Turkish Constitution.

¹⁷⁴ EC 2020 report, page 25.

¹⁷⁵ CDL-AD(2016)002-e, Opinion on articles 216, 299, 301 and 314 of the Penal Code of Turkey, adopted by the Venice Commission at its 106th plenary session (Venice, 11-12 March 2016), available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)002-e)

¹⁷⁶ USDOS 2019 report. For example, a court sentenced university student Baran Baris Korkmaz to 59 years in prison for membership in an illegal organisation based on testimony from a secret witness. Police in Diyarbakir denied any knowledge of the secret witness, identified by a pseudonym in court documents, despite a court request for information regarding the secret witness.

¹⁷⁷ USDOS 2019 report.

¹⁷⁸ Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Fionnuala NíAoláin); the Working Group on Arbitrary Detention (Vice-Chair Elina Steinerte); the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Irene Khan); the Special Rapporteur on the rights to freedom of peaceful assembly and association (Clement Nyaletsossi Voule); the Special Rapporteur on the situation of human rights defenders (Mary Lawlor); and the Special Rapporteur on the independence of judges and lawyers (Diego García-Sayán); Available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25482>

Bar associations and HRD report that increasing executive interference with the judiciary and actions taken by the Government through the state of emergency provisions have severely jeopardized this right¹⁷⁹.

The law provides a presumption of innocence of defendants and the right to be present at their trial, although in several high-profile cases, defendants increasingly appeared via video link from prison, rather than in person.¹⁸⁰ Individuals from the southeast were increasingly housed in prisons or detention centres far from the location of the alleged crime and appeared at their hearing via video link systems too. Some human rights organisations reported that hearings sometimes continued in the defendant's absence when video links purportedly failed¹⁸¹

Courtroom proceedings are, as a rule, public except for cases involving minors as defendants. The state increasingly used a clause allowing closed courtrooms for hearings and trials related to security matters, such as those related to "crimes against the state."¹⁸² Court files, which contain indictments, case summaries, judgments, and other court pleadings, were closed except to the parties to a case, making it difficult for the public, including journalists and watchdog groups, to obtain information on the progress or results of a case. In some politically sensitive cases, judges restricted access to Turkish lawyers only, limiting the ability of domestic or international groups to observe some trials.

12.6 ACCESS TO JUSTICE IS DENIED

MISUSE OF PRE-TRIAL DETENTION

Rule of law advocates noted that broad use of pre-trial detention¹⁸³ had become a form of summary punishment, particularly in cases that involved politically-motivated terrorism charges. According to Human Rights Watch, one-fifth of the prison population (approximately 50,000 of 250,000 inmates) were charged or convicted of terrorism-related offences¹⁸⁴.

According to international standards and the ECtHR case law, even where the national law has been complied with, the deprivation of liberty cannot be considered lawful if domestic law allows for excessive detention in the concerned case¹⁸⁵. Pre-trial detention should, therefore, be limited to those circumstances where it is strictly necessary for the public interest, but also the continuing detention must be justified, as long as it lasts, by adequate grounds of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty.

¹⁷⁹ USDOS 2019 report.

¹⁸⁰ USDOS 2019 report.

¹⁸¹ USDOS 2019 report.

¹⁸² USDOS 2019 report.

¹⁸³ As regards preventive detention in general, a distinction can be drawn between detention following initial police arrest (art. 5.1. ECHR) on the one hand, and detention following a judicial decision that a person should remain in custody¹⁸³(art. 5.3. ECHR), on the other.

¹⁸⁴ USDOS 2019 report.

¹⁸⁵ ECtHR, *Scott. V. Spain*, decision of 18 December 1996.

Under the state of emergency, authorities could detain persons without charge for up to 14 days. Under anti-terror legislation adopted in 2018, the government may detain without charge (or appearance before a judge) a suspect for 48 hours for "individual" offences and 96 hours for "collective" offences. These periods may be extended twice with the approval of a judge, amounting to six days for "individual" and 12 days for "collective" offences. This is in contrast with the international standard about police custody. The protection afforded by Article 5 of the Convention is relevant here. The ECtHR accepts that protecting the State's interest is a legitimate goal but that this cannot justify that judicial control is not prompt enough¹⁸⁶.

Human rights organisations raised concerns that holding individuals in police custody for up to 12 days without charge increased the risk of mistreatment and torture. There were numerous accounts of persons, including foreign citizens, held in detention beyond 12 days awaiting formal charges. For example, child rights activist Yigit Aksakoglu was held without charge for four months before prosecutors included him in the larger indictment for those involved in the 2013 Gezi Park protests. According to media reports, more than 50,000 people were in pre-trial detention in the country in 2019¹⁸⁷.

Detainees awaiting or undergoing trial prior to the state of emergency had the right to a review in person with a lawyer before a judge every 30 days to determine if they should be released pending trial. Under a law passed in July 2018, in-person review occurs once every 90 days with the 30-day reviews replaced by a judge's evaluation of the case file only¹⁸⁸. Bar associations noted this element of the law was contrary to the principle of habeas corpus and increased the risk of abuse since the detainee would not be seen by a judge on a periodic basis¹⁸⁹.

Trials sometimes began years after indictment, and appeals could take years more to reach a conclusion¹⁹⁰. This practice runs contrary to article 5§3 of ECHR that imposes special diligence on prosecutors in bringing the case to trial if the accused is detained¹⁹¹ and implies that a detained person is entitled to having the case given priority and conducted with a particular expedition. To this

¹⁸⁶ ECtHR, judgment of 12 December 1996, application no 21987/93, *Aksoy v. Turkey*, para. 66. "The Court recalls its decision in the case of *Brogan and Others v. the United Kingdom* (judgment of 29 November 1988, Series A no. 145-B, p. 33, para. 62), that a period of detention without judicial control of four days and six hours fell outside the strict constraints as to time permitted by Article 5 para. 3 (art. 5-3). It clearly follows that the period of fourteen or more days during which Mr. Aksoy was detained without being brought before a judge or other judicial officer did not satisfy the requirement of "promptness".

¹⁸⁷ USDOS 2019 report.

¹⁸⁸ The persistence of a strong suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However, after a certain lapse of time, it no longer suffices other grounds must exist to justify the continuation of deprivation of liberty.

¹⁸⁹ USDOS 2019 report.

¹⁹⁰ USDOS 2019 report.

¹⁹¹ ECtHR, judgment of 26 June 1991, application no.12369/86, *Letellier v. France*, para 35; judgment of 27 August 1992, application No 12850/87, *Tomasi v. France*, para 84; judgment of 27 November 1991, applications nos. 12325/86 and 14992/89, *Kemmache v. France*, para 45.

respect, the ECtHR has held that the duration of pre-trial detention must not exceed a reasonable time¹⁹².

In cases of alleged human rights violations, and cases of long duration of pre-trial detention, detainees have the right to apply directly to the Constitutional Court for redress while their criminal case is proceeding. Nevertheless, a backlog of cases at the Constitutional Court slowed proceedings, preventing expeditious redress¹⁹³.

The perceived influence of the executive over the decisions and the jurisdiction and practice of ‘criminal judges of peace’ continued raising serious concerns. The criminal judgeships of peace were established by Law no. 6545, which entered into force on 28 June 2014. Concerns particularly relate to their extensive powers, such as to issue search warrants, detain individuals, block websites or seize property, with considerable financial consequences; and to the fact that objections to their decisions are not reviewed by a higher judicial¹⁹⁴ body but by another single-judge institution. Their rulings increasingly diverge from the European Court of Human Rights case-law and rarely provide sufficiently individualised reasoning¹⁹⁵.

This incapacity of the criminal justice system (including the Constitutional Court in the context of the individual application complain) is particularly evident in the case of detention of journalists and media professionals. The criminal justice system continued to allow journalists to be prosecuted and imprisoned on extensive charges of terrorism, insulting public officials, and/or allegedly committing crimes against the state and the government. Indictments often failed to establish direct and credible links with the alleged offence and, in some high-profile cases, the arguments provided by the defendants were not taken into consideration by the court¹⁹⁶. According to the EC, in 2020 there were still an estimated 120 journalists in prison. Threats and physical attacks on journalists and media organisations due to their work continued in the years following the attempted *coup d’état* up to the date.

¹⁹² By way of example, the Court has found excessive periods of pre-trial detention lasting from two and a half to nearly five years ECtHR, judgment of 25 April 2000, application no.31315/96, *Punzelt v. Czech Republic*; judgment of 6 November 2003, application no. 60851/00, *Pantano v. Italy*.

¹⁹³ USDOS 2019 report.

¹⁹⁴ Venice Commission, Opinion No. 852/2016, page 14. On this point, the Venice Commission concluded that: “it is not a general human right to litigate to an appellate court. However, the lack of an appeal to a superior court of general jurisdiction exacerbates the difficulties that were identified above regarding the dangers of a specialist court; it also removes the common safety-net of an appeal to an independent superior court that is present in most European systems. The Venice Commission emphasised in its Opinion on Articles 216, 299, 301, and 314 of the Criminal Code of Turkey that the highest courts’ guidance is very important for the lower courts in the interpretation and implementation of human rights standards in their case-law. It is evident that an appeal procedure before a superior court would provide for better guarantees to the interested parties compared to an appeal procedure before a same level judgeship”.

¹⁹⁵ Venice Commission, Opinion No. 852/2016, page 18. “Already in its Opinion on Law no. 5651 on the regulation of publications on the Internet and combating crimes committed by means of such publication (“the Internet Law”) the Venice Commission, had stated that “[s]ome decisions of the peace judgeships which the Venice Commission has been able to see during the meetings in Ankara, do not provide for any motivation and reasons to justify the interference with the right to freedom of expression. The Venice Commission does not have at its disposal sufficient examples of judgeship decisions. However, it reiterates the crucial importance of the statement of reasons in a court decision in order not only to respect the principle of proportionality under Article 10 ECHR but also to satisfy the requirements of a fair trial under Article 6 ECHR.”

¹⁹⁶ EC 2020 report, page 34.

At this point, it is worth mentioning that the Working Group on Arbitrary Detentions (WGAD) of United Nations Human Rights Council, in its recent Opinion¹⁹⁷, has issued the following statement: *“In the past three years, the Working Group has noted a significant increase in the number of cases brought to it concerning arbitrary detention in Turkey. The Working Group expresses its concern over the pattern that all these cases follow and recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity”*.

13. JUDICIAL REMEDIES ARE INEFFECTIVE



13.1 JUDICIAL REMEDIES ARE INEFFECTIVE.

THE DECISIONS TO RELEASE DETAINEES ARE NOT ENFORCED.

Representatives of the Executive and legislative branches continued to publicly comment on ongoing judicial cases, disregarding the presumption of innocence of the suspects.

Several court rulings favourable to prominent defendants, including journalists, HRD, politicians were swiftly reversed by another or even by the same court, following comments from the Executive¹⁹⁸.

Some significant examples are reported below by accredited sources of information.

- Twenty-one journalists, who were released on 1st April 2017 by the Istanbul 25th High Criminal Court, after 10-months in pre-trial detention because of accusation for membership to the Gülen movement, were rearrested at the exit gate of the Silivri Prison. They were re-arrested because a prosecutor appealed against their release, and a new investigation was hastily launched. When the release decision was announced, pro-

¹⁹⁷A/HRC/WGAD/2020/51), paragraph 102

¹⁹⁸ EC 2018 report., page 10

government figures, including journalists, immediately launched a campaign on social media, which demanded their re-arrest¹⁹⁹.

- Many Kurdish MPs, including Ayhan Bilgen (September 2017)²⁰⁰, Nursel Aydoğan (May 2017)²⁰¹, Ferhat Encü (February 2017)²⁰², Besime Konca²⁰³ (May 2017), were re-arrested shortly after their release by the court.
- Enis Berberoglu, a prominent journalist and a CHP Deputy, remained in prison, despite a court decision that, on 14 July 2017, quashed his conviction. The chief of the court that quashed the conviction was himself banished to another court. In February 2018, Enis Berberoglu was convicted by Chamber no2 of the Istanbul Regional Court of Justice to 5 years and ten months imprisonment for publishing images of the halting of intelligence agency trucks²⁰⁴.
- On 2nd May 2017, Aysenur Parıldak, a 27-year old Turkish journalist, was re-arrested only a few hours after an Ankara court released her from her nine-month pre-trial detention²⁰⁵.
- In November 2019, Ahmet Altan, a Turkish journalist and author, was detained a week after the Istanbul Regional Appeal Court released him²⁰⁶.
- Cahit Nakıboğlu, a 70-year-old businessman who spent almost eighteen months in jail as part of the government's post-coup crackdown on the Gülen movement, was re-arrested only a day after he was released from prison, and he was put under house arrest²⁰⁷.
- Taner Kılıç, who is the Chair of Amnesty International's Turkey branch, was re-detained even before his release from Izmir Sakran Prison and was then rearrested by the same court which had decided to release him. Taner Kılıç was taken into custody on 6th June 2017 and was subsequently arrested by the Izmir Peace Criminal Judgeship on 9th June 2017. On 31st January 2018, the Istanbul 35th High Penal Court decided to release him at the trial's third hearing. However, after the prosecutor's appeal against the court's decision, his release procedure was frozen, and Mr. Kılıç was re-detained by prison guards, taken into the courthouse, and re-arrested by the same court that had decided to release him only hours before²⁰⁸.

¹⁹⁹ Stockholm Center for Freedom. 21 Journalists' Re-Arrest Comes After Outcry Among Pro-Gov't Colleagues. stockholmcf.org/21-journalists-re-arrest-comes-after-outcry-among-pro-govt-colleagues/

²⁰⁰ <https://stockholmcf.org/turkish-court-rules-re-arrest-of-pro-kurdish-hdps-spokesperson-ayhan-bilgen/>

²⁰¹ <https://www.turkishminute.com/2017/05/02/arrest-warrant-issued-for-newly-released-hdp-deputy/>

²⁰² <https://turkeypurge.com/8023-2>

²⁰³ <https://stockholmcf.org/arrest-warrant-issued-for-released-hdp-deputy-konca/>

²⁰⁴ [CHP's EnisBerberoglu sentenced to 5 years and 10 months' imprisonment \(cumhuriyet.com.tr\)](https://cumhuriyet.com.tr)

²⁰⁵ Stockholm Center for Freedom. Turkish Journalist Under Suicide Risk Re-Arrested A Few Hours After Release. stockholmcf.org/journalist-parildak-re-arrested-before-leaving-prison-following-her-release-by-court/

²⁰⁶ <https://ahvalnews.com/turkish-courts/turkish-journalist-ahmet-altan-detained-days-after-release>

²⁰⁷ Stockholm Center for Freedom. 70-Year-Old Turkish Businessman Re-Arrested After Erdoğan's Henchman Reacted To His Release. <https://stockholmcf.org/70-year-old-turkish-businessman-re-arrested-after-erdogans-henchman-reacted-to-his-release/>

²⁰⁸ AfÖrgütü. [TanerKılıç'ın tahliye kararının ardından gerçekleşen hukuki süreç. https://www.amnesty.org.tr/icerik/taner-kilic-in-tahliliye-kararinin-ardindan-gercekleşen-hukuki-süreç](https://www.amnesty.org.tr/icerik/taner-kilic-in-tahliliye-kararinin-ardindan-gercekleşen-hukuki-süreç)

- The İstanbul 37th High Assize Court, which had decided, at the first trial hearing, the release of 20 lawyers, ruled to re-detain 12 of them, including the Association of Progressive Lawyers' (ÇHD) Chairman, Selçuk Kozağaçlı²⁰⁹.
- Metin İyidil, a military officer, was detained a day after the Ankara Regional Appeal Court had acquitted and released him²¹⁰.
- On 18th February 2020, Osman Kavala was acquitted on charges related to the "Gezi Protest" trials but, on the very same day, he was re-arrested upon the charge that he was involved in the attempted coup in 2016, and also with espionage²¹¹.

In almost all cases of re-arrest, decisions to re-arrest have been triggered either by an AKP politician's statement or by a message from a pro-Erdoğan journalist posted online.

13.2 THE TURKISH CONSTITUTIONAL COURT'S DECISIONS ARE INEFFECTIVE

THE ALTAN AND ALPAY CASES

Art. 153 of the Turkish Constitution establishes that decisions of the Constitutional Court are binding over legislative, executive and judicial organs, administrative authorities and persons and corporate bodies.

Nevertheless, in high-profile cases, the authority of the Constitutional Court was ignored by court decisions.

The case of journalists Sahin Alpay and Mehmet Altan is of particular significance in this regard.

On 11th January 2018, the Turkish Constitutional Court ruled that decisions to arrest journalists Sahin Alpay and Mehmet Altan were unlawful. On the same day, the İstanbul 13rd and 26th High Penal Courts refused to release Altan and Alpay, because the decisions of the CC had not yet been published in the Official Gazette. On 14th January 2018, the İstanbul 13th and 26th High Penal Courts refused to release Altan and Alpay again, on the grounds that the CC had exceeded its authority. On 15th January 2018, the İstanbul 14th and 27th High Penal Courts refused the objections of Altan and Alpay's lawyers²¹²

The European Court of Human Rights examined the applications of each of the two journalists and ruled on 20 March 2018 that the Turkish authorities had violated their rights to liberty and security and their freedom of expression. The ECtHR also supported the reasoning and the role of the Turkish Constitutional Court and criticised the lower court for not having conformed with the Constitutional Court ruling of January 2018²¹³.

²⁰⁹ <https://arrestedlawyers.org/2018/09/16/turkey-rearrests-12-lawyers-a-day-after-their-release/>

²¹⁰ <https://ipa.news/2020/01/19/general-re-arrested-as-erdogan-fumes-at-judges-for-freeing-him/>

²¹¹ <https://www.hrw.org/news/2020/02/20/turkey-prominent-civic-leader-rearrested-after-acquittal>

²¹² The Arrested Lawyers Initiative: <https://arrestedlawyers.org/2018/01/16/lawyers-to-alpay-altan-say-constitutional-court-rulings-are-binding-on-all/>

²¹³ EC 2018 report, page 25.

13.3 THE EUROPEAN COURT OF HUMAN RIGHTS' DECISIONS ARE INEFFECTIVE. THE CASES OF ALPARSLAN ALTAN AND HAKAN BAŞ

Following the lifting of the state of emergency, in August 2018 Turkey revoked its derogations to the European Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR). However, the full monitoring procedure re-opened by the Parliamentary Assembly of the Council of Europe in April 2017 continues.

Nevertheless, in a decision adopted on 4 June 2020, referring to the ECtHR's *Hakan Baş v. Turkey* ruling (similarly applied to the Alparslan Altan case), the Constitutional Court refused to implement the European Court ruling, invoking the national margin of discretion.

- In the case *Baş v. Turkey*, (Grand Chamber judgment of 3 March 2020, application no. 66448/18)²¹⁴, connected to the attempted coup of 15 July 2016 and regarding Mr. Hakan Baş, a first instance court judge, the European Court found that his arrest was illegal because of different reasons: lack of reasonable suspicion that he had committed an offence (Art 5 § 1 (c) of the Convention); the necessary procedure for investigation and arrest of judges was not followed (Art 5 § 1 of the Convention); state of emergency and derogation from human rights conventions is not "carte blanche" for arbitrary arrests (Art. 15 of the Convention); right to a speedy review of the lawfulness of detention (of Art. 5 § 4 of the Convention) was breached by the time of 14 months during which the applicant had not appeared in person before a judge.

Similarly, in the case of Alparslan Altan, the former Deputy Chief Justice of the Turkish Constitutional Court, who was arrested hours after the coup attempt and detained by the Ankara Criminal Peace Judgeship, the European Court of Human Rights, on 16th April 2019²¹⁵, decided that his detention was unlawful²¹⁶. The case was also connected to the attempted coup of 15 July 2016. Since then Alparslan Altan has not been released and, on the contrary, he has been sentenced to eleven years in prison²¹⁷.

In both cases, the Court found a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights as regards the unlawfulness of the applicants' initial pre-trial detention and on account of lack of reasonable suspicion that, at the time of their initial pre-trial detention, they had committed a criminal offence. Having examined the case-law of the Court of Cassation (a Yargıtai leading judgment of 10 October 2017) which finds a mere suspicion of membership of a criminal organisation as sufficient to characterise the element of *in flagrante delicto*, the Court concluded that the national courts' extension of the scope of the concept of *in flagrante delicto* was not only problematic in terms of legal certainty but also appeared manifestly unreasonable

²¹⁴ [BAS v. TURKEY \(coe.int\)](https://www.coe.int/en/web/european-court-of-human-rights/cases-and-judgments/bas-v-turkey)

²¹⁵ ECtHR, judgment of 16 April 2019, application no. 12778/17, *Alparslan Altan v. Turkey*, <http://hudoc.echr.coe.int/eng?i=002-12446>

²¹⁶ ECtHR, *Alparslan Altan v. Turkey*, cit..

²¹⁷ <https://www.turkishminute.com/2019/03/06/former-deputy-chief-justice-given-11-year-jail-sentence-over-gulen-links/>

The Turkish Constitutional Court, however, in an inadmissibility decision²¹⁸ adopted on 4 June 2020 and related to the concept of *in flagrante delicto*, referring to the ECtHR's Hakan Baş v. Turkey ruling, determined that, while the ECtHR rulings remain binding for Turkey, the interpretation of Turkish laws on the imprisonment of members of the judiciary pertains to the Turkish courts, which are "much better positioned than the ECtHR for interpreting the provisions of the Turkish law." This decision has made the effectiveness of the ECtHR case-law highly questionable in Turkey as the Constitutional Court openly refused to comply with ECHR's Alparslan Altan and Hakan Bas judgments.

13.4 THE EUROPEAN COURT OF HUMAN RIGHTS' DECISIONS ARE INEFFECTIVE: THE CASES OF SELAHATTIN DEMIRTAŞ AND OSMAN KAVALA



In two further high-profile decisions of the ECtHR against Turkey, regarding detainees, the enforcement of the European Court ruling was ignored by regular Turkish courts.

Selahattin Demirtaş, who was the Co-Chair of the pro-Kurdish Party, HDP, was detained on 4th November 2016. On 20th November 2018, the ECtHR decided that Turkey had violated Article 18 of the Convention, in conjunction with Article 5 § 3, and therefore the detention was unlawful²¹⁹. However, Mr. Demirtaş was not released. On 21st September 2019, the Turkish President, Recep Tayyip Erdoğan, said his Government would not allow the release of Selahattin Demirtaş. *"This nation does not forget, and will not forget, those who invited people to the streets and then killed 53 of our children in Diyarbakır. We have been following, will follow, this issue, until the end. We cannot release those people. If we release them, our martyrs will hold us accountable"*²²⁰ said Erdoğan. On the very same day, Selahattin Demirtaş was detained under a new investigation to prevent his release from the ongoing detention. The ECtHR held a Grand Chamber hearing in September 2020 and issued a final decision on 22 December 2020²²¹. The ECtHR Grand Chamber finally ruled that Demirtaş' four years in prison violated his rights under five different categories,

²¹⁸ *Yıldırım Turan* [GK], B. No: 2017/10536, 4/6/2020, available at: [T.C. Anayasa Mahkemesi](http://www.tcm.gov.tr/Anayasa-Mahkemesi)

²¹⁹ ECtHR, judgment of 20 November 2018, application no. 14305/17, *Demirtaş v Turkey*, <http://hudoc.echr.coe.int/eng?i=001-187961>

²²⁰ <https://ahvalnews.com/recep-tayyip-erdogan/turkeys-erdogan-signals-continued-imprisonment-former-hdp-leaders>

²²¹ ECtHR, Grand Chamber, judgment of 22 December 2020, application no. 14305/17, *Selahattin Demirtaş v. Turkey*.

including freedom of expression and right to liberty. In its judgment dated 22 December 2020, the Court observed, in line with the Venice Commission's findings in its Opinion on Articles 216, 299, 301 and 314 of the Criminal Code²²², that the Code does not define the concepts of "armed organisation" and "armed group"²²³. On 23 December 2020 the Minister of Interior, Suleyman Soylu declared: "Demirtaş is a terrorist. The European Court of Human Rights ruling, whatever the reason, is meaningless"²²⁴. Mr. Demirtaş was not released following the ECtHR Grand Chamber decision. In January 2021 Mr. Selahattin Demirtaş filed another individual application to Turkey's Constitutional Court, demanding the implementation of the European Court of Human Rights ruling for his immediate release²²⁵.

Osman Kavala, a prominent civil society leader, was detained in October 2017. On 10th December 2019, the ECtHR decided that a violation of Articles 5.1 (right to liberty and security), 5.4 (right to a speedy decision on the lawfulness of detention) and 18 (limitation on use of restrictions on rights) of the ECHR occurred. The Court called for the immediate release of Osman Kavala. The Court found that the authorities were unable to demonstrate that the applicant's initial and continued pre-trial detention had been justified by reasonable suspicions based on an objective assessment of the acts attributed to him.²²⁶ However, on 24 December 2019 and 28 January 2020, the trial court (the Istanbul 30th Heavy Penal Court) refused to release Mr. Kavala²²⁷. Furthermore, on 18th February 2020, Osman Kavala was acquitted on charges related to the "Gezi Protest" trials but, on the very same day, he was re-arrested upon the charge that he was involved in the attempted coup in 2016, and also with espionage²²⁸. The European Court's ruling became final on 12 May 2020 as it rejected the Turkish Government's request for referral. Osman Kavala was not released.

14. INQUIRY COMMISSION ON THE STATE OF EMERGENCY MEASURES IS INEFFECTIVE

On 23 January 2017, the Turkish Council of Ministers issued Decree-Law no. 685 establishing a "Commission to Review the Actions Taken under the Scope of the State of Emergency"²²⁹.

²²² CDL-AD(2016)002-e, Opinion on articles 216, 299, 301 and 314 of the Penal Code of Turkey, adopted by the Venice Commission at its 106th plenary session (Venice, 11-12 March 2016), available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)002-e)

²²³ The qualifying criteria for a criminal organisation have been set out in the case-law of the Court of Cassation: such an organisation has to have at least three members; there should be a hierarchical connection between the members; they should have a common intention to commit crimes; the group has to display continuity in time; and the structure of the group, the number of its members, its tools and its equipment should be appropriate for the commission of the crimes envisaged. Regarding "membership of an armed organisation", the Turkish Court of Cassation takes into account the continuity, diversity, and intensity of the acts attributed to the suspects to determine whether those acts prove that the suspect had an "organic relationship" with the organisation or whether the acts may be considered to have been committed knowingly and willingly within the "hierarchical structure" of the organisation.

²²⁴ ECHR ruling on 'terrorist' HDP leader is 'meaningless' (aa.com.tr)

²²⁵ Jailed Kurdish politician Selahattin Demirtaş appeals again for his release | Ahval (ahvalnews.com)

²²⁶ ECtHR, judgment of 10.12.2019, application no. 28749/18, *Kavala v. Turkey*, <http://hudoc.echr.coe.int/eng?i=001-199515>

²²⁷ <https://www.reuters.com/article/us-turkey-security-gezi/turkey-keeps-businessman-in-jail-despite-european-court-release-call-idUSKBN1YS001>

²²⁸ <https://www.hrw.org/news/2020/02/20/turkey-prominent-civic-leader-rearrested-after-acquittal>

²²⁹ Article 3.1, Decree-Law no. 685, Published in the Official Gazette no. 29957, dated 23 January 2017.

The Council of Ministers called the establishment of the Commission a "*tangible example of Turkey's commitment to the Council of Europe's standards*" and declared that the Commission was "*established with the aim to creating an effective domestic remedy for those who were affected by the measures under the decree-laws.*"²³⁰

The Commission has the competence to review dismissals, closure of associations, annulment of ranks of retired personnel ordered through decree-laws; in short, it was tasked to review hundreds of thousands of potential violations of fundamental rights, and to establish redress. However, it was not given any competence on decisions adopted by an administrative act under rules contained in the decrees, including dismissals of judges and prosecutors²³¹.

It is here useful to recall the characters of an effective domestic remedy in the light of international standards, as highlighted above: an effective remedy should be accessible and should be provided by an independent and impartial judicial body and should prompt and effective in practice as well as in law, and must not be unjustifiably hindered by the acts of State authorities²³². It further must be enforceable and lead to cessation and reparation for the human rights violation concerned²³³.

The UN Special Rapporteur on freedom of expression, who visited Turkey after the establishment of the Commission, expressed concern "*about the narrow scope of the Commission's mandate and its lack of independence and impartiality*"²³⁴. In 2017, the UN Special Rapporteur on torture expressed the view that "*the composition of the Commission may raise legitimate questions regarding its independence and impartiality, given that the majority of its members will be appointed by the Government. ... Concerns have also been raised that the Commission may be considered as an additional domestic remedy that has to be exhausted before individuals or institutions can have their cases reviewed by the Constitutional Court (and possibly later by the European Court of Human Rights)*"²³⁵. The Parliamentary Assembly of the Council of Europe²³⁶ and the Office of the UN High Commissioner for Human Rights have, similarly, expressed concern for the lack of independence and impartiality of the Commission members and the unfairness of its procedure.

²³⁰ Information Note Concerning the Inquiry Commission on the State of Emergency Measure.

²³¹ Decree-Law no. 685, published in the Official Gazette no. 29957, dated 23 January 2017, article 2.

²³² ECtHR, judgment of 11 December 2008, application no 42502/06, *Muminov v. Russia*, para. 100; judgment of 19 June 2008, application no. 20745/04, *Isakov v. Russia*, para. 136; judgment of 8 July 2010, application no. 1248/09, *Yuldashev v. Russia*, paras. 110-111; judgment of 10 June 2010, application no. 53688/08, *Garayev v. Azerbaijan*, paras. 82 and 84.

²³³ ICJ report, page 11.

²³⁴ *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his visit to Turkey*, UN Doc. A/HRC/35/22Add.3, 21 June 2017, para. 40.

²³⁵ *Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment on his mission to Turkey*, UN Doc. A/HRC/37/50/Add.1, 18 December 2017, para 84.

²³⁶ *State of emergency: proportionality issues concerning derogations under article 15 of the European Convention on Human Rights*, PACE report, Doc. No. 14506, 27 February 2018, para 92. "Members come from the same authorities which dismissed the officials in question, putting in doubt their independence and impartiality; its members are automatically dismissed should a terrorism-related investigation be opened concerning them – given the very broad scope of antiterrorism law in Turkey and the potential for its arbitrary abuse, this places the members' positions on the Commission at the mercy of the authorities; the secretariat of the Commission, responsible for administrative and preparatory work, is appointed by the Prime Minister, putting its independence in question; the basis of contested decisions is unclear, making them difficult to contest; there is no possibility of adversarial proceedings and there are no hearings, making it difficult for applicants to articulate their cases; the workload, working methods (each decision requires the participation of four of the Commission's seven members) and time-frame available would seem to make it almost impossible "to give individualised treatment to all cases", as intended by the Venice Commission."

More recently, the EC has observed the lack of institutional independence, lengthy review procedures, the absence of sufficiently individualised criteria, and the absence of a proper means of defence cast serious doubt over the Inquiry Commission on the State of Emergency Measures' ability to provide an effective remedy against dismissals²³⁷.

In 2020, the Inquiry Commission stated it reviewed individually all complaints related to more than 150,000 dismissals through emergency decrees. As of the end of March 2020, 126,300 applications had been made. Of these, the Inquiry Commission had reviewed 105,100 and only 11,200 had led to a reinstatement (8,86% rate), while 93,600 complaints had been rejected. 57 reinstatement decisions were linked to the re-opening of organisations that were closed after the coup attempt. At that time, there were 21,200 applications pending.

The EC has considered that the rate of processing of applications raises concerns as to whether each case is being examined individually. There are strong concerns about a lack of respect for the rights of defence of those dismissed and an assessment procedure in line with international standards. Since there were no hearings, there was a general lack of procedural rights for applicants, and decisions were taken based on the written files related to the original dismissal, all of which called into question the extent to which the Inquiry Commission is an effective judicial remedy.²³⁸

It is then clear that the State of Emergency Commission has serious shortcomings related to its independence from the executive that disqualify it as a judicial remedy. It is therefore also clear, on these grounds alone, that the Commission, not being independent, does not in itself provide an effective remedy.²³⁹

Further, the remedy before the State of Emergency Commission is not an effective one, because its procedure is unfair and its exam is not individualised.

More, the alarming situation of the judiciary in Turkey, described above, casts serious doubts as to the capacity of the judicial system to provide an effective appeal against decisions of the Commission or of ministries or agencies that have dismissed employees²⁴⁰.

It is however certain that the establishment of a Commission, that lacks independence and effectiveness, prevented more than 150,000 Turkish citizens, who claimed to have their fundamentals rights severely violated by the action to the Government, to access a judge and to access a prompt and effective remedy. More than four years have passed since July 2016, when hundreds of thousands of people were suddenly deprived of their jobs and their income, without having the possibility to access a judicial effective remedy.

15. HUMAN RIGHTS AND EQUALITY INSTITUTION (NHREI) AND THE OMBUDSMAN INSTITUTION ARE INEFFECTIVE

Turkey has also two institutions on human rights: the National Human Rights and Equality Institution (NHREI) and the Ombudsman institution. Both are authorised to monitor, protect and

²³⁷ EC 2020 report, page 6.

²³⁸ EC 2020 report, page 21.

²³⁹ ICJ report, page 36.

²⁴⁰ ICJ report, page 33.

promote human rights, and to prevent violations in this area. They can also investigate individual complaints or allegations. The NHREI also acts as the national preventive mechanism against torture and has the mandate to investigate ill-treatment and torture upon application or ex officio. It has also the power to launch investigations of its own initiative into potential human rights violations.

According to the EC, neither of the two above institutions has operational, structural, or financial independence and their members are not appointed in compliance with the Paris Principles.²⁴¹

The US Department of State reported that the Government continued to staff its human rights monitoring body, the NHREI. According to August press reports, the NHREI received, in 2019, at least 10 applications regarding prison conditions and the practices of prison authorities. The NHREI did not accept any of the complaints. In response to an application regarding prison overcrowding, the NHREI stated that "*due to the increased number of arrestees [related to the state of the emergency period] and intensity of the capacity in prisons, such practice shall be accepted as proportionate.*" Critics complained the institution was ineffective and lacked independence²⁴².

16. THE ACTION PLAN SUBMITTED TO COE FOLLOWING THE

ALPARSLAN ALTAN RULING IS INEFFECTIVE

Notwithstanding the case-law of the ECHR, the Action Plan²⁴³ submitted by the Turkish Government to the Committee of Ministers of Council of Europe in reply to the ECtHR's Alparслан Altan judgment is a clear indication of the Government's lack of will, plan or project for the proper implementation of the said judgment of the ECHR.

17. THE JUDICIAL REFORM STRATEGY IS INEFFECTIVE

The President announced the Judicial Reform Strategy for 2019- 2023 in May 2019. However, it falls short of addressing key shortcomings regarding the independence of the judiciary. No measures were announced to remedy the concerns identified by the Council of Europe's Venice Commission and in the European Commission's annual country reports. No measures were taken to change the structure of, and process for, the selection of members of the Council of Judges and Prosecutors to strengthen its independence. Concerns regarding the lack of objective, merit-based, uniform, and pre-established criteria for recruiting and promoting judges and prosecutors persisted. No changes were made to the institution of criminal judges of peace so that concerns regarding their jurisdiction and practice remained²⁴⁴. Shortly after the adoption of the judicial reform strategy, the HYSK ordered the forces transfer of almost 4000 judges and prosecutors.

²⁴¹ EC 2018 Report, page 31.

²⁴² USDOS 2019 report.

²⁴³ 1383rd meeting (29 September-1 October 2020) (DH) - Action plan (23/06/2020) - Communication from Turkey concerning the *Alparслан Altan v. Turkey* (Application No. 12778/17).

²⁴⁴ EC 2020 report page 6.

THE ANSWER TO THE QUESTION. EPILOGUE.

Can we evaluate the judicial system of Turkey as ensuring full access to justice and effective judicial protection in case of human rights violations?

The answer to the question comes directly from the first part of the report

Independence of judges is not a prerogative or privilege granted in judges' own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice²⁴⁵.

Judicial independence is, therefore, necessary to ensure effective judicial protection of the rights of individuals, as recognised by articles 13 and 41 of the ECHR and by article 19 of the Treaty on European Union and art. 47 of the Charter of Fundamental Rights of EU.

Effective judicial protection further implies access to justice and judicial remedies that are effective in law as well in practice and are not unjustifiably hindered by the acts of State authorities.

In Turkey, fundamental rights are not protected.

Persecution of lawyers and HRD (chapter 12.), unjustifiable limitations of the right of defence (chapters 12.1, 12.3, and 12.2), legal and factual impediments to access to evidence by the defendants (chapter 12.4), disruption of fair trial rules (chapter 12.5) and misuse of detention (chapter 12.6) hinder access to Justice.

Political control over the judiciary makes the judicial remedies ineffective: decisions to release detainees are not executed (chapter 13.1); decisions of the Constitutional Court are not respected (chapter 13.2.); landmark judgments of the Court of Human Rights are disregarded and denied enforcement (chapter 13.3. 13.4).

Without effective judicial protection of fundamental rights, there is no Justice; without Justice there is no Rule of Law.

²⁴⁵CM/Rec(2010)12, principle 11



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UNDER THE ROME STATUTE IN TURKEY TODAY

AUGUST 2021

PROF. DR. EM. JOHAN
VANDE LANOTTE

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**INTERNATIONAL
OBSERVATORY
HUMAN RIGHTS**

Executive Summary

Crimes Against Humanity under the Rome Statute in Turkey Today

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In this report, we will investigate if the acts of torture and the abductions, as described in the other reports presented to the **Turkey Tribunal**, can be qualified as crimes against humanity, according to the Rome Statute and the case law of the International Criminal Court (ICC). We will NOT examine the competence of the ICC in the specific cases cited, nor will we examine who is, or are, the person(s) that are punishable under the Rome Statute for the specific cases cited in the reports. Eventually this will be the competence of the ICC itself.

The Rome Statute has defined the criteria and the decisive elements needed to qualify acts as crimes against humanity. We will evaluate if each of these decisive elements are present in the reports concerning the abductions and the acts of torture. To be considered as a crime against humanity, some specific requirements must be fulfilled. These requirements are the “contextual elements for crimes against humanity” or “the chapeau”.

To qualify a crime as a ‘crime against humanity’ the crimes must be an attack, meaning: a course of conduct, involving the multiple commission of acts, that widespread or systematic, directed against any civilian population and committed pursuant to, or in furtherance of, a state or organisational policy to commit such attack.

The Turkish government has denied the existence of torture and internal abductions so uncovering the exact figures of such acts is not possible, however, it is our conclusion from the data that is available, that we are confronted with an attack, meaning a course of conduct involving the multiple commission of acts of torture and abductions.

It seems appropriate to define “widespread” as “massive, frequent, large scaled, directed against a multiplicity of victims” whereby the assessment must be carried out on the basis of the individual

facts, while the term “systematic” must be defined as “*a non-coincidental repetition of crimes*” or as the “*improbability of their random occurrence*”. Taking into account the numbers, compared to the targeted group, the seriousness of the acts and the high impact on the targeted group, it is our view that torture can be qualified to be widespread in Turkey.

Based on the high numbers during a long period, the specific targeting of some groups, the existence of recurring patterns and the use of specialized teams; torture in Turkey is systematic.

We acknowledge that the qualification of the internal and/or international abductions executed by the Turkish authorities as widespread, how important they may be, within the context of the Rome Statute is disputable. However, what is not disputable is that these abductions must be considered as systematic within this framework.

The attack must be directed (intention) against any civilian population (not necessarily against all the civilian population), which means a clearly defined and stable group, with common characteristics, that in turn make it the target of an attack, so the acts are not merely directed against randomly selected individuals. The victims of the abductions and or torture are therefore not randomly selected persons but belong to two groups that are critical towards the government and are abducted and or tortured for that reason – the Gülen movement and the Kurdish movement.

To be considered as crimes against humanity, acts must be committed pursuant to or in furtherance of a state or organizational policy to commit such attack. We can define the policy on torture of the Turkish state as follows: by torturing the persons who are allegedly linked to the Gülen movement or the Kurdish movement, which they all indicate as terrorists, the Turkish state wants to make them confess and aims to physically punish them. The state also aims to extract from them information – true or false- about other persons who in their turn will be tortured, and so the cycle continues.

All these persons will then be condemned to long prison sentences, based upon declarations done under torture. The ultimate hope of the government seems to be the annihilation of both movements, and to create a deterrent effect on other (alleged) members of these movements, but that is the political long-term ambition, not the concrete intention. Delivering torture to punish and to extract, real or false information, which leads to long prison sentences, is the concrete intention. It is our finding that every level of the state: legislator, government, governors,

the judicial system and the security services, organize, encourage and actively promote this policy, either in a direct or indirect way. The requirements foreseen in Article 7(2) of the Rome Statute are fulfilled.

The policy of the Turkish state on enforced disappearance can be summarized as follows: by abducting, and depriving victims of their freedom and meanwhile torturing the persons who are allegedly linked to the Gülen movement or the Kurdish movement, which they all indicate as terrorists, the Turkish state wants to make victims of enforced disappearances confess, which will enable the state to physically punish them and ultimately condemn them to long prison sentences.

With regards to internal enforced disappearances, our conclusion is that the policy of the Turkish state is promoted and encouraged in a direct and indirect way. Abductions need a complex form of coordination of different services and require substantial resources, which are elements of promotion or encouragement. Normally abductions would cause intensive investigations. In Turkey, abductions go together with an extreme form of impunity with negating all elements of proof, with refusing any investigation and with controlling the possible consequences of the abductions by legally and extra-legally limiting possible vindication of the victims and or their family. As with the extraterritorial enforced disappearances, the policy of the Turkish state is promoted and directly encouraged in an open way by the government itself, who even seems to take pride in it.

In order to constitute a crime against humanity, the acts of violence committed as part of a widespread or systematic attack directed against any civilian population must fall within (one of) the categories of offences listed in Article 7 (1) of the Rome Statute. For the purposes of this report, only the underlying offences of torture and enforced disappearance of persons are discussed.

Our conclusion is that the acts of torture and the enforced disappearances, as described in the report '**Torture in Turkey today**' and the report '**Abductions in Turkey Today**', are in line with the definition of torture in the Rome Statute.

The ICC should only deal with the gravest of all crimes and the evaluation of facts that constitute crimes against humanity must be strict. However, we cannot deny the reality.

Our conclusion is clear and firm: the facts of torture and the abductions described in our reports, are crimes against humanity.

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I. INTRODUCTION

1. Together with war crimes, genocide and the crime of aggression, crimes against humanity are one of the four “core crimes” – the most serious violations of human rights and international criminal law – with respect to which the International Criminal Court (the “ICC”) in the Hague has jurisdiction.¹

“ ... crimes against humanity as defined in art. 7 are among the most serious crimes of concern to the international community as a whole”²

2. Crimes against humanity were first introduced as a separate category of international crimes in the Charter of the Nuremberg Tribunal.³ The aim was to criminalize three sorts of criminality that had, until then, evaded the sanction of international law: (i) atrocities committed outside the context of an armed conflict or independent of it, (ii) crimes committed against fellow nationals and (iii) institutionalized discriminatory violence that resulted in individuals being targeted and mistreated by a state because of their identity.⁴
3. Almost immediately after the Nuremberg and Tokyo proceedings, the law of crimes against humanity gained recognition as general international law,⁵ and is now considered to be part of customary international law.⁶ The contours and elements of the notion of crimes against humanity continued to be refined after Nuremberg through the adoption of resolutions, treaties, statutory instruments, etc., and through

¹ Article 5 of the Rome Statute of the International Criminal Court, 17 July 1998, United Nations, Treaty Series, vol. 2187, No. 38544 (the “Rome Statute”).

² Elements of Crimes. Article 7 Crimes against Humanity. Introduction. The “Elements of Crime” are based on Article 9 of the Rome Statute: “*Elements of Crimes shall assist the Court in the interpretation and application of Articles 6,7,8 and 8bis. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties*”.

³ Article 6 (c) of the Charter of the International Military Tribunal (“IMT”) annexed to the Agreement for the prosecution and punishment of the major war criminals of the European Axis.

⁴ METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 38.

⁵ IMT Judgement (N 77) 461; UNGA, “Nuremberg Principles”, UN Doc A/1316, para. 123.

⁶ E.g. Secretary-General Report on ICTY, para. 35; METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 33.

the statutes and jurisprudence of international criminal tribunals.⁷ McCORMACK clearly states,

“one of the major achievements of the negotiations of the definition of crimes against humanity in Rome was the final elimination of a requisite nexus with armed conflict”⁸

4. In this report we will concentrate our attention on the Rome Statute and the International Criminal Court. The definition of crimes against humanity in the Rome Statute was, at the time of its adoption on 17 July 1998, both a codification of existing law and a further development of that law, adding new elements to this offence for the purpose of proceedings before the ICC.⁹
5. As TRIFFTERER and AMBOS rightly state: *“Article 7 represents both a ‘codification’ and a ‘progressive development’ of international law within the meaning of article 13 UN Charter”¹⁰*. With the adoption of the Rome Statute, the link between the presence of armed conflict on the one hand and the criminalization of some human rights violations on the other hand, was definitively left behind. *“the concept of crimes against humanity has also seen an evolution in the legislative and jurisprudential sphere, in that it is no longer shackled to the jus in bello framework”¹¹*.
6. In this report, we will investigate if the acts of torture and the abductions, as described in the other reports presented to the Turkey Tribunal, can be qualified as crimes against humanity, according to the Rome Statute and the case law of the ICC. We will NOT examine the competence of the ICC in the specific cases cited, nor will we

⁷ METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 35.

⁸ McCormack, T.L., *Crimes Against Humanity*, in McGoldrick, D, Rowe, P. and Donnelly, E. (eds.), *The Permanent International Criminal Court: Legal and Policy Issues*, 2004, Hart, 182.

⁹ Ambos, K. “Crimes Against Humanity and the International Criminal Court”, in Leila Nadya Sadat (ed.), *Forging a Convention for Crimes Against Humanity* (CUP 2011), 279-304.

¹⁰ Triffterer, O. and Ambos, K (eds). *Rome Statute of the International Criminal Court. A Commentary*, München, 2016, 3rd Edition, C.H. Beck, 155.

¹¹ Abtahi, H., ‘Crimes against Humanity and the Armed Conflict Nexus: From Nürenberg to the ICC’ (2013) 3 European Society of International Law Conference, Conference paper 1/2013, 2.

examine who is or are the person(s) that are punishable under the Rome Statute for the specific cases cited in the reports. For the Turkey Tribunal, we will not suggest or examine individually which of these crimes can be attributed to whom specifically. Eventually this will be the competence of the ICC itself. The Rome Statute has defined the criteria and the decisive elements needed to qualify acts as crimes against humanity. For each of these decisive elements we will evaluate if they are present in what has been commented in the reports concerning the abductions and the acts of torture.

The question we submit in this report to the Tribunal is the following;

Do we need to qualify the acts of torture, as well as the national and the extraterritorial abductions, as described in the reports brought before the Turkey Tribunal, as crimes against humanity, according to the Rome Statute?

II. THE *CHAPEAU* OR THE CONTEXTUAL ELEMENTS FOR CRIMES AGAINST HUMANITY.

7. Article 7 of the Rome Statute defines the contextual elements (also referred to as the *chapeau* element) that need to be present to qualify a certain conduct as a crime against humanity:

“For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.

Further is stipulated:

“Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

The elements of Crimes further specify:

It is understood that "policy to commit such an attack" requires that the State or organization actively promote or encourage such an attack against a civilian population".

8. In accordance with these clauses, as contextual elements must be considered:

- An attack (meaning: a course of conduct, involving the multiple commission of acts)
- Widespread or systematic
- Directed against any civilian population
- Pursuant to or in furtherance of a state or organizational policy to commit such attack.

9. "Ordinary" crimes and violations of human rights may be prosecuted on the domestic level but not brought before the ICC. This distinction of enabling crimes against humanity to be brought before the ICC can be identified by these contextual elements. To constitute a crime against humanity, an act that falls within one of the specified categories of crimes against humanity (see III.) must be committed in the context of, and as part of, a widespread or systematic attack against a civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack. We will pay attention to each of these elements separately and for each of them we will evaluate if these elements are present in our case.

II.1. THERE MUST BE AN "ATTACK", MEANING: A COURSE OF CONDUCT, INVOLVING THE MULTIPLE COMMISSION OF ACTS.

II.1.2. DEFINITION WITHIN THE ROME STATUTE.

10. Article 7 (2) (a) of the Rome Statute and the Elements of Crimes define an "attack" as a course of conduct involving the multiple commission of acts falling within the specified categories of crimes against humanity. Although the word "attack" seems to point to military or anyhow violent actions, this is not the case. As TRIFFTENER and

AMBOS state: *"Thus the attack need not even involve military forces or armed hostilities or any violent force at all. It can involve any mistreatment of the civilian population"*¹².

11. In its case law, the ICC has several times interpreted the notion of "course of conduct". In the Gbagbo confirmation decision, the ICC states it as follows:

"209. The expression "course of conduct" already embodies a systemic aspect as it describes a series or overall flow of events as opposed to a mere aggregate of random acts. As already recognised by the jurisprudence of the Court, it implies the existence of a certain pattern as the "attack" refers to a "campaign or operation carried out against the civilian population" which involves the multiple commission of acts referred to in article 7(1) of the Statute directed against any group distinguishable by nationality, ethnicity or other distinguishing features including (perceived) political affiliation.

*210. Therefore, while a course of conduct must involve multiple acts, the occurrence of those acts is not the only evidence that may be relevant to prove its existence. On the contrary, since the course of conduct requires a certain "pattern" of behaviour, evidence relevant to proving the degree of planning, direction or organisation by a group or organisation is also relevant to assessing the links and commonality of features between individual acts that demonstrate the existence of a "course of conduct" within the meaning of article 7(2)(a) of the Statute"*¹³.

More recently, in the Appeals Judgement in the case of Mr Bosco Ntaganda of 30 March 2021, the Appeals Chamber of the ICC specified this requirement as follows:

"The requirement that the acts form part of a 'course of conduct' indicates that Article 7 is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts. However, this does not mean that a trial chamber must have regard to the totality of the activities and military operations of a state or organization for the purposes of establishing that

¹² Triffterer, O. and Ambos, K. (eds), *The Rome Statute of the International Criminal Court, A Commentary*, München, 2016, 3rd edition CH.Beck, 166.

¹³ Decision of the Confirmation of Charges against Laurent Gbagbo, ICC-02/11-01/11-656-Red, 12 June 2014, paras. 209 – 210.

*there was a course of conduct involving the multiple commission of acts referred to in article 7(1) or that the attack targeted a civilian population. These determinations can be made through an examination of the circumstances and manner in which the criminal acts were carried out. It is not necessary for this purpose to have regard to other military operations or the wider activities of the state or organization in question, including activities that did not involve the commission of crimes.”*¹⁴ (Underlining added)

12. TRIFFTERER and AMBOS state it as follows:

*“The fundamental requirement is that the facts must not be unrelated to the attack, capable of being characterized as the isolated and random conduct of an individual acting alone”*¹⁵.

METTRAUX literally citing the ICC comes to the same conclusion:

*“The ICC has interpreted the notion of “course of conduct” as implying a series or overall flow of criminal events as opposed to a mere aggregate of random acts”*¹⁶.

13. No minimum threshold is set for the amount of criminality or a quantifiable geographical area which an attack must reach. However, the ICC considered the “multiple commission of acts” to be “more than a few”, “several” or “many” acts.¹⁷ The acts may be performed in a single incident in which many crimes are committed or in a succession of violent acts that occurred in different places, at different times.¹⁸

¹⁴ Judgment on the appeals of Mr. Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019, ICC-01/04-02/06-2666-Red, 30 March 2021, para. 8.

¹⁵ Triffterer, O. and Ambos, K. (eds), *The Rome Statute of the International Criminal Court, A Commentary*, München, 2016, 3rd edition CH.Beck, 167.

¹⁶ METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 200.

¹⁷ Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08, 21 March 2016, para. 150.

¹⁸ METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 204-205.

14. The “acts” relevant to establishing the existence of an attack are limited by the Rome Statute to those “referred to in paragraph 1” of its Article 7, i.e. the specified categories of crimes against humanity (see part III).¹⁹

15. As a conclusion, an “attack”, meaning a course of conduct, involving the multiple commission of acts, implies basically a series of criminal events that cannot be seen as a mere aggregate of random acts, whereby “multiple” means: more than a few, several or many, without a specific number that can be defined as the threshold.

II.1.2. APPLICATION TO THE TURKISH SITUATION: TORTURE.

16. Are we confronted with “multiple acts”? As far as torture is concerned, we have to rely on the statistical information about the complaints delivered by the Ministry of Justice and the reports of international institutions. In our report *‘Torture in Turkey Today’* we stated it as follows:

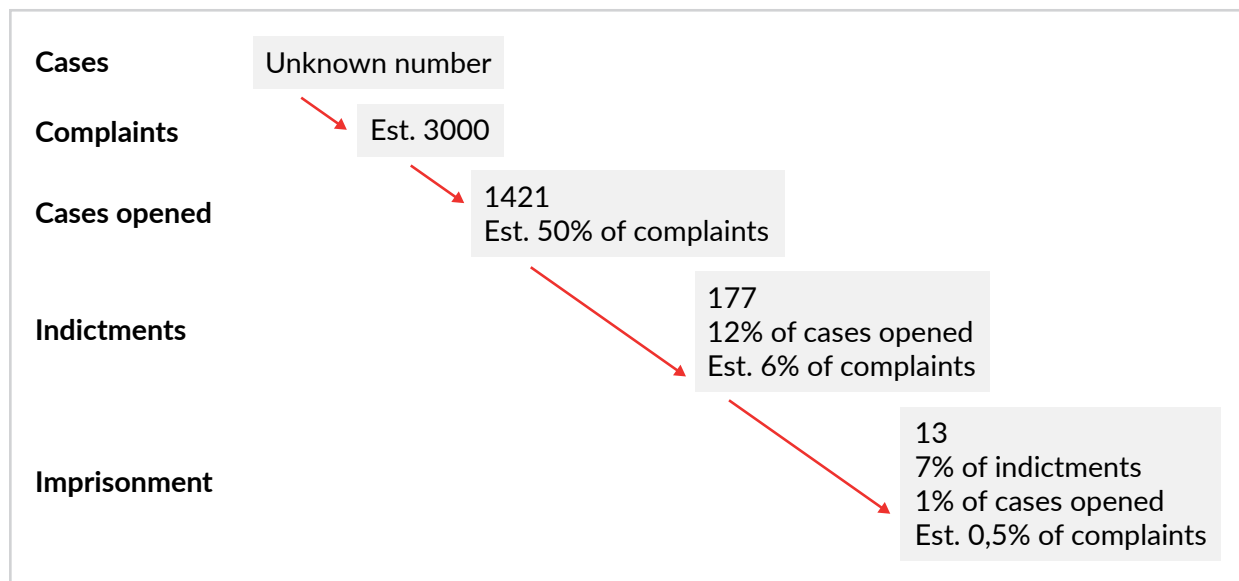
¹⁹ METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 203-204.

"In table 1 data is given about the judicial action against torture in Turkey. This is the official data from the Ministry of Justice and is available on the website of the Ministry. No data has been published for 2019 or 2020.

Year	Total	Investigation Phase		Trial Phase	
		Non-Prosecution	Filing a Public Case (Indictment)	Acquittals	Imprisonment
2013	1826	1148	211	86	20
2014	1719	1029	248	99	13
2015	1475	894	294	65	17
2016	1359	903	128	52	11
2017	1191	804	98	144	7
2018	960	652	83	38	10
Total	8530	5430	1062	484	78
Yearly	1422	905	177	80	13

Based on this information we can present the following overview in Scheme 1.

Scheme 1: Overview of the judicial action against Torture in Turkey (based on data for 2013-2018, numbers are yearly average)



Some remarks must be made to clarify this diagram."

17. We have no statistics about the exact number of cases of torture. It is common and universal knowledge that the dark number is high, certainly in a system where the number of convictions is low.

18. Neither do we know the exact number of complaints. For the period 2013-2018 Human Rights Organization (HRA – IHD in Turkish) received in average yearly 2063 complaints (...) ²⁰. Of course they do not receive all the complaints of the whole country. In the report of the Committee against Torture for the fourth periodic report on Turkey, the Committee against Torture noticed: *"a significant disparity between the high number of allegations reported by non-governmental organizations and the data provided by the state party in its periodic report...suggesting that not all allegations of torture have been investigated during the reporting period."* (CAT/C/TUR/CO/4, No 9).

²⁰ In their figures we see a slow growth of the number of complaints till 2010 (average 843 complaints in a year), from 2011 till 2014 the number is higher (average 1428 complaints per year), from 2015 till 2019 we notice a very sharp increase of complaints (average of 2300 complaints per year). As far as the location where the torture allegedly is executed is concerned, prisons represent 39% of the complaints but the proportion is markedly lower before 2010. We see the opposite situation for "custody", in police stations (this also includes the security directorates). The percentage of the complaints about torture or ill-treatment in extra-custodial places is high.

In that context an estimation of a yearly average of 3000 complaints surely is not an overestimation.

19. Filing a complaint does not necessarily mean that a case is opened for torture. The case can be considered under Article 96 Turkish Criminal Code– voluntary injury, for instance (see *infra* No. 7). Or competence can be denied, etc. It is the prosecutor who decides, not the complainant. We notice that an average of 1421 cases for torture were opened annually. If we estimate the number of complaints yearly at estimated 3000, then half of the complaints are opened under torture.
20. Remarkably, the number of cases opened have clearly declined since 2015. Compared to 2013, the number of 2018 is down by nearly 50%. There is no indication that the number of cases of torture dropped in this period. On the contrary, the number of allegations went up markedly. The only explanation that is plausible is a reduced will to prosecute torture on the part of the prosecutors. If we stick with the number of 3000 complaints yearly (and for the period 2015-2018 that is probably an underestimation), the percentage of cases opened dropped to less than one third. It should, of course, be borne in mind that the international obligation is for all cases to be examined thoroughly.
21. When a case is opened this does not automatically lead to an indictment. On average 177 indictments were rendered annually. This is 12% of the cases opened and 6% of the estimated number of complaints.
22. Finally on average 13 imprisonments were decided. This is 1% of the indictments and 0.5% of the estimated complaints.
23. To this diagram we need to add that under Article 96 Turkish Criminal Code (torment/deliberate injury – not amounting to torture) on average 1500 cases were opened annually in the period 2013-2018, leading to 532 indictments and 238 imprisonments. An important number of these cases most probably should have been investigated as torture cases. The sanction for torment is lower than for torture and

suspension of pronouncement of the verdict is possible. Note that if we add these cases opened to the cases on torture, we also arrive at 3000 cases opened annually.

24. Some reports (for instance in the conclusions and recommendations of the UN Committee on the third periodic report of 20 January 2011) mention the tendency that, when confronted with complaints of torture or ill-treatment, police officers would often resort to counter charges, using Article 265 Turkish Criminal Code: using violence or threats against a public official to prevent them from carrying out their duty. By doing so, the reports suggest that pressure or intimidation is directed toward the victims, or the relatives of the victims, not to file a complaint. In this context it is interesting to compare the cases about torture and the number of cases about Article 265 *leg cit*²¹. For this comparison we have added the numbers of torment/deliberate injury to the ones of torture. For the whole period 2010-2019, for torture and deliberate injury there are in total 28,768 cases concerned and for Article 265 *leg cit* there are 1,723,767 (!) cases; 60 times more.
25. Finally in the yearly reports HRA mentions that in 2018 160 persons "*notably students, journalists and political activists*" stated that they were subjected to torture and ill-treatment due to attempts to force them to become informants. For 2019 this was 71 persons, but in addition, the media mentioned 66 other persons.
26. Although exact figures cannot be given, due to the complete denial of these acts by the government and the non-prosecution of these acts as shown above, it is clear that we are confronted with *multiple acts* of torture, meaning: "*more than a few, several or many*". There is no doubt that the number of acts of torture simply can be qualified as high. To answer the question if these acts are more than a mere aggregate of random acts, we refer to II.2.2.

²¹ Data from the official website of the Ministry of Justice.

II.1.3. APPLICATION TO THE TURKISH SITUATION: ENFORCED DISAPPEARANCE.

27. With regards to internal abductions, Turkey denies any state implication and also denies the existence of this phenomenon. In the report '**Abductions in Turkey Today**', the author could, after an extensive examination of the suspicious disappearances in Turkey, distinguish 25 cases in which it is beyond any reasonable doubt that an abduction organized by the Turkish state has taken place. It is however clear that many cases of forced disappearance have not yet come to the attention of international organizations, NGOs or newspapers and go unnoticed. In that regard it is particularly remarkable that only two abductions of a Kurdish person could be identified, while already in July 2016 the UN Working Group on Enforced or Involuntary Disappearances expressed its concerns that "*situations such as the current one in the south-east are conducive to human rights violations, including enforced disappearances*"²².
28. The Turkish government is much more open about its responsibility in terms of extraterritorial abductions. Our own investigations in the report '**Abductions in Turkey Today**' allowed us to identify 68 cases of extraterritorial abductions. Turkish officials however have repeatedly claimed that Turkey was involved in more than 100 international abductions. For instance, Turkish Foreign Minister Mevlüt Cavusoglu confirmed that 104 Gülenists from 21 countries were abducted and brought back to Turkey as part of the Turkish government's global manhunt.²³ Deputy Foreign Minister Yavuz Selim Kiran stated that this happened to more than 100 Gülenists²⁴.

²² Report of the Working Group on Enforced or Involuntary Disappearances in the context of migration

(A/HRC/36/39/Add.2) of 28 July 2017, No. 33; Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey (A/HRC/33/51/Add.1) of 27 July 2016, No. 11.

²³ U.S. Department of State, 2018 Country Reports on Human Rights Practices: Turkey, 28 June 2019. (<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/turkey/>); Sabah, '52 FETÖ'cü 83 ülkede', 15 November 2018 (<https://www.sabah.com.tr/gundem/2018/11/15/452-fetocu-83-ulkede>).

²⁴ Hurriyet, Bakan Yardımcısı açıkladı: 100'ün üzerinde FETÖ teröristi getirildi, 24 February 2019 (<https://www.hurriyet.com.tr/gundem/bakan-yardimcisi-100un-uzerinde-feto-teroristi-ulkemize-getirildi-41128404>).

29. In February 2021, Freedom House published a report of NATE SCHENKKAN and ISABEL LINZER: *"Out of sight, not out of reach"*. Concerning the abductions operated by the Turkish state, the report states the following:

"The Turkish state's current campaign of transnational repression is remarkable for its intensity, its geographic reach, and the suddenness with which it escalated. Since the coup attempt against President Recep Tayyip Erdoğan in July 2016, the regime has pursued its perceived enemies in at least 31 different host countries spread across the Americas, Europe, the Middle East, Africa, and Asia. The campaign is also notable for its heavy reliance on renditions, in which the government and its intelligence agency persuade the targeted states to hand over individuals without due process, or with a slight fig leaf of legality. Freedom House catalogued 58 of these renditions since 2014. No other perpetrator state was found to have conducted such a large number of renditions, from so many host countries, during the coverage period—and the documented total is almost certainly an undercount."²⁵ (Underlining added).

30. An extensive examination of the suspicious disappearances in Turkey identifies 25 cases in which it is beyond any reasonable doubt that an abduction organized by the Turkish state has taken place. Members of the government themselves confirm that more than 100 Gülenists were abducted and brought to Turkey. Freedom House qualifies this activity by saying; *"no other perpetrator state was found to have conducted such a large number of renditions, from so many host countries, during the coverage period"*. Therefore it is justified to say that we are confronted with *multiple acts* of forced disappearance, meaning: *"more than a few, several or many"*. There is no doubt that the number of acts of forced disappearance simply can be qualified as high. To answer the question if these acts are more than a mere aggregate of random acts, we refer to II.2.2.

²⁵ Schenkan, N. and Linzer, I., *Out of Sight, not out of reach*, Freedom House, February 2021, 38.

II.2. THE ATTACK MUST BE “WIDESPREAD OR SYSTEMATIC”.

II.2.1. DEFINITION WITHIN THE ROME STATUTE.

31. An “attack” for the purpose of crimes against humanity must be “widespread or systematic”. These requirements apply disjunctively,²⁶ and meet a certain threshold in terms of its magnitude – the *widespread* nature of the attack – or in terms of its organized nature – the *systematic* nature of the attack.²⁷ TRIFFTERER and AMBOS refer to the UNWCC: “speaking of crimes which either by their magnitude and savagery or by their large number or by the fact that a similar pattern was applied ... endangered the international community or shocked the conscience of mankind”²⁸

32. Widespread” and “systematic” are relative notions. As the International Criminal Tribunal for the Former Yugoslavia stated:

*“430. The widespread or systematic nature of the attack is essentially a relative notion. The Trial Chamber must first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon this population, ascertain whether the attack was indeed widespread or systematic.”*²⁹

33. The notion of a “widespread” attack relates to its large-scale nature and the number of victims, not each act separately must be widespread. In other words, the widespread character of an attack can be the cumulative result of a large number of single acts. METTRAUX, referring to the jurisprudence, summarizes as follows: “*The attack may be*

²⁶ Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09, 31 March 2010, para. 94.

²⁷ METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 266.

²⁸ Triffterer, O. and Ambos, K. (eds), *The Rome Statute of the International Criminal Court, A Commentary*, München, 2016, 3rd edition, C.H.Beck, 156.

²⁹ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Kunarac e.a.*, Trial judgement, 22 February 2001, para 430.

widespread because of the cumulative effect of a series of acts or, as has been suggested, because of the effect of a single act of extraordinary magnitude”³⁰

34. In the Gbagbo case the ICC pointed it out as follows:

222. According to the established jurisprudence of the Court, the term “widespread” connotes the large-scale nature of the attack and the number of targeted persons. In the present case, Pre-Trial Chamber III has previously adopted the approach followed by Pre-Trial Chamber II, according to which the term “widespread” encompasses the large-scale nature of the attack, in the sense that it “should be massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims” and that this assessment is not exclusively quantitative or geographical, but must be carried out on the basis of the individual facts. (...) (Underlining added)

224. The Chamber considers that the attack referred to above was large-scale in nature, as it:

(i) involved a large number of acts;

ii) targeted and victimised a significant number of individuals;

(iii) extended over a time period of more than four months; and

(iv) affected the entire city of Abidjan, a metropolis of more than three million inhabitants.

Considering the cumulative effect of this series of violent acts, the Chamber is of the view that there are substantial grounds to believe that the attack was “widespread” within the meaning of article 7(1) of the Statute.³¹

TRIFFTERER and AMBOS rightly point to the fact that in the original Draft Code of the International Law Commission (“ILC”) the required multiplicity of victims was addressed with the term “mass scale”, but that this term deliberately was replaced by the term “large scale” afterwards. McCORMACK is somehow critical towards the “massive” exigence: “*The multiple*

³⁰ METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 272, with reference to the jurisprudence.

³¹ Prosecutor v. Gbagbo, Decision on the confirmation of Charges against Laurent Gbagbo, ICC – 0211-01/11-656-Red, 13 June 2014, Nrs. 222 and 224.

victims requirement, however, is a much lower threshold than that required to prove 'massive, frequent large scale action'³²

35. As a conclusion it seems appropriate to define "widespread" as "**massive, frequent, large scaled³³, directed against a multiplicity of victims whereby the assessment must be carried out on the basis of the individual facts**".
36. The notion of "systematic" refers to the non-coincidental repetition of crimes.³⁴ METTRAUX enumerates a large number of factors judged to be relevant to establish that the attack was "systematic" in the jurisprudence. Between those enumerated, we want to emphasize the following factors, which especially could be relevant for the Turkish situation: existence and repetition of patterns of criminal acts, in particular, through the repetition of crimes over a long period of time or throughout distinct geographical locations; repetition and multiplication of discriminatory acts directed at certain members of the population; presence and use of propaganda by the perpetrators; planned and organized nature of the attack; the aim of the operation, in particular when a criminal purpose has been established; consequences of the attack upon the targeted population; existence of public statements or political views underpinning the events; existence of a plan or policy targeting a specific group of individuals; means and methods or modus operandi; campaign of violence, fear and intimidation; the discriminatory character of the crimes and the coincidence between the crimes and an underlying political agenda..³⁵

³² McCormack, T.L., Crimes Against Humanity, in McGoldrick, D, Rowe, P. and Donnelly, E. (eds) The Permanent International Criminal Court.; Legal and Policy Issues, 2004, Hart,, 182.

³³ We do not keep "*carried out collectively with considerable seriousness*" as an essential element as it does not seem to be adapted to the specific situation we are looking at. "*Carried out collectively*" would also mean that a consistent series of consecutive acts never could be "widespread". There is no reason to accept this kind of interpretation: "*The attack may be widespread because of the cumulative effect of a series of acts*" (METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 272)).

³⁴ METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 272-273.

³⁵ METTRAUX, G. *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 275, 278-281.

37. In the already cited Gbagbo case the ICC took the following position:

“223. The alternative requirement that the attack be “systematic” has been consistently understood in the jurisprudence of the Court as pertaining to the organised nature of the acts of violence and the improbability of their random occurrence. Further, according to the jurisprudence of the Court, the systematic nature of an attack can “often be expressed through patterns of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis”.

225. Further, the Chamber notes the evidence demonstrating that preparations for the attack were undertaken in advance and that the attack was planned and coordinated. In addition, the acts of violence analysed by the Chamber reveal a clear pattern of violence directed at pro-Ouattara demonstrators or activists, and more generally against areas whose inhabitants were perceived to be supporters of Alassane Ouattara. On this basis, the Chamber concludes that there are also substantial grounds to believe that the attack was “systematic”, within the meaning of article 7(1) of the Statute”.³⁶

38. The requirements of “widespread” or “systematic” are to be assessed relative to the civilian population that is alleged to have been subject to the attack.³⁷

39. In some cases, small scale attacks were accepted as being “widespread” in relation to their results. In the Galic case for instance, the International Criminal Tribunal for the Former Yugoslavia³⁸ made it clear that the shelling and sniping of Sarajevo was part of a sustained and deliberate “campaign” to terrorize the civilians of Sarajevo.

40. As a conclusion it seems appropriate to define “systematic” as: “a non-coincidental repetition of crimes” or as the “improbability of their random occurrence”.

³⁶ Prosecutor v. Gbagbo, Decision on the confirmation of Charges against Laurent Gbagbo, ICC – 0211-01/11-656-Red, 13 June 2014, Nrs. 223 and 225.

³⁷ METTRAUX, G. International Crimes, Volume II: Crimes against Humanity, 2020, Oxford University Press, 269.

³⁸ (ICTY) Prosecutor v Stanislav Galić (Trial Chamber Judgment), Case No IT-98-29-T (5 December 2003), 208. In a national Dutch case (Wijngaarde e.a. v. Bouterse) the court decided that the torture and summary execution of 15 prominent political opponents in Suriname by the former leader of Suriname could constitute a crime against humanity.

II.2.2 APPLICATION TO THE TURKISH SITUATION: TORTURE.

41. As already mentioned, the term “widespread” is a relative notion. The quantitative importance of the acts must be assessed in relationship to the targeted group. In the torture report we pointed out that the main targeted groups are people in detention or custody, who are supposedly linked to the Kurdish movement or to the Gülen movement. Taking in account the number of 3000 complaints a year, it is above all reasonable doubt that towards these groups the acts of torture are “massive, frequent, large scaled and directed against a multiplicity of victims”.
42. This conclusion is confirmed by the jurisprudence of the European Court of Human Rights (“ECtHR”), where Turkey has a massive number of convictions for violation of Article 3 European Convention on Human Rights (“ECHR”) (counted in average per year, there are more convictions by the ECtHR than by domestic courts in Turkey). In the same sense can we refer to the reports of the European Committee for the Prevention of Torture, of the UN Committee against Torture, of the European Commissioner for Human Rights, of the UN Special Rapporteur on Torture, and the reports of the OHCHR, all cited in the report ‘**Torture in Turkey Today**’. As just one of the many citations that could be used, we refer to the report of the OHCHR of March 2018:

“OHCHR documented the use of different forms of torture and ill-treatment in custody, including severe beatings, threats of sexual assault and actual sexual assault, electric shocks and waterboarding. Based on accounts collected by OHCHR, the acts of torture and ill-treatment generally appeared to aim at extracting confessions or forcing detainees to denounce other individuals. It was also reported that many of the detainees retraced forced confessions during subsequent court appearances. On the basis of numerous interviews and reports, OHCHR documented the emergence of a pattern of detaining women just before, during or immediately after giving birth. In almost all cases, the women were arrested as associates of their husbands,

who were the Governments' primary suspects for connection to terrorist organizations, without separate evidence supporting charges against them" ³⁹

43. Taking in account the numbers compared to the targeted group and taking in account the seriousness of the acts and the high impact on the targeted group, it is our opinion that torture can be said to be widespread in Turkey.
44. Is the torture committed systematic? As we know, the Turkish government simply denies the presence of torture in Turkey. Hence, to answer the question, we basically need to prove *the organized nature of the acts of violence and the improbability of their random occurrence*. As the government completely denies the existence of torture, the proof necessarily needs to be found in a more indirect way, by emphasizing the improbability (or even more: the impossibility) that the acts of torture occur in a random way.
45. In our opinion, decisive elements in this context are:
 - a) The massive numbers of victims during a long period;
 - b) The specific targeting;
 - c) The existence of recurring patterns;
 - d) The existence and the use of specialized teams.
46. As previously indicated, the number of complaints for torture has been very high during a long period already. A haphazard emergence of high volumes of torture theoretically is possible. If, however, these figures stay elevated during a longer period, it is very difficult, if not impossible, to consider them anymore as being the result of a coincidence. In the report '**Torture in Turkey Today**', we concluded: "*Consequently, we can establish without doubt and with absolute clarity that the frequent use of torture of certain groups of people does not constitute a spontaneous reaction of certain police officers*". This conclusion seems to stand beyond any reasonable doubt.

³⁹ Office of the United Nations High Commissioner for Human Rights, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East January – December 2017, Nrs. 77-78.

47. The targeted group is very clear: opponents of the governmental policy are targeted, more especially persons allegedly belonging to the Gülen movement or the Kurdish movement. If torture would occur in a haphazard way, it is improbable that some, quite specific groups would be especially targeted during a long period and certainly not these groups. If the acts of torture would be haphazard, no specific group would be targeted and if any, it would rather be a group of violent criminals, child abusers, sexual offenders, who “traditionally” (and unfortunately), are targeted in prisons or in police stations.
48. In our report '**Torture in Turkey Today**' recurring patterns were discovered. These patterns were also mentioned in the report of the OHCHR, cited above and described as follows: *“the emergence of the pattern of detaining women just before, during or immediately after giving birth. In almost all cases, the women were arrested as associates of their husbands, who were the Governments’ primary suspects for connection to terrorist organizations, without separate evidence supporting charges against them”*. Another pattern is mentioned in the yearly reports of HRA. In 2018, 160 persons *“notably students, journalists and political activists”* stated that they were subjected to torture and ill-treatment due to attempts to force them to become informants. For 2019 this related to 71 people, however the media also mentioned an additional 66 other people. Appropriately, we refer to our report '**Torture in Turkey Today**': *“Moreover, there seems to be a consistent pattern, whereby first the person concerned (mainly men) he alone is dealt with. If the torture does not provide the desired results, the security officers threaten to get the spouse of the detained person involved”*. Recurring specific patterns of torture, as described above, do not match with a spontaneous, unorganized way of torturing.
49. The existence and the use of specialized teams is also an indication of the existence of a systematic practice. We refer to the report '**Torture in Turkey Today**': *“We note that in the testimonies of the victims, remarks are put forward which indicate that specialized persons took the matter in their own hands, with reference often made to officers of M.I.T. It is repeatedly shown in testimonies that the perpetrators are trained*

and master their craft such that the victim does not get killed and the torture practices can continue. In the two latest CPT reports (visits of 2017 and 2019) reference is made to the mobile intervention teams (Yunus) who are allegedly "specialized" in the ill-treatment of persons taking in custody. It is absurd to consider as realistic that this situation would occur in a "spontaneous, haphazard" way.

50. **Our conclusion is clear and simple: torture in Turkey, as described in our report '*Torture in Turkey Today*', is also systematic.**

II.2.3. THE APPLICATION TO THE TURKISH SITUATION: ENFORCED DISAPPEARANCE

51. Widespread is a relative notion. In the report '***Abductions in Turkey Today***', as far as the internal abductions are concerned, it is stated: *"an extensive examination of the suspicious disappearances in Turkey has allowed us to identify 25 cases in which it is beyond reasonable doubt that an abduction organised by the Turkish state has taken place"*. Each case study mentioned in the report is based on at least three different sources.
52. Our investigation also allowed us to identify 63 cases of international abductions. However, Turkish governmental officials have repeatedly claimed that Turkey was involved in more than 100 international abductions.
53. To evaluate if the presence of some type of acts is widespread, we need to take into account the nature of these acts. It is reasonable to argue that a widespread pattern of abductions does not need elevated numbers to be considered as widespread. For instance, torture needs high numbers to be considered as widespread. Although the impact of torture on each victim and on each family of the victim is massive and persisting, the "chilling effect" of abductions on the victim, on his/her family, knowing at least torture will follow and perhaps the person will never return, but also on the targeted group as a whole, is even higher. The abductions create the feeling that no

person belonging or supposedly belonging to the targeted group, can feel free and safe in his or her own country or abroad.

54. However, we acknowledge that the qualification of the internal and/or international abductions executed by the Turkish authorities as widespread, how important they may be, within the context of the Rome Statute is disputable.
55. Crimes against humanity, within the context of the Rome Statute, must be widespread OR systematic. Within the framework of the Rome Statute, "systematic" means "a non-coincidental repetition of crimes" and the "improbability of their random occurrence".
56. The evaluation, if the abductions are "non-coincidental" or if a "random occurrence is improbable" need to be executed separately for the internal abductions and the extraterritorial abductions.
57. For the evaluation of the internal abductions, we need to take in account the following elements. First of all, abductions are by nature non-coincidental, because the execution of abductions need an important preparation and organization.
58. Moreover, in the report '**Abductions in Turkey Today**', a certain pattern in the execution of the abductions has been established. We can summarize the findings of the report as follows.
 1. The abductions were carried out in such a way that it is clear that the perpetrators were not worried about an intervention by the law enforcement authorities.
 2. Many abductions were the result of large-scale kidnapping operations: some with a group of almost 40 people with many witnesses being present, some involved 4 cars who followed and abducted the victims, in another case 2 cars were involved.
 3. The abductions often took place in the middle of the day, or in very busy streets in busy districts, in front of crowded shopping malls, as if it was meant to "show" clearly that the possibility of being abducted is real for those who belong to the targeted group.

4. Consequently many people witnessed those abductions. The abductors also did not seem concerned by the fact that plenty of security cameras managed to film the abductions and notably recorded the number plates of the vehicles with which they committed the abductions.

5. The abductions were consistently carried out in a very similar manner. The cars of the abductees were blocked by the same type of vehicles, often with a car accident being provoked. The abductors then put a bag over the heads of the abductees and pushed them into a black VW Transporter van.

6. All abductees were considered by the Turkish state as political opponents – either as members of the Gülen movement or of the PKK.

7. The fact that the Turkish state is involved with these abductions is supported by a wide variety of evidence. Reference can be made to various statements made by people who were initially abducted but then resurfaced and were finally able to make statements. Moreover, as evidenced by CCTV footage and eyewitnesses, the abductors frequently wore clothes or badges indicating that they worked for the Turkish police forces or the Turkish secret services. In some cases, the abductors did not hesitate to either present themselves as being police officers or behaved as such.

59. The evaluation of the extraterritorial abductions must be developed in another way. As indicated in the report on abductions, it is important to note that, in the context of extraterritorial abductions, Turkey has never denied its involvement. For instance, Turkish Foreign Minister Mevlüt Çavuşoğlu confirmed that 104 Gülenists from 21 countries were abducted and brought back to Turkey as part of the Turkish government's global manhunt. Similarly, Deputy Foreign Minister Yavuz Selim Kiran stated that this happened to more than 100 Gülenists. Ismail Hakki Pekin, former head of the Turkish Armed Forces Intelligence Department, also confirmed that, unless the followers of the Gülen movement are *"returned to Turkey by force, they must be exterminated wherever they are, just like ASALA or the MOSSAD did with the former Nazis"*. The presidential spokesperson Ibrahim Kalin furthermore publicly stated that

operations abroad against the Gülen movement were being carried out “*under clear instructions*” from President Erdogan. He also stated on 21 December 2018, during a press conference, that the government would continue its operations against the Gülen Movement, similar to the one in Kosovo. Vice President Fuat Oktay declared that supporters of the Gülen movement “*would never be left alone*” anywhere in the world.

60. The United Nations has noted the approach being taken by the Turkish state to abduct its citizens from abroad. In July 2019, the UN Working Group on Enforced or Involuntary Disappearances rang the alarm bell while writing: “*One such development is the increasing use of extraterritorial abductions, as the Working Group observed before the General Assembly in 2018. (...) China and Turkey continue to seek the cooperation of other States to arrest, often in undercover operations, Uighurs and alleged supporters of the Hizmet/Gülen movement respectively, living outside the country. The allegations received by the Working Group indicate that individuals often disappear during these operations or once they arrive in the country of destination.*”⁴⁰ In 2018 too, the UN Working Group expressed its concerns in that respect: “*The Working Group is concerned at the allegations concerning the practice of extraterritorial abduction of individuals allegedly belonging to and/or sympathizers of the Hizmet/Gülen movement, as pointed out in a number of communications (see A/WGEID/114/1, paras. 7 and 145).*”⁴¹ Similarly, in a recent letter written to Turkey by the UN Working Group on Enforced or Involuntary Disappearances and three UN Special Rapporteurs it was stated: “*Turkish authorities have not only acknowledged direct responsibility in perpetrating or abetting abductions and illegal transfers, but have also vowed to run more covert operations in the future*”⁴².

⁴⁰ UN Working Group on Enforced Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/42/40) of 30 July 2019, No. 56.

⁴¹ UN Working group on Enforced Disappearances, Report of the Working Group on Enforced Disappearances or Involuntary Disappearances (A/HRC/39/46) of 30 July 2018, No.136.

⁴² Letter sent by the UN Working Group on Enforced Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020).

61. **Our conclusion is that internal and extraterritorial abductions in Turkey are without any doubt to be evaluated as systematic within the framework of the Rome Statute.**

II.3. DIRECTED AGAINST ANY CIVILIAN POPULATION.

II.3.1. DEFINITION WITHIN THE ROME STATUTE.

62. The phrase “*directed against*” a civilian population requires that the civilian population was the primary object of the attack and not just an incidental victim of that attack.⁴³ It was the intention to attack the civilian population. The ICC Appeals Chamber considered in that regard in its Judgement of 30 March 2021 in the case of Mr Bosco Ntaganda:

“Article 7 of the Statute requires a finding that the attack was ‘directed against any civilian population’ and does not require a separate finding that the civilian population was the primary object of the attack. This means no more than that the attack targeted the civilian population; it is not required that the main aim or object of the relevant acts was to attack civilians. An attack directed against a civilian population may also serve other objectives or motives. The question of whether an attack was directed against a civilian population is essentially a factual issue.”⁴⁴ (Underlining added).

63. The term “civilian” population refers to those individuals not involved in any form of military activity or armed resistance.⁴⁵ This requirement clearly reflects that the definition of crimes against humanity was constructed to make a difference with war crimes.

⁴³ G. METTRAUX, *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 233.

⁴⁴ Judgment on the appeals of Mr. Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’ ICC-01/04-02/06-2666-Red, 30 March 2021, para. 7.

⁴⁵ Decision on the Prosecutor’s Application for the Issuance of a Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18, 22 May 2018, para. 45.

"What the requirement of an attack against a civilian population intends to remove from the realm of crimes against humanity is the situation where civilians are merely collateral or incidental victims of an otherwise legitimate military attack, i.e., a situation where they are not the primary target of the attack".⁴⁶

64. Also, the term "any" must be placed in the evolution from war crimes to crimes against humanity. This evolution had as a consequence that the crimes against humanity could also be committed against the own population. "Any" reflects this evolution: it is not limited to "one side" as war crimes were and are applicable for any nationality.

65. The term "*population*", seems to indicate that a group is targeted not each individual as such and that this group must form a sufficiently stable and identifiable group, either geographically or as a result of certain common features (nationality, ethnicity, race or religion).⁴⁷ The common stance taken in the jurisprudence and the legal doctrine is that the fact that attackers specifically target certain groups of individuals *within* the population (e.g. Members of particular communities or affiliations), does not exclude the possibility that the attack was directed against the civilian population.

"For the same reason, the targeting of members of particular communities or affiliations could still lead to the conclusion that the attack is directed against a civilian population"⁴⁸.

TRIFFTERER and AMBOS go a step further:

"Population refers to a multiplicity of persons sharing common attributes"⁴⁹

WERLE and JESSBERGER share the same opinion:

"any group of people linked by shared characteristics that in turn make it the target of an attack"⁵⁰

⁴⁶ METTRAUX, G., International Crimes, Volume II: Crimes against Humanity, 2020, Oxford University Press, 237

⁴⁷ METTRAUX, G., International Crimes, Volume II: Crimes against Humanity, 2020, Oxford University Press, 247.

⁴⁸ G. METTRAUX, International Crimes, Volume II: Crimes against Humanity, 2020, Oxford University Press, 235.

⁴⁹ Triffterer, O. and Ambos, K. (eds), The Rome Statute of the International Criminal Court, A Commentary, München, 2016, 3rd edition, C.H.Beck, 172.

⁵⁰ Werle, G. and Jessberger, F., Principles of International Criminal Law, 2014, 3rd edition, UOP, 334.

66. So for example, in the “Decision on the confirmation of charges against Laurent Gbagbo”, the ICC considered that an attack directed against a civilian population had taken place since the acts of violence were carried out by pro-Gbagbo forces and directed against civilians believed to be Ouattara supporters.⁵¹ Furthermore, in the Judgement in the case of Hisssein Habré, the Extraordinary African Chamber established the attack directed against a civilian population on the following basis:⁵²

“L’ensemble des éléments de preuve démontrent que dès les premières semaines d’existence du régime de Hisssein Habré jusqu’à sa chute, la population civile du Tchad – et plus particulièrement, les opposants politiques au régime de Hisssein Habré ou ceux perçus comme tels, les populations civiles du Sud et des ethnies Hadjerai et Zaghawa – a été victime d’une attaque à grande échelle qui a fait des milliers de victimes. La répression frappait de manière indiscriminée tout membre de ces groupes, hommes, femmes et enfants. Elle a consisté en des actes de violences répétés, délibérés et réguliers, dont des arrestations, détentions au secret et dans des conditions effroyables, sévices de toutes sortes, disparitions et exécutions.”

Free translation:

“All the evidence shows that from the first weeks of the existence of Hisssein Habré’s regime until its fall, the civilian population of Chad – and more specifically, the political opponents of Hisssein Habré’s regime or those perceived as such, the civil populations of the South and of the Hadjerai and Zaghawa ethnic groups – were the victims of a large-scale attack that resulted in thousands of victims. The repression was indiscriminate against any member of these groups, men, women and children. It consisted of repeated, deliberate and regular acts of violence, including arrests, incommunicado detention in appalling conditions, abuse of all kinds, disappearances and executions.”

⁵¹ Decision of the Confirmation of Charges against Laurent Gbagbo, ICC-02/11-01/11-656-Red, 12 June 2014, paras. 209, 210, 211.

⁵² Chambre Africaine extraordinaire d’assises, Prosecutor v. Hisssein Habré, 30 May 2016, 1392.

67. **The conclusion is that the attack must be directed (intention) against any civilian population (not necessarily against all the civilian population), which means a clearly defined and stable group with common characteristics that in turn make it the target of an attack⁵³, so the acts surely are not merely directed against randomly selected individuals.**

II.3.2. APPLICATION TO THE TURKISH SITUATION: TORTURE.

68. Are the acts of torture in Turkey directed towards “any civilian population”? In the report ‘**Torture in Turkey today**’ we have identified 5 targeted groups of whom two are in the heart of our investigation:

- 1) People who are presumed to be linked with or to be supportive to the Kurdish movement (especially the PKK or other leftist groups). This group has been the object of torture with varying intensity. The varying intensity is linked to the presence of a state of emergency in the regions concerned and to whether or not the violent conflict has flared up.
- 2) People presumed to have something to do with the Gülen movement. This group has mainly been subjected to torture since the attempted coup d’état of July 2016.

Immediately linked to these categories are a) Persons, presumed members of the PKK, of far left-wing organizations and of the Gülen movement who were abducted, in Turkey or abroad, and tortured after their abduction, and b) The wives of arrested men, where a practice of imprisoning these women shortly before childbirth has grown. Today it is taken into account that about 800 young children are in prison.

Related to the two categories mentioned, are also those people targeted for arrest with the intention of “convincing” them to become police informants. This group seems to have become larger in recent years. For the sake of completeness, the two other groups, where we do not

⁵³ There has been some discussion if an attack against a civilian population requires necessarily that civilians are targeted because of some distinguishable characteristic of the civilian population. We do not enter into this decisions as it is useless for our report. See, for a critical overview: METTRAUX,G, *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 242-245.

claim, in this report, that they have to be considered as crimes against humanity, are people suspected of “ordinary” crimes, especially aggravated crimes or sexual crimes (against minors) and juveniles who are locked up in a closed shelter/juvenile prison and who suffer from violent illegal punishment.

69. **Taking into account the formulated remarks and the cited literature and jurisprudence, it is hard not to see that these groups must be considered as being in accordance with “any civilian population”. The victims of the abductions are surely not randomly selected persons but belong to two groups (Gülen movement and Kurdish movement) that are critical towards the government and are tortured for that reason.”**

II.3.3. APPLICATION TO THE TURKISH SITUATION: ENFORCED DISAPPEARANCE.

70. Are the acts of abduction executed by the Turkish government directed towards “any civilian population”?

71. In the report ‘**Abduction in Turkey Today**’ we could define the targeted groups as follows.

a) During the 1980s and 1990s, Turkey was confronted with many state-sponsored abductions and disappearances. Human rights organizations estimate that up to 3,500 people forcibly disappeared, with around 450 cases being confirmed. The UN Working Group on Enforced or Involuntary Disappearances registered 214 cases during those years. The victims were nearly exclusive Kurdish persons allegedly linked to the PKK or other (far) left groups.

b) For the abductions of the last years, the composition of the group changed somehow, because the political situation also changed. For that period, we can summarise the report ‘**Abductions in Turkey Today**’ as follows:

“All abductees were considered by the Turkish State as political opponents – either as members of the Gülen movement, or of the PKK. Even before their abduction, many of the victims were the object of a criminal investigation for the alleged membership of

these organisations. Moreover, an important number of abductees knew in advance that they were the object of an arrest warrant and went into hiding out of fear of being tortured by the authorities. Others worked at institutions considered to be linked to the Gülen movement and were dismissed from their jobs following the 15 July 2016 events. Finally, the case of Hıdır Çelik stands out as he seems to have been caught in the midst of violent clashes between the armed forces and the PKK in Diyarbakır's Hazro district. The Turkish authorities seemed to have considered that he was a PKK member and involved with these clashes. In any event, it is clear that Mr. Çelik was considered to be an "opponent" of the Turkish State. Lider Polat was, as a youth leader of HDP, also considered to be a political opponent of the current regime in Turkey."

72. The targeted group for the extraterritorial abductions is nearly completely – to our knowledge, with only one exception – composed of persons (supposed to be) linked with the Gülen movement. A large number of them were responsible for "Gülen schools" in the country they lived.
73. To be in accordance with the Rome Statute, the attack must be directed (intention) against any civilian population (which does not mean all the civilian population), which means a clearly defined and stable group with common characteristics, so the acts surely are not merely directed against randomly selected individuals. As was stipulated above this criterion is present in our case. The victims of the abductions are surely not randomly selected persons, but belong to two groups (Gülen movement and Kurdish movement) that are critical towards the government and are abducted for that reason.

II.4. THE ATTACK MUST BE COMMITTED "PURSUANT TO OR IN FURTHERANCE OF A STATE OR ORGANIZATIONAL POLICY TO COMMIT SUCH ATTACK"

II.4.1. DEFINITION WITHIN THE ROME STATUTE.

74. According to Article 7 (2) (a) of the Rome Statute, the attack against any civilian population must be committed pursuant to or in furtherance of a state or

organizational policy to commit such attack. According to the Elements of Crimes, it is understood that “policy to commit such attack” requires that the state or organization actively promote or encourage such an attack against a civilian population.

75. The policy requirement has *“often been justified in the literature on grounds that it would help distinguish between what is of concern to the international community on the one hand and, on the other, the sort of crimes that should remain the exclusive concern of domestic jurisdictions”*⁵⁴. In this context the ICC stated clearly that the policy requirement *“ensures that the attack, even if carried out over a large geographical area or directed against a large number of victims, must still be thoroughly organised and follow a regular pattern”*⁵⁵. As Cupido explains: *“With the removal of the war nexus and the recognition of crimes against humanity as an autonomous international crime, the legal elements excluding isolated, random and individually committed crimes from the crimes against humanity concept had to be sought elsewhere”*⁵⁶

There is an ongoing discussion⁵⁷ about the nature of the policy – requirement. Is it an element *“from which the systematic nature of an attack may be inferred”*⁵⁸ as the prosecutor in the Kenya case stated and what also is the opinion of an important part of the academia, or is it *“a separate contextual requirement to crimes against humanity”*⁵⁹ as Hansen states, one out of five

⁵⁴ METTRAUX, G, International Crimes, Volume II: Crimes against Humanity, 2020, Oxford University Press, 292.

⁵⁵ ICC, Pre-Trial Chamber I, Situation in the Democratic Republic of the Congo, in the case of The Prosecutor v. German Katanga and Mathieu Ngudjolo Chui, Decision on the confirmation of charges, 30 September 2008, §396.

⁵⁶ Cupido, M., The policy underlying crimes against humanity: practical reflections on a theoretical debate, Criminal Law Forum, 2011, 279.

⁵⁷ For an overview of this discussion, see: Cupido, M., The policy underlying crimes against humanity: practical reflections on a theoretical debate, Criminal Law Forum, 2011, 275-281 and METTRAUX, G, International Crimes, Volume II: Crimes against Humanity, 2020, Oxford University Press, 289 and more specifically footnote 407.

⁵⁸ As previously held by Pre-Trial Chamber III, the reference to a wide spread or systematic attack has been interpreted as excluding isolated or random acts from the concept of crimes against humanity. In this regard, the adjective “widespread” refers to “the large-scale nature of the attack and the number of targeted persons”, while the adjective “systematic” refers to the “organised nature of the acts of violence and the improbability of their random occurrence”. The Chamber, moreover, opined that the existence of a State organisational policy is an element from which the systematic nature of an attack may be inferred”. (ICC, Office of the prosecutor, Situation in the Republic of Kenya: Request for Authorisation of an Investigation Pursuant to Article 15 of the Rome Statute, 26 November 2009. §79).

⁵⁹ Hansen, T., The policy requirement in crimes against humanity: lessons from and for the case of Kenya, Georges Washington International Law Review, 43, no1 (2011), 39.

contextual elements to define a crime against humanity as applied for instance by the Pre-Trial Chamber II in the same case⁶⁰.

76. Although it is certainly an interesting and important discussion, as for our report we will take in account the heaviest burden of proof, which means that we will consider the policy requirement as a specific contextual element needed to be present to consider an attack as a crime against humanity, this discussion is not relevant for our report.

77. Defining term of "policy" in a transparent and verifiable way is not an easy task. *"Our difficulty is that 'policy' is rather a loose word in English and is inclined to be used by people when they want to get out of expressing a concrete meaning"*⁶¹.

78. METTRAUX summarizes the jurisprudence of the ICC as follows: *"From this, the ICC developed a notion of "policy" that revolves around four main features (which have been given different weight and importance by different chambers):*

- (i) The attack must be thoroughly organized and follow a regular pattern.*
- (ii) It must be conducted in furtherance of a common policy involving public or private resources.*
- (iii) It can be implemented either by groups who govern a specific territory or by an organization that has the capacity to commit a widespread or systematic attack against a civilian population*
- (iv) It need not be explicitly defined or formalized".* ^{62 63}

⁶⁰ "Further, Article 7(2)(a) of the Statute imposes the additional requirement that the attack against any civilian population be committed "pursuant to or in furtherance of a State or organizational policy to commit such attack" (ICC, Pre-Trial Chamber III, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the situation in the Republic of Kenya, 31 March 2010, §83).

⁶¹ Minutes of Conference Session of July 19, 1945, cited in METTRAUX, G. International Crimes, Volume II: Crimes against Humanity, 2020, Oxford University Press, 292, footnote 420.

⁶² G. METTRAUX, International Crimes, Volume II: Crimes against Humanity, 2020, Oxford University Press, 298 with reference to ICC, Pre-Trial Chamber III, Corrigendum to "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Côte d'Ivoire, ICC-02/11, 15 November 2011, para 43.

⁶³ The requirement "involving public or private resources" (ii) is requirement stems from footnote 6 of the Elements of Crimes that suggests that the policy must also be implemented by State or organizational action, which has been

79. The Elements of Crime in footnote 7 state that *“Such a policy may, in exceptional circumstances, be implemented by deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action.”* The existence of a policy appears to imply a certain level of planning of the attack, whereby this certain level of planning also seems to be a sufficient element of proof. *“An attack which is planned, directed or organized – as opposed to spontaneous or isolated acts of violence – will satisfy the policy criterion”*.⁶⁴ The policy does not have to have foreseen each of the specific crimes and acts of violence that formed part of the attack, but its implementation must have reasonably involved the commission of the acts of violence against the civilian population.⁶⁵

II.4.2. APPLICATION TO THE TURKISH SITUATION: TORTURE

80. For this report concerning the Turkish situation, it is our intention to prove a state policy, not an organisational policy. The discussion about the definition of “organisational” by this is not relevant for our report.

81. The acts of torture described in the report *‘Torture in Turkey Today’* take place in prisons, police stations and (secret) detention locations by law enforcement officials, mainly police and gendarmerie officers and officers of the secret services. The term “state” is not limited to the governmental level, but to all levels of the state, so also including for instance the law enforcement officials. Further we will indicate that also governors, the parliament, the government and the judiciary actively participate or

interpreted by one ICC Chamber as requiring that the implementation of the policy must involve public or private resources (Decision on the confirmation of charges in the case of the Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, ICC-01/04-01/07, 30 September 2008, para. 396).

⁶⁴ Decision of the Confirmation of Charges against Laurent Gbagbo, ICC-02/11-01/11-656-Red, 12 June 2014, paras. 209, 210, 215-216 and to ICC, Pre-Trial Chamber III, Corrigendum to “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Côte d’Ivoire, ICC-02/11, 15 November 2011, para 43.

⁶⁵ G. METTRAUX, *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 300.

“organize” the policy on torture. So, also the question “if” and to what extent the “deliberate failure to take action” or “the absence of governmental action” is sufficient to prove a state policy, is irrelevant.

82. The policy of the Turkish state can be summarized as follows:

by torturing the persons who are allegedly linked to the Gülen movement or the Kurdish movement, which they all indicate as terrorists, the Turkish state wants to make them confess and aims to physically punish them. The state also aims to extract from them information – false or true – about other persons who on their turn will be tortured, etc... All these persons then will be condemned for long prison sentences, based upon declarations done under torture. The ultimate hope of the government seems to be the annihilation of both movements, and to create a deterrent effect on other (alleged) members of these movements, but that is the political long-term ambition, not the concrete intention. The concrete intention is torturing to punish and to extract real or false information, leading to long prison sentences.

83. The next questions is, whether this policy is “organized”, “promoted”, “encouraged” and how? We perceive different levels of this “organisation”, “promotion” and “encouraging”.

84. At the level of the legislator important steps have been taken in that direction. As a first element the legislator has installed a large possibility of impunity of state officials. We summarize the findings of the report ‘**Impunity in Turkey Today**’ on this topic in the following paragraphs.

85. Turkey’s broad-reaching Anti-Terrorism Law⁶⁶ offers only a vague definition of terrorism, lacking the level of legal certainty required by international human rights standards. The ECtHR has most recently condemned Turkey’s legal framework on

⁶⁶ The Law on Fight against Terrorism, No. 3713, adopted on 12 April 1991, published in the Official Gazette of Turkey on 12 April 1991 and amended in 1995, 1999, 2003, 2006 and 2010

terrorism in two important judgments. In *Imret v. Turkey and Işıkırık v. Turkey*⁶⁷ the Court held that Sections 6 and 7 of Article 220 of the Turkish Criminal Code imputing membership of an illegal organisation to the mere fact of a person having acted ‘on behalf of’ that organisation or for having ‘aided an illegal organisation knowingly and willingly’ respectively, were not ‘foreseeable’ in their application since they did not afford the applicants legal protection against arbitrary interference with their rights to freedom of assembly and association under Article 11 ECHR. This Anti-Terrorism Law has been used widely and arbitrarily to designate and criminalise many instances of peaceful activity of political opponents, human rights defenders and journalists as terrorist activity (in particular for alleged “membership of a terrorist organisation”); as per the succinct conclusion of an Amnesty International report, “*when correctly viewed, everyone’s a terrorist*” in post-coup Turkey⁶⁸.

86. A second element contributing to promote torture, in a nearly direct way, is the continuing existence of legislation creating a system of administrative authorization, by which impunity of perpetrators of torture are assured of impunity. Under the Law No. 4483 on the Prosecution of Civil Servants and Other Public Officials, Turkish civil servants, including police cannot be prosecuted without the permission of relevant administrative authorities for crimes that are not excluded from the scope of the law and that have been committed in the course of the civil servant’s duties. While the crime of torture is excluded from the scope of the law – meaning that prosecutors do not need an authorisation to investigate, the distinction between ‘judicial and administrative law enforcement’ gives rise to conflicting practice. The duty of the administrative law enforcement is to prevent the disturbance of public order (such as maintaining public order, crowd control, etc.), whereas the judicial law enforcement is tasked with the duty to collect criminal evidence in the event of any act that may be considered a crime, to apprehend the perpetrators and deliver them to judicial authorities, and to ensure the conditions for a sound investigation. An authorisation

⁶⁷ ECtHR, *Imret v. Turkey* (No. 2), App. No. 57316/10, 10 July 2018, para. 55 and ECtHR, *Işıkırık v. Turkey*, App. No. 41226/09, 14 November 2017, para. 41,

⁶⁸ Amnesty International, ‘Punishment Without Trial: Pre-Trial Detention in Turkey’ 5 May 2017, available at [amnestyusa.org/punishment-without-trial-pre-trial-detention-in-turkey/](https://www.amnestyusa.org/punishment-without-trial-pre-trial-detention-in-turkey/).

by the highest-ranking civil administrator must be issued for crimes committed by security forces during the execution of their administrative law enforcement duties. For crimes committed during their judicial law enforcement duties, such authorisation is not needed. Such a vague and abstract distinction is very difficult to maintain in practice in terms of the structure, organisation and duties of the law enforcement agencies. Most often, the investigations into crimes allegedly committed by security officers are hindered by subjecting them to an administrative authorisation, thereby contributing to the climate of impunity in the country. This procedural protection has the effect of considerably delaying if not removing certain police misconduct cases from the judicial process entirely.

87. The Turkish Law No. 2937 of 2011 on the State Intelligence Services and the National Intelligence Agency (MIT) – as amended by the Law No. 6532 of 2014 gives MIT personnel effective immunity from persecution unless the head of the intelligence agency issues an authorisation. The public prosecutor thus has no authority to initiate direct criminal investigations. Since 2012, the MIT has allegedly been involved in a high number of crimes, including enforced disappearances, torture and ill-treatment. Such an authorisation is also required by the President to put the Chief of the General Staff and Chief of Staff of the Land, Sea and Air Forces on trial for crimes they allegedly committed in the course of their duties under the Turkish Law No.353 on Military Criminal Procedure Law.

88. Importantly, the Turkish Law No. 6722 of 2016, which amended the Law No. 5442 on Provincial Administration, granted Turkish security forces a *de facto* immunity from prosecution for acts carried out in the course of their operations in the Turkish South-east (especially in 2015 and 2016). The law applies retroactively and introduces the requirement to seek authorisation from relevant authorities (in particular ministries) before any public officials taking part in counter-terrorism operations can be prosecuted for any offences committed while carrying out their duties. This legislation has received harsh criticism from a wide swath of international community. The UN Special Rapporteur, Nils Melzer criticized the legislation noting it has the potential of

“rendering investigations into allegations of torture or ill-treatment by the security forces involved more difficult, if not impossible”⁶⁹ .

89. Also, the Emergency Decrees increased the risk of impunity. Decree No. 667 of 22 July 2016 granted full immunity from legal, administrative, financial and criminal liabilities to state officials who would otherwise be subject to criminal investigation and prosecution. Article 37 of Decree No. 668 and its subsequent amendment, (Article 121 of) Decree No.696, extended this immunity to civilians – those ‘who have adopted decisions and executed decisions or measures with a view to suppressing the coup attempt and terrorist actions performed on 15/7/2016 and the ensuing actions’ ... ‘without having regard to whether they held an official title or were performing an official duty or not’. This effectively prevented accountability for any and all abuses that might have been perpetrated during this time, and also raised concerns of pro-state vigilantism. These decrees were later approved by the Turkish Parliament as Laws Nos. 6749, 6755 and 7079 and added to Turkey’s broad counter-terrorism arsenal. An application on the constitutionality of these clauses was dismissed by the Constitutional Court.
90. The legislator cannot be considered to be ignorant of the consequences this legislation has. In the different reports made for the Turkey Tribunal, the authors have cited international institutions and the ECtHR who clearly warned the legislator about the fact that this kind of legal dispositions have an immediate impact on the persistence of torture. It is not the only element of course, but it is a way to make the above defined policy work. That is the reason why we can and must consider this legislation as element of proof of the “promoted”, “encouraged” or “organized” state policy. It could be argued that it is an indirect proof. We do not agree on that. The impact of the legislation is direct and predictable and the intention to let the

⁶⁹ See, Report of the Special Rapporteur supra n. 51 at para. 69. The CoE Human Rights Commissioner, Dunja Mijatovic similarly noted it “further strengthened the shield of impunity” in Turkey. See COE, Human Rights Commissioner Third party intervention by the Council of Europe Commissioner for Human Rights, CommDH(2017)13 25 April 2017 para. 32, available at <https://rm.coe.int/168070cff9>.

perpetrators unpunished and by this promoting torture as legitimate, seems to us undisputable.

91. At the governmental level the "official rhetoric" is a zero tolerance towards Torture. However, from the very first days following the 2016 attempted coup, disturbing images have fuelled allegations of torture and ill-treatment of detainees in Turkey and have been widely reported by the media and international organisations. Despite the fact that the Turkish government strenuously denied these claims (in official occasions), avowing their commitment to "zero tolerance for torture" and labelling them part of a "misinformation campaign", they have failed to adequately respond to the allegations. Responding to a July 2016 Amnesty International report detailing allegations of torture and ill-treatment, for example, the then Turkish Minister of Justice Bekir Bozdağ, said in an interview, the transcript of which was later posted on the ministry's website, that "Whoever says that there is torture in Turkey's prisons is lying, defaming. There is no possibility that we have torture in our prisons"⁷⁰. Former Prime Minister Binali Yildirim similarly denied such allegations⁷¹.
92. In the context of specific allegations: the official denial of any possibility of torture and the refusal of any investigation into these allegations, next to political motivation, have an immediate impact on the perpetrators who by this receive the clear message that they will not be accused nor condemned. It is an active way to encourage torture towards the targeted groups.
93. It should also be noted that on some non-official occasions, such as television interviews and rallies, the Government officials have appeared to openly encourage torture and ill-treatment, thus contributing openly to the climate of impunity and promoting by this the acts of torture. For instance, President Erdogan at a rally on 4 April 2017 said:

⁷⁰ See, "Bozdağ: Cezaevlerinde İşkence Kesinlikle Yoktur" (There is definitely no torture in prisons"), Ministry of Justice website posting, 2 August 2016, available at [http://www.basin.adalet.gov.tr/Etkinlik/bozdag-cezaevlerinde-iskence-kesinlikle- Yoktur](http://www.basin.adalet.gov.tr/Etkinlik/bozdag-cezaevlerinde-iskence-kesinlikle-Yoktur).

⁷¹ See, "Turkish Premier Demands US Help with Gulen", Wall Street Journal, 26 July 2016, available at <http://www.wsj.com/articles/turkishpremier-demands-u-s-help-with- gulen-1469555265>

*"We are purging every Gülenist in the army, in the police and in state institutions, and we will continue cleansing [these organisations of] them because we will eradicate this cancer from the body of this country and the state. **They will not enjoy the right to life.** They divided this nation, this Ummah [Islamic nation]. Our fight against them will continue until the end. We won't leave them wounded"⁷² (Underlining added).*

Similarly, the then Economy Minister, Nihat Zeybekci said of the coup plotters: *"We will put them into such holes [jails] for punishment that they won't even be able to see the sun of God as long as they breathe. They will not see the light of day. They will not hear a human voice. They will beg for death, saying 'just kill us'"⁷³ (Underlining added).*

94. The difference between the official statements about zero tolerance and deviating communication who encourage or even praise unlawful acts, has also been pointed out by the UN Office of the High Commissioner for Human Rights in the report of March 2018:

"Thousands of uncensored images of torture of alleged coup suspects in degrading circumstances were circulated widely in Turkish media and social networks after the coup, along with statements against opponents of the Government"⁷⁴.

95. Specific attention should be given to the press conference of President Erdogan on 5 July 2021 regarding the abduction of Mr. Inandi from Kyrgyz Republic to Turkey. During this press conference the president showed the picture of Mr. Inandi with clear signs of torture on his right hand. This interpretation has been confirmed by Dr. Fincanci, a reputed authority on examining victims of torture. The message was clear: the president showed he was able to abduct who he wanted to abduct, and the

⁷² 'President Erdogan: Gülenists will not enjoy right to life in Turkey' Turkey Purge, 5 April 2017 available at

<https://turkeypurge.com/president-erdogan-gulenists-will-not-enjoy-right-to-life-in-turkey>

⁷³ "Economy Minister Says Government will Make Coup Plotters Beg For Death", Turkish Minute, 1 August 2016, available at <https://www.turkishminute.com/2016/08/01/economy-minister-says-govt-will-make-coup-plotters-beg-for-death/>.

⁷⁴ Office of the United Nations High Commissioner for Human Rights, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East January-December 2017, March 2018, para 80.

abducted persons could not trust that he would not be tortured. It is hardly possible to have a more clear and open acceptance of torture.

96. Finally, we want to pay attention to the letter of August 2016, reproduced in Appendix 5 of the report '**Torture in Turkey Today**.' In this classified letter, sent by the General Director of Security, the security services, awaiting the visit of the CPT, are ordered "*within this scope, the sport halls and the like used as detention centres should not be used as much as possible, current laws and international standards should be followed in detention actions and processes, and the regularisations/arrangements to make all other detention centres appropriate for the aforementioned visit should be immediately realised*". It is evident that the central security administration, under the direct authority of the government, was trying to hide as much as possible the unlawful acts and by that was actively covering up these acts.
97. At the judicial level, we refer to the report '**Torture in Turkey Today**'. Despite numerous complaints (estimated an average of 3000 a year), documented and confirmed by official international reports, the number of inquiries, the number of indictments, the number of prison sanctions are extremely low and impossible to evaluate them as in line with the international standards. As highlighted by the ICJ in a report of June 2016, transfers of judges between judicial positions in different regions of Turkey were being applied as a hidden form of disciplinary sanction and as a means to marginalize judges and prosecutors seen as unsupportive of Government interests or objectives.
98. This finding concurs with the numerous refusals of the governors to start an inquiry and with the extreme length of procedures based on complaints against torture. The government actively promoted this absence of judicial reaction. As stated in the report '**Judicial Independence & Access to Justice**': "*Arrest and detention of judges and prosecutors, who adopted decisions or performed investigations disliked by the Government, happened much before the attempted coup d'état; the charge was the same, before and after July 2016 "being a member of a terrorist organisation"*". After the failed coup however, the intensity of the governmental action increased spectacularly.

One day after the attempted coup d'état, 2745 judges and prosecutors were purged. The policy oriented against the critical, in that moment mostly alleged Gülen members, what was started in 2013, was well prepared and the failed coup d'état was an excellent excuse (as President Erdogan said: a gift of God) to eradicate this group from the judiciary and by that weakening, if not destroying the judicial control on torture imposed on this group. Finally, more than 4000 judges and prosecutors were dismissed and 2450 judges and prosecutors were arrested.

99. Finally at the operational level of the security services, the recruitment of specialists, the creation of specific and specialised infrastructure, the elaboration of tactical moves towards the wives of the accused, the absence of disciplinary sanctions and the refusal by the governors to allow the prosecution of the persons accused of torture, is a clear indication that torture is actively promoted and encouraged state officials.

100. **The overall conclusion is that the Turkish state developed a policy of torturing persons allegedly linked to the Gülen movement or the Kurdish movement, to make them confess, to physically punish them, to extract information – false or true – about other persons, so that they afterwards can be condemned to long prison sentences. Every level of the state: legislator, government, governors, the judicial system and the security services organize, encourage and actively promote, in a direct or indirect way this policy. The requirements foreseen in Article 7(2) are fulfilled.**

II.4.3. APPLICATION TO THE TURKISH SITUATION: ENFORCED DISAPPEARANCE.

101. The policy of the Turkish state on enforced disappearance can be summarized as follows: by abducting, depriving them of their freedom and meanwhile torturing the persons who are allegedly linked to the Gülen movement or the Kurdish movement, which they all indicate as terrorists, the Turkish state wants to make them confess, aims to physically punish them and afterwards condemn them to long prison

sentences. The state aims to extract information -false or true- about other persons, who then will be tortured and/or condemned to long prison sentences also.

102. To evaluate the existence of a policy concerning forced disappearance, we need to differentiate between the internal and the extraterritorial abductions.
103. The Turkish government has continuously denied any involvement in internal abductions. Any state implication has been denied. Our investigation in the report '**Abductions in Turkey Today**', based for each case on at least three different witnesses, has allowed us to distinguish 25 cases in which it is beyond any reasonable doubt that an abduction organised by the Turkish state has taken place. It is realistic to state that this number is an underestimation.
104. The policy of forced disappearance is not a new phenomenon. Turkey has indeed a long history in this. Human Rights organisations estimate that during the 1980s and de 1990s up to 3500 persons forcibly disappeared, with among 450 cases confirmed. After a period where this illegal actions strongly diminished, the abductions are back as a regular state practice.
105. Because of the denial by the government of any involvement, even the denial of the existence of abductions, and taking in account the by nature secret character of abductions, to proof the presence of state policy, much the same elements will be taken in consideration as under II.2.3 (systematic character). In its case law the ICC developed some elements contributing to the proof a policy. We need to take in account that if abductions, which are complex actions, are executed by state officials, by that fact alone also important public resources are used (which means that this resources must be foreseen or at least approved) and that some coordination is needed. One of the typical coordination activities is also the way how abducted persons are "hand over" to police station, with a recurring pattern of "coincidental" apprehending of the "suspect". Making available sufficient resources and assuring the coordination for instance by organizing a recurring pattern of handing over "suspects"

to the police station: these are two ways to “actively promote or encourage” as mentioned in the Elements of Crimes.

106. The disappearance of persons is a fact that will normally alarm security services in every country. This statement is strengthened when witnesses or CCTV footage testify that the disappearance was forced by violence, in quite some cases by persons wearing police cloths or declaring to be policemen. This modus operandi was described in our report '**Abductions in Turkey Today**'. This report also clearly pointed out that no conviction ever occurred, and that no real investigation was started. The wives of the victims were not allowed to speak with their husband alone, the victims were not allowed to have their own lawyer, the victims and their family were threatened, ... If a small offense now and then happens and the security officers and the judicial apparatus do not react, we cannot easily deduct from these facts a policy of the authorities not to react or even stronger: a policy to promote these offenses. However, when very important crimes as forced disappearances/abductions often occur and the security officers and the judicial apparatus never react, we must qualify this attitude as a clear way of promoting/encouraging these forced disappearances/abductions.
107. We need to stress a very import declaration by a member of the Turkish parliament who was a member of the ruling AKP party. Indeed, in May 2020 the involvement of the Turkish state and the control over the execution of these internal abductions was confirmed by a video interview given by Mustafa Yeneroğlu, member of Turkish parliament and former chair of the parliament’s Committee on Human Rights Inquiry. At that time he was a member of the ruling AKP party. He stated:
“The abduction cases began at the time when I was chair of the Committee on Human Rights Inquiry. I talked to relevant people then, telling them that unless those people turned up within three weeks, I would do my part and raise the issue on different platforms. At the time we resolved it and those people all reappeared here and there, at police stations. I know exactly how that happened, how it developed, and by whom it was done. If I did not know, I would not be speaking this assertively”. (Underlining added)

108. **Our conclusion is that the policy of the Turkish state on internal enforced disappearance, is promoted and encouraged in a direct and indirect way. Abductions need a complex form of coordination of different services and require substantial resources, which are elements of promotion or encouragement. Normally abductions would cause intensive investigations. In Turkey abductions go together with an extreme form of impunity with negating all elements of proof, with refusing any investigation and with controlling the possible consequences of the abductions by legally and extra-legally limiting possible revendications of the victims and/or their family.**
109. The evaluation of a policy of the extraterritorial abductions is much easier. The government itself has openly declared to be responsible for the abductions and to go further with it as long as needed. In the context of international abductions, Turkey has never denied its involvement. For instance, Turkish Foreign Minister Mevlüt Çavuşoğlu confirmed that 104 Gülenists from 21 countries were abducted and brought back to Turkey as part of the Turkish government's global manhunt. Similarly, Deputy Foreign Minister Yavuz Selim Kiran stated that this happened to more than 100 Gülenists. Ismail Hakki Pekin, former head of the Turkish Armed Forces Intelligence Department, also confirmed that, unless the followers of the Gülen movement are *"returned to Turkey by force, they must be exterminated wherever they are, just like ASALA or the MOSSAD did with the former Nazis"*. The presidential spokesperson Ibrahim Kalin furthermore publicly stated that operations abroad against the Gülen movement were being carried out *"under clear instructions"* from President Erdogan. He also stated on 21 December 2018, during a press conference, that the Government would continue its operations against the Gülen Movement, similar to the one in Kosovo. Vice President Fuat Oktay declared that supporters of the Gülen movement *"would never be left alone"* anywhere in the world.
110. The United Nations has noted the approach being taken by the Turkish state to abduct its citizens from abroad. In July 2019, the UN Working Group on Enforced or Involuntary Disappearances rang the alarm bell while writing: *"One such development*

is the increasing use of extraterritorial abductions, as the Working Group observed before the General Assembly in 2018. (...) China and Turkey continue to seek the cooperation of other States to arrest, often in undercover operations, Uighurs and alleged supporters of the Hizmet/Gülen movement, respectively, living outside the country. The allegations received by the Working Group indicate that individuals often disappear during these operations or once they arrive in the country of destination.”⁷⁵. In 2018 too, the UN Working Group expressed its concerns in that respect: “The Working Group is concerned at the allegations concerning the practice of extraterritorial abduction of individuals allegedly belonging to and/or sympathizers of the Hizmet/Gülen movement, as pointed out in a number of communications.”⁷⁶ Similarly, in a more recent letter written to Turkey by the UN Working Group on Enforced or Involuntary Disappearances and 3 UN Special Rapporteurs it was stated: “Turkish authorities have not only acknowledged direct responsibility in perpetrating or abetting abductions and illegal transfers, but have also vowed to run more covert operations in the future”⁷⁷.

- 111. Our conclusion is that the policy of the Turkish state on extraterritorial enforced disappearances, is promoted and encouraged in a direct and openly way by the government itself, who even seems to take pride in it.**

⁷⁵ UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/42/40) of 30 July 2019, at 56.

⁷⁶ UN Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/39/46) of 30 July 2018, at 136.

⁷⁷ Letter sent by the UN Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Turkey on 5 May 2020 (Reference: AL TUR 5/2020).

III. COMMITTING CRIMES LISTED IN ARTICLE 7 OF THE ROME STATUTE

112. As mentioned above, in order to constitute a crime against humanity, the acts of violence committed as part of a widespread or systematic attack directed against any civilian population must fall within (one of) the categories of offences listed in Article 7 (1) of the Rome Statute. For the purposes of this report, only the underlying offences of torture and enforced disappearance of persons are discussed.

III.1 TORTURE

113. Article 7(2)(e) Rome Statute defines torture as follows: *"The intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions."*

114. Our report '**Torture in Turkey Today**' departs from the definition of torture as stated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). The definition in the Rome Statute is broader than the definition of the CAT Convention, as there is no obligation regarding the purpose of torture. Thus, what the report identifies as torture is undoubtedly also covered by the concept of torture within the meaning of the Rome Statute. The Rome Statute also, at least according to Rodley, does not need – as seems to do the ECHR as interpreted by the ECtHR- *"a need for an aggravation of the pain or suffering"*⁷⁸.

115. The findings of the report are based nearly exclusively on reports of international institutions. Here, we cite only two of them. The other reports all point in the same direction.

116. **European Committee for the Prevention of Torture:** During the visit from 10 to 23 May 2017 *"the CPT's delegation received a considerable number of allegations from*

⁷⁸ Rodley, N., The definition of Torture in International Law, Current Legal Problems, 55 (2002), 467-493.

detained persons (including women and juveniles) of recent physical ill-treatment by police and gendarmerie officers, in particular in the Istanbul area and in south-eastern Turkey. Most of these allegations concerned excessive use of force at the time of or immediately following apprehension (...), as well as beatings during transportation to a law enforcement establishment. In addition, many detained persons claimed that they had been physically ill-treated inside law enforcement establishments (in locations which were apparently not covered by CCTV cameras), with a view to extracting a confession or obtaining information or as a punishment. (...) In Istanbul, the delegation received detailed and consistent accounts from detained persons (including women), interviewed independently of each other, that they had been taken by police officers to a partly derelict building in the city centre, where they were subjected to heavy beatings and severe sexual humiliation, in particular by officers of a mobile intervention unit (so-called "Yunus")⁷⁹.

117. **The special UN Rapporteur on Torture:** *"According to numerous consistent allegations received by the Special Rapporteur, in the immediate aftermath of the failed coup, torture and other forms of ill-treatment were widespread, particularly at the time of arrest and during the subsequent detention in police or gendarmerie lock-ups as well as in improvised unofficial detention locations such as sports centres, stables and the corridors of courthouses."⁸⁰*

"The Special Rapporteur received numerous testimonies of torture and other forms of ill-treatment of both male and female individuals suspected of being members or sympathizers of the PKK and other groups affiliated with the Kurdish insurgency. Most instances of ill-treatment were alleged to have been inflicted upon apprehension and arrest, as well as during transit to the detention location, predominantly by the special operations teams of the police or by the gendarmerie. Ill treatment was also alleged to have occurred during interrogations in the early hours and days of detention in holding cells"⁸¹.

⁷⁹ CPT/Inf (2020)22, No.12.

⁸⁰ A/HRC/37/50/Add.1, No. 26.

⁸¹ Ibidem, No 30

118. **Our conclusion is that the acts of torture as described in the report ‘Torture in Turkey today’ are in line with the definition of Torture in the Rome Statute.**

III.2. ENFORCED DISAPPEARANCE

119. For the definition of Enforced Disappearance, we need to refer to Article 7 (2) of the Statute and to the Elements of Crimes.

120. Article 7(2) defines enforced disappearance as follows:

“Enforced disappearance of persons means the arrest, detention or abduction of persons by or with the authorization, support or acquiescence of a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”. The requirement: *“for a prolonged period of time”* is specific to the Rome Statute.

121. The elements of crimes further specify enforced disappearance as follows.

*Crime against humanity of enforced disappearance of persons*⁸²⁸³

1. *The perpetrator: (a) Arrested, detained*⁸⁴⁸⁵ *or abducted one or more persons; or (b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.*

2. *(a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or (b) Such refusal was preceded or accompanied by that deprivation of freedom.*

⁸² Given the complex nature of this crime, it is recognized that its commission will normally involve more than one perpetrator as a part of a common criminal purpose.

⁸³ This crime falls under the jurisdiction of the Court only if the attack referred to in elements 7 and 8 occurs after the entry into force of the Statute.

⁸⁴ The word “detained” would include a perpetrator who maintained an existing detention.

⁸⁵ It is understood that under certain circumstances an arrest or detention may have been lawful.

3. *The perpetrator was aware that:*⁸⁶ (a) *Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons*⁸⁷; or (b) *Such refusal was preceded or accompanied by that deprivation of freedom.*
4. *Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.*
5. *Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization.*
6. *The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.*
7. *The conduct was committed as part of a widespread or systematic attack directed against a civilian population.*
8. *The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.*

122. Two basic elements seem to define "enforced disappearance". *"Two different strands of action fulfil the elements of the specific crime of enforced disappearance. The first strand of action consists of the deprivation of liberty, whereas the second strand of action is the refusal to inform about the fate and the whereabouts of the victim"*⁸⁸. METTRAUX adds a third element: *"the offence requires proof of an element of special intent to remove the victim from the protection of the law for a prolonged period of time"* also as essential⁸⁹.

123. For the purpose of our report, some elements of the definition seem to be evident. In the case of abductions, the deprivation of liberty is clear. The Rome Statute requires

⁸⁶ This element, inserted because of the complexity of this crime, is without prejudice to the General Introduction to the Elements of Crimes.

⁸⁷ It is understood that, in the case of a perpetrator who maintained an existing detention, this element would be satisfied if the perpetrator was aware that such a refusal had already taken place.

⁸⁸ Ott, L. *Enforced Disappearance in International Law*, 2011, Intersentia, 165. See also: METTRAUX, G. *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 719.

⁸⁹ G. METTRAUX, *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 719.

that the “*arrest, detention or abduction*” is carried out “*by, or with the authorization, support or acquiescence of a State or a political organization.*” The notions “authorization”, “support” or “acquiescence” apply alternatively and are to be interpreted broadly. “Authorization” is to be understood as consent with a particular conduct, whilst “acquiescence” would cover situations where a state or organization learns of the commission of such acts committed by officials or associates and fails to adopt any measures to prevent, stop or punish such acts. “Support” could refer to any form of assistance, such as the provision of resources or facilities, logistical support or intelligence.⁹⁰ In the case reported in ‘**Abductions in Turkey Today**’, the role of the state is clear. However, do the investigated acts correspond with the requirement of a “prolonged period of time”?

124. For the internal abductions, there does not seem to be any doubt concerning the time the victims disappeared. The shortest period is 41 days, most victims disappeared for months some are still missing since long time.

125. For the extraterritorial abductions, the period of incommunicado in general is shorter. So the question is what must be understood under “prolonged period of time”. OTT states it as follows: “*By using this formulation, the Rome Statute excludes cases of disappearance, where the intention is directed towards releasing the detained after a short period of time*”⁹¹ And further: “*Neither the Statute nor case law and literature provide for interpretative clues on what could be understood as “prolonged”. Since the risk of maltreatment or killing is the highest during the first hours and days after the initial deprivation of liberty, the time frame conceived as “prolonged” must be interpreted as short as possible. In order to define the cases in which the International Criminal Court will have jurisdiction, HALL suggests taking the internationally recognized law and standards in the time period during which governments can deny family, lawyers and doctors information on a detained person, as reference point. Today there is international consent that a person deprived of his or her liberty must have*

⁹⁰ METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 725-726.

⁹¹ Ott, L. *Enforced Disappearance in International Law*, 2011, Intersentia, 186

*contact with the outside world 'without delay' and even in exceptional circumstances, denying such access to the outside world for more than 24 to 48 hours would violate the rights of the person detained. Since these reference periods have found international acceptance and have proved to be viable and there is thus no reason to form new standards*⁹².

126. It seems appropriate to apply a teleological interpretation of the requirement. In the extraterritorial abductions, the period of incommunicado seems always to be depending on the possibility to avoid any judicial procedure by the victim in the country of his residence that could prohibit the abduction towards Turkey. Once the victim arrives in Turkey, the government proudly announces the abduction and breaks the silence. However also in that case the victim will not necessarily appear in a very short way for a judge, but often will be kept in custody without lawyer designated by himself, without a medical expertise that could prove him/her being tortured, In all cases the "period" is sufficiently "prolonged" to annihilate any judicial protection and by this to "remove him from the protection of law" in a definitive and decisive way, because once abducted to Turkey the abducted loses any possibility to enjoy the judicial protection in the country of residence, that could have kept him/her out of the control of the Turkish state. A specific element in all this, is the fact that several abducted victims had obtained or applied for a refugee status, where the expulsion of refugees to their country of origin in international law is strictly regulated.
127. The second element is the refusal to give information. According to OTT some scholars "argue that the refusal is only given if the information about the fate and whereabouts of the person was specifically asked for by family members, counsel, etc."⁹³ Although the author does not seem to accept this interpretation, in any of the cases reported, one way or another action was taken by (some of) the named actors. The approach of METTRAUX seems to us the most logical one: "As a matter of human rights law, whether or not the victim's family lodges a formal complaint, State authorities are duty-

⁹² Ott, L. Enforced Disappearance in International Law, 2011, Intersentia, 187

⁹³Ott, L. Enforced Disappearance in International Law, 2011, Intersentia, 178.

bound to commence without delay an impartial and thorough investigation ex officio into the victim's disappearance. ... 'Refusal' to provide information about the fate of the victim could, therefore, be inferred not only from the response given to request for information but also from the general conduct of those concerned, including efforts to dissimulate the circumstances of the disappearance and fate of the victims, evidence of a policy of silence, or threats to victims, their relatives, or their representatives".⁹⁴

128. **Our conclusion is that the extraterritorial abductions described in the report 'Abductions in Turkey Today' are in line with the definition of enforced disappearances in the Rome Statute.**

III.3 OTHER CRIMES NOT TAKING IN ACCOUNT IN THIS REPORT, AS CRIMES AGAINST HUMANITY, BUT PART OF THE CONTEXTUAL SITUATION.

129. In Article 7 (1) of the Rome Statute "*imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law*" is also defined as a crime against humanity, on the condition of course that all elements of the "chapeau" are met. In our report we will not further examine if the massive deprivation of ten thousands of people without due process, in Turkey must be considered as a crime against humanity. International reports and the ECtHR have been very critical. We refer also to the report '**Judicial Independence & Access to Justice**'. At this point, it is worth mentioning that the Working Group on Arbitrary Detentions (WGAD) of United Nations Human Rights Council, in a recent Opinion, has issued the following statement: "*In the past three years, the Working Group has noted a significant increase in the number of cases brought to it concerning arbitrary detention in Turkey. The Working Group expresses its concern over the pattern that all these cases follow and recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity. In almost all cases of re-arrest, decisions to re-*

⁹⁴ METTRAUX, G., *International Crimes, Volume II: Crimes against Humanity*, 2020, Oxford University Press, 723.

arrest have been triggered either by an AKP politician's statement or by a message from a pro-Erdogan journalist posted online. In this context it seems reasonable to take in account that, the absence of the rule of law, the deterioration of the independence of the judiciary and the high numbers of persons with long imprisonment sanctions without due process, are important contextual elements to evaluate the facts of torture and enforced disappearance as being in accordance with the requirements of the Rome Statute or not. The impact of the described acts of torture and abduction is indeed much more intensive when there is no real, independent judicial remedy left. Our conclusion necessarily needs to take in account these contextual elements. We cannot judge acts without taking in account the context in which these acts are committed.

IV. CONCLUSION

130. "There are several good reasons why the ICC should only deal with the gravest of all crimes, and not a broader spectrum of human rights abuses"⁹⁵. As HANSEN states: "There is some merit in claiming that we must uphold high thresholds for international crimes, exactly in order not to confuse these serious threats to humanity with other crimes"⁹⁶.
131. We agree completely with the citations above. In this report we have for each element examined thoroughly if the facts are in correspondence with the Rome Statute and the Elements of Crimes. We have not looked at the competence of the ICC neither to the individual responsibility of the alleged perpetrators. That will come later.
132. For now, our investigation is limited to the question put forward in the beginning of this report: do we need to qualify the acts of torture, the national and the

⁹⁵ Hansen, T., The policy requirement in crimes against humanity: lessons from and for the case of Kenya, *Georges Washington International Law Review*, 43, no1 (2011), 31.

⁹⁶ Hansen, T., The policy requirement in crimes against humanity: lessons from and for the case of Kenya, *Georges Washington International Law Review*, 43, no1 (2011), 35.

extraterritorial abductions, as described in the reports brought before the Turkey Tribunal, as crimes against humanity, according to the Rome Statute?

133. The answer to this question, based on the detailed analysis of the different components of the definitions in the Rome Statute and the Elements of Crimes is affirmative. All elements are present. The acts of torture and the abductions can be qualified as an "attack", meaning: a course of conduct, involving the multiple commission of acts. The attack is "widespread" (torture) or "systematic" (torture and abductions) and are "directed against any civilian population". The attack is committed pursuant to or in furtherance of a state or organizational policy to commit such attack. And the acts of torture and the abductions correspond to the definition of these crimes in the Rome Statute. We also take in account the massive number of imprisonments in breach of the international recognised standards and the absence of the independence of the judiciary and the rule of law, which means that the impact of the described facts is much more intense than in a "normal situation".
134. **As said above, we fully agree with the opinion that the ICC should only deal with the gravest of all crimes and that the evaluation if facts constitute crimes against humanity must be strict. But we can't deny the reality neither.**

The facts of torture and the abductions described in our reports, are crimes against humanity.



TURKEY TRIBUNAL

Because Silence is the Greatest Enemy of
Fundamental Human Rights



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**INTERNATIONAL
OBSERVATORY
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